

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Plum Pox Virus

I.D. No. AAM-44-07-00006-E
Filing No. 1076
Filing date: Oct. 12, 2007
Effective date: Oct. 12, 2007

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

Action taken: Addition of Part 140 to Title 1 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This rule establishes a plum pox virus quarantine in New York State for purposes of helping prevent the further spread of this viral infection of stone fruit trees within the State.

The plum pox virus, Potyvirus, is a serious viral disease of stone fruit and ornamental nursery stock that affects many of the Prunus species. This includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but seriously debilitates the produc-

tive life of the plants. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for plum pox. However, in 2006, the plum pox virus was detected in two locations in Niagara County near the Canadian border. As a result, on July 16, 2007, the Department adopted, on an emergency basis, a rule which immediately established a plum pox quarantine in that portion of Niagara County. The plum pox virus has since been detected in four (4) other locations in Niagara County as well as one location in Orleans County. This rule establishes the plum pox virus quarantine in Orleans County and contains the necessary extensions of that quarantine in Niagara County.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that failure to immediately establish a quarantine to regulate the intrastate movement of stone fruit could result in the unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the agricultural resources of the State, but could also result in a federal quarantine or exterior quarantines imposed by other states. Such quarantines would cause economic hardship for New York's stone fruit growers, since such quarantines may be broader than that which we propose and may vary in requirements and prohibitions from state to state. The consequent loss of business would harm industries which are important to New York State's economy and as such, would harm the general welfare. Accordingly, it appears that this rule should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Various trees and plants of the Prunus species.

Purpose: To establish a plum pox virus quarantine in New York State for purposes of helping to prevent the further spread of this viral infection of plants within the State.

Text of emergency rule:

*PART 140. CONTROL OF THE PLUM POX VIRUS (POTYVIRUS
DIDERON STRAIN)*

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

Section 140.1 Definitions.

For the purpose of this Part, the following words, names and terms shall be construed, respectively, to mean:

(a) *Certificate* means a certificate issued or authorized to be issued by the Commissioner, certifying the eligibility of products for intrastate movement under the requirements of this Part.

(b) *Commissioner* means the Commissioner of Agriculture and Markets of the State of New York and any officer or employee of the New York State Department of Agriculture and Markets or the United States Department of Agriculture duly delegated pursuant to section 17 of the Agriculture and Markets Law.

(c) *Compliance agreement* means an agreement approved by the Commissioner and executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.

(d) *Infection* means the presence of plum pox virus.

(e) *Inspector* means an inspector of the New York State Department of Agriculture and Markets, or representatives of the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), when authorized to act in that capacity.

(f) *Limited permit* means a permit issued by the Commissioner for the planting of regulated articles in the nursery stock regulated area for the restricted movement of regulated articles from a regulated area to a specified destination for specified processing, handling or utilization.

(g) *Moved and movement* means shipped, offered for shipment to a common carrier received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved from the regulated area.

(h) *Nursery dealer* means any person, firm, partnership, association or corporation which or who is not a nursery grower or an original producer of nursery stock in the State and which or who buys, or acquires, or receives on consignment nursery stock for the purpose of reselling, transporting, or otherwise disposing of same.

(i) *Nursery grower* means the owner or operator of the grounds or premises, private or public, on or which nursery stock is propagated, grown or cultivated for the purpose of distribution or selling the same as a business. The term nursery grower shall not include persons engaged in the part-time production of plant products not sold in the regular channels of business.

(j) *Nursery stock* means all trees, shrubs, plants and vines and parts thereof.

(k) *Nursery stock regulated area* means any area so designated by this Part, which is within 11.5 kilometers of any location where plum pox virus has been detected within the preceding three years.

(l) *Plum pox virus* means the plum pox potyvirus Dideron strain, which is a pathogen affecting susceptible *Prunus* species.

(m) *Quarantined area* means the area designated as quarantined by this Part.

(n) *Regulated area* means an area designated as regulated pursuant to this Part due to the presence of plum pox virus in that area.

(o) *Regulated articles* means plant and plant materials, including trees, seedlings, root stock, budwood, branches, twigs and leaves of the following varieties of the *Prunus* species:

(1) Fruit-bearing and ornamental varieties of *Prunus americana* (American plum and wild plum); *Prunus armeniaca* (apricot); *Prunus cerasifera* (Myrobalan plum/cherry plum); *Prunus domestica* (European plum); *Prunus dulcis* (sweet almond); *Prunus peresica* var. *persica* (peach and flowering peach); *Prunus persica* var. *nucipersica* (nectarine); and *Prunus salicina* (Japanese plum).

(2) Ornamental varieties of *Prunus cerasifera* (purple leaf plum); *Prunus x cistena* (purple leaf sand cherry); *Prunus glandulosa* (flowering almond); *Prunus persica* (flowering peach and purple leaf peach); *Prunus pumila* (sand cherry); *Prunus spinosa* (black thorn and sloe); *Prunus serrulata* (Japanese flowering cherry and Kwanzan cherry); *Prunus tomentosa* (Nanking cherry and Hansen's bush cherry); and *Prunus triloba* (flowering plum).

(3) For the purposes of this Part, the following varieties of the *Prunus* species are not regulated articles: *Prunus avium*; *Prunus cerasus*; *Prunus Effuse*; *Prunus laurocerasus*; *Prunus mahaleb*; *Prunus padus*; *Prunus sargentii*; *Prunus serotina*; *Prunus serrula*; *Prunus subhirtella*; *Prunus yedoensis*; and *Prunus virginiana*.

(4) For the purposes of this Part, seeds and fruit that is free of leaves of all varieties of the *Prunus* species are not regulated articles.

(o) *State* means the State of New York.

Section 140.2 *Quarantined area*.

(a) That area of Niagara County which is bordered on the north by Lake Ontario and bordered on the east by Hartland Road, which extends south to its intersection with Ditch Road; extends west on Ditch Road to its intersection with Hosmer Road; extends south on Hosmer Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to its intersection with Orangeport Road; and extends south on Orangeport Road to its intersection with Slayton-Settlement Road; extends west on Slayton-Settlement Road to its intersection with Route 78 (Lockport-Olcott Road); extends south on Route 78 (Lockport-Olcott Road) to its intersection with Stone Road; extends northwest on Stone Road to its intersection with Sunset Drive; extends south on Sunset Drive to its intersection with Shunpike Road; extends west on Shunpike to its intersection with Route 93 (Townline Road); extends south on Route 93 (Townline Road) to its intersection with Route 270 (Campbell Boulevard); extends south on Route 270 (Campbell Boulevard) to its intersection with Beach Ridge Road; extends southwest on Beach Ridge Road to its intersection with Townline Road; extends south on Townline Road to its intersection with the Tonawanda Creek; following the Tonawanda Creek west to its entry into the Niagara River; following the Niagara River north to its entry into Lake Ontario.

(b) That area of Orleans County which is bordered on the north by Lake Ontario and bordered on the west by County Line Road; extends south on County Line Road to its intersection with Johnson Road; extends east on Johnson Road to its intersection with Salt Works Road; extends south on Salt Works Road to its intersection with the Orleans/Genesee County border; extends east along the Orleans/Genesee County border to its intersection with Route 98 (Quaker Hill Road); extends north on Route 98 (Quaker Hill Road) to its intersection with East Barre Road; extends east on East Barre Road to its intersection with Culver Road; extends north on Culver Road to its intersection with East Lee Road; extends east on East Lee Road to its intersection with Rich's Corners Road; extends north on Rich's Corners Road to its intersection with Route 31 (Telegraph Road) and Keitel Road; extends north on Keitel Road to its intersection with Zig Zag Road; extends north on Zig Zag Road to its intersection with Lattin Road; extends north on Lattin Road to its intersection with Route 104 (Ridge Road West); extends west on Route 104 (Ridge Road West) to its intersection with Sawyer Road; extends north on Sawyer Road to its intersection with Roosevelt Highway; extends west on Roosevelt Highway to its intersection with Oak Orchard Road; extends north on Oak Orchard Road to its intersection with Point Breeze Road; extends north on Point Breeze Road to its intersection with Lake Ontario.

Section 140.3 *Regulated area*.

The following areas within the quarantined area are regulated areas:

(a) That area bordered on the east by Porter Center Road; bordered on the south by Balmer Road which terminates on Creek Road; bordered on the west by Creek Road, Blairville Road and the Robert Moses Parkway; and bordered on the north by Lake Ontario in the Town of Porter in the County of Niagara, State of New York.

(b) That area bordered on the north by Lake Ontario; bordered on the west by Maple Road; extends south on Maple Road to its intersection with Wilson-Burt Road; extends east on Wilson-Burt Road to its intersection with Beebe Road; extends south on Beebe Road to its intersection with Ide Road; extends east on Ide Road to its intersection with Route 78 (Lockport-Olcott Road); extends north on Route 78 (Lockport-Olcott Road) to its intersection with Lake Ontario, in the Towns of Burt, Newfane, and Wilson in the County of Niagara, State of New York.

(c) That area bordered on the east by Porter Center Road starting at its intersection with Route 104 (Ridge Road) and extending north-northeast on Porter Center Road to its intersection with Langdon Road; extends east on Langdon Road to its intersection with Dickersonville Road; extends north on Dickersonville Road to its intersection with Schoolhouse Road; extends east on Schoolhouse Road to its intersection with Ransomville Road; extends south on Ransomville Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to its intersection with Simmons Road; extends south on Simmons Road to its intersection with Albright Road; extends east on Albright Road to its intersection with Townline Road; extends south on Townline Road to its intersection with Lower Mountain Road; extends west on Lower Mountain Road to its intersection with Meyers Hill Road; extends south on Meyers Hill Road to its intersection with Upper Mountain Road; extends west on Upper Mountain Road to its intersection with Indian Hill Road; extends northeast on Indian Hill Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to its intersection with Porter Center Road, in the Town of Lewiston, in the County of Niagara, State of New York.

(d) That area bordered on the south by the Erie Canal at its intersection with Culvert Road extending north on Culvert Road to its intersection with Route 104 (Ridge Road); extends east on Route 104 (Ridge Road) to its intersection with Kenyonville Road; extends south on Kenyonville Road to its intersection with Eagle Harbor- Knowlesville Road; extends east on Eagle Harbor- Knowlesville Road to its intersection with the Erie Canal; following west along the Erie Canal to its intersection with Culvert Road, in the Town of Ridgeway, in the County of Orleans, State of New York.

Section 140.4 Nursery stock regulated area.

The nursery stock regulated area shall consist of the quarantined area set forth in section 140.2 of this Part, exclusive of the regulated areas set forth in section 140.3 of this Part.

Section 140.5 Conditions governing the propagation of regulated articles.

Regulated articles originating from or growing within the regulated area or the nursery stock regulated area shall not be used as a source of propagated material (either root stock, scion or seed).

Section 140.6 Conditions governing the intrastate movement of regulated articles.

(a) Prohibited movement.

(1) The movement of any regulated article within the regulated area is prohibited.

(2) The intrastate movement of any regulated article from the regulated area to any point outside the regulated area is prohibited, except pursuant to a limited permit, authorizing such movement.

(3) The intrastate movement of any regulated article from any point outside the regulated area to the regulated area is prohibited, except pursuant to a limited permit, authorizing such movement.

(4) The intrastate movement of any article infected with or suspected of having been exposed to the plum pox virus is prohibited, except as provided in Section 140.12 of this Part.

(5) The handling of regulated articles by nursery dealers or nursery growers within the nursery stock regulated area is prohibited, except pursuant to a compliance agreement.

(6) The digging or moving of regulated articles by nursery dealers and nursery growers within the nursery stock regulated area is prohibited.

(7) The planting and over-wintering of regulated articles by nursery dealers and nursery growers within the nursery stock regulated area is prohibited.

(b) Regulated movement.

Regulated articles may be moved through the regulated area if the regulated articles originated outside the regulated area and:

(1) the point of origin of the regulated articles is on the waybill or bill of lading; and

(2) a certificate accompanies the regulated articles; and

(3) the vehicle moving the regulated articles does not stop within the regulated area except for refueling; and

(4) the vehicle moving the regulated articles during the period April 1 through November 30 is either an enclosed vehicle or a vehicle completely covered by canvas, plastic or closely woven cloth to prevent access by aphids or other vectors of plum pox virus.

Section 140.7 Records.

Nursery dealers and nursery growers handling regulated articles within the nursery stock regulated area shall compile, maintain and make available for inspection, for a period of two years, records of inventory and sales of regulated articles on a form or forms prescribed by the Commissioner.

Section 140.8 Conditions governing the issuance of certificates and permits.

(a) Certificates may be issued for the intrastate movement of regulated articles under one or more of the following conditions:

(1) when they have been tested and found apparently free from infection; or

(2) when they have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infection would be transmitted thereby, provided, that subsequent to certification, the regulated articles will be loaded, handled, and shipped under such protection and safeguards against reinfection as are required by the inspector.

(b) Limited permits may be issued for the movement of noncertified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into compliance agreements to maintain such sanitation safeguards against the establishment and spread of infection and to comply with such conditions as to the maintenance of identity,

handling, processing, or subsequent movement of regulated products and the cleaning of cars, trucks and other vehicles used in the transportation of such articles, as may be required by the inspector. Failure to comply with conditions of the agreement will result in cancellation of a limited permit.

(c) Certificates or limited permits issued under these regulations may be withdrawn or canceled by the Commissioner and further certification refused whenever in his or her judgment the further use of such certificates or limited permits may result in the spread of the plum pox virus.

Section 140.9 Inspection and disposition of shipments.

Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate from the regulated area, which contains, or which the inspector has probable cause to believe may contain, regulated articles or other articles infected with the plum pox virus, may be examined by an inspector at any time or place. When regulated articles are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he or she deems necessary to eliminate the danger of the spread of the plum pox virus. If found to be infected, such articles or regulated articles shall be freed of infection without cost to the State except that for inspection and supervision.

Section 140.10 Assembly of regulated articles for inspection.

(a) Persons intending to move intrastate any of the articles covered by these regulations shall make application for certification as far in advance as possible, and will be required to prepare and assemble articles at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments verified. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The New York State Department of Agriculture and Markets or the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS) shall not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

Section 140.11 Marking requirements.

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate or limited permit, issued in compliance with these regulations: provided, that:

(a) for lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for car lot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and

(b) for movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of shipment.

Section 140.12 Shipments for experimental and scientific purposes.

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the New York State Department of Agriculture and Markets. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the New York State Department of Agriculture and Markets showing compliance with such conditions.

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 January 9, 2008.

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

Regulatory Impact Statement

1. Statutory authority:

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

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to

control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

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

2. Legislative objectives:

The proposed rule establishing a quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the further spread within the State of a serious viral infection of plants, the plum pox virus (*Potyvirus*).

3. Needs and benefits:

This rule establishes a plum pox virus quarantine in New York State for purposes of helping prevent the further spread of this viral infection of plants within the State.

The plum pox virus, *Potyvirus*, is a serious viral disease of stone fruit trees that affects many of the *Prunus* species. This includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but debilitates the productive life of the trees. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. There is no known treatment or cure for this virus. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox virus by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for the plum pox virus. However, in 2006, the plum pox virus was detected in two locations in Niagara County near the Canadian border. As a result, on July 16, 2007, the Department adopted, on an emergency basis, a rule which immediately established a plum pox quarantine in that portion of Niagara County. The plum pox virus has since been detected in four (4) other locations in Niagara County as well as one location in Orleans County.

This rule establishes the plum pox virus quarantine in Orleans County and contains the necessary extensions of that quarantine in Niagara County. The amendments create two (2) separate and non-contiguous quarantined areas; one quarantined area is in Niagara County, and the other is in Orleans County.

Within the quarantined area in Niagara County, there are three (3) regulated areas and one nursery stock regulated area. The first regulated area extends 1.5 to 2 kilometers from one point where the plum pox virus was detected in 2006. The second regulated area extends 1.5 to 2 kilometers from the point where the plum pox virus was recently detected this year. The third regulated area extends 1.5 to 2 kilometers from each of the three (3) points where the plum pox virus was recently detected this year as well as from one point where the virus was detected in 2006. The nursery stock regulated area extends 11.5 kilometers from the regulated areas in Niagara County where the plum pox virus was detected.

Within the quarantined area in Orleans County, there is one regulated area and one nursery stock regulated area. The regulated area extends 1.5 to 2 kilometers from the point in Orleans County where the plum pox virus was recently detected. The nursery stock regulated area extends 11.5 kilometers from the regulated area in Orleans County where the plum pox virus was detected.

The amendments prohibit the movement of any article infected with or suspected of having been exposed to the plum pox virus, regardless of where the articles are located in the State. Otherwise, only the movement of regulated articles i.e., plants and trees of any *Prunus* species susceptible to plum pox virus, are restricted under the amendments, and the extent of

those restrictions depends on whether the regulated articles are in the regulated areas or the nursery stock regulated areas.

In the regulated areas, the amendments prohibit the following: the movement of regulated articles within the regulated areas; the intrastate movement of regulated articles from the regulated areas to any point outside the regulated areas, except pursuant to a limited permit, authorizing such movement; and the intrastate movement of regulated articles from any point outside the regulated areas to the regulated areas, except pursuant to a limited permit, authorizing such movement.

The amendments also regulate the movement of regulated articles through the regulated areas. Under the amendments, regulated articles may be moved through the regulated areas if the regulated articles originate outside the regulated areas and the point of origin of the regulated articles is on the waybill or bill of lading; a certificate accompanies the regulated articles; the vehicle moving the regulated articles does not stop except for refueling; and the vehicle moving the regulated articles during the period April 1 through November 30 is either an enclosed vehicle or is completely covered by canvas, plastic or closely woven cloth.

In the nursery stock regulated areas, the amendments prohibit the following: the handling of regulated articles by nursery dealers or nursery growers, except pursuant to a compliance agreement; the digging or moving of regulated articles by nursery dealers and nursery growers; and the planting and over-wintering of regulated articles by nursery dealers and nursery growers.

Under the amendments, certificates may be issued when the regulated articles have been inspected and found to be free of infection or have been grown, produced, stored or handled in such a manner that, in the judgment of the inspector, no infection is present in the articles. Limited permits may be issued for the movement of noncertified articles to specified destinations for specified purposes. The amendments provide that persons shipping, transporting, or receiving such articles may be required to enter into written compliance agreements. These agreements would allow the shipment of articles without a state or federal inspection. They are entered into by the Department with persons who are determined to be capable of complying with the requirements necessary to insure that the plum pox virus is not spread. Under the amendments, certificates and limited permits may be withdrawn or canceled whenever an inspector determines that further use of such certificate or permit might result in the spread of infection.

The amendments are necessary, since although the virus has only been found in seven locations in Niagara County and Orleans County, the failure to immediately establish this quarantine could result in the unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the natural resources of New York, but could also result in the imposition on New York of a federal quarantine or quarantines by other states. Such quarantines would cause economic hardship for New York's nurseries and stone fruit growers, since such quarantines may be broader than this one. The consequent loss of business would harm industries which are important to New York's economy and as such, would harm the general welfare.

4. Costs:

(a) Costs to the State government:

Regulated articles in the regulated areas that are exposed to plum pox virus would be destroyed. Compensation for the regulated articles is predicated upon the age of the plants and trees. Compensation would range from \$4,368 to \$17,647 per acre, of which the USDA would pay 85% of the compensation. Accordingly, New York's 15% share of the compensation would be \$655 to \$2,647 per acre, provided the owners of the regulated articles in question submit verified claims to the Department in accordance with section 165 of the Agriculture and Markets Law, and provided further that damages are awarded based on those claims.

Nursery dealers and nursery growers would also be eligible to receive compensation for regulated articles planted in the regulated areas and nursery stock regulated areas that would otherwise be prohibited from sale. New York would pay up to \$1,000 per acre in costs to remove such regulated articles.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles planted in the regulated areas and nursery stock regulated areas.

(d) Costs to the regulatory agency:

It is anticipated that regulatory oversight and enforcement of the quarantine would require the hiring of two inspectors at an annual cost to the Department of \$150,900. This cost includes salary, fringe benefits, travel costs, computer hardware and support and cell phones for the persons hired.

5. Local government mandate:

None.

6. Paperwork:

Nursery dealers and nursery growers handling regulated articles in the nursery stock regulated areas would require a compliance agreement with the Department. They may also require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement of these regulated articles.

7. Duplication:

None.

8. Alternatives:

None. The failure of the State to establish a quarantine could result in the establishment of quarantines by the federal government or other states. It could also place the State's own natural resources at risk from the further spread of plum pox virus which could result from the unrestricted movement of regulated articles in the regulated areas. In light of these factors, there does not appear to be any viable alternative to the establishment of the quarantine proposed in this rulemaking.

9. Federal standards:

Sections 301.74 through 301.74-5 of Title 7 of the Code of Federal Regulations (CFR) restricts the interstate movement of regulated articles susceptible to the plum pox virus. This rule does not exceed any minimum standards for the same or similar subject areas, since it restricts the intrastate, rather than interstate, movement of regulated articles by establishing a plum pox virus quarantine in New York State.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

The rule establishes a plum pox virus quarantine in New York State. It is estimated that there are 312 stone fruit growers and 4,049 nursery growers and nursery dealers throughout New York State. Of these, there are approximately 35 stone fruit growers and 50 nursery growers or nursery dealers in the nursery stock regulated areas, and 29 stone fruit growers in the regulated areas. Most of these entities are small businesses.

Although it is not anticipated that local governments would be involved in the handling or movement of regulated articles within the quarantined areas, in the event that they do, they would be subject to the same requirements and restrictions as are other regulated parties.

