

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00008-A
Filing No. 1181
Filing Date: 2008-11-26
Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00009-A
Filing No. 1185
Filing Date: 2008-11-26
Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00010-A
Filing No. 1184
Filing Date: 2008-11-26
Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00010-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00011-A
Filing No. 1188
Filing Date: 2008-11-26
Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00012-A

Filing No. 1189

Filing Date: 2008-11-26

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00013-A

Filing No. 1192

Filing Date: 2008-11-26

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00014-A

Filing No. 1183

Filing Date: 2008-11-26

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00014-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00015-A

Filing No. 1190

Filing Date: 2008-11-26

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00016-A

Filing No. 1182

Filing Date: 2008-11-26

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00016-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00017-A

Filing No. 1193

Filing Date: 2008-11-26

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.
Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00017-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00018-A
Filing No. 1186
Filing Date: 2008-11-26
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 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.
Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00018-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00020-A
Filing No. 1180
Filing Date: 2008-11-26
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 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.
Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00020-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00021-A
Filing No. 1191
Filing Date: 2008-11-26
Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 1 and Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class and to delete positions from the non-competitive class.
Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00021-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00022-A
Filing No. 1197
Filing Date: 2008-12-01
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the exempt class and to delete positions from the non-competitive class.
Text of final rule: At a meeting of the State Civil Service Commission held March 12, 2008, the following resolution was adopted pursuant to Section 6 of the Civil Service Law:

RESOLVED, That subject to the approval of the Governor, Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of the Governor, Office of the State Inspector General," be and hereby is amended by deleting therefrom the following positions: Associate Counsel, Confidential Administrative Assistant, Confidential Secretary, Confidential Stenographer (6), Deputy Inspector General (19), Program Associate, by decreasing the number of positions of Investigative Auditor from 19 to 16, by adding thereto the following positions: Administrative Officer, Assistant Administrative Officer, Assistant Director of Audit and Consulting, Assistant Director Public Information, Assistant Manager of Information Services, Assistant Manager of Training, Chief Investigator (2), Deputy Chief Investigator (2), Director of Audit and Consulting, Director and Chief of Investigations (2), Director Public Information, Director of Quality Assurance, Forensic Accountant (3), Investigative Aide (8), Investigative Assistant (15), Manager of Training, Special Deputy Investigator General, Investigative Counsel (14), Manager of Information Services, and by increasing the number of positions of Investigator State Inspector General from 1 to 28, it having been determined that competitive or non-competitive examination is not practicable for filling these positions.

IT IS FURTHER RESOLVED, That subject to the approval of the Governor, Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of the Governor, Office of the State Inspector General," be and hereby is amended by deleting therefrom the following positions: Investigator (State Inspector General) (20), Principal Investigator (State Inspector General) (8), Senior Investigator (State Inspector General) (15), Supervising Investigator (State Inspector General) (8).

Final rule as compared with last published rule: Nonsubstantive changes were made under the heading: by adding thereto the following positions: Investigative Auditor (11) should be omitted.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA, and JIS.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-17-08-00023-A

Filing No. 1187

Filing Date: 2008-11-26

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 3 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the labor class.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00023-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB,

Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-20-08-00011-A

Filing No. 1198

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB,

Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-20-08-00012-A

Filing No. 1200

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB,

Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-20-08-00013-A

Filing No. 1202

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB,

Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-20-08-00014-A

Filing No. 1204

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class and to delete positions from the non-competitive class.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB,

Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-20-08-00015-A

Filing No. 1201

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.
Purpose: To delete a title from the non-competitive class.
Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00015-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00016-A
Filing No. 1208
Filing Date: 2008-12-01
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 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.
Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00016-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00017-A
Filing No. 1195
Filing Date: 2008-12-01
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 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.
Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00017-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00018-A
Filing No. 1209
Filing Date: 2008-12-01
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 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.
Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00018-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00019-A
Filing No. 1196
Filing Date: 2008-12-01
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 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.
Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00019-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00021-A
Filing No. 1207
Filing Date: 2008-12-01
Effective Date: 2008-12-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00021-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00022-A
Filing No. 1199
Filing Date: 2008-12-01
Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00022-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00023-A

Filing No. 1203

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00023-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00024-A

Filing No. 1206

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 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.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00024-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00025-A

Filing No. 1205

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a title in the non-competitive class.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00025-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sex Offender Internet Identifiers

I.D. No. CJS-51-08-00005-P

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

Proposed Action: Addition of Part 6057 to Title 9 NYCRR.

Statutory authority: Correction Law, section 168-b(10)

Subject: Sex Offender Internet Identifiers.

Purpose: To establish a fee-based subscription service to provide sex offender internet identifiers to authorized internet entities.

Text of proposed rule: A new Part 6057 is added to Title 9 NYCRR to read as follows:

Part 6057

Office of Sex Offender Management

Section 6057.1 Purpose. The provisions of this Part shall govern the Division's disclosure of registered sex offender internet identifiers to an authorized internet entity to enable such entity to prescreen or remove sex offenders from its services or advise law enforcement or other governmental entities of potential violations of law or threats to public safety.

Section 6057.2 Definitions. When used in this Part:

(a) The term Authorized internet entity shall mean any business, organization or other entity providing or offering a service over the Internet which permits persons under the age of eighteen to access, meet, congregate or communicate with other users for the purpose of social networking. This definition shall not include general e-mail services.