2. Compliance requirements:

All regulated parties in the nursery stock regulated areas, which includes approximately 35 stone fruit growers and 50 nursery growers or nursery dealers, would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in the nursery stock regulated areas would be required to enter into a compliance agreement.

The amendments would prohibit regulated parties in the nursery stock regulated areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties would be required to maintain sales records of regulated articles for a period of three years.

All regulated parties in the regulated areas, which include approximately 29 stone fruit growers, would be prohibited from moving regulated articles within the regulated areas. Regulated parties would, however, be able to move regulated articles to and from the regulated areas pursuant to a limited permit.

Under the amendments, all regulated parties would be prohibited from moving any article infected with or suspected of having been exposed to the plum pox virus, regardless of where the articles are located in the State.

3. Professional services:

In order to comply with the proposed rule, regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a com-

pliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

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

Regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles planted in the regulated areas.

Local governments moving regulated articles to or through the regulated areas would incur similar costs.

5. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on small businesses and local governments. The proposal limits the regulated articles to only those varieties of the *Prunus* species which are susceptible to infection by plum pox virus. The proposal also limits the inspection and permit requirements to only those necessary to detect the presence of plum pox virus and to prevent its spread through regulated articles in the regulated areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the movement of regulated articles without state or federal inspection. These agreements are another way in which the proposed rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

In 1999, a Plum Pox Virus Task Force was established in response to the reported discovery of the virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the United States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convened annually via teleconference.

On October 3, 2006, February 15, 2007 and May 22, 2007, the director of the Department's Division of Plant Industry provided an overview of the plum pox virus and its discovery in New York to the Invasive Species Task Force in Albany; the Empire State Fruit and Vegetable Expo in Syracuse; and the Statewide Survey Committee of the Cooperative Agricultural Pest Survey Program in Albany, respectively.

The Department has provided Cornell Cooperative Extension with information on the plum pox virus for dissemination to stone fruit growers. Inspectors with the Department's Division of Plant Industry have also discussed the needs and benefits of this regulation with stone fruit growers in the regulated and quarantine areas.

On June 26, 2007, Department officials met with approximately 30 stone fruit growers to discuss the plum pox virus outbreak as well as the proposed regulations establishing the quarantine. Most of the growers recognized the need to proceed with the quarantine, and expressed the desire that New York's response be consistent with that of Pennsylvania, Michigan and the federal government. Several growers also questioned when compensation would be paid following the destruction and removal of infected trees.

Outreach efforts will continue.

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

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Nursery dealers and nursery growers handling regulated articles within the nursery stock regulated areas, other than pursuant to a compliance agreement, would require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, would be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The rule establishes a plum pox virus quarantine in New York State. It is estimated that there are 312 stone fruit growers and 4,049 nursery growers and nursery dealers throughout New York State. Of these, there are 35 stone fruit growers and 50 nursery growers or nursery dealers in the nursery stock regulated areas, and 29 stone fruit growers in the regulated areas. Many of these entities are located in rural areas of New York State.

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

All regulated parties in the nursery stock regulated areas, which includes approximately 35 stone fruit growers and 50 nursery growers or nursery dealers, would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in the nursery stock regulated areas would be required to enter into a compliance agreement.

The amendments would prohibit regulated parties in the nursery stock regulated areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties would be required to maintain sales records of regulated articles for a period of three years.

In order to comply with the proposed rule, regulated parties handling regulated articles in the nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

All regulated parties in the regulated areas, which include approximately 29 stone fruit growers, would be prohibited from moving regulated articles within the regulated areas. Regulated parties would, however, be able to move regulated articles to and from the regulated areas pursuant to a limited permit.

Under the amendments, all regulated parties would be prohibited from moving any article infected with or suspected of having been exposed to the plum pox virus, regardless of where the articles are located in the State.

3. Costs:

Regulated parties handling regulated articles in the nursery stock regulated areas pursuant to compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs will be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles exposed to the plum pox virus.

4. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on small businesses and local governments. The proposal limits the regulated articles to only those varieties of the *Prunus* species which are susceptible to infection by plum pox virus. The proposal also limits the inspection and permit requirements to only those necessary to detect the presence of plum pox virus and to prevent its spread through regulated articles in the regulated areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the movement of regulated articles without state or federal inspection. These agreements are another way in which the proposed rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

In 1999, a Plum Pox Virus Task Force was established in response to the reported discovery of the virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the United States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convened annually via teleconference.

On October 3, 2006, February 15, 2007 and May 22, 2007, the director of the Department's Division of Plant Industry provided an overview of the plum pox virus and its discovery in New York to the Invasive Species Task Force in Albany; the Empire State Fruit and Vegetable Expo in Syracuse;

and the Statewide Survey Committee of the Cooperative Agricultural Pest Survey Program in Albany, respectively.

The Department has provided Cornell Cooperative Extension with information on the plum pox virus for dissemination to stone fruit growers. Inspectors with the Department's Division of Plant Industry have also discussed the needs and benefits of this regulation with stone fruit growers in the regulated and quarantine areas.

On June 26, 2007, Department officials met with approximately 30 stone fruit growers to discuss the plum pox virus outbreak as well as the proposed regulations establishing the quarantine. Most of the growers recognized the need to proceed with the quarantine, and expressed the desire that New York's response be consistent with that of Pennsylvania, Michigan and the federal government. Several growers also questioned when compensation would be paid following the destruction and removal of infected trees.

Outreach efforts will continue.

Job Impact Statement

The establishment of a plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. It is estimated that there are 312 stone fruit growers and 4,049 nursery growers and nursery dealers throughout New York State. Of these, there are 35 stone fruit growers and 50 nursery growers or nursery dealers in the nursery stock regulated areas, and 29 stone fruit growers in the regulated areas. A further spread of this plant infection would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the spread of the plum pox virus, the rule would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's stone fruit and nursery industries.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Medical Assistance for Chemical Dependence Services

I.D. No. ASA-44-07-00008-E

Filing No. 1077

Filing date: Oct. 11, 2007

Effective date: Oct. 11, 2007

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

Action taken: Amendment of sections 841.11(a), (b), 841.14(a); and addition of section 841.11(d) to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 19.15(a), 19.40, 32.01, 32.07(a), 32.09, 43.02; and Social Services Law, section 364

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

Specific reasons underlying the finding of necessity: Modification to inpatient medically supervised withdrawal services fee methodology is essential to continue operations of a number of service providers. Modification of residential rehabilitation services for youth rate setting methodology is required to meet Federal Medicaid State plan.

Subject: Medical assistance for chemical dependence services.

Purpose: To modify fee methodology for inpatient medically supervised withdrawal services and residential rehabilitation services for youth.

Text of emergency rule: 1. New sections 841.11(a)(4), (5), (6) and (7) are added to read as follows:

(4) "Service operating fees" shall mean fees calculated pursuant to sections 841.11(b) and (c) as payment in full for operating costs as required by Part 816 of this Title. Prior to April 1, 2007, such fees shall be inclusive of all reimbursement for capital costs. Beginning on April 1,

2007 such fees shall not be inclusive of reimbursement for capital costs and such costs shall be reimbursed through provider-specific capital add-ons.

(5) "Capital add-on" shall mean a provider-specific cost-based per diem calculated pursuant to section 841.11(d) of this section to address allowable and approved real property, equipment, and start-up costs not included in the service operating fee. The provider-specific capital add-on shall not be utilized for reimbursement purposes prior to April 1, 2007.

(6) "Fee Period" shall be the calendar year, beginning January 1, 2008.

(7) For purposes of computing capital add-ons, the "Base Period" shall be the calendar year two years prior to the fee period.

2. Section 841.11(b) is amended to read as follows:

(b) Calculation of service operating fees. Service operating [F]fees shall be developed for inpatient medically supervised withdrawal services. Such [F]fees shall reflect geographic variations in cost. Such [F]fees, and associated provider-specific capital add-ons, as may be applicable, shall be all inclusive and payment in full for inpatient medically supervised withdrawal services provided pursuant to Part 816 of this Title. Separate inpatient medically supervised withdrawal service operating fees shall be established for the upstate region and the downstate region.

3. Section 841.11(c) is amended to read as follows:

(c) Fee Methodology. The service operating fees for inpatient medically supervised withdrawal services shall be determined using a cost model based on the requirements of Part 816 of this Title and a review of historical costs for inpatient medically supervised withdrawal services. The cost model shall contain personal service and non-personal service costs. Upstate and downstate fees shall be used to recognize cost differentials between these regions of the State. Two [unit] per diem fee models shall be developed: inpatient medically supervised withdrawal downstate and inpatient medically supervised withdrawal upstate.

4. Section 841.11(d) is re-lettered section 841.11(e)

5. A new section 841.11(d) is added to read as follows:

(d) Calculation of the capital add-on.

(1) To be considered as allowable, capital costs must be reasonable and necessary to patient care under Part 816 of this Title. Allowable capital costs shall be determined and reimbursed by the office in accordance with the requirements of section 841.14 of this Title. Except as provided for in paragraph (4) of this subdivision, allowable patient days for the purpose of calculating the capital add-on shall be the higher of the actual days in the base period or 85 percent of possible days based upon annualized certified bed capacity.

(2) The capital add-on to the service operating fee shall be calculated for each fee period on a provider-specific basis by dividing the provider's allowable capital costs from the base period by allowable patient days as defined in paragraph (1) of this subdivision.

(3) Interest on current working capital shall be treated and reported as an administrative operating expense and as such is not considered an allowable capital cost.

(4) At the discretion of the office, the capital add-on may be calculated or adjusted on a retroactive or prospective basis to more accurately reflect the actual or anticipated allowable capital cost, the base period as defined in section 841.11(a)(7) and the methodology as described in section 841.11(d)(2) notwithstanding. At the discretion of the office, when the capital add-on is adjusted retroactively, actual patient days for the fee period of the adjustment may be used instead of allowable patient days as defined in paragraph (1) of this subdivision.

6. Section 841.12(a)(10) is amended to read as follows:

(10) "Service operating fee" shall mean fees calculated pursuant to subdivision (b) of this section as payment in full for operating expenses as required by Part 817 of this Title. Such fee shall not include [the] capital [or admission review team] add-ons.

7. Section 841.12(a)(12) is deleted.

8. Section 841.12(b)(4)(i) is amended to read as follows:

(i) the application of an annual trend factor to the service operating fee. Such trend factor shall be based on the Congressional Budget Office's Consumer Price Index for all Urban Consumers and shall apply to all components of the service operating fee, but shall not apply to the capital [or admission review team] add-on[s] to the service operating fee;

9. Section 841.12(d) is deleted.

10. Section 841.12(e) is amended to read as follows:

(3) [If] Where the office determines that sufficient allowable expense exists, a capital [and admission review team] add-on shall be calculated and added to the service operating per diem fee. Capital [and admission

review team] add-ons to the service operating fee shall be calculated as defined in [subdivisions] section 841.12(c) [and (d) of this section].

12. Section 841.12(g)(2) is amended to read as follows:

(2) The service operating fee and [admission review team] capital add-on for each new eligible residential rehabilitation services for youth provider shall be calculated and reimbursed pursuant to the requirements of subdivisions (b) to [(f)] (e) of this section. The capital add-on shall be approved, calculated and reimbursed pursuant to the requirements of subdivision (c), (e), and (f) of this section] and section 841.14 of this Part.

13. Sections 841.12(e), (f), (g), (h) and (i) are re-lettered 841.12(d), (e), (f), (g), and (h).

14. Section 841.13(c) is amended to read as follows:

(c) Revisions to rates for inpatient rehabilitation programs, revisions to capital [and admission review team] add-ons for residential rehabilitation services for youth programs, revisions to service operating fees for residential rehabilitation services for youth programs based on changes in certified capacity.

15. Section 841.14(a) is amended to read as follows:

(a) This section shall apply [only] to [those] all programs with Medicaid reimbursement calculated pursuant to [Section 841.10 of this Title or Section 841.12 of] this Part.

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 January 8, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Patricia Flaherty, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203-3539, (518) 485-2317, e-mail: PatriciaFlaherty@oasas.state.ny.us

Regulatory Impact Statement

1. Statutory Authority

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services ("the Commissioner") to ensure that persons who abuse or are dependent on alcohol and/or substances and their families are provided with care and treatment which is effective and of high quality.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 19.15(a) of the Mental Hygiene Law bestows upon the Commissioner the responsibility of promoting, establishing, coordinating, and conducting programs for the prevention, diagnosis, treatment, aftercare, rehabilitation, and control in the field of chemical abuse or dependence.

Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue a single operating certificate for the provision of chemical dependence services.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner the power to adopt regulations to effectuate the provisions and purposes of Article 32.

Section 32.09 of the Mental Hygiene Law gives the Commissioner the authority to issue operating certificates to providers of chemical dependence services.

Section 43.02 of the Mental Hygiene Law gives the Commissioner the authority to determine rates or methods of payment for inpatient services subject to licensure or certification and to adopt rules and regulations to effectuate provisions of this section.

2. Legislative Objectives

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and ensure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, and those who are at risk of becoming chemical abusers. The amendments to Part 841 will remove a standardized regional capital component from the inpatient medically supervised withdrawal (MSW) fee and replace it with a provider specific capital add-on based on each providers actual capital expenditures as reported in their annual cost reports and adjusted by OASAS to remove any costs not allowable under Part 841. Reimbursement for MSW operating costs would continue in the form of regional fees. This change would also comport with the fee/rate methodologies for other inpatient programs which separately reimburse capital costs. In addition the admission review team provision in the residential rehabilitation services for youth section

will be deleted. This deletion is necessary because this provision was not approved as part of the federal approval of the Medicaid state plan amendment for residential services for youth.

3. Needs and Benefits

The modification to the fee is necessitated by the expiration of the legislative "hold harmless" which assisted MSW providers with high capital costs which were not sufficiently reimbursed in the existing MSW fee by allowing those providers to use cost-based rates. These providers provide MSW services to almost 5,000 patients. Many of these providers will have to drastically cut or eliminate services endangering the health and safety of patients and the communities they serve. Many of these communities do not have alternative programs to serve these patients. The elimination of the admission review team provision in the RSY fee setting methodology is necessary to comply with the Medicaid state plan and essential to begin the certification of this new program model for youth. The elimination of the admission review team provision is necessary to comply with the Medicaid state plan. It should be noted that the admission review team will continue to operate with state funding.

4. Costs:

a. Costs to regulated parties.

Some providers who currently are covered by the hold harmless will see a reduction in revenues. However, implementation of the amendments to Part 841 will significantly reduce such losses.

b. Costs to the agency, state and local governments.

The state and local impact of the fee modification is estimated to be approximately \$2.1 million annually of which 50% is state share and 50% is local share. These increases in Medicaid costs will be offset by elimination of the hold harmless which will provide an overall cost savings of \$1.7 million. The savings will be 50% state and 50% local.

5. Local Government Mandates

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

6. Paperwork

The proposed rule does not impose additional paperwork requirements.

7. Duplication

The proposed rule does not duplicate of other state or federal regulations.

8. Alternatives

The only alternative to the proposed regulation is to continue the hold harmless.

9. Federal Standards

Federal standards governing Medicaid requirements for these services are currently incorporated into Part 841.

10. Compliance Schedule.

It is expected that full implementation of these Part 841 become effective for these providers retroactively upon the expiration of the hold harmless on April 1, 2007.

Regulatory Flexibility Analysis

Effect of Rule: The proposed amendments to 14 NYCRR Section 841.11 will affect inpatient medically supervised withdrawal services by their reimbursing capital costs on a program basis instead of through a fixed fee. Currently programs are paid an all inclusive fee which includes a capital component. This amendment would remove the capital component from the fee and each provider would have an individual capital add-on to their fee based upon their actual capital costs. This will also assist providers who no longer are covered by the hold harmless, particularly those providers with high capital costs. Local governments where the hold harmless programs are located will be impacted by this change in reimbursement methodology. The state and local impact of the fee modification is estimated to be approximately \$2.1 million annually of which 50% is state share and 50% is local share. These increases in Medicaid costs will be offset by elimination of the hold harmless which will provide an overall cost savings of \$1.7 million. The savings will be 50% state and 50% local.

The amendments to 14 NYCRR Section 841.11 will have no impact on small business or local governments. OASAS will reimburse all costs associated with the Admissions Review Team.

Compliance Requirements: Inpatient medically supervised withdrawal services will not be required to comply with any additional requirements. Existing cost reporting requirements will contain the data necessary to calculate the capital add-on. There will be no added compliance requirements resulting from the elimination of the Admission Review Team from the reimbursement methodology for Residential Rehabilitation Services for Youth.

Professional Services: There will be no additional requirements for professional services resulting from these amendments.

Compliance Costs: There will be no additional costs resulting from compliance with these amendments.

Economic and Technological Feasibility: Compliance with the record-keeping and reporting requirements of the Part 841 amendments and Part 817 are not expected to have an economic impact or require any changes to technology for small businesses and government.

Minimizing Adverse Impact: There will be no adverse impact on residential rehabilitation services for youth providers or local governments. The capital add-on to the medically supervised inpatient withdrawal fees will not negatively impact any providers and will provide additional revenues to most providers.

Small Business and Local Government Participation: Since this is an emergency rule, small business and local governments have not participated in the rulemaking process.

Rural Area Flexibility Analysis

The proposed amendments do not impose any adverse impact on rural areas because none of the impacted inpatient medically supervised withdrawal services are located in rural areas. The amendments will have no impact on residential rehabilitation facilities for youth programs in rural areas.

Job Impact Statement

Nature of Impact: If the amendments to rate/fee setting methodology are not made and the hold harmless expires there could be a major impact to the fiscal viability of a number of inpatient medically supervised withdrawal service providers. This could result in job layoffs and/or program closures.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00011-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Director, Bureau of Certification and Finance and by adding thereto the position of Director of Adoption Services.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00012-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance, by increasing the number of positions of Assistant Counsel from 5 to 7.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00013-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by increasing the number of positions of Investigator from 162 to 165.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00014-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by increasing the number of positions of Assistant Attorney General from 620 to 627.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00015-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Research Associate from 6 to 7.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00016-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Insurance Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Insurance Department, by increasing the number of positions of Executive Assistant from 2 to 8.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00017-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by increasing the number of positions of Citizen Services Representative from 23 to 24.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00018-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by increasing the number of positions of Special Assistant from 3 to 4

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00019-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by increasing the number of positions of Associate Attorney (Tax Enforcement) from 7 to 9.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00020-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for the Aging," by adding thereto the position of Director, Long Term Care Advocacy (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00021-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Correctional Services.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services, by increasing the number of positions of Correctional Industries Marketing Assistant from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00022-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Homeland Security," by adding thereto the position of φCyber Security Associate Director (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00023-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Insurance Department, by adding thereto the position of φAffirmative Action Administrator 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00024-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Office of Mental Health.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Office of Mental Health, by increasing the number of positions of Advocacy Specialist 2 from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00025-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by deleting therefrom the position of Director Policy and Program Development (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00026-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from the non-competitive class in the Department of Correctional Services.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services, by deleting therefrom the positions of Asbestos Control Coordinator (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00027-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by decreasing the number of positions of Convention and Arts Center Lighting and Sound Assistant from 2 to 1 and by increasing the number of positions of Convention and Arts Center Operations Coordinator from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00028-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by deleting therefrom the position of Secretary 1 (1) and by increasing the number of positions of Quality Care Facility Review Specialist 1 from 28 to 31.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00029-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete a subheading from the exempt and non-competitive classes in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by deleting therefrom the subheading "Office of Cyber Security and Critical Infrastructure Coordination; and

Amend Appendix 2 of the Rules for the Classified Service, in the non-competitive class, in the Executive Department, by deleting therefrom the subheading "Office of Cyber Security and Critical Infrastructure Coordination."

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-07-00030-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department

of Health, by deleting therefrom the position of Director Bureau Medical Assistance Operations and by increasing the number of positions of Specialist Assistant from 12 to 14; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by deleting therefrom the position of Social Services New York City Systems Specialist (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

Jurisdictional Classification

I.D. No. CVS-44-07-00031-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the position of Compliance Specialist 3 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

**Department of Correctional
Services**

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

Access to Records Subject to the Personal Privacy Protection Law

I.D. No. COR-44-07-00005-P

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

Proposed action: This is a consensus rule making to amend section 6.2(c) of Title 7 NYCRR.

Statutory authority: Public Officers Law, section 94; and Correction Law, sections 29[2], 71 and 112

Subject: Access to records subject to the Personal Privacy Protection Law.

Purpose: To reflect the appropriate employee job title that has been designated as the department's deputy privacy compliance officer.

Text of proposed rule: The sentence that comprises 7 NYCRR 6.2(c) is hereby amended as follows:

(c) The director of [employee investigations] *personnel*, Building 2, State Campus, 1220 Washington Avenue, Albany, NY 12226-2050 is hereby designated as the deputy privacy compliance officer.

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

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 Correctional Services has determined that no person is likely to object the proposed text as it merely amends the employee job title that is designated as the deputy privacy compliance officer.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities.

**Department of Economic
Development**

**EMERGENCY
RULE MAKING**

Empire Zones Reform

I.D. No. EDV-44-07-00010-E

Filing No. 1101

Filing date: Oct. 15, 2007

Effective date: Oct. 15, 2007

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

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

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

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

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

Subject: Empire Zones reform.

Purpose: To conform the regulations to existing statute and recent statutory amendments and clarify and improve administrative procedures.