(b) The term Internet identifiers shall mean e-mail addresses and designations, including, but not limited to, screen names, used for the purposes of chat, instant messaging, social networking or other similar internet communication.

(c) The term Division shall mean the Division of Criminal Justice Services.

Section 6057.3 Requests for Access to Sex Offender Internet Identifiers

(a) An authorized internet entity's request for a subscription to obtain sex offender internet identifiers must be made in writing.

(b) The request must be on official company letterhead displaying the authorized internet entity's name, address and telephone number. The authorized internet entity must also submit to the Division the name of a contact person and his or her e-mail address.

(c) The authorized internet entity must provide the Division with documentation concerning its legal nature and corporate status, and the number of registered users.

Section 6057.4 Grant or Denial of Access to Records

(a) Upon receipt of a request for a subscription to obtain sex offender internet identifiers, the Division shall determine whether the requestor is an authorized internet entity.

(b) If the Division determines that the requestor is an authorized internet entity, it shall grant the request and the subscription to access sex offender internet identifiers shall be provided in a format to be determined by the Division.

(c) If the Division determines that the requestor is not an authorized internet entity, it shall deny the request. The Division shall state, in writing, the reason for the denial of the request.

(d) An authorized internet entity shall not disclose or redisclose any information provided to it by the Division unless necessary to enable the authorized internet entity to prescreen or remove a sex offender from its services or to advise a law enforcement agency or other governmental agency of potential violations of law or threats to public safety. An authorized internet entity may disclose information provided to it by the Division to any person it is seeking to remove from its services or deny access to its services because the authorized internet entity reasonably believes such person is a registered sex offender. An authorized internet entity shall not use the information provided to it by the Division to contact any person unless such contact is necessary to prescreen or remove such person from its services.

(e) If the Division determines there is reasonable cause to believe that an authorized internet entity is engaged in a pattern or practice of misuse of the sex offender internet identifiers, the Division is authorized to terminate an authorized internet entity's subscription to access sex offender internet identifiers.

Section 6057.5 Receipt of information from an authorized internet entity

The Division may accept any information from an authorized internet entity concerning a sex offender or a registered user of an authorized internet entity and may forward that information to any appropriate law enforcement or supervision agency.

Section 6057.6 Fees.

The Division shall charge a fee to an authorized internet entity for a subscription to access sex offender internet identifiers as follows:

(a) If the authorized internet entity has less than five million registered users the fee shall be one hundred dollars per month.

(b) If the authorized internet entity has at least five million registered users but less than fifteen million registered users the fee shall be five hundred dollars per month.

(c) If the authorized internet entity has at least fifteen million registered users but less than thirty million registered users the fee shall be one thousand dollars per month.

(d) If the authorized internet entity has thirty million or more registered users the fee shall be two thousand dollars per month.

In its discretion, the Division may fully or partially waive the fee when an authorized internet entity demonstrates that the fee would be unreasonably burdensome.

Section 6057.7 Liability.

Nothing contained in this part shall impose liability upon the Division or the State for any damages related to a registered sex offender's access to services provided by an authorized internet entity or damages related to any person's denial of service by an authorized internet entity.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-5628, email: natasha.harvin@dcjs.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: Correction Law section 168-b(10) as added by Chapter 67 of the Laws of 2008. Correction Law section 168-b(10) requires the Division of Criminal Justice Services to release the internet identifiers of registered sex offenders to authorized internet entities which provide social networking services to users under the age of eighteen. This will allow these internet entities to pre-screen or remove users who are registered sex offenders in order to prevent such sex offenders from using the social networking site to lure potential victims. Correction Law section 168-r grants the Division immunity from liability for damages for any discretionary decision to release relevant and necessary information pursuant to the Sex Offender Registration Act, unless the Division is shown to act with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

2. Legislative objectives: Chapter 67 of the laws of 2008 was enacted to establish protections against sex offenders so that the public, especially children, can more safely use the internet. The Legislature provided the Division with the power to provide sex offender internet identifiers to social networking sites in order to assist in the protection of children using such sites.

3. Needs and benefits: This rule is necessary to implement Chapter 67 of the Laws of 2008 by establishing a subscription service whereby authorized internet entities can gain access to sex offender internet identifiers. This rule benefits the Division by setting forth the parameters for the subscription service, and benefits authorized internet entities by allowing them access to information needed to deny service to registered sex offenders when such denial is necessary to protect vulnerable minors who use the social networking services provided by the entity. As noted by the

sponsor, convicted sex offenders are able to hide their identities on the internet while contacting and befriending children using social networking sites. In 2007, investigations by the Office of the Attorney General ("OAG") confirmed the misuse of the internet by sex offenders and noted that current safety measures are inadequate to protect New Yorkers, particularly children, using online services.

4. Costs:

a. Authorized internet entities will pay a yearly fee for access to sex offender data on a graduated scale based on the number of registered users. For entities with less than five million registered users the fee is one hundred dollars per month. For entities with at least five million registered users but less than fifteen million registered users the fee is five hundred dollars per month. For entities with at least fifteen million registered users but less than thirty million registered users the fee is one thousand dollars per month. For entities with thirty million or more registered users the fee is two thousand dollars per month. Additionally, the fee may be fully or partially waived by the Division if an authorized internet entity demonstrates that the fee is unduly burdensome. This fee schedule is modest enough that it will be affordable to the operator of any social networking site, but takes into account the increasing value of the information to larger entities who gain more advertising revenue by increasing the number of registered users and who will be able to attract a greater number of users by being able to advertise that the entity's site is safer for children because registered sex offenders are denied access to service.

b. The Division has completed the efforts required to maintain this subscription service with existing agency resources. No personnel were hired or equipment was purchased to maintain this service. However, because the existing resources used to support this service were already used to accomplish other Division functions, the Division may request increased funds in the future to ensure that all of the Division's responsibilities, including the subscription service, may be accomplished.

c. The cost analysis is based on information provided by the Division's Office of Sex Offender Management and Office of Justice Information Services.

5. Local government mandates: The rule imposes no mandates on local governments.

6. Paperwork: An authorized internet entity must submit a request for access to sex offender internet information on official company letterhead and must provide documentation concerning the corporate status of the company and the number of registered users of the entity's service. This should be able to be accomplished in a one or two page letter.

7. Duplication: This proposal does not duplicate any other existing State or federal requirements.

8. Alternatives: The Division of Criminal Justice Services considered providing access to sex offender internet identifiers without charging a fee. However, a social networking site which can advertise that it screens registered users to prevent access by sex offenders is likely to attract more users because parents and guardians will feel more confident in allowing children in their care to register on that particular social networking site. Because sites with more users can charge more for advertising, it was determined that a subscriber may actually gain revenue by subscribing to the service. Additionally, the fee is to be deposited in the Criminal Justice Improvement Account to be used for victim services and, therefore, will be used, in part, to assist victims who were contacted through a social networking site. For the foregoing reasons it was determined that a fee should be charged unless charging the fee would unduly burden the subscriber. The Division conducted a web-based conference with interested social networking sites on August 5, 2008. Approximately eight attendees representing four different social networking sites attended, including Classmates, Hi5, FashionFantasyGame and MySpace. Because some attendees commented that the fee contemplated to be charged for a social networking site with the greatest number of users seemed too high, especially if other states began imposing a fee for a similar service, the Division revised the original regulation to halve such fees from \$4000 per month to \$2000 per month for social networking sites with thirty million or more registered users and from \$2000 per month to \$1000 per month for social networking sites with at least fifteen million users but less than with thirty million or more registered users.

9. Federal standards: There are no federal standards governing access to sex offender information by authorized internet entities.

10. Compliance schedule: It is anticipated that the Division will be able to provide sex offender internet information to authorized internet entities as soon as this regulation is adopted.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this rulemaking because the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed rule seeks to establish fee-based subscription

service to allow an authorized internet entity providing certain social networking services to access sex offender internet identifiers maintained by the Division of Criminal Justice Services and to establish limits for re-disclosure of such information. No authorized internet entity is required to maintain a subscription to this service. An internet entity choosing to subscribe has no reporting or recordkeeping requirements imposed on it by this rule. Therefore, this rule, by imposing no mandates and providing a subscription service to be used by only those entities which choose to subscribe, clearly does not impose any adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on small businesses or local governments. Further, this rule would have no impact on local governments, adverse or otherwise. The Division has not found any local government which maintains a website offering a social networking service. Moreover, a review of the status of the entities most likely to subscribe to this service revealed that none are small businesses or local governments. Most are headquartered in California. For example, Facebook's founder, Mark Zuckerberg, reported in an employee meeting in January of 2008 that the business employs more than 450 persons and projects revenues of \$325 million for the year 2008 and plans to increase the number of employees to 1000. MySpace has 300 employees and is owned by Newscorp. Few social networking sites were found to be headquartered in New York State. AOL and Bebo, which is owned by AOL, may be considered headquartered in New York because AOL is a subsidiary of Time Warner which is headquartered in New York City. Clearly, Time Warner is not a small business. Based on the foregoing it is evident that this rule imposes neither an adverse economic impact nor a recordkeeping requirement and small businesses and local governments in New York State are unaffected by this rule.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this rulemaking because the proposed rule will not impose any adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposed rule seeks to establish fee-based subscription service to allow an authorized internet entity providing certain social networking services to access sex offender internet identifiers maintained by the Division of criminal Justice Services and to establish limits for re-disclosure of such information. No authorized internet entity is required to maintain a subscription to this service. A subscribing internet entity has no reporting or recordkeeping requirements imposed by this rule. Therefore, this rule, by imposing no mandates and providing a subscription service to be used by only those entities which choose to subscribe, clearly does not impose any adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. Further, a search of the corporate location of the entities most likely to subscribe to this service revealed that most are located within urban areas in the State of California. For example, MySpace is headquartered in Beverly Hills, CA and Facebook's headquarters are in Palo Alto, CA. Few social networking sites were found to be headquartered in New York State. AOL and Bebo, which is owned by AOL, may be considered headquartered in New York because AOL is a subsidiary of Time Warner which is headquartered in New York City and not in a rural area. The only New York State based website which has expressed interest in this subscription service, Fashion Fantasy Game, is operated by R. Lilly Tuckerwear which is located in Manhattan. Based on the foregoing, it is evident that this rule imposes neither an adverse economic impact nor a recordkeeping requirement and public and private entities in rural areas of New York State are unaffected by this rule.