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

First, pursuant to Chapter 63 of the Laws of 2000 and Chapter 63 of the Laws of 2005, the emergency rule would reflect the name change of the program from Economic Development Zones to the Empire Zones and add

reference to three new tax benefits: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

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

Third, the emergency rule would amend the Department's discretionary provision that limits the designation of nearby lands in investment zones to 320 acres. Such regulatory limitations are arbitrary and unnecessarily exceed or are inconsistent with State statute, and at the same time place undue limits on the reconfiguration of zones; municipalities cannot effectively utilize zone acreage to create opportunities for business investment and job growth in economically distressed areas that are not necessarily located in eligible or contiguous census tracts. At the same time, the Department is required to provide guidance in regulation on placement of nearby zone lands, and cannot countenance abuse of the program's requirements on acreage placement. Thus, placement of nearby lands can exceed 320 acres provided that the municipality demonstrates that (1) there is insufficient existing or planned infrastructure within eligible or contiguous tracts to accommodate business development in a highly distressed area, or to accommodate development of strategic businesses or (2) placing up to 960 acres in eligible or contiguous census tracts would be inconsistent with open space and wetland protection or (3) there are insufficient lands available for further business development within eligible or contiguous census tracts or (4) lands previously designated in the eligible or contiguous census tracts that were otherwise suitable for development and have not had any appreciable commercial activity or capital investment or (5) changes to eligible census tracts as a result of the 2000 Census, combined with the requirement in the amended statute that the distinct and separate contiguous areas accommodate already designated lands, alter the amount of nearby acreage used and available for development.

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

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

Sixth, the emergency rule tracks the new statutory requirement that certain defined "regionally significant" projects can be located outside of the new distinct and separate contiguous areas. There are four categories of

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

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

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

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

Tenth, the emergency rule fulfills the requirements of Chapter 63 to subject all businesses applying for zone benefits to meet a "cost-benefit analysis". The cost-benefit analysis is to be included in the zone development plan by the applicant municipality. The definition included in the emergency rule lays out the basic formula for calculating the benefits received to the costs incurred.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire January 12, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Thomas Regan, Department of Economic Development, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

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

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

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

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Participation in the Empire Zones Program is entirely at the discretion of each eligible municipality and business enterprise. Neither General Municipal Law Article 18-B nor the emergency regulations impose an obligation on any local government or business entity to participate in the program. The emergency regulation does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses and/or local governments. In fact, the emergency regulations may have a positive economic impact on the small businesses and local governments that do participate due to clarifying changes, the added flexibility and a new application process. The administrative structure of the program was designed to offer a streamlined application and approval process by extracting only essential information from the applicants. In addition, the changes to the regulations that track changes in statute and result in a reconfiguration of zones will actually enhance the ability of businesses yet to apply which are located in distressed areas to receive program benefits. Local governments will have the additional short-term burden of taking the legal and administrative steps necessary to reconfigure their zones, but this is a statutorily imposed burden, not solely a regulatory one. Because it is evident from the nature of the emergency rule that it will have either no substantive impact, or a positive impact, on small businesses and local governments, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

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

Job Impact Statement

The emergency regulation relates to the Empire Zones Program. The Empire Zones Program itself is a job creation incentive. The emergency regulation will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency regulations, which result from statutory-based reforms, will enable the program to better fulfill its mission: job creation and investment for economically distressed areas. At the same time, businesses currently receiving benefits will not have their status jeopardized as a result of the emergency regulations. Because it is evident

from the nature of the emergency regulations that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuing Education Requirements for Dentists Licensed in New York State

I.D. No. EDU-44-07-00033-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 61.15 and addition of section 61.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6506(1), 6507(2)(a), 6604-a(2), 6604-a(6), 6611(10); and L. 2007, ch. 183, section 4

Subject: Continuing education requirements for dentists licensed in New York State.

Purpose: To make the regulations of the Commissioner of Education consistent with recent changes in the Education Law increasing the amount of continuing education required of licensed dentists during each triennial registration period and requiring certification in cardiopulmonary resuscitation and completion of coursework in New York State jurisprudence and ethics.

Text of proposed rule: 1. Paragraph (2) of subdivision (b) of section 61.15 of the Regulations of the Commissioner of Education is amended, effective February 7, 2008, as follows:

(2) Exemptions and adjustments to the requirement. (i) Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice dentistry in New York State, exclusive of those first licensed to practice dentistry in New York State pursuant to an endorsement of a license of another jurisdiction; and

(b) [licensees whose first registration date following January 1, 1997 occurs prior to January 1, 1998, for periods prior to such registration date; and

(c)] licensees who are not engaged in the practice of dentistry, as evidenced by not being registered to practice in New York State, except as otherwise provided in paragraph (c)(2) of this section to meet the education requirements for the resumption of practice after a lapse in practice for a licensee who has not lawfully practiced continuously in another jurisdiction throughout such lapse period.

(ii) . . .

2. Subdivision (c) of section 61.15 of the Regulations of the Commissioner of Education is amended, effective February 7, 2008, as follows:

(c) Mandatory continuing education requirement.

(1) *Basic requirements.*

(i) During each triennial registration period, meaning a registration period of three years' duration, *which ends prior to July 1, 2008*, an applicant for registration shall complete at least 45 hours of formal continuing education acceptable to the department, as defined in paragraph (4) of this subdivision, provided that no more than 15 hours of such continuing education shall consist of self-study courses.

(ii) Any licensed dentist whose [first] registration [date following January 1, 1997 occurs less than three years from that date, but on or after January 1, 1998] *period begins prior to July 1, 2008 and continues after July 1, 2008*, shall complete continuing education hours on a prorated basis at the rate of one and one-quarter hours of acceptable formal continuing education per month for [the period beginning January 1, 1997 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 1997 and ending before the first day of the new registration period or at the option of the licensee

during any time in the previous registration period] *each month from the beginning of that registration period through June 30, 2008 and at the rate of one and two-thirds hours of acceptable formal continuing education per month for each month of that registration period from July 1, 2008 through the end of that registration period.*

(iii) *During each triennial registration period, meaning a registration period of three years' duration, beginning on or after July 1, 2008, an applicant for registration shall complete at least 60 hours of formal continuing education acceptable to the department, as defined in paragraph (4) of this subdivision, provided that no more than 18 hours of such continuing education shall consist of self-study courses.*

[ii] (iv) Beginning with the first registration period for a licensed dentist that occurs on or after January 1, 2002 in which completion of acceptable formal continuing education is required, and before the occurrence of the succeeding registration renewal period following that date, a licensed dentist shall be required to have completed on a onetime basis, as part of the [45 hours of] formal continuing education required in [subparagraph (i) of] this paragraph [or as part of a proration of such 45 hours], no fewer than two hours of formal continuing education acceptable to the department, as defined in paragraph (4) of this subdivision, regarding the chemical and related effects and usage of tobacco and tobacco products and the recognition, diagnosis, and treatment of the oral health effects, including but not limited to cancers and other diseases, caused by tobacco and tobacco products. A licensee returning to the practice of dentistry after a lapse in practice, as prescribed in paragraph (2) of this subdivision, shall be subject to the requirements of this subparagraph and shall complete such formal continuing education in the registration period prescribed in this subparagraph. A licensed dentist shall be deemed to have met the requirements of this subparagraph if the licensee provides to the department satisfactory documentation that the licensee has completed on or after January 1, 1997 and prior to the registration period prescribed in this subparagraph in which such formal continuing education is required to be completed, formal continuing education acceptable to the department, as defined in paragraph (4) of this subdivision, of not less than two hours in the same or substantially similar subject matter as that prescribed in this subparagraph.

(v) *During the first registration period for a licensed dentist beginning on or after January 1, 2008 in which completion of acceptable formal continuing education is required, a licensed dentist shall be required to have completed on a one-time basis, as part of the mandatory hours of acceptable continuing education required in this paragraph, no fewer than three hours in a course approved by the department in dental jurisprudence and ethics, which shall include the laws, rules, regulations and ethical principles relating to the practice of dentistry in New York State.*

(a) *As used in this section, jurisprudence shall mean the application of the principles of law and justice as they relate to the practice of dentistry. A dental mandatory continuing education course in jurisprudence shall be based upon the laws of New York State.*

(b) *As used in this section, ethics shall mean the principles of conduct relating to dental practice. A dental mandatory continuing education course in ethics shall be based upon ethical principles, such as those of the New York State Dental Association as established pursuant to section 5 of Chapter 987 of the Laws of 1971, or of another dental association approved by the department, or the substantial equivalent thereof, as determined by the department.*

(c) *Standards for approval of coursework or training. Coursework or training shall include, but need not be limited to, the core elements specified in a syllabus prepared and provided by either a non-profit dental education entity, which has been incorporated or chartered by the New York State Board of Regents for the purpose of providing dental education, or by the New York State Dental Association, which syllabus has been approved by the department. Such non-profit entity shall have knowledge and expertise in New York State Dental Association ethics or the substantial equivalent, as determined by the department.*

(2) Requirement for lapse in practice. [(i)] A licensee returning to the practice of dentistry after a lapse in practice, as evidenced by not being registered to practice in New York State[, whose first registration date after such lapse in practice and following January 1, 1997 occurs less than three years from January 1, 1997, but on or after January 1, 1998, shall be required to complete:] *shall submit an application for renewal of registration on a form prescribed by the commissioner and evidence of acceptable continuing education as defined in paragraph (4) of this subdivision and in accordance with subparagraphs (i) or (ii) of this paragraph as applicable.*

(a) at least one and one-quarter hours of acceptable formal continuing education for each month beginning with January 1, 1997 until the beginning of the new registration period, which shall be completed for a licensee who has not lawfully practiced dentistry continuously in another jurisdiction throughout such lapse period, in the 12-month period before the beginning of the new registration period; and for the licensee who has lawfully practiced dentistry continuously in another jurisdiction throughout such lapse period, in the new registration period or at the option of the licensee in the period beginning the 36 months before the commencement of the new registration period and ending at the conclusion of such registration period; and

(b) for a licensee who has not lawfully practiced dentistry continuously in another jurisdiction throughout such lapse period, at least 15 hours of acceptable formal continuing education in each successive 12-month period of the new registration period; and for a licensee who has lawfully practiced dentistry continuously in another jurisdiction throughout such lapse period, acceptable formal continuing education at the rate of one and one-quarter hours per month during the new registration period.]

(i) *Such licensee who has been lawfully practicing in another jurisdiction and submits such application, shall submit satisfactory evidence of three years of acceptable continuing education completed within the three years immediately preceding the submission of such application. Such continuing education shall be completed at a rate of one and one-quarter hours for each month of such three year period prior to July 1, 2008 and one and two-thirds hours for each month on or after July 1, 2008; or*

(ii) [Except as prescribed in subparagraph (i) of this paragraph for registrations therein specified, the licensee who returns to the practice of dentistry after a lapse in practice in which the licensee was not registered to practice in New York State and did not lawfully practice dentistry continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(a) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period; and

(b) at least one and one-quarter hours of acceptable formal continuing education for each month of lapsed registration up to a maximum 45 hours, which shall be complete in the 12 months before the beginning of the new registration period; and

(c) at least 15 hours of acceptable formal continuing education in each succeeding 12-month period, after such registration is reissued, until the next registration date] *Such licensee who has not been practicing in another jurisdiction and submits such application, shall submit satisfactory evidence of three years of acceptable continuing education completed within the 12 months immediately preceding the submission of such application. Such continuing education shall be completed at a rate of one and one-quarter hours for each month of such three year period prior to July 1, 2008 and one and two-thirds hours for each month on or after July 1, 2008.*

(iii) Except as prescribed in subparagraph (i) of this paragraph for registrations therein specified, the licensee who returns to the practice of dentistry after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice dentistry continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(a) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period; and

(b) at least one and one-quarter hours of acceptable formal continuing education for each month of lapsed registration up to a maximum of 45 hours, which shall be completed in the new registration period, or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of the new registration period; and

(c) completion of the regular continuing education requirement at the rate of one and one-quarter hours of acceptable formal continuing education per month during the new registration period.]

(3) Proration. If a registration period is less than three years in duration, a licensed dentist shall complete acceptable formal continuing education at the rate of one and one-quarter hours of continuing education per month for any part of such registration period ending on or before June 30, 2008 and at the rate of one and two-thirds hours of continuing education per month for any part of such registration period from July 1, 2008 through the end of such registration period.

(4) . . .

3. Subdivision (e) of section 61.15 of the Regulations of the Commissioner of Education is amended, effective February 7, 2008, as follows:

(e) Conditional registration. (1) The department shall issue a conditional registration to a licensee who attests to or admits to noncompliance with the continuing education requirements of this section, provided that such licensee meets the following requirements:

(i) the licensee agrees to remedy such deficiency within the conditional registration period;

(ii) the licensee agrees to complete the [regular] continuing education requirement for any months of the conditional registration period prior to July 1, 2008 at the rate of one and one-quarter hours of acceptable formal continuing education per month [during] and at the rate of one and two-thirds hours per month for the period beginning July 1, 2008 through the end of such conditional registration period; and

(iii) the licensee agrees to complete additional continuing education during such conditional registration period, which the department may require to ensure the licensee's proper delivery of dental care consistent with the licensee's practice of dentistry.

(2) The duration of such conditional registration shall not exceed one year and shall not be renewed or extended.

4. Part 61 of the Regulations of the Commissioner of Education is amended, effective February 7, 2008, by adding a new section 61.19 as follows:

§ 61.19 *Dental requirement for cardiopulmonary resuscitation certification.*

(a) *Beginning January 1, 2009, each dentist licensed and registered to practice in New York State shall become certified in cardiopulmonary resuscitation by a provider approved by the department and thereafter shall maintain current certification, except as provided for in subdivision (e) of the section. Coursework leading to obtaining and maintaining such certification shall be included in the mandatory hours of continuing education to the extent provided in subdivision (c) of this section.*

(b) *Cardiopulmonary resuscitation certification providers approved by the department shall include the American Heart Association, the American Red Cross, the National Safety Council and the American Safety and Health Institute. The Department may also approve other providers determined by the Department to offer substantially similar content to courses offered to professionals by such organizations and to have a similar renewal period. Online courses are not acceptable; all courses taken to meet this requirement shall be taken in person. Such coursework shall include, but need not be limited to, content in the following:*

- (1) scene survey;
- (2) patient assessment;
- (3) one and two rescuer cardiopulmonary resuscitation;
- (4) mouth-to-mouth resuscitation;
- (5) mouth-to-mask resuscitation;
- (6) conscious choking;
- (7) unconscious choking;
- (8) bag-valve-mask resuscitation;
- (9) recovery position;
- (10) automated external defibrillator use;
- (11) infection control matters;
- (12) recognizing a heart attack; and
- (13) cardiopulmonary resuscitation and automated external defibrillator scenarios.

(c) *For each triennial registration period, a licensee may count up to a maximum of twelve hours of coursework in cardiopulmonary resuscitation, including coursework in advanced cardiac life support and/or pediatric advanced life support.*

(d) *At the time of his or her registration renewal, each dentist shall attest to having met the cardiopulmonary resuscitation requirement or attest to meeting the requirements for exemption as defined in subdivision (e) of this section.*

(e) *A licensee may be granted an exemption to the cardiopulmonary resuscitation requirement if he or she is physically incapable of complying with the requirements of subdivision (a) of this section. Documentation of such incapacity shall include a written statement by a licensed physician describing the licensee's physical incapacity. The licensee shall also submit an application to the department for exemption which verifies that another individual will maintain certification and be present in the dental office while the dentist is treating patients.*

(f) *In accordance with subdivision (f) of section 61.15 of this Part, each licensee shall maintain for review by the department records of compliance with this section, including the licensee's cardiopulmonary resuscitation certification card.*

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: Frank Muñoz, Associate Commissioner, Office of the Professions, Education Department, 2nd Fl., West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3817, ext. 470, e-mail: opopr@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the practice of the professions and to promulgate rules to carry out such supervision.

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

Section 6604-a(2) of the Education Law requires dentists to complete continuing education during each triennial registration period.

Section 6604-a(6) of the Education Law requires dentists to complete a course in dental jurisprudence and ethics approved by the department.

Section 6611(10) of the Education Law requires dentists to be certified in cardiopulmonary resuscitation (CPR).

Section 4 of Chapter 183 of the Laws of 2007 authorizes the Commissioner of Education to promulgate regulations necessary for the implementation of that chapter.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement Education Law sections 6604-a and 6611, as recently amended by Chapter 183 of the Laws of 2007. These statutory amendments to Education Law sections 6604-a and 6611 increase the continuing education requirement for New York State licensed dentists from 45 hours to 60 hours per triennial registration period and require that dentists complete a course in dental jurisprudence and ethics as part of the mandatory continuing education requirement and become certified in cardiopulmonary resuscitation (CPR).

3. NEEDS AND BENEFITS:

The proposed amendment reflects the statutory increase in the continuing education requirement for licensed dentists to 60 hours, 18 of which may be self-study courses, and sets transitional requirements on a pro rata basis for completing these credit hours. The proposed amendment also establishes standards for the approval of coursework or training in dental jurisprudence and ethics, standards for CPR certification providers and the amount of continuing education credit which may be accepted for CPR training for certification, and provides an exemption from the CPR certification requirement for dentists who are physically incapable of performing CPR.

Additionally, the proposed amendment to section 61.15 of the Regulations of the Commissioner of Education deletes outdated language, which applied to previous transition periods, and clarifies the language relating to continuing education requirements following a lapse of practice.

4. COSTS:

(a) Costs to State Government: The amendment will not impose any additional cost on State government.

(b) Costs to local government: None.

(c) Costs to private regulated parties: The proposed amendment will not impose any cost on private regulated parties beyond those required to comply with the statutory requirements.

(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 implements Education Law sections 6604-a and 6611, as recently amended by Chapter 183 of the Laws of 2007, increasing the continuing education requirement for dentists licensed in New York State. The amendment will not affect local governments in New York State. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment will not require any additional paperwork for the licensee.

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 requirements for dentists.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated 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 will apply to licensed dentists in New York State, including all 18,267 dentists currently registered to practice in New York State and the estimated 150 New York State licensed dentists who submit applications for registration renewal following a lapse in practice.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment conforms the Regulations of the Commissioner of Education to recent changes made to Education Law sections 6604-a and 6611 by Chapter 183 of the Laws of 2007. These changes increase the continuing education requirement for New York State licensed dentists from 45 hours to 60 hours per triennial registration period and require that dentists complete at least three hours in dental jurisprudence and ethics as part of the mandatory continuing education requirement and become certified in cardiopulmonary resuscitation (CPR). These changes will affect New York State licensed dentists including those who practice in small businesses.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed amendment.

4. COMPLIANCE COSTS:

The proposed amendment will not impose costs beyond those required to comply with the statutory requirements.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any special technological requirements on regulated parties. As stated above in "Compliance Costs," the amendment will not result in additional costs to regulated parties.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment conforms the Commissioner's Regulations to recent changes made to Education Law sections 6604-a and 6611 by Chapter 183 of the Laws of 2007, which increase the continuing education requirement for licensed dentists in New York State. Continuing education requirements are in place to insure continued competency in licensed professionals and thereby safeguard the public. Given the nature of the proposed amendment, establishing different standards for dentists based upon the size of the business where they are employed would not be appropriate.

7. SMALL BUSINESS PARTICIPATION:

Members of the State Board for Dentistry, many of whom have experience in a small business environment, provided input during the development of the proposed amendment. In addition, comments on the proposed amendment were solicited from the New York State Dental Association, which is a statewide organization whose membership includes individuals who own and operate small businesses or are employed by small businesses.

(b) Local Governments:

The proposed amendment concerns the continuing education requirement for dentists licensed in New York State. The proposed amendment will not affect local governments in New York State. The amendment will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on local governments. Because it is evident from the nature of the 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 will apply to dentists licensed in New York State. The proposed amendment is necessary to conform the Regulations

of the Commissioner of Education to recent changes made to Education Law sections 6604-a and 6611 by Chapter 183 of the Laws of 2007, which increase the continuing education requirements for licensed dentists registered or returning to practice in New York State, including those dentists that are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At the present time, there are 18,267 dentists licensed and registered to practice in New York State. Of these, 1,508 dentists reported that their permanent address of record is in a rural county. The proposed amendment also affects the estimated 150 dentists who return to New York State following a lapse in practice. Of those dentists, it can be further estimated that approximately 12 will report that their permanent address of record is in a rural county.

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

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to recent changes made to Education Law sections 6604-a and 6611 by Chapter 183 of the Laws of 2007, which increase the continuing education requirements for dentists registered or returning to practice in New York State. The amendment does not impose any additional reporting or recordkeeping requirements on licensees, including those located in rural areas. In addition, the amendment does not require regulated parties to hire professional services in order to comply.

3. COSTS:

The proposed amendment will not impose costs beyond those required to comply with the statutory requirements.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to recent changes made to Education Law sections 6604-a and 6611 by Chapter 183 of the Laws of 2007, which increase the continuing education requirement for licensed dentists registered or returning to practice in New York State. Given the nature of the proposed amendment, establishing a different standard for those affected licensees located in rural areas of the State would not be appropriate.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the New York State Dental Association, which is a statewide organization whose membership includes individuals who live or work in rural areas.

Job Impact Statement

The proposed amendment conforms the Regulations of the Commissioner of Education to recent changes made to Education Law sections 6604-a and 6611 by Chapter 183 of the Laws of 2007. These changes increase the continuing education requirement for New York State licensed dentists from 45 hours to 60 hours per triennial registration period and require that dentists complete at least three hours in dental jurisprudence and ethics as part of the mandatory continuing education requirement and become certified in cardiopulmonary resuscitation (CPR). Given the nature and purpose of the proposed amendment, the amendment will have no impact on jobs or employment opportunities.