Job Impact Statement

The proposed rule seeks to establish fee-based subscription service to allow an authorized internet entity providing certain social networking services to access sex offender internet identifiers maintained by the Division of Criminal Justice Services and to establish limits for re-disclosure of such information. No authorized internet entity is required to maintain a subscription to this service. As such, it is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Department of Environmental Conservation

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

Management of Marine Commercial Fisheries for Weakfish and Black Sea Bass

I.D. No. ENV-51-08-00001-P

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

Proposed Action: Amendment of sections 40.1 and 40.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0340-a and 13-0340-f

Subject: Management of marine commercial fisheries for weakfish and black sea bass.

Purpose: To amend regulations for commercial limits on weakfish, construction of traps for black sea bass, and definition of total length.

Text of proposed rule: Title 6 of the Official Compilation of New York Codes, Rules and Regulations, Part 40, entitled "Marine Fish", is amended as follows:

Subdivision 40.1 (f) is amended as follows:

(f) Table A - Recreational Fishing.

<i>Species</i>	<i>Open season</i>	<i>Minimum length</i>	<i>Possession limit</i>
Striped bass (except the Hudson River north of the George Washington Bridge)	April 15- Dec. 15	Licensed party/ charter boat anglers 28" TL	2
		All other anglers 28" to 40" TL	1
		>40" TL (total length)*	1
Red drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Jan. 17- April 30 and Oct. 1-Dec. 17	14" TL	4
American eel	All year	6" TL	50
Pollock	All year	19" TL	no limit
Haddock	All year	19" TL	no limit
Atlantic cod	All year	22" TL	no limit
Summer flounder	May 15- Sept. 1	20.5" TL	4

<i>Species</i>	<i>Open season</i>	<i>Minimum length</i>	<i>Possession limit</i>
Yellowtail flounder	All year	13" TL	no limit
Atlantic sturgeon	No possession allowed		
Spanish mackerel	All year	14" TL	15
King mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (goosefish)	All year	17" TL	
		11" tail length #	no limit
Weakfish	All year	16" TL 10" fillet length+ 12" dressed length**	6
Bluefish	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish	15, no more than 10 of which shall be less than 12" TL
Winter flounder	Arpil 1-May 30	12" TL	10
Scup (porgy) licensed party/charter boat anglers****	June 12-Aug. 31	11" TL	10
	Sept. 1-Oct. 15	11" TL	45
Scup (porgy) all other anglers	May 24-Sept. 26	10.5" TL	10
Black sea bass	All year	12" TL	25
American shad	All year	No minimum size limit	1
Hickory shad	All year	No minimum size limit	5
Oyster toadfish	Jan. 1-May 14 and July 16-Dec. 31	10" TL	3
Large & small coastal sharks ##, ###	As per title 50 CFR, part 635###	As per title 50 CFR, part 635###	As per title 50 CFR, part 635###

<i>Species</i>	<i>Open season</i>	<i>Minimum length</i>	<i>Possession limit</i>
Pelagic sharks++, ###	As per title 50 CFR, part 635###	As per title 50 CFR, part 635###	As per title 50 CFR, part 635###
Prohibited sharks***, ###	No possession allowed		
<p>* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device, <i>except that black sea bass are measured from the tip of the snout or jaw (mouth closed) to the farthest extremity of the tail, not including the tail filament.</i></p> <p># The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.</p> <p>+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.</p> <p>** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.</p> <p>## Large and small coastal sharks include those shark species so defined as in table 1 to appendix A to part 635 of title 50 <i>Code of Federal Regulations.</i></p> <p>++ Pelagic sharks include those species so defined as in table 1 to appendix A to part 635 of title 50 <i>Code of Federal Regulations.</i></p> <p>*** Prohibited sharks include those species so defined as in table 1 to appendix A to part 635 of title 50 <i>Code of Federal Regulations.</i></p> <p>### Applicable provisions of the following are incorporated herein by reference: 50 CFR part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the <i>Federal Register</i>, volume 64, number 103, pages 29135-29160, May 28, 1999, and as amended in volume 68, number 247, pages 74746-74789, December 24, 2003. A copy of the Federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, NY 11733.</p> <p>**** See Special Regulations contained in 6 NYCRR 40.1(h)(3).</p> <p>Subdivision 40.1(i) is amended to read as follows: (i) Table B - Commercial Fishing.</p>			
<i>Species</i>	<i>Open season</i>	<i>Minimum length</i>	<i>Trip limit</i>
Striped bass (the area east of a line drawn due north from the mouth of Wading River Creek and east of a line at 73 degrees 46 minutes west longitude, which is near the terminus of East Rockaway Inlet)	July 1-Dec. 15#	Not less than 24" TL nor greater than 36" TL*	See subdivision (j) of this section
Red drum	All year	No minimum size limit	no limit for fish less than 27" TL. Fish greater than 27" TL shall not be possessed.

<i>Species</i>	<i>Open season</i>	<i>Minimum length</i>	<i>Trip limit</i>	<i>Species</i>	<i>Open season</i>	<i>Minimum length</i>	<i>Trip limit</i>
Tautog	April 8 to last day of Feb.	14" TL	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)	Bluefish	Jan. 1-Dec. 31	9" TL	A trip limit set by the department and adjusted in consultation with the commercial fishing industry
American eel	All year	6" TL	no limit	Winter flounder	Pound and trap nets July 26- June 14	12" TL	no limit
Pollock	All year	19" TL	no limit	Fyke nets	Oct. 1- March 22	12" TL	no limit
Haddock	All year	19" TL	no limit	All other gear	Dec. 1-June 13	12" TL	no limit
Atlantic cod	All year	22" TL	no limit	Scup	All year	9" TL	A trip limit set by the department to be consistent with the requirements of the Interstate Fishery Management Plan for scup. The department, in its discretion, may establish a weekly limit or a biweekly limit authorizing holders of New York State commercial foodfish licenses to possess and land up to a specified maximum quantity of scup in a seven day (weekly limit) or fourteen-day (biweekly limit) period.
Summer flounder	All year	14" TL	A trip limit, set by the department in consultation with the commercial fishing industry, consistent with the requirements of the Interstate Fishery Management Plan for summer flounder. The department, in its discretion, may establish a weekly limit authorizing holders of commercial summer flounder permits to possess and land up to a specified amount of summer flounder in a seven- day period.	Black sea bass	All year	11" TL	A trip limit set by the department to be consistent with the requirements of the Interstate Fishery Management Plan for black sea bass
Yellowtail flounder	All year	13" TL	no limit	American shad	All year	No minimum length	No more than 5% of the total weight of all foodfish landed per trip
Atlantic sturgeon	No possession allowed			Oyster toadfish	Jan. 1-May 14 and July 16-Dec. 31	10" TL	25
Spanish mackerel	All year	14" TL	3,500 pounds in possession, per vessel	Large & Small Coastal Sharks ++, +++	As per title 50 CFR part 635+++	As per title 50 CFR, part 635+++	As per title 50 CFR, part 635+++
King mackerel	All year	23" TL	3,500 pounds in possession, per vessel	Pelagic Sharks***, ++	As per title 50 CFR part 635+++	As per title 50 CFR, part 635+++	As per title 50 CFR, part 635+++
Cobia	All year	37" TL	2 per vessel	Prohibited Sharks###, +++	No possession allowed		
Monkfish (goosefish)	All year	17" TL 11" tail length+	No more than 25% of the total weight of monkfish landed per trip may be monkfish livers				
Weakfish	Hook and line April 1-June 24 and Aug. 28-Nov. 15 All other gears April 1-June 24 and Aug. 28-Nov. 15 June 25-Aug. 27 and Nov. 16-March 31	16" TL 10" fillet length** 12" dressed length##	no limit No more than [300] 150 pounds, per vessel, in the round***, and provided that at least an equal poundage of other foodfish species caught during the same trip is on board the vessel				

*Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe on the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device, *except that black sea bass are measured from the tip of the snout or jaw (mouth closed) to the farthest extremity of the tail, not including the tail filament.*
 #The commercial striped bass fishery may be closed before December 31st if the allowable harvest cap is projected to be met prior to such date.

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

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

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

++ Large and small coastal sharks include those shark species so defined as in table 1 to appendix A to part 635 of title 50 *Code of Federal Regulations*.

***Pelagic sharks include those species so defined as in table 1 to appendix A to part 635 of title 50 *Code of Federal Regulations*.

####Prohibited sharks include those species so defined as in table 1 to appendix A to part 635 of title 50 *Code of Federal Regulations*.

+++Applicable provisions of the following are incorporated herein by reference: 50 CFR part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the *Federal Register*, volume 64, number 103, pages 29135-29160, May 28, 1999, as amended in volume 68, number 247, pages 74746-74789, December 23, 2003. A copy of the Federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, NY 11733.

Paragraph 40.6(e)(3) is amended to read as follows:

(3) It is unlawful to take or possess any of the species listed in the following table, using fish pots or traps, unless the minimum requirements for either circular vents, rectangular vents, or wire mesh listed in the corresponding row of the table are met as described in paragraphs (1) and (2) of this subdivision:

Species	Circular vents		Rectangular vents		Wire mesh
	Number	Opening diameter	Number	Opening dimensions	
Black sea bass	[1] 2	[2 ³ / ₈ "] 2 ¹ / ₂ "	[1] 2	1 ³ / ₈ " × 5 ³ / ₄ " or 2" × 2"	not applicable
Scup	1	3 ¹ / ₈ "	1	2 ¹ / ₄ " × 2 ¹ / ₄ "	not applicable
Tautog	1	3 ¹ / ₈ "	not applicable	not applicable	not applicable
Northern puffer	none required	none required	none required	none required	not applicable
American eels	not applicable	not applicable	not applicable	not applicable	4" × 4" panel with 1" × 1/2" mesh
all other fish	1	2 ³ / ₈ "	1	1 ¹ / ₈ " × 5 ³ / ₄ "	not applicable

Text of proposed rule and any required statements and analyses may be obtained from: Stephen W. Heins, NYS Department of Environmental Conservation, 205 N. Belle Mead Road, Suite 1, East Setauket, NY 11733-3400, (631) 444-0435, email: swheins@gw.dec.state.ny.us

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

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

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 13-0105, 13-0340-a and 13-0340-f authorize the Department of Environmental Conservation (the department) to establish by regulation, open season, size limits, catch limits, possession and sale restrictions and manner of taking for weakfish and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that the department manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

3. Needs and benefits:

These regulations are necessary in order for New York to comply with the FMP for weakfish, and the one for black sea bass as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to section 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the ASMFC. The ASMFC facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanisms for implementation of cooperative management of migratory fish are the ASMFC's Interstate FMPs for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

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

Environmental Conservation Law sections 13-0105, 13-0340-a and 13-0340-f, which authorize the adoption of regulations for the management of weakfish and black sea bass, provide that such regulations must be consistent with the FMPs for these species adopted by the ASMFC and with applicable provisions of FMPs adopted pursuant to ACFCMA.