Because it is evident from the nature of the proposed amendment, that the proposed amendment will have no impact on jobs or employment opportunities in the field of dentistry 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Admission to the Licensing Examination for Veterinary Technicians

I.D. No. EDU-44-07-00034-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 62.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a) and (3)(a) and 6711(5)

Subject: Admission to the licensing examination for veterinary technicians.

Purpose: To allow students completing registered or accredited programs of education for veterinary technology admission to the licensing examination for veterinary technicians prior to graduation.

Text of proposed rule: Section 62.5 of the Regulations of the Commissioner of Education is amended, effective February 7, 2008, as follows:

(a) Each applicant for licensure as a veterinary technician [who meets the requirements of section 62.4 of this Part] shall pass a written examination in the basic and clinical sciences. The Department may accept grades acceptable to the State Board for Veterinary Medicine on the uniform examination in veterinary technology prepared by the Professional Examination Service, or other examination satisfactory to the State Board. The passing score for the written examination shall be 75.0 as determined by the State Board.

(b) *To be admitted to the professional licensing examination for veterinary technicians, the applicant shall have satisfied the professional education requirements for licensure set forth in section 62.4 of this Part, or shall be within his or her final six months of professional study in a program of education for veterinary technology registered by the department or accredited by an accrediting organization acceptable to the department.*

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: Frank Muñoz, Associate Commissioner, Education Department, Office of the Professions, 2 West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 486-1765, e-mail: opopr@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.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to the practice of the professions and to promulgate rules to carry out such supervision.

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

Paragraph (a) of subdivision (3) of section 6507 of the Education Law authorizes the State Education Department, assisted by the board for each profession, to establish standards for licensing examinations.

Subdivision (5) of section 6711 of the Education Law provides that an applicant for a license as a veterinary technician must pass an examination satisfactory to the State Board for Veterinary Medicine and in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that applicants for licensure as a veterinary technician must pass an examination in accordance with the Commissioner's regulations. The amendment makes a change in the admission requirements for the licensure examination in this field.

3. NEEDS AND BENEFITS:

Under existing regulations, an applicant for New York State licensure as a veterinary technician must have completed all professional education requirements before being admitted to the licensing examination for veterinary technicians. The licensing examination is administered twice each year in January and June. A June graduate of an educational program in veterinary technology must wait several months before being able to sit for New York's licensing examination for veterinary technicians. Other states, however, allow veterinary technology students to sit for the licensing examination before their completion of the educational program. As a result, New York State students are at a competitive disadvantage as compared to out-of-state students who can enter the national job market as licensed veterinary technicians shortly after their completion of the educational program. The New York State graduate must wait to sit for the exam and thereafter await the issuance of a license.

The purpose of the proposed amendment is to change the professional education requirement for admission to the licensing examination for veterinary technicians so that students completing registered or accredited programs of education for veterinary technology may be admitted to the licensing examination within their final six months of such professional study. The amendment is needed to align examination admission requirements in this field with practice in other states and thereby remove the competitive disadvantage that New York Students confront. The State Board for Veterinary Medicine has approved this change.

This amendment will not compromise the public health or professional competency, because, by the time of application for licensure, the applicant must have completed the program of professional study and passed the licensing examination. Moreover, licensed veterinary technicians must always practice under the supervision of a licensed veterinarian.

4. COSTS:

(a) Cost to State government: The amendment will not impose any additional cost on the State government. The proposed change will not require the State Education Department to spend additional resources for administering the examination or processing applications for licensure.

(b) Cost to local government: None.

(c) Cost to private regulated parties: There are no additional costs for licensure candidates.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to examination requirements that applicants must meet for New York State licensure as a veterinary technician and does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

There are no other State or Federal requirements regarding standards for admission to the examination for New York State licensure as a veterinary technician. Therefore, the 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 regulating the licensure of veterinary technicians.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

The proposed amendment changes the professional education requirement for admission to the licensing examination for veterinary technicians so that students in registered or accredited veterinary technology programs may be admitted to the licensing examination for veterinary technicians before graduation. It does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect candidates who sit for the licensing examination for veterinary technicians for licensure to practice veterinary technology in this State, including those that live in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment changes the professional education requirement for admission to the licensing examination for veterinary technicians so that students in registered or accredited veterinary technology programs may be admitted to the licensing examination for veterinary technicians before graduation. The proposed amendment does not impose a need for professional services and does not establish additional reporting or recordkeeping requirements on applicants for licensure in veterinary technology, including those located in rural areas of New York State.

3. COSTS:

There are no costs for individuals, their employers, or the State for adopting this amendment.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment changes the professional education requirement for admission to the licensing examination for veterinary technicians so that students in registered or accredited veterinary technology programs

may be admitted to the licensing examination for veterinary technicians before graduation. The amendment makes no exception for individuals who live or work in rural areas of New York State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Board for Veterinary Medicine approved this change to the Regulations of the Commissioner of Education. The State Board for Veterinary Medicine includes members who live and work in rural areas of New York State. The proposed amendment was requested by the New York State Association of Veterinary Technicians. The State Education Department solicited comments on the proposed amendment from the New York State Veterinary Medical Association. Both associations include members who live and work in all areas of New York State, including rural areas of the State.

Job Impact Statement

The proposed amendment changes the professional education requirement for admission to the licensing examination for veterinary technicians so that students in registered or accredited veterinary technology programs may be admitted to the licensing examination for veterinary technicians before graduation. It does not change the requirements for licensure. Before issuance of a professional license, applicants will need to meet the professional education requirement by completing a program of education for veterinary technology and to pass the licensing examination. This change is expected to shorten the time between graduation and licensure.

This change in the requirements for admission to the licensure examination will impose no adverse effect on the number of jobs or employment opportunities in the field of veterinary technology. Rather, by shortening the time between graduation and licensure, the proposed amendment may have a positive effect on employment opportunities for those seeking licensure in New York State, many of whom are likely to be New York State residents. Because it is evident from the nature of the proposed amendment that it will have no adverse impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Universal Prekindergarten Programs

I.D. No. EDU-24-07-00027-RP

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

Revised action: Repeal of Subpart 151-1 and addition of a new Subpart 151-1 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3602-e(1), (2), and (5)-(16); and L. 2007, ch. 57, part B, section 19

Subject: Universal prekindergarten programs.

Purpose: To establish uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive process, and facility requirements.

Substance of revised rule: The State Education Department proposes to repeal Subpart 151-1 of the Regulations of the Commissioner of Education and promulgate a new Subpart 151-1, effective January 3, 2008. Since publication of a Notice of Revised Rule Making in the *State Register* on September 12, 2007, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith. The following is a summary of the provisions of the revised proposed rule.

Section 151-1.1 specifies that the purpose of this Subpart is to provide four-year-old children with universal opportunity to access prekindergarten programs.

Section 151-1.2 defines approved expenditures, eligible agencies, eligible child, and universal prekindergarten program plan.

Section 151-1.3 establishes uniform quality standards for all universal prekindergarten classrooms, including both district-based and eligible agency-based settings. Such standards require:

(1) use of curricula, aligned with the State learning standards, that ensures continuity with instruction in the early elementary grades and is integrated with the district's instructional program in kindergarten through grade twelve

(2) early literacy and emergent reading instruction based on effective, evidence-based practices;

(3) activities to be learner-centered and to be designed to promote a child's total growth and development;

(4) a process for assessing the developmental baseline and progress of all children participating in the program, which shall at a minimum provide for on-going assessment of the development of language, cognitive and social skills in children

(5) all prekindergarten students shall be screened as new entrants as set forth in Part 117 of Title 8; prekindergarten programs operating less than three hours shall provide a nutritional meal and/or snack; and programs operating more than three hours shall provide appropriate meals and snacks to ensure the nutritional needs of the children are met;

(6) a maximum class size of 20 children and that there be one teacher and one paraprofessional for classes up to 18 children and one teacher and two paraprofessionals for classes of 19 or 20 children;

(7) universal prekindergarten program teachers and paraprofessionals in both school district and eligible agency settings to meet minimum staff qualifications;

(8) school districts to provide fiscal and program oversight and be accountable for student progress in all prekindergarten classrooms in district and agency settings;

(9) professional development be based on the instructional needs of children and be provided to all teachers and staff in both district and agency settings;

(10) the development of procedures to ensure active engagement of parents and/or guardians in the education of their children; and

(11) school districts to provide, either directly or through referral, support services to children and their families necessary to support the child's participation in the program.

Section 151-1.4 sets forth provisions related to the design of programs. Programs may be either full-day or half-day and must operate five days per week a minimum of 180 days per year. A district may operate a summer only program during the months of July and August only upon demonstrating to the Commissioner's satisfaction that the school district is unable to operate the program during the regular school session because of a lack of available space in both district buildings and eligible agencies. Unless waived by the Commissioner, a minimum of 10 percent of the total grant must be used for the provision of the instructional program through collaborative efforts with eligible agencies.

Section 151-1.4(d) provides that school districts must establish a process to select eligible children to receive universal prekindergarten services on a random basis where there are more eligible children than can be served in a given school year, provided, however, that a school district that operated a targeted prekindergarten program in the base year may use the selection process established for such program.

Section 151-1.4(e) provides that the environment and learning activities of the program shall be designed to promote and increase inclusion of preschool children with disabilities.

Section 151-1.4(f) provides that the program be designed to ensure that participating children with limited English proficiency are provided equal access to the program and opportunities to achieve the same program goals and standards as other participating children.

Section 151-1.5 establishes to application process by which school districts access their Universal Prekindergarten allocations. Two or more school districts may submit a joint application to operate a joint program with a maximum grant that is the sum of the allocation computed for each participating district. Provision is made for a written request to the Commissioner for a variance: (1) of the 10 percent set aside for collaboration as set forth in Education Law section 3602-e(5)(e); (2) class size requirements; (3) for districts that operated a targeted program under Subpart 151-2 in the 2006-2007 school year; and (4) for a summer only program, for district unable to operate during the regular school session.

Section 151-1.5(b)(7)(iii) allows districts that operated a targeted prekindergarten program in the 2006-2007 school year to seek variances of certain universal prekindergarten provisions and to continue to operate under the targeted prekindergarten regulations. The amount of funding supporting classrooms to which such variances apply may not exceed the amount of targeted prekindergarten grant funds received by the district for the 2006-2007 school year.

Section 151-1.5(a) and (b)(8) allow two or more school districts to submit a joint application to operate a joint universal prekindergarten program.

Section 151-1.6 provides that school districts must use a competitive process to determine which eligible agencies will collaborate with the

district for the provisions of the instructional program. This section establishes minimum requirements for the request for proposals and identified criteria to be used when evaluating responses to such request. Section 151-1.6(e) requires school districts to conduct a minimum of one site visit to settings where the universal prekindergarten program will be located prior to contracting for services.

Section 151-1.7 states the facilities requirements for Universal Prekindergarten programs. These requirements are unchanged from the current regulation.

Revised rule compared with proposed rule: Substantial revisions were made in section 151-1.3(e)(2).

Revised rule making(s) were previously published in the State Register on September 12, 2007.

Text of revised 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, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

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

Regulatory Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on September 12, 2007, the following substantial revisions were made to the proposed rule.

Section 151-1.3(e)(1)(iii), was revised to permit possession of a license or certification in the childhood grades, together with a written plan to obtain certification valid for service in the early childhood grades within five years, as an additional alternative staff qualification requirement for teachers in eligible agencies collaborating with a school district to provide universal prekindergarten services.

Section 151-1.3(e)(2) was revised to permit an on-site director at an eligible agency site to possess a teaching license or certificate valid for service in either the early childhood or child hood grades.

These revisions will provide additional flexibility with respect to the staffing of eligible agencies offering universal prekindergarten instruction, and are consistent with the authorizing statute (Education Law section 3602-e, as amended by section 19 of Part B of Chapter 57 of the Laws of 2007), which directs that in promulgating regulations to carry out the statute's provisions, the Commission and Board of Regents shall take into account the availability of certified teachers and teaching assistants to provide instruction in prekindergarten programs and consider ways to increase the pool of qualified personnel.

The revisions do not require any further changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the *State Register* on September 12, 2007, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The revisions to the proposed rule do not require any further changes to the previously published Regulatory Flexibility Analysis.

Rural Area Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the *State Register* on September 12, 2007, the proposed rule was revised as set forth in the Statement concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule do not require any changes to the previously published Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on September 12, 2007, the proposed rule was revised as set forth in the State Concerning the Regulatory Impact Statement.

The proposed amendment, as revised, is necessary to conform Subpart 151-1 of the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, relating to universal prekindergarten programs operated by public school districts, and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed revised amendment that it will have no impact on jobs or employment opportunities, no further steps were

needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Special Fishing Regulations for the Salmon River

I.D. No. ENV-44-07-00004-E

Filing No. 1075

Filing date: Oct. 12, 2007

Effective date: Oct. 12, 2007

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

Action taken: Amendment of Part 10 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-1301 and 11-1303

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

Specific reasons underlying the finding of necessity: The immediate adoption of this rule is necessary for the preservation of the general welfare.

Subdivision 10.2(g) of NYCRR designates catch and release, fly-fishing only areas on the Salmon River. The lower fly fishing catch and release area, which is ¼ mile in length, is located in that portion of the Salmon River that lies immediately downstream of the Salmon River Hatchery and upstream of the County Rt. 52 bridge in Altmar. The upper boundary of the area is just downstream from Beaverdam Brook. Fish gain access to the Department's Salmon River Hatchery from the Salmon River through Beaverdam Brook.

The Salmon River Reservoir is managed through a license from the Federal Energy Regulatory Commission (FERC) to provide year round base flows to the lower 18 miles of the Salmon River which is accessible to lake-run trout and salmon. The prescribed base flow for the fall salmon season is 335 cubic feet per second (cfs). The recent drought has left the reservoir at an historic low level (14 feet below dam crest on September 10, 2007) with no significant rain in the forecast. As a result, the executive committee of the Salmon River Flow Management Team recently agreed to conserve water in the reservoir and to reduce the base flow in the Salmon River to 100 cfs, which is less than 1/3 of normal for this time of year.

The lower fly fishing, catch and release area on the Salmon River is a staging area for various species of fish, including chinook and coho salmon as they prepare to enter the hatchery. A high number of salmon are already present in the staging area. In light of the drought conditions noted above, the Department has several concerns. First, the fish mortality rate associated with catch and release fishing, which is normally low, will increase during drought conditions. Warmer water temperatures and lower water levels place additional stress on fish and increase the likelihood that fish will not survive after catch and release. An increase in the fish mortality rate would be contrary to the purpose of catch and release fishing. Second, the low water levels and high concentrations of fish, conditions currently present in this portion of the Salmon River are not conducive to ethical fly fishing and would likely result in numerous fish being illegally hooked (snagged). Third, the Department is responsible for ensuring that adequate numbers of fish will enter the Department's hatchery on the Salmon River in order to provide eggs for the hatchery operations that support the Lake Ontario and tributaries fishery. If the fishery were to remain open, the first two concerns noted above could interfere with the Department's ability to obtain sufficient numbers of fish at the hatchery.

The lower fly fishing, catch and release area on the Salmon River was scheduled to open to fishing on September 15, 2007. The Department delayed the opening to October 15th by emergency rulemaking, anticipat-

ing that conditions would eventually improve. Unfortunately, conditions have not improved due to continued warm weather and a lack of precipitation.

In response to this situation, the Department has determined that it is necessary to further delay the opening of the lower fly fishing area until November 15, 2007. The egg taking activities at the Salmon River Hatchery were scheduled to begin on October 9, 2007, but continued warm weather and a lack of precipitation have delayed that effort. Delaying the opening to November 15, 2007 should allow adequate numbers of fish to enter the hatchery. In addition, water temperatures should be lower by November 14 and, with some precipitation, base flows may be higher.

Although the Department is hopeful that conditions will return to levels that will allow fishing to resume in this area on November 15, the Department reserves the right to extend the closure for a longer period of time should conditions not improve sufficiently.

Subject: Special fishing regulations for the Salmon River.

Purpose: To prevent salmon mortality due to drought conditions.

Text of emergency rule: Subdivision 10.2(g) of 6 NYCRR is amended to read as follows:

(g) Additional special fishing regulations for the Salmon River, Oswego County, from County Route 52 bridge upstream from Lighthouse Hill Reservoir. No person may fish at any time except from County Route 52 bridge in Altmar upstream to a marked boundary at Beaverdam Brook from [September 15] *November 15* through May 15, and from a marked boundary upstream of the New York State Salmon River Fish Hatchery property upstream approximately 0.6 mile to a marked boundary at the Lighthouse Hill Reservoir tailrace from April 1 through November 30. No person, while fishing in these places during these times, shall:

- (1) fish from one-half hour after sunset to one-half hour before sunrise;
- (2) use fishing tackle other than a traditional fly fishing rod, reel and line;
- (3) use other than single artificial flies, including weighted flies, which are permitted;
- (4) use a hook with more than one hook point or with a gap of greater than one-half inch;
- (5) use a leader, including tippet, measuring in excess of 15 feet;
- (6) place additional weight on the line or leader, whether fixed or sliding at a distance exceeding four feet from the fly; and
- (7) fail to immediately release all fish without unnecessary injury.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire January 9, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, e-mail: sxkeeler@gw.dec.state.ny.us

Regulatory Impact Statement

1. Statutory Authority

Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department of Environmental Conservation (Department) to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Sections 11-1301 and 11-1303 of the ECL empower the Department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the Environmental Conservation Law), in all waters of the state.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are the basic tools used by the Department in achieving the Legislature's intent. The purpose of setting seasons is to prevent the over-exploitation of fish populations during vulnerable periods, such as during spawning, thereby insuring healthy fish populations. Size limits are necessary to maintain quality fisheries and to insure that adequate numbers survive to spawning size. Creel limits are used to distribute the harvest of fish among many anglers and angling days and to optimize resource benefits. Regulations governing the manner of taking fish enhance the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, and limit exploitation. Catch-and-release fishing regulations are used in waters capable of sustaining outstanding growth and survival of fish to reduce fishing mortality to the lowest possible level. Reduction of fishing mortality results in a larger population of desirable-sized fish and increases the quality of the recreational opportunities for anglers.

3. Needs and Benefits

Subdivision 10.2(g) of NYCRR designates catch and release, fly-fishing only areas on the Salmon River. The lower fly fishing catch and release area, which is ¼ mile in length, is located in that portion of the Salmon River that lies immediately downstream of the Salmon River Hatchery and upstream of the County Rt. 52 bridge in Altmar. The upper boundary of the area is just downstream from Beaverdam Brook. Fish gain access to the Department's Salmon River Hatchery from the Salmon River through Beaverdam Brook.

The Salmon River Reservoir is managed through a license from the Federal Energy Regulatory Commission (FERC) to provide year round base flows to the lower 18 miles of the Salmon River which is accessible to lake-run trout and salmon. The prescribed base flow for the fall salmon season is 335 cubic feet per second (cfs). The recent drought has left the reservoir at an historic low level (14 feet below dam crest on 9/10/07) with no significant rain in the forecast. As a result, the executive committee of the Salmon River Flow Management Team recently agreed to conserve water in the reservoir and to reduce the base flow in the Salmon River to 100 cfs, which is less than ⅓ of normal for this time of year.

The lower fly fishing, catch and release area on the Salmon River was scheduled to open to fishing on September 15, 2007. This same portion of the River is a staging area for various species of fish, including chinook and coho salmon as they prepare to enter the hatchery. A high number of salmon are already present in the staging area. In light of the drought conditions noted above, the Department has several concerns. First, the fish mortality rate associated with catch and release fishing, which is normally low, will increase during drought conditions. Warmer water temperatures and lower water levels place additional stress on fish and increase the likelihood that fish will not survive after catch and release. An increase in the fish mortality rate would be contrary to the purpose of catch and release fishing. Second, the low water levels and high concentrations of fish, conditions currently present in this portion of the Salmon River are not conducive to ethical fly fishing and would likely result in numerous fish being illegally hooked (snagged). Third, the Department is responsible for ensuring that adequate numbers of fish will enter the Department's hatchery on the Salmon River in order to provide eggs for the hatchery operations that support the Lake Ontario and tributaries fishery. If the fishery were to remain open, the first two concerns noted above could interfere with the Department's ability to obtain sufficient numbers of fish at the hatchery.

In response to this situation, the Department originally delayed the opening of the lower fly fishing area until October 15, 2007. The Department is further delaying the opening until November 15th because conditions have not improved. The egg take at the Salmon River Hatchery was scheduled to begin on October 9, 2007 but continued high temperatures and low flows delayed the start of the egg take. Further delaying the opening to November 15, 2007 should allow adequate numbers of fish to enter the hatchery. In addition, water temperatures should be lower by November 14 and, with some precipitation, base flows may be higher.

Although the Department is hopeful that conditions will return to levels that will allow fishing to resume in this area on November 15, 2007 the Department reserves the right to extend the closure for a longer period of time should conditions not improve sufficiently.

4. Costs

Enactment of the emergency regulation described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

6. Paperwork

No additional paperwork will be required as a result of these changes in regulations.

7. Duplication

There are no other state or federal regulations which govern the taking of fish.