Under Addendum II to Amendment 4 to the Interstate FMP for weakfish, the status of the weakfish stock indicated that management action was warranted. All non-de minimis jurisdictions were required to reduce the bycatch possession limit for non-directed fisheries for weakfish from the Amendment 4, section 4.2.1 allowance of 300 pounds per day or trip to 150 pounds per day or trip. New York's weakfish fishery is in this category. For black sea bass, the changes were called for at an August 2005 joint meeting of the Mid-Atlantic Fishery Management Council and the ASMFC Black Sea Bass Management Board, and were issued in annual specifications (final rule, Federal Register Vol 70, No 249, December 29, 2005). These measures were to be made effective 1 January 2007, giving fishermen 2 years to comply. Failure by a state to adopt, in a timely manner, revised regulations may result in a determination of non-compliance by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for weakfish in that state, which could result in significant adverse impacts to the state's economy.

Specific major changes to the regulations include the following:

1. Weakfish: reduce the bycatch possession limit for the non-directed fishery from a 300-pound trip limit to a 150-pound trip limit.

2. Black sea bass:

- a) add a definition of total length specific for black sea bass that excludes the tail filament from inclusion in the length measurement; and
- b) change the requirements for fish traps or pots used to take black sea bass to increase the number of vents required from one to two and increase the diameter of the circular vent required from two and three eighths inches to two and one half inches.

4. Costs:

(a) Cost to State government: There are no new costs to state government resulting from this action.

(b) Cost to Local government: There will be no costs to local governments.

(c) Cost to private regulated parties:

Certain regulated parties (commercial foodfish harvesters who use trawl nets, black sea bass pot/trap fishers) may experience some minor economic effects through reduced landings for these species or the cost of gear modifications.

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

The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying commercial harvesters and other support industries of the new rules.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

No Action (no amendment to the regulations).

The "no action" alternative would leave current regulations in place, which would likely result in a Federal non-compliance determination, which would bring about a closure of all fishing for weakfish and black sea bass in New York under ACFCMA. This would have a much more severe economic impact than the imposition of tighter restrictions, therefore, this option was rejected.

9. Federal standards:

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

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via the department's website of the changes to the regulations. Because the changes were announced previously, fishermen have had ample time to make necessary gear modifications. The regulations will become effective when filed.

Regulatory Flexibility Analysis

1. Effect of the regulation:

Small businesses affected by the proposed regulations will include some of the currently licensed commercial foodfish harvesters. There were 1,109 licensed commercial foodfish harvesters in operation in New York in 2007. Most permitted commercial fishermen are self-employed. None, however, are expected to lose their jobs as a result of the proposed changes.

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

2. Compliance requirements:

Under the proposed rule, those harvesters who target black sea bass using fish pots or traps will be required to add an additional escape vent to each pot or trap fished, and use the correct minimum size vent. In addition, those fishermen who during the closed season for weakfish continue to fish for other species, will not be allowed to retain more than 150 pounds of weakfish in a trip and must have an equal or greater weight of fish other than weakfish when landing weakfish.

3. Professional services:

None

4. Compliance costs:

Some costs will be associated with complying with the regulations in that each fish pot or trap must be modified at some incremental cost which will then be multiplied by the total number of pots or traps fished. The annual cost of continuing compliance may take the form of lost income if the catch of commercial or recreational fishermen declines.

5. Economic and technological feasibility:

The changes required by this action have been determined to be economically feasible for the majority of the affected parties. For those proposals which are required under federal and interstate fishery management plans, the department does not have any discretion regarding this economic impact. New York must comply with the provisions of the fishery management plans or face federal sanctions.

There is no additional technology required for small businesses, and this action does not apply to local governments, so there are no economic or technological impacts for any such bodies.

6. Minimizing adverse impact:

The maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including wholesale and retail outlets and the support industries for commercial and recreational fisheries. There is no way to eliminate the short-term losses while trying to rebuild overharvested stocks of fish. These regulations are designed to protect stocks from continued overharvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the complete collapse of a fish stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. Regulations are proposed to provide the appropriate level of protection.

7. Small business and local government participation:

The proposed regulations are based upon the requirements of interstate fishery management plans which do not provide discretion to the department in developing the proposal. The Interstate Fishery Management Program operated by the Atlantic States Marine Fisheries Commission (ASMFC) operates in public and provides opportunity for public participation at every meeting and at public hearings. The black sea bass proposal is based upon industry recommendations provided to the ASMFC's Black Sea Bass Management Board. There was no special effort to contact local governments because the rule does not affect them.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural

areas within the marine and coastal district. The marine finfish fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The Department of Environmental Conservation has determined that the proposed regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

Those most affected by the proposed rule making are the commercial and recreational fishermen harvesting marine fish species from New York marine waters. There were 1,109 licensed commercial foodfish harvesters in New York during 2007. Some currently licensed commercial fishermen will be affected by these regulations. Some of the proposed regulations may result in a short-term reduction in allowable catch or availability of marine fisheries resources for the affected parties.

The maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including wholesale and retail outlets and the support industries for both commercial and recreational fisheries. Over the long-term, these short-term reductions in harvest or availability will be offset by the restoration of fishery stocks. These regulations are designed to protect stocks from continued over harvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the complete collapse of a fish stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. Moreover, failure to implement the required provisions of interstate fishery management plans can result in complete federal closure of those fisheries in the State, an outcome with far more severe short-term consequences than those resulting from the proposed regulations.

Based on the above and the department's experience in adopting regulations similar to those contained in this proposed rule making, the department has concluded that there will not be a substantial adverse impact on jobs or employment opportunities as a consequence of these amendments. In the short-term, these proposals will prevent a federal closure of New York's fisheries; in the long-term, these proposals, by conserving marine fisheries, will likely have a positive impact on employment opportunities in the commercial and recreational fishing industries.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Article 16 Clinic Fee Setting

I.D. No. MRD-51-08-00003-P

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

Proposed Action: Amendment of section 679.6 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 43.02

Subject: Article 16 Clinic fee setting.

Purpose: Revise the schedule of clinic fees using a new base year.

Text of proposed rule: Delete 14 NYCRR Subdivision 679.6(j).

Add new Subdivision 679.6(j) as follows:

Section 679.6 Fee setting and financial reporting.

Subdivision 679.6(j)

(j) Fee setting.

(1) Effective March 1, 2009, for clinic treatment facilities which filed a 2004 or 2004/2005 certified cost report:

(i) Those certified Part 679 clinic treatment facilities which submitted a 2004 or 2004/2005 certified cost report with data yielding an adjusted operating cost per adjusted visit of less than or equal to \$95.41 shall be reimbursed in accordance with Schedule A as set forth at subparagraph (5)(i) of this subdivision.

(ii) Those certified Part 679 clinic treatment facilities which submitted a 2004 or 2004/2005 certified cost report with data yielding an

adjusted operating cost per adjusted visit of more than \$95.41 shall be reimbursed in accordance with Schedule B as set forth at subparagraph (5)(ii) of this subdivision.

(iii) OMRDD shall determine the actual operating cost per adjusted visit by dividing total actual costs exclusive of property from either the 1/1/2004 12/31/2004 or 7/1/2004 6/30/2005 submitted and certified cost report, as applicable, by adjusted visits for the same period of time. OMRDD shall determine adjusted visits by weighting the annual utilization as reported by the provider for billing purposes by the relative proportion of all visits to total full clinic visits. The provider specific monetary effects of participation in fiscal year COLAs effective on October 1, 2006, June 1, 2007 and August 1, 2008 and Health Care Enhancements I, II, and III subsequent to the base year through October 1, 2008 shall be factored into the unit cost along with an efficiency adjustment (see subparagraph [j][1][iv]) to yield the adjusted operating cost per adjusted visit.

(iv) OMRDD shall establish allowable administrative costs. OMRDD shall allow administrative expense to the extent that the percentage of administrative costs to total operating and administrative costs in the 2004 or 2004/2005 cost reports does not exceed percentages similarly computed from the specific providers' HCBS Waiver services historical cost reports.

(2) Effective March 1, 2009, clinic treatment facilities which did not submit a 2004 or 2004/2005 certified cost report and which were certified before October 1, 2008 shall be reimbursed in accordance with Schedule A as set forth at subparagraph (5)(i) of this subdivision.

(3) Effective March 1, 2009, for clinic treatment facilities initially certified by OMRDD as Part 679 clinic treatment facilities on or after October 1, 2008:

(i) OMRDD shall use for fee setting purposes budget information and units of service submitted by the provider in its application to receive an operating certificate provided they have been accepted and approved by the Commissioner. The approved projected units of service shall be delineated in terms of numbers of full clinic visits, brief clinic visits, comprehensive diagnostic and evaluation visits, and group clinic visits. OMRDD shall approve budgeted costs based on whether they are necessary and appropriate to deliver services in accordance with this Part.

(ii) OMRDD shall determine projected adjusted visits for fee setting purposes by weighting the approved projected utilization by the relative proportion of all visits to full clinic visits.

(iii) OMRDD shall determine the allowable administrative component of budgeted costs. OMRDD shall compare the approved budgeted administrative costs as a percentage of total approved budgeted operating and administrative costs exclusive of property to the regional average percentage computed similarly and derived from regional providers' historical data. The percent of allowable administrative expense shall not exceed the applicable regional historical percentage.

(iv) Further, in order to effectively compare approved budgeted costs to the 2008 standard used for Part 679 clinic treatment facilities certified before October 1, 2008, any increases or decreases established for clinic treatment facilities on or after October 1, 2008 will be assumed to be incorporated in budgeted costs. OMRDD shall factor such increases or decreases out of allowable budgeted operating costs for the determination of adjusted budgeted cost per projected adjusted visit relative to \$95.41.