8. Alternatives

The alternative to the regulation would be to retain the current fishing regulation, which the Department does not find acceptable. In the absence of the change, adequate numbers of fish may not reach the Salmon River Hatchery for egg taking operations, fish may be vulnerable to large scale catch and release mortality, and a high concentration of fish would be exposed to conditions not conducive to ethical angling (i.e., snagging).

9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

10. Compliance Schedule

This regulation will take effect immediately upon filing with the Department of State, and immediate compliance with the closed period will be required.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule is intended to protect brood fish staging below the Salmon River Hatchery and to avoid potential catch and release mortalities that would likely occur due to the low flow, high water temperature situation that currently exists. The rule would also eliminate unscrupulous fishing activity (i.e., snagging) that would likely occur given the current high density of fish in the area and the low flows.

2. Compliance requirements:

The original emergency regulation closed the area to fishermen from September 15th (the scheduled opening day) through and including October 14th. This rule would further extend the closure through and including November 14th. Absent further action by the Department, the area would open on November 15th.

3. Professional services:

NA.

4. Compliance costs:

NA.

5. Economic and technological feasibility:

Recent creel surveys on the Salmon River estimate from 76,000 to 91,000 angler trips for the entire river during the September through November time period. The fly fishing catch and release areas (upper and lower sections combined) have accounted for about 10 percent of the overall fishing effort.

6. Minimizing adverse impact:

The lower fly fishing catch and release fishing area is ¼ of a mile in length which leaves anglers with approximately 15 miles of river to fish, including the upper fly fishing catch and release fishing area. The upper fly fishing catch and release fishing area is located upstream of the Salmon River Fish Hatchery, is open to fishing from April 1 through November 30, and provides anglers with a similar fishing opportunity as the lower fly fishing catch and release fishing area. The opening of the lower fly fishing catch and release fishing area is delayed only as long as is estimated to be necessary. The delay is intended to ensure sufficient numbers of chinook salmon and coho salmon enter the Salmon River Fish Hatchery for spawning and egg-take purposes. Providing for an adequate egg take for hatchery operations in support of the Lake Ontario and tributary fisheries will benefit fishing-dependent businesses in future years as the fish resulting from the hatchery operations are available to be caught by anglers for the next four years.

7. Small business and local government participation:

The Department's outreach efforts on this rulemaking included notification to the area businesses that we are considering the rule. The Department will issue a press release on the regulation change, and notification of the delayed open season will be posted on the Department's website www.dec.ny.gov. In addition, Department staff will seek to have the rule posted on Brookfield Power's "water line" www.h2oline.com/365123.asp, which is a web site that provides flow levels in the Salmon River and is very popular with anglers.

Rural Area Flexibility Analysis

This emergency rulemaking will delay the open fishing season on a small portion of the Salmon River, ¼ of a mile in length. Anglers have approximately 15 other miles of river to fish, including the upper fly fishing catch and release fishing area. The additional protection afforded fish destined for the egg take operations at the Salmon River Hatchery will help ensure that subsequent hatchery production resulting from these fish will support the Lake Ontario and Salmon River fisheries into the future. Hatchery operations are beneficial to the rural communities and the businesses in those communities that rely on robust fisheries. Therefore, the Department of Environmental Conservation has determined that this rule will not impose any significant adverse impact on rural areas.

The rulemaking simply closes an area to fishing for approximately one more month. Thus, the Department has determined that this rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

Therefore, the Department has concluded that a rural area flexibility analysis is not required.

Job Impact Statement

The Department has determined that this emergency rulemaking will not have a substantial adverse impact on jobs and employment opportunities. The only jobs that could potentially be directly affected by this rule are fishing guides. While certain fishing guides may wish to take clients on this portion of the Salmon River, the effects are limited and temporary. The original emergency rulemaking delayed the opening of the lower fly fishing area by one month. The Department is further delaying the opening until November 15th because conditions have not improved. Even with this one month extension only a 1/4-mile portion of the Salmon River will be closed for a total of two months. There are approximately 15 additional miles of river not impacted by this rulemaking that are open to anglers and fishing guides.

Protection of the fish in the staging area prior to their entry into the Salmon River Hatchery will benefit angling businesses and jobs by ensuring that sufficient hatchery production will be available to support the fisheries in future years.

Therefore, the Department has determined that a job impact statement is not required.

Department of Health

EMERGENCY RULE MAKING

Chemical Analysis of Blood, Urine, Breath or Saliva for Alcoholic Content

I.D. No. HLT-44-07-00001-E

Filing No. 1074

Filing date: Oct. 10, 2007

Effective date: Oct. 10, 2007

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

Action taken: Amendment of Part 59 of Title 10 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1194(4)(c); and Environmental Conservation Law, section 11-1205(6)

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

Specific reasons underlying the finding of necessity: Immediate adoption of this amendment is necessary for preservation of the public safety. The amendment, once adopted, will enable law enforcement agencies to use a breath alcohol testing device, which, while not currently listed in 10 NYCRR Section 59.4, is approved for use by the National Highway Traffic Safety Administration.

A new Conforming Products List was published in the Federal Register on June 29, 2006, adding a state-of-the-art evidential breath test instrument: the DataMaster DMT. Under a Division of Criminal Justice Services project fully funded through the Governor's Traffic Safety Committee, the DataMaster DMT will replace 475 breath test instruments currently used by more than 420 police agencies statewide. The Division of Criminal Justice Services has informed the Department of its expectation to begin distribution of the first lot of approximately 40 DataMaster DMT instruments on or about April 30, 2007.

Failure to update the list by emergency rulemaking will result in confusion as to the DataMaster DMT's approval for use in New York State, resulting in defense challenges to the legal admissibility of evidentiary results obtained with the device. Such failure would obviously impede law enforcement efforts to combat drunk driving, particularly as more and more of the older DataMaster models become unusable, thereby adversely affecting public safety. Moreover, the federal and State lists of approved breath testing devices must be identical to avoid legal challenges to prosecutions for alcohol-related offenses and preclude inadmissibility of evidence, and to ensure effective enforcement of the laws against driving while intoxicated.

Subject: Chemical analysis of blood, urine, breath or saliva for alcoholic content.

Purpose: To update the conforming products list of breath alcohol testing devices currently approved for use by the National Highway Traffic Safety Administration. Such updating is necessary to enable NYS law enforcement agencies to use state-of-the-art devices, avoid legal challenges to

prosecutions for alcohol related offenses, preclude inadmissibility of evidence and ensure effective enforcement of the laws against driving while intoxicated.

Text of emergency rule: Subdivision (c) of Section 59.1 is amended as follows:

(c) Chemical tests/analyses include breath tests conducted on those instruments found on the Conforming Products List of Evidential Breath Measurement Devices as established by the U.S. Department of Transportation/National Highway Traffic Safety Administration, published in the Federal Register on [June 4, 1999] *June 29, 2006*. Such list is set forth in section 59.4 of this Part.

Subdivision (b) of Section 59.4 is amended as follows:

(b) The commissioner has adopted the Conforming Products List of Evidential Breath Measurement Devices, as hereinafter set forth, established by the U.S. Department of Transportation/National Highway Traffic Safety Administration, as meeting the above criteria. Unless otherwise noted, the devices are approved for both mobile and nonmobile use.

Conforming Products List

(1) Alcohol Countermeasure Systems [,] Corp., Mississauga, Ontario, Canada:

(i) Alert J3AD.

(ii) Alert J4X.ec.

[(ii)] (iii) PBA3000C.

(2) BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer.

(3) CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer.

(4) CMI, Inc., Owensboro, KY:

(i) Intoxilyzer 200.

(ii) Intoxilyzer 200D.

(iii) Intoxilyzer 300.

(iv) Intoxilyzer 400.

(v) Intoxilyzer 400PA.

[(v)] (vi) Intoxilyzer 1400.

[(vi)] (vii) Intoxilyzer 4011.

[(vii)] (viii) Intoxilyzer 4011A.

[(viii)] (ix) Intoxilyzer 4011AS.

[(ix)] (x) Intoxilyzer 4011AS-A.

[(x)] (xi) Intoxilyzer 4011AS-AQ.

[(xi)] (xii) Intoxilyzer 4011AW.

[(xii)] (xiii) Intoxilyzer 4011A27-10100.

[(xiii)] (xiv) Intoxilyzer 4011A27-10100 with filter.

[(xiv)] (xv) Intoxilyzer 5000.

[(xv)] (xvi) Intoxilyzer 5000 (with Cal. Vapor Re-Circ.).

[(xvi)] (xvii) Intoxilyzer 5000 (with 3/8" ID hose option).

[(xvii)] (xviii) Intoxilyzer 5000CD.

[(xviii)] (xix) Intoxilyzer 5000CD/FG5.

[(xix)] (xx) Intoxilyzer 5000EN.

[(xx)] (xxi) Intoxilyzer 5000 (CAL DOJ).

[(xxi)] (xxii) Intoxilyzer 5000 VA.

(xxiii) Intoxilyzer 8000.

[(xxii)] (xxiv) Intoxilyzer PAC 1200.

[(xxiii)] (xxv) Intoxilyzer S-D2.

(xxvi) Intoxilyzer S-D5.

[(5) Decator Electronics, Decator, IL: Alco-Tector model 500 (nonmobile only.)]

[(6)] (5) Draeger Safety, Inc., Durango, CO:

(i) Alcotest 6510.

(ii) Alcotest 6810.

[(i)] (iii) Alcotest 7010.

[(ii)] (iv) Alcotest 7110.

[(iii)] (v) Alcotest 7110 MKIII.

[(iv)] (vi) Alcotest 7110 MKIII-C.

[(v)] (vii) Alcotest 7410.

[(vi)] (viii) Alcotest 7410 Plus.

[(vii)] (ix) Breathalyzer 900.

[(viii)] (x) Breathalyzer 900A.

[(ix)] (xi) Breathalyzer 900 BG.

[(x)] (xii) Breathalyzer 7410.

[(xi)] (xiii) Breathalyzer 7410-II.

[(7)] (6) Gall's Inc., Lexington, KY: Alcohol Detection System-A.D.S. 500.

(7) Guth Laboratories, Inc., Harrisburg, PA:

(i) Alcotector BAC-100.

(ii) Alcotector C2H5OH.

(8) Intoximeters, Inc., St. Louis, MO:

- (i) Photo Electric Intoximeter (nonmobile only).
- (ii) GC Intoximeter MK II.
- (iii) GC Intoximeter MK IV.
- (iv) Auto Intoximeter.
- (v) Intoximeter 3000.
- (vi) Intoximeter 3000 (rev B1).
- (vii) Intoximeter 3000 (rev B2).
- (viii) Intoximeter 3000 (rev B2A).
- (ix) Intoximeter 3000 (rev B2A) w/FM option.
- (x) Intodximeter 3000 (Fuel Cell).
- (xi) Intoximeter 3000 D.
- (xii) IntoXimeter 3000 DFC.
- (xiii) Alcomonitor (nonmobile only).
- (xiv) Alcomonitor CC.
- (xv) Alco-Sensor III.
- (xvi) *Alco-Sensor III (Enhanced with Serial Numbers above*

1,200,000).

- [(xvi)] (xvii) Alco-Sensor IV.
- [(xviii)] *Alco-Sensor IV-XL.*
- [(xvii)] (xix) Alco-Sensor AZ.
- [(xx) *Alco-Sensor FST.*
- [(xviii)] (xxi) RBT-AZ.
- [(xix)] (xxii) RBT III.
- [(xx)] (xxiii) RBT III-A.
- [(xxi)] (xxiv) RBT IV.
- [(xxii)] (xxv) RBT IV with CEM (cell enhancement module).
- [(xxiii)] (xxvi) Intox EC/IR.
- [(xxvii) *IntoX EC/IR II.*
- [(xxiv)] (xxviii) Portable Intox EC/IR.

(9) Komyo Kitagawa, Kogyo, K.K., *Japan:*

- (i) Alcolyzer DPA-2.
- (ii) Breath Alcohol Meter PAM 101B.
- (10) Lifeloc Technologies, Inc. (formerly Lifeloc, Inc.), Wheat

Ridge, CO:

- (i) PBA 3000B.
- (ii) PBA 3000-P.
- (iii) PBA 3000C.
- (iv) Alcohol Data Sensor.
- (v) Phoenix.
- (vi) *EV 30.*
- (vii) *FC 10.*
- (viii) *FC 20.*

(11) Lion Laboratories, Ltd., Cardiff, Wales, UK:

- (i) Alcolmeter 300.
- (ii) Alcolmeter 400.
- [(iii) Alcolmeter AE-D1.]
- [(iv)] (iii) Alcolmeter SD-2.
- [(v)] (iv) Alcolmeter EBA.
- [(vi) Auto-Alcolmeter (nonmobile only).]
- [(vii)] (v) Intoxilyzer 200.
- [(viii)] (vi) Intoxilyzer 200D.
- [(ix)] (vii) Intoxilyzer 1400.
- [(x)] (viii) Intoxilyzer 5000 CD/FG5.
- [(xi)] (ix) Intoxilyzer 5000 EN.

(12) Luckey Laboratories, San Bernardino, CA:

- (i) Alco-Analyzer 1000 (nonmobile only).
- (ii) Alco-Analyzer 2000 (nonmobile only).

(13) National Draeger, Inc., Durango, CO:

- (i) Alcotest 7010.
- (ii) Alcotest 7110.
- (iii) Alcotest 7110 MKIII.
- (iv) Alcotest 7110 MKIII-C.
- (v) Alcotest 7410.
- (vi) Alcotest 7410 Plus.
- (vii) Breathalyzer 900.
- (viii) Breathalyzer 900A.
- (ix) Breathalyzer 900BG.
- (x) Breathalyzer 7410.
- (xi) Breathalyzer 7410-II.

(14) National Patent Analytical Systems, Inc., Mansfield, OH:

- (i) BAC DataMaster (with or without the Delta-1 accessory).
- (ii) BAC Verifier *Datamaster* [DataMaster] (with or without the Delta-1 accessory).
- (iii) DataMaster cdm (with or without the Delta-1 accessory).
- (iv) *DataMaster DMT.*

* * *

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 January 7, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The New York State Vehicle and Traffic Law, Section 1194(4)(c), and Department of Environmental Conservation Law, Section 11-1205(6), authorize the Commissioner of Health to adopt regulations concerning methods of testing breath for alcohol content.

Legislative Objectives:

This amendment allows law enforcement/police agencies to use state-of-the-art equipment for breath alcohol testing, as approved by the Commissioner of Health. This action fulfills the legislative objective of ensuring effective enforcement of the law against driving while intoxicated.

Needs and Benefits:

In 1986, the Commissioner of Health adopted the Conforming Products List of Evidential Breath Measurement Devices, as established by the National Highway Traffic Safety Administration, under 10 NYCRR Sections 59.1(c) and 59.4(b). The Traffic Safety Administration's list is periodically revised to include additional approved testing devices. Affected parties are law enforcement agencies that train police organizations in the use of breath testing devices and the organizations/agencies whose staff conduct testing, including the New York State Police; the State Division of Criminal Justice Services' Office of Public Safety; and the Police Departments of Nassau County, Suffolk County, and the City of New York.

A new Conforming Products List was published in the *Federal Register* on June 29, 2006, adding a state-of-the-art evidential breath test instrument: the DataMaster DMT. Under a Division of Criminal Justice Services project fully funded through the Governor's Traffic Safety Committee, the DataMaster DMT will replace 475 breath test instruments currently used by more than 420 police agencies Statewide. The Division of Criminal Justice Services has informed the Department of its expectation to begin distribution of the first lot of approximately 40 DataMaster DMT instruments on or about April 30, 2007.

Prosecutors and defense attorneys Statewide rely on the provisions of Part 59 daily in adjudicating alcohol-related offenses. By including in Section 59.4 all devices that appear on the latest federal Conforming Products List, this proposed amendment, once adopted, will make these devices available for use by law enforcement agencies without risk of evidentiary challenge to prosecution, and will ensure effective enforcement of the laws against driving while intoxicated.

Costs:

Costs to Private Regulated Parties:

The requirements of this regulation are not applicable to any private parties regulated by the Department.

Costs to State Government:

Adoption of additions and revisions to the Conforming Products List does not necessitate purchase of new devices or discontinuance of devices currently in use. Therefore, this proposed amendment does not require affected parties to incur new costs. The Division of Criminal Justice Services has requested timely amendment of Part 59 because the manufacturer of the DataMaster breath analysis device currently in use has begun phasing out production due, in part, to the fact that parts to manufacture and repair these instruments are becoming increasingly unavailable. Moreover, the Division of Criminal Justice Services expects the newer model instrument, which utilizes improved diagnostics, an enhanced operating system and an outboard printer, to generate cost savings from fewer instrument malfunctions, resulting in less downtime. Thus, this amendment's authorizing use of an updated model, the DataMaster DMT, will result in decreased costs to law enforcement agencies.

Costs to Local Government:

Adoption of additions and revisions to the Conforming Products List does not require purchase of new devices or discontinuance of devices currently in use. Therefore, this proposed amendment does not impose any additional costs to police departments operated by local governments, including the City of New York Police Department. Police departments operated by local governments may experience cost savings for the same reasons described under Costs to State Government.

Costs to the Department of Health:

Adoption of additions and revisions to the Conforming Products List does not impose any costs on the Department.

Local Government Mandates:

This regulation does not impose any new mandate on any county, city, town, village, school district, fire district or other special district.

Paperwork:

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

Duplication:

This regulation is consistent with, but does not duplicate, other State and federal statutes concerning approved breath alcohol measurement devices.

Alternative Approaches:

At the present time, there are no acceptable alternatives. Failure to update the list will result in confusion as to the DataMaster DMT's instrument approval for use in New York State, resulting in defense challenges to the admissibility of results obtained with the device. Such failure will obviously impede law enforcement efforts to combat drunk driving, particularly as more and more of the older DataMaster models become unusable, thereby adversely affecting public safety.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government; it merely adds new federally approved devices to the Conforming Products List, to be consistent with federal standards.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing a Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to Section 202-b (3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb (4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. The amendment harmonizes state and federal lists of approved breath measurement devices, making the entire range of devices available for use by law enforcement agencies in New York without risk of evidentiary challenge to prosecution for alcohol-related offenses.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Ketamine Hydrochloride and Schedule II Sodium Pentobarbital

I.D. No. HLT-44-07-00032-P

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

Proposed action: This is a consensus rule making to amend sections 80.2, 80.132 and 80.134 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3308(2) and 3305(1)(d)

Subject: Use of ketamine hydrochloride and schedule II sodium pentobarbital by animal control facilities.

Purpose: To allow the use of ketamine hydrochloride and schedule II sodium pentobarbital for anesthesia and euthanasia purposes by animal control facilities.

Text of proposed rule: The title of Section 80.134 in the Table of Contents is amended to read as follows:

80.134 Authorization for the purchase, possession and dispensing of *ketamine hydrochloride to anesthetize animals and/or sodium pentobarbital* to euthanize animals.

Section 80.2 is hereby amended to read as follows:

80.2 Exemptions. (a) Pursuant to section 3305 of the Public Health Law, the provisions of this Part restricting the possession of controlled substances shall not apply to:

- (1) common carriers or warehousemen while engaged in lawfully transporting or storing such substances or to any employee of the same acting within the scope of his employment;
- (2) public officers or their employees in the lawful performance of their official duties requiring possession of controlled substances;
- (3) temporary incidental possession by employees or agents of persons lawfully entitled to possession or by persons whose possession is for the purpose of aiding public officers in performing their official duties;
- (4) a person in the employ of the United States government, its territories, districts or insular governments by reason of his official duties;
- (5) a master of a ship or a person in charge of any aircraft upon which a physician is not regularly employed; or

(6) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing [sodium pentobarbital] to registered and certified personnel, *ketamine hydrochloride to anesthetize animals and/or sodium pentobarbital* to euthanize animals.

(b) The provisions of article 33 with respect to the payment of fees and costs shall not apply to the State of New York or any political subdivision thereof or any agency or instrumentality of either.

(c) The following exemptions are granted to the possession and use of schedule III or IV substances as part of an industrial process or manufacture of substances other than drugs: None.

Section 80.132 is hereby amended to read as follows:

80.132 Hypodermic syringes and needles; designation of persons or classes of persons.

(a) The following persons or classes of persons may obtain hypodermic syringes and hypodermic needles without prescription for use within the scope of their professions or activities:

- (1) physicians;
- (2) dentists;
- (3) veterinarians;
- (4) undertakers;
- (5) nurses;
- (6) podiatrists;
- (7) registered pharmacists;
- (8) hospitals;
- (9) sanitariums;
- (10) clinical laboratories;
- (11) medical institutions;
- (12) manufacturers or dealers in medical, pharmaceutical, surgical or dental supplies or their agents;

(13) resident physicians or interns of hospitals, sanitariums or other medical institutions;

(14) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing *to registered and certified personnel ketamine hydrochloride to anesthetize and/or sodium pentobarbital* [to registered and certified personnel] to euthanize animals;

(15) persons engaged in an agricultural activity, provided that the manufacturer, distributor or supplier of the hypodermic syringe or hypodermic needle or of any product pre-packaged in a hypodermic syringe has an established needle and syringe return program in compliance with any applicable law;

(i) for purposes of this section, agricultural activity shall mean the production of food for human consumption and fiber through crops, livestock and livestock products.

(16) an advanced life support agency; and

(17) persons certified by the New York State Department of Environmental Conservation as wildlife rehabilitators. Wildlife rehabilitators are responsible for the proper safeguarding and handling of hypodermic syringes and needles and must comply with section 80.133(h)-(j) of this Part. All needles and syringes shall be stored in compliance with section 80.133(g) of this Part;

(18) licensed respiratory therapists and licensed respiratory therapy technicians;

(19) certified home health agencies, licensed home care services agencies and long term home health care programs approved under Article 36 of the Public Health Law; and

(20) certified hospices licensed under Article 40 of the Public Health Law.

Section 80.134 is hereby amended to read as follows:

80.134 Authorization for the purchase, possession and dispensing *ketamine hydrochloride to anesthetize animals and/or sodium pentobarbital to euthanize animals.*

(a) Except where different meanings are specified expressly, the terms in this section shall have the following meanings:

(1) An incorporated society for the prevention of cruelty to animals (society) shall include any incorporated humane society or society for the prevention of cruelty to animals having facilities for the care and eventual disposition of animals, within the State.

(2) Municipal animal control facility (facility) shall include any pound or shelter maintained by or under contract or agreement with any county, city, town or village within the State.

(3) Solution shall mean:

(i) a premixed solution of sodium pentobarbital, manufactured only and specifically for the euthanasia of animals, which contains such other ingredients as to place such solution within schedule III of the Controlled Substances Act (article 33, Public Health Law);

(ii) *schedule II sodium pentobarbital; or*

(iii) *ketamine hydrochloride.*

(4) An agent is a person or persons other than a licensed veterinarian appointed by the incorporated society or municipal animal control facility, and duly registered with the department, authorized to purchase, possess and dispense *ketamine hydrochloride to anesthetize animals and/or sodium pentobarbital to euthanize animals.*

(5) A registered individual is a person certified and registered pursuant to subdivision (f) of this section.

(b) No society, facility or its agent shall purchase, possess, dispense or cause to be administered, a controlled substance within this State without first registering with the department.

(c) A society or facility and its agents shall also register with the Federal Drug Enforcement Administration (DEA) in the controlled substance schedule provided for under this Part.

(d) Any society or facility may register an agent to purchase, possess and dispense a controlled substance, by application to the department.

(1) The department shall issue such registration unless the commissioner finds that the application should be denied by reason of false statements in the application, conviction of a felony relating to controlled substances, suspension, revocation or denial of the applicant's Federal DEA registration, failure to provide adequate safeguards against diversion of the solution, or other good and sufficient reason such as conviction for a violent felony or a felony related to theft, an administrative determination that article 33 of the Public Health Law or provisions of this Part were violated, conviction for a misdemeanor relating to controlled substances, or any conviction under the Agriculture and Markets Law relating to the treatment of animals.

(2) Such registration shall be valid for a period of three years from the date of issuance and may be suspended or revoked upon a finding by the commissioner that the society, facility, agent or certified personnel have violated the provisions of this section, or any other requirement of this Part or article 33 or any other State law or regulation relating to the proper care of animals by societies or facilities.

(3) Any society or facility registering an agent shall immediately notify the department of any change in the employment or contractual relationship with the designated agent.

(4) Such registration shall be valid only at the registered location.

(e)(1) Registered agents of societies or facilities may dispense solution for the *anesthesia and/or euthanasia of animals only to registered individuals certified by the department to administer such a solution; or to a licensed and properly registered veterinarian and only for on-premises use.*

(2) Solution may be dispensed for use off the premises only where the animal to be *anesthetized and/or euthanized* is injured or transport of such animal to the society or facility is not practical.

(f) Registration and certification of individuals to administer solution for *anesthesia and/or euthanasia of animals.*

(1) No person other than a licensed veterinarian shall receive a controlled substance from a duly authorized agent of a society or facility to

anesthetize and/or euthanize [dogs and cats] animals unless the person is certified and registered with the department.

(2) To obtain a certification and registration from the department in order to administer a solution to *anesthetize and/or euthanize animals*, the applicant must:

(i) be 21 years of age or older;

(ii) hold a bachelor or associate degree in animal health sciences or related field; and

(iii) obtain a written certification from two licensed veterinarians or one licensed veterinarian and one licensed animal health technician in which the veterinarians or technicians state that they have observed the proficient use, by the applicant, of injections for the *anesthesia and/or euthanasia of animals.*

(3) Any person who meets the minimum qualifications stated in subparagraphs (2)(i) and (iii) of this subdivision, but who lacks the required bachelor or associate degrees, may obtain certification and registration from the department if such person has two years' experience in animal care including *anesthesia and/or euthanasia of animals.*

(4) The department shall issue such registration and certification unless the commissioner finds that the application should be denied by reason of false statements in the application, the applicant's conviction of a felony relating to controlled substances or for other good and sufficient reason.

(5) Such registration and certification shall be valid for a period of three years from the date of issuance and may be suspended or revoked upon a finding by the commissioner that the registered individual has violated the provisions of this Part, article 33 or any other State law or regulation relating to the proper care of animals, or is not competent to administer solution in the *anesthesia and/or euthanasia of animals by injection.*

(g) Renewal of registrations. Registrations issued under this section shall be renewed by the department upon receipt of a completed renewal application which includes proof of attendance at a department-sponsored or -approved course in the safe and effective use of a solution in the *anesthesia and/or euthanasia of animals.*

(h) Safeguarding of solution. Agents shall safeguard the solution in compliance with the standards for safeguarding controlled substances set out in section 80.6(a) and (b) of this Part.

(i) Minimum security standards for a society, facility and its agents.

(1) The solution must be stocked in a securely locked cabinet of substantial construction. The cabinet shall be stationary and made of steel or other approved metal and of sufficient size to store the stock of solution.

(2) The cabinet shall be limited to the storage of the solution, needles and syringes and solution records.

(j) Recordkeeping requirements.

(1) Agents shall keep records of all solution purchased, dispensed and administered.

(2) All purchase records, including a copy of the invoice, shall be kept in a separate file and filed by date received.

(3) A separate record of solution activities and transactions in the form of a running inventory shall be maintained and include the following:

(i) the name of the drug (by brand name);

(ii) the name of the manufacturer, lot number, NDC number;

(iii) the strength of the drug in milligrams (mg) per milliliter (ml);

(iv) the total amount of drug received in milliliters;

(v) the name, address and DEA registration number of the supplier of the drug;

(vi) the date the solution was received;

(vii) the signature of the person receiving the solution;

(viii) the date of any transaction or activity, the amount of the solution dispensed at each dispensing;

(ix) the signature of the agent who dispensed the solution;

(x) the signature of the registered individual administering the solution; and

(xi) the remaining amount of drug on hand.

(4) Any unused solution must be returned to the agent. The agent must record the date, the amount returned, the signatures of the agent and the registered individual returning the drug, and the amount on hand after such transaction.

(5) A separate record shall be maintained of all losses with a brief statement describing the incident and signed by the agent and a witness.

(6)(i) Agents shall cause the registered individual and any contracting practitioner to receive a work card or medical record sheet when dispensing the solution and such record shall be returned to the agent upon completion of each workday.

(ii) The work card or medical report sheet shall contain information to properly identify each animal to whom the solution is administered. For each female with litter, utilize only one record or card.

(iii) The registered individual *anesthetizing and/or* euthanizing such animal shall document on such record the date of the administration of the drug, the amount of the drug used and the registered individual's signature.

(7) All records pertaining to the solution shall be kept on the premises of the society or facility for a period of five years and shall be available readily and produced promptly for inspection by authorized representatives of the commissioner.

(k) Quarterly reports. Within 10 days of the end of each quarter of each year, the society or facility shall submit a report to the department signed by an officer or official and the agent and include the following:

- (1) the name, address and phone number of the society or facility;
- (2) the agent's name, bureau registration number, DEA registration number;
- (3) the total amount of solution received from suppliers;
- (4) the total amount of solution dispensed to personnel;
- (5) the total amount of solution returned from personnel;
- (6) the total amount of solution lost for any reason;
- (7) the total amount of solution on hand at the end of the quarter;
- (8) an actual physical inventory count of solution on hand; and
- (9) the total number of animals euthanized by species.

(l) All agents and registered individuals are under continuing duty to report immediately to the department any loss, theft or diversion of solution from the society or facility.

(m) Certification or registration by the department under this section does not authorize the use of medicated darts in a handgun.

(n) Registered individuals may administer solution for *anesthesia and/or* euthanasia of animals only when in the employ of a registered society or facility and only when solution is obtained from the registered agent of such society or facility.

(o) An agent of a society or facility may also obtain registration and certification to administer the solution as defined in paragraph (f)(2) of this section. However, the same individual may not act as both the agent dispensing and the registered individual administering in the same facility at the same time.

(p) Agents of an incorporated society or a facility are responsible for the proper safeguarding and handling of hypodermic syringes and needles and must comply with section 80.133(h)-(j) of this Part. All needles and syringes shall be stored in compliance with subdivision (i) of this section.

(q) The agent of a society or facility is not relieved of his responsibilities to detect or correct any diversion or mishandling of any solution by a delegation of responsibility.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

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

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

Consensus Rule Making Determination

STATUTORY AUTHORITY

Section 3308(2) of the Public Health Law (PHL) 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.

PHL Section 3305(1)(d) requires the department to adopt rules and regulations providing for the registration and certification of any individual who, under the direction of the duly authorized and registered agent of an incorporated society for the prevention of cruelty to animals, or municipal animal control facility, uses ketamine hydrochloride to anesthetize animals and/or sodium pentobarbital to euthanize animals, including but not limited to dogs and cats. The section also authorizes the department to adopt rules and regulations that provide for the safe and efficient use of ketamine hydrochloride and/or sodium pentobarbital by incorporated societies for the prevention of cruelty to animals and animal control facilities.

These regulations have been drafted after discussions with such provider groups as The Humane Society of the United States, Mohawk & Hudson River Humane Society and the Central New York Society of Cruelty to Animals.

Prior to 1997, Public Health Law Section 3305 authorized animal control facilities to use sodium pentobarbital to euthanize animals and the

Department of Health adopted regulations governing the use of schedule III sodium pentobarbital in these facilities. Although this statute was amended in 1997 to allow these facilities to also use ketamine hydrochloride to anesthetize animals, the regulations were never amended to reflect this change. These regulations are being promulgated to address that discrepancy and conform the regulations to the statute.

Additionally, humane societies and animal control facilities have apprised the Department that the available schedule III sodium pentobarbital formulation authorized by the existing regulations is recommended only for the euthanizing of dogs and larger animals, and that the schedule II formulation of sodium pentobarbital is preferred for more humane treatment of smaller animals. They have advised the Department that Schedule III formulation has a higher viscosity that renders it difficult to utilize for cats and other small animals, resulting in seizures, fear and pain to the animals at the time of euthanasia. In fact, the Schedule III formulation of sodium pentobarbital is not approved by the U.S. Food and Drug Administration for use with cats. Since Public Health Law § 3305(d) specifically authorizes humane societies and animal control facilities to use sodium pentobarbital to euthanize cats, as well as dogs and other animals, the current limitation in the regulations restricting such facilities to the Schedule III formulation of sodium pentobarbital is inconsistent with the purpose and language of the existing statute. Consequently, these regulations also would amend Part 80 of Title 10 of the New York Code of Rules and Regulations to conform the regulations to the statutory language and intent by including Schedule II sodium pentobarbital among the controlled substances that may be possessed and administered by humane societies and animal control facilities.

Animal shelters provide a valuable public service by treating stray, injured, aged, sick, and feral animals. While licensed veterinarians are authorized to appropriately euthanize small animals using Schedule II sodium pentobarbital, they are not regularly available to perform the euthanasia in animal shelters. Consequently, the inability of humane societies and animal control facilities to use Schedule II sodium pentobarbital to euthanize small animals creates a hardship for these facilities and the animals euthanized by them.

Since this proposal would conform Part 80 of Title 10 of the New York Code of Rules and Regulations to Public Health Law § 3305 and will permit humane societies and animal control facilities to euthanize animals in a more compassionate and humane manner, no person is likely to object to the adoption of this rule as written.

Job Impact Statement

No Job Impact Statement is required. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on employees of municipal animal control facilities or employees of an incorporated society for the prevention of cruelty to animals. It implements statute authorizing animal control facilities to use ketamine hydrochloride to anesthetize animals and authorizes use of Schedule II sodium pentobarbital to euthanize small animals.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Nursing Faculty Loan Forgiveness Incentive Program

I.D. No. ESC-44-07-00007-P

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

Proposed action: This is a consensus rule making to amend section 2201.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 653(9), 655(4) and 679-d

Subject: New York State Nursing Faculty Loan Forgiveness Incentive Program.

Purpose: To implement the New York State Nursing Faculty Loan Forgiveness Incentive Program.

Text of proposed rule: Section 2201.6 of Title 8 of the New York Code, Rules and Regulations is hereby amended to read as follows:

Section 2201.6 New York State Nursing Faculty Loan Forgiveness Incentive Program

(a) Authority: The provisions contained within this regulation are made pursuant to authority granted to the Higher Education Services Corporation in sections 653, 655, and 679-d of the Education Law

(b) Definitions:

(1) "Year" or "Academic year" means one calendar year beginning July 1st and concluding on June 30th.

(2) "Nursing Degree Program" means those classes that are related to the diploma or degree in professional nursing (including non-nursing electives) and to classes in doctoral programs that qualify applicants as nursing faculty or adjunct clinical faculty, but does not include classes or loans obtained for a non-nursing degree.

(3) "Faculty" means a position that is primarily teaching, rather than administrative or research.

(4) "Loans" means New York State or federal governmental loans, or loans made by commercial entities subject to governmental examination, related to the nursing degree program. It does not, however, include parent PLUS loans, or loans that may be canceled under any other program including Perkins loans, or private loans given for example by family or friends, or student loan debts paid via credit card.

(c) Eligibility: In addition to those requirements already provided in sections 661 and 679-d of the Education Law, these additional requirements shall apply in the selection of the program recipients:

(1) Applications for the New York State Nursing Faculty Loan Forgiveness Incentive Program shall be postmarked or electronically transmitted no later than August 1st of each year, provided that this deadline may be extended at the discretion of the corporation;

(2) Applications shall be filed annually on forms prescribed by the corporation;

(3) The pool of applicants shall be those who have successfully met the filing deadline;

(4) Applications shall be for prior academic year faculty services, except as provided in paragraph 5 of this subdivision.

(5) Applications for retroactive awards for faculty services provided between January 1, 2001 and June 30, 2004 shall be received by January 1, 2006.

(6) Eligibility for loan forgiveness is based on the duties presented in an official position description, not on the position title.

(7) Recipients shall receive loan forgiveness if they are simultaneously teaching in a part-time status at more than one nursing school, provided that the total number of credit hours is in conformity with the requirements of this program.

(8) Recipients shall receive loan forgiveness only for those classes applicable to their nursing degree programs, or to the doctoral program that qualified them as nursing faculty or adjunct clinical faculty, not for loans obtained for a non-nursing degree.

(9) First priority shall be given to applicants who have received payment of an award pursuant to section 679-d of the Education Law in a prior academic year.

(10) If there shall not be enough appropriated funds to grant loan forgiveness to all eligible applicants, second priority shall be given to those recipients with loans guaranteed by the corporation.

(11) If there are more applicants than available funds in any year, the remaining recipients shall be decided by lottery. The lottery shall be conducted by random selection.]

(d) Disqualifications:

The applicant shall be disqualified from receiving an award for any of the following conditions:

(1) The applicant has a service obligation owed to any other state or federal program.

(2) The applicant has loans for which documentation is not available.

(3) The applicant has loans without a promissory note.

(4) The applicant is in default on a federally guaranteed student loan, except if the loan is guaranteed by the corporation.

(5) The applicant's loans are paid in full.

(e) Amounts:

(1) Recipients who had received awards prior to June 23, 2006 shall be paid according to the following schedule:

(i) ten percent to be awarded upon completion of the first year;

(ii) twenty percent to be awarded upon completion of the second

year;

(iii) thirty percent to be awarded upon completion of the third year;

(iv) thirty percent to be awarded upon completion of the fourth year;

(v) the balance or remainder of the award to be paid upon completion of the fifth year;

(vi)[(1)]The annual award shall be a simple percentage of the maximum allowable cap which is the lesser of \$40,000.00 or the cumulative amount of the outstanding loans [under section 679d(a)(3) of the Education Law,] and not a percentage of the amount left over from the previous year's award.

(2) Awards made on or after June 23, 2006 shall be paid pursuant to section 679-d of the education law.

[(2)] (3) The maximum lifetime value of the loan forgiveness shall not exceed the amount of eligible student loan debt that was documented with the corporation in the first year of the applicant's participation or forty thousand dollars, whichever is less.

[(3)](4) The corporation may offset any portion of the loan forgiveness if the applicant is in default on a student loan guaranteed by the corporation.

(f) Priorities: If there are more applicants than available funds appropriated by the legislature in any fiscal year, the following provisions shall apply:

(1) First priority shall be given to eligible applicants who have received payment of an award pursuant to section 679-d of the education law for the preceding academic year of qualified service;

(2) Second priority shall be given to eligible applicants who have received payment of an award pursuant to section 679-d of the education law for any prior academic year of qualified service; and

(3) Third priority shall be given to eligible applicants, including re-applicants, who have never received an award and who meet the minimum eligibility requirements.

(4) In the event of a tie within any given priority, recipients shall be chosen by random selection. Random selection shall be conducted by lottery. Lottery shall be the preferred manner of all tie breaking.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Supervising Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: regcomments@hesc.org

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

This statement is being submitted pursuant to paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to amend section 2201.6 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule. The proposed rule implements non-discretionary statutory provisions enacted in 2006 and 2007 concerning the calculation and eligibility of student loan forgiveness awards for nursing faculty in New York State.

Section 679-d of the Education Law establishes the Nursing Faculty Loan Forgiveness Incentive Program by which licensed registered nurses agree to provide twelve (12) semester hours of clinical or classroom instruction in nursing every year for five years. In return, recipients receive annual awards to be used to repay student loans.

Paragraph 3 of subdivision (a) of section 679-d was amended by Chapter 109 of the Laws of 2006. Former paragraph 3 authorized loan forgiveness awards to be calculated as an escalating percentage of a recipient's total outstanding loan amount of up to \$40,000.00. New paragraph 3 changes award calculations to equal amounts of \$8,000.00 each year over a five year period rather than receiving an escalating annual percentage. This statutory provision has the dual effect of simplifying calculations while allowing recipients to know exactly what their award will be each year.

This proposed regulatory amendment amends subdivisions 1 and 2 of paragraph (e) of section 2201.6 of Title 8 of the NYCRR to reflect this statutory change. In addition, subdivisions 9, 10 and 11 of paragraph (c) were moved to new paragraph (f) to conform to the style of other regulations recently promulgated by the corporation.

Part E-3 of Chapter 57 of the Laws of 2007 further amended section 679-d of the Education Law by expanding program eligibility to include those applicant's with doctorates who wish to earn loan forgiveness in

return for providing nursing faculty services in New York State. Accordingly, this proposed regulatory amendment adds the necessary terms throughout the document where needed to reflect this statutory change.

Inasmuch as the proposed consensus rule merely conforms the rule to non-discretionary, statutory provisions which have no negative effects on present, past or future recipients, HESC has determined that there is no basis for any person to object to the proposed rule.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to amend section 2201.6 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any adverse impact on jobs or employment opportunities. The proposal implements non-discretionary statutory provisions enacted in 2006 and 2007 concerning eligibility and calculation of annual student loan forgiveness awards for nursing faculty in New York State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Senator Patricia K. McGee Nursing Faculty Scholarship Program I.D. No. ESC-44-07-00009-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 section 2201.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 653(9), 655(4) and 679-c

Subject: Senator Patricia K. McGee Nursing Faculty Scholarship Program.

Purpose: To implement the Senator Patricia K. McGee Nursing Faculty Scholarship Program.

Text of proposed rule: Section 2201.5 of Title 8 of the New York Code, Rules and Regulations is amended to read as follows:

Section 2201.5 Senator Patricia K. McGee Nursing Faculty Scholarship

(a) Authority. The provisions contained within this regulation are made pursuant to authority granted to the Higher Education Services Corporation in sections 653, 655, and 679-c of the Education Law.

(b) Definitions. Faculty means a position that is primarily teaching, rather than administrative or research.

(c) Eligibility. In addition to those requirements already provided in sections 661 and 679-c of the Education Law, these additional requirements shall apply in the selection of the program recipients:

(1) applications for the Senator Patricia K. McGee Nursing Faculty Scholarship shall be postmarked or electronically transmitted no later than July 1st of each year, provided that this deadline may be extended at the discretion of the corporation;

(2) applications shall be filed annually on forms prescribed by the corporation;

(3) the pool of applicants shall be those who have successfully met the filing deadline;

(4) the applicant shall have been accepted into a *master's level* nursing faculty preparation program at an accredited nursing school, *or in a doctoral program that will qualify the applicant as nursing faculty or adjunct clinical faculty*, in the State of New York, at the time of application. The corporation will waive the requirement that the applicant be accepted into a "nursing faculty preparation program" for any individual who receives a scholarship prior to the 2008-2009 academic year to permit curriculum development;

(5) first priority shall be given to applicants who have received payment of an award pursuant to section 679-c of the Education Law in the prior academic year;

(6) the applicant shall have a grade point average of 3.0 or higher if the applicant has already completed a semester in *either a master's degree program in nursing, or in a doctoral program that will qualify the applicant for nursing faculty or adjunct clinical faculty*; and

(7) the following formula shall be used in determining award recipients:

(i) on a 4.0 scale, the applicant's final grade point average received from the *undergraduate* nursing program where the applicant received a [their] diploma or degree in professional nursing;

(ii) *on a 4.0 scale, the applicant's final grade point average received from the nursing program where the applicant received a master's degree in a nursing or nurse faculty curriculum*;

[(ii)] (iii) on a 4.0 scale, the applicant's current grade point average, provided that the applicant has already completed a semester in a master's [or doctoral] degree program in nursing, *or a semester in a doctoral program that will qualify the applicant for nursing faculty or adjunct clinical faculty*; and

[(iii)] (iv) on a scale of 0-10 for experience as a licensed registered professional nurse, where:

(a) 0 equals less than one year experience;

(b) 2 equals one to three years of experience;

(c) 5 equals three to five years of experience;

(d) 8 equals five to seven years of experience; and

(e) 10 equals greater than seven years of experience;

[(iv)] (v) the corporation shall add the points from subparagraphs (i), (ii), [and] (iii) *and (iv)* of this paragraph and then rank the eligible candidates based upon highest scores;

[(v)] (vi) tie scores shall be decided by lottery, as determined by the corporation. The lottery shall be conducted by random selection;

(8) successful applicants shall execute a service contract prescribed by the corporation.

(d) Disqualifications. The applicant shall be disqualified from receiving a scholarship award for any of the following conditions:

(1) the applicant has a service obligation to the State of New York or another entity; or

(2) the applicant is in default on a federally guaranteed student loan or State loan or has defaulted on any prior service obligation.

(e) Amounts.

(1) The amount of the scholarship award shall be determined in accordance with section 679-c of the Education Law.

(2) Disbursements shall be made each semester and pro-rated by credit hour.

(3) Scholarship awards shall be reduced by the value of other scholarships and grants.

(f) Penalty.

(1) The scholarship award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to complete their education or who fail to complete their service in the allotted time.

(2) Interest for the life of the loan shall be fixed, and equal to that published annually by the U.S. Department of Education for Federal *Family Education Loan Program PLUS* loans at the time the service contract was signed.

(3) Interest shall begin to accrue on the day the award money was first disbursed to the school and/or recipient.

(4) Interest shall be capitalized on the day the scholarship award recipient violates the service contract or on the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract.

(5) The corporation may in its discretion waive a portion of the repayment of a scholarship award that is commensurate with service completed.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Supervising Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: regcomments@hesc.org

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

This statement is being submitted pursuant to paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to amend section 2201.5 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule. The proposed rule implements non-discretionary statutory provisions enacted in 2007 concerning the scholarship eligibility of doctoral candidates for the Senator Patricia K. McGee Nursing Faculty Scholarship Program.

Section 679-c of the Education Law sets forth the Senator Patricia K. McGee Nursing Faculty Scholarship by which licensed registered nurses could receive scholarships to obtain master's degrees that would qualify them as nursing faculty. In return, the scholarship recipients agree to teach

nursing for five years anywhere in New York State. Part E-3 of Chapter 57 of the Laws of 2007 amended section 679-c of the Education Law by extending program eligibility to those applicants who wish to obtain doctoral degrees that would qualify them as nursing faculty or adjunct clinical faculty.

This proposed regulatory amendment adds the necessary terms throughout the document to reflect this statutory change. Inasmuch as the rule merely extends scholarship eligibility to doctoral candidates, the rule will have no adverse impact on any regulated party, including past, present or future scholarship recipients.

Inasmuch as the proposed consensus rule merely conforms the rule to non-discretionary, statutory provisions, and it will have no negative effects on past, present or future recipients, nor upon nursing schools, HESC has determined that there is no basis for any person to object to the proposed rule.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Proposed Rule Making seeking to amend section 2201.5 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any adverse impact on jobs or employment opportunities. The proposal implements a non-discretionary statutory provision extending scholarship eligibility to doctoral candidates who promise to provide nursing faculty services in New York State.

There are at least two post-secondary institutions of higher education in New York State that do not offer master’s level courses in nursing faculty, but who offer doctoral degrees that allow graduates to teach nursing. Thus, rather than having an adverse effect, or no effect, upon nursing schools and scholarship recipients, the statutory amendment could have a positive effect on these parties.

Insurance Department

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Insurance Department publishes a new notice of proposed rule making in the NYS Register.

Rules for Key Person Company-Owned Life Insurance

I.D. No.	Proposed	Expiration Date
INS-41-06-00002-EP	October 11, 2006	October 11, 2007

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lucky Sum Promotional Game Feature

I.D. No. LTR-44-07-00002-P

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

Proposed action: Amendment of Parts 2828 and 2832 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

Subject: Lucky Sum promotional game feature.

Purpose: To formally include the Lucky Sum promotional game feature to current New York Lottery regulations.

Text of proposed rule: Section 1. Section 2828.3 is amended by adding a new subdivision (h) to read as follows:

(h) *Lucky Sum* is a feature of New York’s Numbers game. *Lucky Sum* shall determine winners from bet tickets by correctly matching the sum of the player’s number selection against the sum of the winning numbers drawn by the Lottery for that drawing.

(1) To place a bet, a purchaser must communicate

(i) the desired game bet data to an agent pursuant to subdivision (e) of this section; and

(ii) communicate to the agent that such purchaser’s desire to add a *Lucky Sum* wager to the normal wager, who will issue a bet ticket. Such bet ticket will reflect the sum of the numbers played by the purchaser on that wager as the additional *Lucky Sum* wager.

(2) *Lucky Sum* wagers shall not be placed with pairs wagers.

(3) Up to fifty percent of the sales from each drawing will be allocated to a prize pool for that drawing.

(4) Prize structure and odds for this feature.

Sum of Number Picked	Number of Ways to Match a Number	Expected Odds	Prize
0	1	1,000	\$500.00
1	3	333	\$166.00
2	6	167	\$83.00
3	10	100	\$50.00
4	15	67	\$33.00
5	21	48	\$23.50
6	28	36	\$17.50
7	36	28	\$13.50
8	45	22	\$11.00
9	55	18	\$9.00
10	63	16	\$7.50
11	69	14	\$7.00
12	73	14	\$6.50
13	75	13	\$6.50
14	75	13	\$6.50
15	73	14	\$6.50
16	69	14	\$7.00
17	63	16	\$7.50
18	55	18	\$9.00
19	45	22	\$11.00
20	36	28	\$13.50
21	28	36	\$17.50
22	21	48	\$23.50
23	15	67	\$33.00
24	10	100	\$50.00
25	6	167	\$83.00
26	3	333	\$166.00
27	1	1,000	\$500.00

(5) *Lucky Sum* bets may be purchased for a minimum of \$1.00 per wager.

§ 2. Section 2832.3 is amended by adding a new subdivision (g) to read as follows:

(g) *Lucky Sum* is a feature of Win-4 game. *Lucky Sum* shall determine winners from bet tickets by correctly matching the sum of the player’s number selection against the sum of the winning numbers drawn by the Lottery for that drawing.

(1) *Lucky Sum* wagers shall not be placed with pairs wagers.

(2) To place a bet, a purchaser must communicate:

(i) the desired game bet data to an agent pursuant to subdivision (e) of this section; and

(ii) communicate to the agent that such purchaser’s desire to add a *Lucky Sum* wager to the normal wager, who will issue a bet ticket. Such bet ticket will reflect the sum of the numbers played by the purchaser on that wager as the additional *Lucky Sum* wager.

(3) Up to fifty percent of the sales from each drawing will be allocated to a prize pool for that drawing.

(4) Prize structure and odds for this feature.

Sum of Number Picked	Number of Ways to Match a Number	Expected Odds	Prize
0	1	10,000	\$5,000.00
1	4	2,500	\$1,250.00
2	10	1,000	\$500.00
3	20	500	\$250.00
4	35	286	\$142.00
5	56	179	\$89.00

6	84	119	\$60.00
7	120	83	\$42.00
8	165	61	\$30.00
9	220	45	\$22.50
10	282	35	\$17.50
11	348	29	\$14.00
12	415	24	\$12.00
13	480	21	\$10.00
14	540	19	\$9.00
15	592	17	\$8.00
16	633	16	\$7.50
17	660	15	\$7.50
18	670	15	\$7.50
19	660	15	\$7.50
20	633	16	\$7.50
21	592	17	\$8.00
22	540	19	\$9.00
23	480	21	\$10.00
24	415	24	\$12.00
25	348	29	\$14.00
26	282	35	\$17.50
27	220	45	\$22.50
28	165	61	\$30.00
29	120	83	\$42.00
30	84	119	\$60.00
31	56	179	\$89.00
32	35	286	\$142.00
33	20	500	\$250.00
34	10	1,000	\$500.00
35	4	2,500	\$1,250.00
36	1	10,000	\$5,000.00

(5) Lucky Sum bets may be purchased for a minimum of \$1.00 per wager.

Text of proposed rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Acting General Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.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: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2828 and 2832, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's Lucky Sum as a new feature to existing games.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York Lottery's Lucky Sum, as an existing game feature, allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games. The New York Lottery's Lucky Sum as a new feature to existing games is anticipated on a full annual basis, to bring in more than \$53.9 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. Game feature brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to adding New York Lottery's Lucky Sum as an existing game feature is not to proceed and forfeit the investment already made by the New York State Lottery for the game feature. The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

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

Lotto Extra

I.D. No. LTR-44-07-00003-P

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

Proposed action: Amendment of Part 2817 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

Subject: Lotto Extra.

Purpose: To formally include the Lotto Extra feature in existing Lottery regulations. The game is anticipated, on a full annual basis, to bring in more than \$5.4 million in revenue to benefit education in the State.

Text of proposed rule: Section 1. Part 2817 is amended by adding a new section 2817.12 to read as follows:

Section 2817.12 Lotto Extra.

(a) *Lotto Extra is a feature of New York's Lotto game. Except as otherwise noted in this section, the rules of Lotto apply to all Lotto Extra wagers.*

(b) *Lotto Extra shall determine winners from bet tickets by correctly matching some or all of the numbers in the player's number selection against the winning numbers, bonus number and Extra bonus number drawn by the Lottery for that drawing.*

(c) *Players of Lotto Extra are automatically included in the respective Lotto drawing, and have the added benefit of matching their number selections against the Extra bonus number for additional prize levels not available to Lotto players.*

(d) *To place a bet, a purchaser must communicate the desired game bet data to an agent by presenting a completed Lotto Extra playcard or by requesting a Lotto Extra quick pick. The playcard provides for the player's number selections, number of drawings requested and the option for Cash Value or Annuity Payments if the jackpot is won. The agent will issue a bet ticket. Such bet ticket will reflect the numbers played by the purchaser on that wager as the Lotto Extra.*

(e) *Forty percent of the gross Lotto Extra sales for each Lotto drawing shall be paid into the New York Lottery prize account for allocation of prize winnings.*

(f) *Not less than 38 percent of gross Lotto Extra sales for a particular drawing shall be the amount allocated to the winning pool for that particular game.*

(g) *During each Lotto drawing, the Lottery will draw an Extra bonus number. Numbers will be drawn in the following sequence: the first randomly chosen six numbers will be the winning numbers; the seventh number will be the bonus; and the eighth number will be the Extra bonus number.*

(h) *Lotto Extra bets may be purchased for a minimum of \$2.00 per two game panels; \$1.00 of such bet is on the Lotto game, and \$1.00 of such bet is for the Lotto Extra feature.*

(i) *Determination of Prizes: The prize structure and odds for this feature are:*

	Match	Odds	Pool Percentage
5	+ Either Bonus	3,754,789.50	14.50%
5		147,246.65	5.50%
4	+ Either Bonus	29,449.33	25.25%

4		2,355.95	5.75%
3	+ Either Bonus	883.48	15.00%
3		108.18	11.00%
2	+ Either Bonus	72.12	23.00%
	Overall Odds	40.47	100.00%

(j) In the event that supplemental prize funds are necessary to fund prizes for Lotto Extra, those funds will be supplemented from unclaimed prize funds in accordance with sixteen hundred fourteen (a) of this article.

Text of proposed rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Acting General Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.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: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2817, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery’s LOTTO Extra as a feature to the existing LOTTO game.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York Lottery’s LOTTO Extra, as an existing game feature, allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games while also providing more opportunities for players to win prizes. The New York Lottery’s LOTTO Extra as a feature to an existing game is anticipated on a full annual basis, to bring in more than \$5.4 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery’s experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. Game feature brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to continuing New York Lottery’s LOTTO Extra as an existing game feature is not to proceed and forfeit the investment already made by the New York State Lottery for the game feature. The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

Niagara Falls Water Board

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Regulation of Water and Wastewater Treatment and Distribution System in Niagara Falls

I.D. No. NFW-44-07-00041-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 1960 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-f

Subject: Regulation of water and wastewater treatment and distribution system in Niagara Falls.

Purpose: To regulate non-storm water discharges to the MS4.

Public hearing(s) will be held at: 5:30 p.m., Dec. 17, 2007 at Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.nfwb.org): Water Board regulations contained in Part 1960 of Title 21 NYCRR provides for the beneficial use of the Board’s System through the regulation of connection to sewer and storm water facilities and water use, as well as for the Board’s equitable recovery of the cost of the System. This proposal amends Part 1960 of Title 21 NYCRR to allow the Water Board to comply with New York State Department of Environmental Conservation (“NYSDEC”) mandatory permit requirements for the management of storm water in the Water Board’s System. The Water Board owns and manages a non-traditional Municipal Separate Storm Sewer System (“MS4”) that is subject to New York State permit requirements pursuant to General Permit No. GP-02-02 (“Permit”).

Pursuant to the Permit, MS4s are required to develop, implement, and enforce a storm water management program (“SWMP”) designed to reduce the discharge of pollutants from small MS4s to the maximum extent practicable to protect water quality and to satisfy the appropriate water quality requirements of the federal Clean Water Act and of the Environmental Conservation Law.

The amendments and changes to the Water Board regulations proposed herein are designed to meet SWMP and permit requirements and are based on NYSDEC’s “Model Law To Prohibit Illicit Discharges, Activities and Connections to Separate Storm Sewer System” (“Model Law”) and will only affect storm water within the Water Board’s System. NYSDEC intended its Model Law to be used as a tool for communities that are responsible for meeting the Phase II storm water management requirements of the National Pollutant Discharge Elimination System (“NPDES”) regulations, administered by New York State through the State Pollutant Discharge Elimination System (“SPDES”) regulations. The purpose of the Model Law is to assist communities in adopting provisions of local law to meet the new federal and state guidelines for prohibiting illicit discharges to municipal separate storm sewer systems. It is the combination of these amendments and changes to the Water Board regulations and the adoption of NYSDEC’s Model Law provisions by the City of Niagara Falls that will provide for the complete management of storm water for the entire MS4 area within the City of Niagara Falls.

While the proposed changes to the regulations includes minor typographical changes throughout, the major substantive proposed changes to Part 1960 of Title 21 NYCRR include the following sections:

Section 1960.1, as amended, reconciles differences between existing Part 1960 definitions and the definitions in NYSDEC’s Model Law. Where terms were defined in both Part 1960 and the Model Law, the definitions in Part 1960 were made to mirror those contained in the Model Law. In cases where defined terms existed in the Model Law, but not Part 1960, the defined terms were added to Part 1960. All defined terms in Part 1960 have been capitalized to denote that they are defined terms.

Section 1960.2, as amended, clarifies that the general provisions of Part 1960 apply to the Water Board’s MS4.

Section 1960.3, as amended, expands the connections provisions to the Water Board MS4.

Section 1960.4, as amended, addresses appropriate use of the Water Board POTW and MS4.

Section 1960.5, as amended, describes the conditions to use the Water Board's POTW and MS4.

Section 1960.9, as amended, makes clear that administrative powers already afforded to the Director for the Water Board's POTW also apply to the Water Board's MS4, including inspection and enforcement, program goals and requirements, application of Best Management Practices, and addressing illicit discharges in emergency situations.

Text of proposed rule and any required statements and analyses may be obtained from: Gerald Grose, Executive Director, Niagara Falls Water Board, 5815 Buffalo Ave., Niagara Falls, NY 14304, (716) 283-9770, ext. 104, e-mail: ggrose@nfwb.org

Data, views or arguments may be submitted to: John J. Ottaviano, Ottaviano & Sansone, LLP, P.O. Box 1230, 172 East Ave., Lockport, NY 14095, (716) 438-0488, ext. 203, e-mail: jottaviano@ottavianosansone.com

Public comment will be received until: five days after the last scheduled public hearing required by statute.

Regulatory Impact Statement

1. Statutory Authority: New York State Public Authorities Law Section 1230-f (7) authorizes the Niagara Falls Water Board (the "Board"), to make and amend rules and Regulations (the "Regulations") governing the exercise and enforcement of its powers and the fulfillment of the purposes of the Niagara Falls Public Water Authority Act, Title 10-B of the Public Authorities Law (the "Act").

2. Legislative Objectives: The legislature has granted the Board jurisdiction, control, possession, supervision and use of the water, wastewater and storm water facilities located in the City of Niagara Falls and related service area (collectively referred to as the "System"). Promulgation of these Regulations are in furtherance of such legislative grant and provide the means whereby the Board can deliver services to persons served by the System, and enables the Board to keep the System in good repair and working order. In addition, promulgation of these Regulations enables the Board to comply with applicable laws of the United States, and the State of New York (the "State") and the rules, regulations, permits and orders of their regulatory agencies.

3. Needs and Benefits: The Board operates, maintains and manages the System. It provides potable water, and receives and treats discharges of wastewater for approximately 55,000 persons who reside or work in the City of Niagara Falls and the adjacent areas served by the System. The Board's Regulations establish a comprehensive program to enable the Board to operate, maintain, repair and manage the System to ensure the uninterrupted delivery of such water and wastewater services.

The Board Water Regulations at Part 1950 provide for the beneficial use of the Board's water facilities through the regulation of connections and water use, as well as for the Board's equitable recovery of the cost of the System. The Regulations generally require every dwelling, house or other building that uses water to be supplied from the water mains of the Board through a separate service. The Board regulates all connections to the System to ensure that only qualified personnel, typically licensed plumbers or qualified employees of the Board, make such connections. In addition, no work or improvements to supply water may be performed without obtaining a permit from the Board.

Except in unique circumstances, all water is furnished to users of the System through a metered service only. The Regulations make provisions for the size and location of the meters within dwelling houses and other buildings that are served by the System. All meters remain the property of the Board and the Board has the obligation to repair, except in limited circumstances, such meters without cost to the property owner. All persons who use the System for potable water and for wastewater are charged, except in certain circumstances, based upon the metered usage of water.

The Board has established a policy to protect the public water supply against actual and potential contamination that may occur because of unauthorized cross-connection of plumbing systems. Also, the Regulations are designed to work in coordination with the Niagara County Health Department and the State Sanitary Code.

The Board Wastewater Regulations at Part 1960 provide for the maximum possible beneficial use of the Board's publicly owned treatment works through the regulation of construction, sewer use and wastewater discharges, and provide criteria for equitable distribution of the cost of the Board's publicly owned treatment works. The Regulations establish provisions to prevent the introduction of pollutants which may interfere with the

operation of the Board's treatment works, pass through the treatment works to waters of the State or otherwise contaminate the Board's treatment works' sludge. The Regulations also govern sewer connections, control of quantity and quality of discharges, wastewater pretreatment, establish criteria for the use of the Board's treatment works capacity, and for the issuance of discharge permits to significant industrial users and industrial commercial users.

The Regulations also regulate industrial discharges and significant industrial users as to the quantity and quality of their discharges and for the pretreatment of industrial wastewater. Certain discharges are expressly prohibited, and are set forth in the Regulations with incorporation by reference to federal Regulations established by the United States Environmental Protection Agency. In addition, the Board has established local limits in accordance with the provisions of 40 C.F.R. Part 403.

The Board also has authorization pursuant to the Act Section 1230-g to engage in special enforcement powers with respect to its wastewater facilities and to otherwise undertake enforcement activity for persons who violate the Regulations with administrative and civil penalties.

4. Costs:

Costs to Regulated Persons: The Regulations obligate all users of the System to pay and be liable to pay the Board for such fees, rates and other charges as the Board may establish from time to time. A schedule of such fees, rates and charges is set forth in Section 1950.20 and also in several provisions of Part 1960. These rates, fees and other charges include a range from initial tapping and permit application fees, to consumption charges for each calendar quarter, termination fees and other usage fees. Each year, the Board, with the assistance of Black & Veatch New York, LLP, as rate consultant, establishes a budget based on its projected expenses, including, among other things, labor, property maintenance, equipment purchases and maintenance, supplies, capital improvements and debt service. The schedule that the Board develops is designed to enable the Board to pay for these expenses as well as to maintain various covenants with its bondholders.

Rates for water usage and wastewater discharges are based on several factors and are set forth in Section 1950.20. Rates are established based on cubic feet of water consumed for each three months (calendar quarter), with a progressive rate so that the rate decreases per 100 cubic feet for increased consumption. For example, in 2003, consumption of the first 20,000 cubic feet was charged at \$ 1.95 per 100 cubic feet, while the next succeeding 60,000 cubic feet in the same three month period would be charged \$ 1.70 per 100 cubic feet, the next succeeding 120,000 cubic feet in the same three month period would be charged \$ 1.43 per 100 cubic feet and any usage in excess of 200,000 cubic feet for the same three month period would be charged \$ 1.19 per 100 cubic feet. The minimum charge for water consumed in any premises within the City for any calendar quarter, or portion thereof is \$ 25.35. These rates increase for persons and properties located outside of the City of Niagara Falls based on the additional cost that is incurred in the pumping and maintenance of the System beyond the City line.

In addition, sewer rates for Commercial Small Industrial Residential Users (CSIRU) and Significant Industrial Users (SIU) are also determined by total metered consumption in each quarter. These rates are set forth in Part 1950.20. Sewer rates for the SIU class of users in each quarter are based on measured quantities of actual discharge parameters: flow, suspended solids and soluble organic carbon. The Regulations authorize the Board to make determinations as to these parameters and provide for five representative 24 hour composite samples taken quarterly, at locations that are adequate for and accessible to the Board representatives. A separate schedule of charges is established for conventional pollutant parameters and for SIUs with discharges that contain substances of concern as set forth in Schedule III of Section 1950.20. In addition to its analysis of the budget to operate and maintain the System, the Board will also seek to recover its real costs which mean the total direct and indirect costs of labor, material, equipment and handling, including overhead costs that it incurs in delivery of special services to individual users.

Costs to the Board, the State and Local Governments: The implementation and continuation of the Regulations should not impose any costs upon the State. The Board will continue to work with the City of Niagara Falls and use various employees of the City for, among other things, billing and collection of the rates, charges and fees. In addition, the Board has reserved the right to use the office of the corporation counsel to assist in the enforcement of any Regulations, permits or orders that have been violated by users of the System. The Board has provided for such expenses in its budget and has sought to recover such expenses as part of its rate structure referenced above. The Board will reimburse the City of Niagara Falls for

the use of any employees and equipment to undertake such activities. Also the Board will continue employment of approximately 9.4 persons (measured in person hours) to administer the Board's wastewater pretreatment program.

Cost Methodology: The Board has retained the services of Black & Veatch New York LLP as its rate consultant. Periodically, and at least annually, Black & Veatch will perform a rate study to ensure that the Board rates, fees and other charges will be sufficient to provide for a balanced budget in light of anticipated and estimated expenses as referenced above. Black & Veatch is a recognized expert rate consultant which serves several municipalities and other agencies in the State that provide water and wastewater services to the public.

5. Local Government Mandates: The Regulations will not impose any new program, services, duties or responsibilities upon any county, city, town, village, school district, fire district or any other special district. The Niagara County Health Department will continue to assist the Board, as it has previously assisted the City, with respect to certain certifications for back flow prevention and compliance with the County Health Law and the State Sanitary Code.

6. Paperwork: The Regulations continue the existing regulatory program that was previously employed by the City of Niagara Falls. No additional or new reporting requirements or paperwork requirements are established for persons regulated by the Board. The Regulations continue to employ application forms for water and wastewater discharge permits, tapping application and the like. In addition, CSIRU's and SIU's will continue to provide monitoring reports, and when served with notices of violations, or administrative orders, such users will be required to provide additional documentation to correct and otherwise address such violations and orders.

7. Duplication: The City of Niagara Falls continues to have on its records, Water Ordinances and Wastewater Ordinances as part of its City Code upon which the Board Regulations are modeled. The Regulations have been established in substantial conformance with such ordinances. It is anticipated that the City will, in the coming year, cancel such ordinances.

8. Alternatives: The Board did not give any consideration to other alternative proposals to the Regulations before deciding to promulgate them.

9. Federal Standards: The Regulations do not exceed any minimum standards of the federal government for the same or similar subject area. The wastewater pretreatment Regulations embodied in 40 C.F.R. Part 403 authorize the Board to establish local limits that may be different than those prescribed generally by these federal regulations. The local limits are set forth in Part 1960.5.

10. Compliance Schedule: The Board has promulgated the Regulations in substantial conformance to the Water and Wastewater Ordinances that have been previously in effect by the City of Niagara Falls for all persons who are served by the System. The Board has not adopted any significant changes and, therefore, it does not anticipate any additional time necessary to require regulated persons to achieve compliance with the Regulations.

Regulatory Flexibility Analysis

1. Effect of Rule: When the Board acquired the System on September 25, 2003 it established by emergency procedure the Regulations in substantial conformance with the Water and Wastewater Ordinances that were previously in effect in the City of Niagara Falls. Accordingly, the Board continued the same regulatory program that was in effect, previously administered by the City, prior to the Board's takeover of the System as of such acquisition date. No new regulation or requirements were established as part of the Board's adoption of the Regulations. Based on the disclosures by the City to the Board as part of the acquisition, the System serves a population of approximately 55,000 persons according to the 2000 census. This includes approximately 19,220 residential, industrial, commercial and governmental accounts. Water consumption and wastewater discharges can be classified pursuant to consumption of water as follows: residential/commercial users, 18,894; industrial users, 272; significant industrial users, 26; and non-resident users, 28. Of these accounts, approximately 275 constitute small businesses within the definition of the State Administrative Procedure Act ("SAPA"). In addition, the System serves the public buildings of the City of Niagara Falls and the Niagara Falls School District and several public buildings of Niagara County. It also provides wastewater services through mutual service agreements to limited portions of the Town of Niagara.

2. Compliance Requirement: No new reporting, recordkeeping or other affirmative acts are required by small business or local governments as a result of the Board's adoption of the Regulations. The same reporting, recordkeeping and actions that were previously required of small busi-

nesses and local governments prior to the Board's adoption continue after the Board's adoption of these Regulations. These requirements have included completion of application forms for contractors who need or desire to tap into the System for purposes of construction, repair or rehabilitation of water and wastewater pipes and other appurtenances, and applications for discharge permits into the wastewater System. Significant industrial users and other commercial and industrial users that are subject to the pretreatment requirements of the Regulations are required to continue to produce monitoring reports, and as necessary pursuant to administrative orders, provide specific periodic monitoring reports including laboratory analyses of their wastewater discharges.

3. Professional Services: No new professional services are required of small businesses or local governments by virtue of the Board's adoption of the Regulations. Again, as in the ordinances that have been in effect in the City of Niagara Falls, industrial users and significant industrial users may need the assistance of consulting engineers, or experts in water and wastewater Systems with respect to the repair, replacement and monitoring of their facilities and discharges.

4. Compliance Costs: No initial or new capital costs will be incurred by regulated businesses, industry or local governments to comply with these Regulations. The Board has adopted the Regulations that have been in effect as ordinances in the City of Niagara Falls. It is difficult to estimate the annual cost for continuing compliance with the Regulations for small business. The compliance cost may vary depending upon the type and/or size of such business and the complexity of its discharges. Moreover, the costs for the Board's pretreatment program are factored into the sewer rates the Board charges all industrial and commercial users and are set forth in Part 1950.20. It is not anticipated that any changes will occur in the compliance cost for local governments as a result of the Board's Regulations. The Regulations continue the same compliance requirements that were in effect before the Board acquired the System on September 25, 2003. There is no change in the economic and technological feasibility of compliance required for small businesses and local governments by virtue of the Board's adoption of these Regulations. There is no additional technology required for small businesses.

5. Economic and Technological Feasibility: There is no change in the economic and technological feasibility of compliance required for small businesses and local governments by virtue of the Board's adoption of these Regulations. There is no additional technology required for small businesses.

6. Minimizing Adverse Impact: The Regulations provide for the beneficial use of the Board's water and wastewater facilities for all users of the System through the regulation of connection, water use and wastewater discharges as well as for the Board's equitable recovery of costs of the operation, maintenance and management of the System. Provision is made for the confidentiality of persons who use the System and the information that they provide in accordance with the Freedom of Information Law and other applicable state and federal statutes and regulations. Generally, the Board's main function is to make sure that the users receive potable water and that wastewater discharges are conveyed and treated in a manner that protects and preserves the public health, safety and welfare and minimizes the contamination of the waters of the State. The Regulations establish compliance and reporting requirements only as necessary to comply with the Safe Drinking Water Act, the Clean Water Act and other federal and state mandates with respect to water and wastewater. Such mandates do not provide any particular exemptions or accommodations for small businesses and local governments.

7. Small Business and Local Government Participation: The Regulations were adopted by the Board on an emergency basis as authorized by SAPA. The Board is publishing the Regulations at this time with a request for comment by the general public and by persons served by the System. The Board will take into account any comments that it receives in accordance with the requirements of SAPA. The Board has conducted two public hearings with respect to its schedule of rates, fees and other charges upon public notice in accordance with the Public Authorities Law. The Board has made the Regulations available for public inspection and comment at the Board's office and at the Office of the City Clerk of Niagara Falls. It has published public notices of the availability of the Regulations for review and comment. In addition, the Board has conducted several public meetings prior to and after its acquisition of the System and has regularly provided opportunity to the public to comment on any aspects of the Board's activities, including the Regulations.

Rural Area Flexibility Analysis

The System and the Board do not serve any rural areas as defined by Subdivision 7 of Section 481 of the Executive Law. The Board serves the

City of Niagara Falls and select urban areas adjacent to or near the City of Niagara Falls. Since no rural areas will be affected by the Regulations, a rural flexibility analysis is not required.

Job Impact Statement

The Regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The City of Niagara Falls, prior to the Board's acquisition of the System, has lost a number of its largest water and wastewater customers in recent years. In 2002, the water System's three largest customers underwent significant changes. DuPont has reduced its demand for water due to the elimination of certain industrial processes. Both SGL Carbon and Carbon Graphite have shut down, the latter having filed for bankruptcy protection.

The population of the City of Niagara Falls has declined in recent years. In 1980 the population in the City was 71,384. In 1990 the population was 61,840, and in 2000 the population was 55,593 persons according to the U.S. Bureau of the Census. In addition, the annual average unemployment rate in the City in 2002 was 11.2% and in the County of Niagara the unemployment rate was 7.5% pursuant to information available from the New York State Labor Department.

Despite the customer and population losses, the City has experienced a recent positive development. In late 2002, the Seneca Indian Nation and the State entered into a compact that provides for the tribe to develop approximately 55 acres of land in the City's downtown area. The long-term plans call for a gaming casino, hotels, a retail complex, restaurants, an entertainment complex and a variety of other attractions. A temporary casino opened December 31, 2002 and currently has approximately 2,200 employees and an average of 20,000 daily visitors on the weekends.

In response to the decline in the industrial sector and the associated revenue loss, several cost saving measures have been established with regard to the System's facilities, operations and maintenance. One such measure deals with staffing. The water facilities have reduced staff levels by 24% since 2000. The 2003 budget eliminated 17 additional jobs within the water and wastewater facilities. A second measure features stringent budget cost controls that have yielded significant expenditure reductions over the last three years. On the revenue side, the Board has assumed from the City nine cellular antenna lease agreements for installation of cell towers at elevated water storage tanks. This currently generates revenue of approximately \$ 168,000 per year in an effort to reduce the reliance on water rates and charges on users.

The Board also intends to conduct a comprehensive rate study for both the water System and the wastewater System. In addition to reviewing the current rate structure and the cost allocations for each customer class, the study should recognize the steady decline of the industrial user class and propose a rate structure to accommodate the changing customer base. In addition, the Board will continue to actively market its hauled waste services to expand its services to businesses that may haul wastewater to the System. The System has capacity to treat more wastewater than is currently discharged by users located in the City of Niagara Falls.

Public Service Commission

NOTICE OF ADOPTION

Cable Franchise Renewal Process by the City of New York

I.D. No. PSC-24-07-00015-A

Filing date: Oct. 10, 2007

Effective date: Oct. 10, 2007

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

Action taken: The commission, on Sept. 19, 2007, adopted an order, approving the City of New York's request for a waiver of 16 NYCRR section 891.2(b)(2) pertaining to the franchise renewal process.

Statutory authority: Public Service Law, section 222(1) and (3)

Subject: Request for waiver of 16 NYCRR section 891.2(b)(2).

Purpose: To allow the City of New York to waive certain franchising renewal procedures.

Substance of final rule: The Commission granted the City of New York (City) a waiver of the deadline in 16 NYCRR, Part 891.2(b)(2) to the extent that the provision applies to the City's cable franchise renewal process.

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.

(07-V-0532SA1)

NOTICE OF ADOPTION

Purchase of Cable System by Time Warner Entertainment-Advance/New House Partnership

I.D. No. PSC-28-07-00012-A

Filing date: Oct. 10, 2007

Effective date: Oct. 10, 2007

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

Action taken: The commission, on Sept. 19, 2007, adopted an order approving the request of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable to purchase the cable system of D.W.S. Construction Company, Inc. serving the Town of Waverly located in Franklin County, NY.

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system properties, franchises and certificates of confirmation to Time Warner Entertainment-Advance/Newhouse Partnership.

Purpose: To approve the transfer of certain cable system properties, franchises and certificates to confirmation of Time Warner Entertainment-Advance/Newhouse Partnership

Substance of final rule: The Commission adopted an order approving the request of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable to purchase the cable system of D.W.S. Construction Company, Inc. serving the Town of Waverly located in Franklin County, New York, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-V-0525SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Gas Rates by KeySpan Energy Delivery New York

I.D. No. PSC-44-07-00036-P

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

Proposed action: The Public Services Commission is considering whether to adopt, in whole or in part, the terms of a joint proposal concerning certain aspects of the gas rates of KeySpan Energy Delivery New York.

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

Subject: Gas rates.

Purpose: To establish a new gas rate plan for KeySpan Energy Delivery New York.

Public hearing(s) will be held at: *11:00 a.m., Nov. 7, 2007 at Department of Public Service, Hearing Rm. A, 90 Church St., New York, NY.

*There could be requests to reschedule the hearing. Notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Cases 06-G-1185 and 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 New York Public Service Commission is considering what additional terms to adopt for a new gas rate plan for KeySpan Energy Delivery New York (KEDNY) to be effective January 1, 2008. Partial revenue requirement and other rate-related determinations for KEDNY were already made in companion Case 06-M-0878, in Public Service Commission orders issued on August 27, 2007 and September 17, 2007. Other rate-related issues were reserved at that time and recommendations concerning how some of those reserved issues should be resolved were filed for the Public Service Commission's consideration on October 11, 2007. (That proposal called the Gas Rates Joint Proposal or JP 4 is posted at http://www.dps.state.ny.us/Cases_06-G-1185-1186.htm).

The issues addressed in that joint proposal include:

1. Shifting the recovery of certain costs from Base Rates to adjustment clause rates.
2. Energy Efficiency Programs and Cost issues.
3. Site Investigation and Remediation Costs.
4. Revenue Allocation and General Rate Design.
5. The results of efforts to integrate KEDNY into National Grid.
6. Gas Safety Labor Partial Reconciliation.
7. Automated Meter Reading.
8. Monthly Customer Billing.
9. Depreciation.
10. Gas Costs and Lost- and Unaccounted for Factors.
11. Temperature Controlled and Interruptible Services.
12. The Crediting of Power Generation Sales Margins.
13. Weather Normalization Clause.
14. A Gas Transportation and Balancing Collaborative.
15. A Gas Cost Incentive Program.
16. Retail Access, including the Purchase of Receivables and Rate Unbundling.
17. State Income Taxes.
18. Deferred Special Franchise Taxes.
19. Distributed Generation Rates.
20. The "On-Track" Program.
21. Additional Deferrals and Recoveries.
22. Area Development and Business Incentive Rates.
23. An Outreach and Education Plan.
24. Bill Reformatting.
25. Billing System or Integration.

The Commission may adopt, reject or adopt with changes any of the proposals on these issues and adopt terms other than those proposed on the same and other gas rate issues.

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. Brilling, 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-1185A2)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Gas Rates by KeySpan Energy Delivery Long Island
I.D. No. PSC-44-07-00037-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, in whole or in part, the terms of a joint proposal concerning certain aspects of the gas rates of KeySpan Energy Delivery Long Island.

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

Subject: Gas rates.

Purpose: To establish a new gas rate plan for KeySpan Energy Delivery Long Island.

Public hearing(s) will be held at: *11:00 a.m., Nov. 7, 2007 at Department of Public Service, Hearing Rm. A, 90 Church St., New York, NY.

*There could be requests to reschedule the hearing. Notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Cases 06-G-1185 and 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 New York Public Service Commission is considering what additional terms to adopt for a new gas rate plan for KeySpan Energy Delivery Long Island (KEDLI) to be effective January 1, 2008. Partial revenue requirement and other rate-related determinations for KEDLI were already made in companion Case 06-M-0878, in Public Service Commission orders issued on August 27, 2007 and September 17, 2007. Other rate-related issues were reserved at that time and recommendations concerning how some of those reserved issues should be resolved were filed for the Public Service Commission's consideration on October 11, 2007. (That proposal called the Gas Rates Joint Proposal or JP 4 is posted at http://www.dps.state.ny.us/Cases_06-G-1185-1186.htm).

The issues addressed in that joint proposal include:

1. Shifting the recovery of certain costs from Base Rates to adjustment clause rates.
2. Energy Efficiency Program and Cost issues.
3. Site Investigation and Remediation Program and Cost issues.
4. Revenue Allocation and General Rate Design.
5. The results of efforts to integrate KEDLI into National Grid.
6. Automated Meter Reading.
7. Monthly Customer Billing.
8. Depreciation Accounting.
9. Gas Costs and Lost- and Unaccounted for Factors.
10. Temperature Controlled and Interruptible Services.
11. The Crediting of Power Generation Sales Margins.
12. Weather Normalization Clause.
13. A Gas Transportation and Balancing Collaborative.
14. A Gas Cost Incentive Program.
15. Retail Access, including the Purchase of Receivables and Rate Unbundling.
16. State Income Taxes.
17. Distributed Generation Rates
18. The "On-Track" Program.
19. Additional Deferrals and Recoveries.
20. Area Development and Business Incentive Rates.
21. An Outreach and Education Plan.
22. Bill Reformatting.
23. Billing System or Integration.

The Commission may adopt, reject or adopt with changes any of the proposals on these issues and adopt terms other than those proposed on the same and other gas rate issues.

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. Brilling, 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-1186A2)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Water Rates and Service by Long Island Water Company

I.D. No. PSC-44-07-00040-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 Long Island Water Company d/b/a Long Island American Water (Long Island Water) to make various changes in the rates, charges, rules and regulations contained in its schedule P.S.C. No. 5 for water service. The effective date of the filing has been suspended through March 28, 2008.

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

Subject: Water rates and service.

Purpose: To consider Long Island Water's request for approval to increase annual water revenues by approximately \$9.6 million or 22.7 percent.

Public hearing(s) will be held at: 3:00 p.m. and 7:00 p.m., Nov. 14, 2007 at Ralph G. Caso Executive and Legislative Bldg., Legislative Chambers, 5th FL., One West St., Mineola, NY.

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

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

Substance of proposed rule: The Commission is considering a request by Long Island Water Company d/b/a Long Island American Water (Long Island Water) to increase its rates for water service. In a May 1, 2007 filing, Long Island Water proposed an increase of \$9.6 million (22.7%) in annual revenues. The effective date of the filing has been suspended through March 28, 2008 in Case 07-W-0508. The Commission will evaluate the filing and may approve or reject it in whole or part or may otherwise alter rates. The Commission may also take other actions that may alter Long Island Water's service or management or take other actions related to the filing.

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

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

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

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

(07-W-0508SA1)

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

Petition for the Submetering of Electricity by RCP-East, LLC

I.D. No. PSC-44-07-00035-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by RCP-East, LLC, to submeter electricity at 1330 First Ave., New York, NY.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of RCP-East, LLC, to submeter electricity at 1330 First Ave., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by RCP-East, LLC, to submeter electricity at 1330 First Avenue, New

York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(07-E-1189SA1)

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

Energy Efficiency Programs by Central Hudson Gas and Electric Corporation

I.D. No. PSC-44-07-00038-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 accept or reject, in whole or in part, a petition filed by Central Hudson Gas and Electric Corporation for expedited approval of interim energy efficiency programs, deferral accounting, revenue decoupling mechanisms, and an interim economic incentive affecting both gas and electric customers of Central Hudson Gas and Electric Corporation.

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

Subject: Energy efficiency programs, the accounting mechanisms related to such programs, a method for dealing with potential lost revenue, and an incentive mechanism associated with such programs.

Purpose: To consider the proposed energy efficiency programs, the accounting mechanisms related to such programs, a method for dealing with potential lost revenue, and an incentive mechanism associated with such programs.

Substance of proposed rule: The Public Service Commission is considering whether to accept or reject, in whole or in part, a petition filed by Central Hudson Gas and Electric Corporation for expedited approval of interim energy efficiency programs, deferral accounting, revenue decoupling mechanisms, and an interim economic incentive affecting both gas and electric customers of Central Hudson Gas and Electric Corporation. The Commission may also consider other related matters.

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

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

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

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

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

(07-M-1139SA1)

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

Issuance of and Sale of Preferred Stock, Bonds and Other Forms of Indebtedness by Rochester Gas and Electric Corporation

I.D. No. PSC-44-07-00039-P

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

Proposed action: The commission is considering whether to approve or deny in whole or in part, a petition of Rochester Gas and Electric Corporation authorizing the issuance of long-term indebtedness, preferred stock and hybrid securities, to enter into and borrow under revolving credit facilities and to enter into derivative instruments to manage interest rate risk and other financial exposure.

Statutory authority: Public Service Law, section 69

Subject: Issuance of and sale of preferred stock, bonds and other forms of indebtedness.

Purpose: To permit Rochester Gas and Electric Corporation to finance transactions for purposes authorized under Public Service Law, section 69.

Substance of proposed rule: The Commission is considering whether to approve or deny in whole or in part a petition of Rochester Gas and Electric Corporation authorizing the issuance of long-term indebtedness, preferred stock and hybrid securities, to enter into and borrow under revolving credit facilities and to enter into derivative instruments to manage interest rate risk and other financial exposure.

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

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

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

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

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

(07-M-1194SA1)