(v) For clinic treatment facilities with approved budgets showing projected expenditures for the allowable operating costs exclusive of property, that when adjusted are less than or equal to \$95.41 per projected adjusted visit, the fees for reimbursable services shall be pursuant to Schedule A (see subparagraph [5][i] of this subdivision).

(vi) For clinic treatment facilities with approved budgets showing projected expenditures for the allowable operating costs exclusive of property that when adjusted are more than \$95.41 per projected adjusted visit, the fees for reimbursable services shall be pursuant to Schedule B (see subparagraph [5][ii] of this subdivision).

(4) The following types of clinic visits, regardless of where provided, delivered in accordance with this Part and the restrictions set forth at section 679.5 of this Part may be claimed for reimbursement:

- (i) full clinic visit (including collateral and intake visits);
- (ii) comprehensive diagnostic and evaluation visit;
- (iii) group clinic visit; or
- (iv) brief clinic visit.

(5) Payment schedules.

(i)

Schedule A	Operating Component	Total
	of Fee	Fee
Full clinic visit	\$ 94.81	\$100.97

Comprehensive diagnostic and evaluation visit	\$284.43	\$302.91
Group clinic visit	\$31.61	\$33.66
Brief clinic visit	\$47.41	\$50.49

(ii)

Schedule B	Operating Component	Total
	of Fee	Fee
Full clinic visit	\$110.17	\$116.33
Comprehensive diagnostic and evaluation visit	\$330.51	\$348.99
Group clinic visit	\$36.72	\$38.78
Brief clinic visit	\$55.09	\$58.17

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OMRDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

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

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

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has on file a Negative Declaration with respect to this Action. OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority -

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, is stated in the New York Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction is stated in the New York State Mental Hygiene Law Section 13.09(b).

c. Section 43.02 of the Mental Hygiene Law grants the commissioner the authority to establish rates and fees for payment under the Medicaid program for facilities licensed by OMRDD and it requires the commissioner to adopt rules and regulations to effectuate Section 43.02.

2. Legislative Objectives -

These amendments further the legislative objectives embodied in the sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The promulgation of these amendments will maintain the financial stability of clinic services certified by OMRDD.

3. Needs and Benefits -

In establishing a schedule of fees for Article 16 clinics (Part 679 clinic treatment facilities), OMRDD examines providers' costs of providing clinic services during a particular year, called the "base year." In time, particularly with fluctuations in the economy, those base year values lose their relevance and become outdated. The last base year OMRDD used was 1990 for upstate providers and 1989/1990 for downstate providers.

In addition, the existing regulations treat monetary increments to fees effective after the base year, such as cost of living adjustments and health care enhancements, as add-ons to the existing fee schedules. With every add-on, there are those providers which participate and those providers which do not, precipitating a doubling of the number of applicable fee schedules.

The new schedule of fees addresses more current costs by using a new base year of 2004 for upstate providers and 2004/2005 for downstate providers. It appropriately reassigns provider payment to a fee schedule which reflects the relative changes in a provider's costs from the 1990 or 1989/90 base year. Moreover, because the new fees incorporate all the add-ons since the previous base year, this regulation eliminates the multitude of schedules and the confusion they engendered.

Finally, this regulation is consistent with the Department of Health's overall restructuring of New York's health care system to strengthen primary and preventative care. This restructuring includes reforming certification so the appropriate State agency has the lead authority for oversight, and so that rules are clear to providers and do not impede coordinated care for patients with co-morbidities. As part of this reform, approximately 22 clinics currently certified and paid by the Department of Health as

Diagnostic and Treatment Centers ("Article 28 clinics") will be certified as Article 16 clinics and reimbursed through the payment methodology established by this regulation.

The Department of Health's restructuring also includes transitioning funding from inpatient to outpatient services to support quality care in outpatient settings and address the problem of avoidable hospitalizations. Part of this transition is a new rate setting methodology, called Ambulatory Patient Groups or APGs, under which the amount paid for a visit varies depending on the intensity of the services provided during the visit. The Diagnostic and Treatment Centers are scheduled for APG phase in effective March 1, 2009. OMRDD considers the revision of the Article 16 clinic fee schedule interim until such time as OMRDD restructures its clinic service platform to move to an APG reimbursement system in collaboration with the Department of Health. This interim measure is a step in the process which ultimately aims to attain Medicaid reimbursement that is consistent with the reimbursement for similar services provided by other State agencies.

4. Costs -

a. There will be no additional cost to providers of clinic services to implement and comply with the amendments. Providers will bill Medicaid for clinic services in the same way they have always billed.

b. There will be additional costs to the state and federal governments as a result of this fee schedule amendment. The aggregate additional costs will be \$4.2 million, which represents \$2.1 million in federal funds and \$2.1 million in state funds, of which OMRDD will be responsible for \$1.0 million and the Department of Health \$1.1 million.

c. There are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

5. Paperwork -

There will be no additional paperwork required as a result of these amendments. Providers will bill Medicaid for clinic services in the same way they have always billed.

6. Local Government Mandates -

a. There are no new requirements imposed on local governments by this amendment.

7. Duplication -

a. The amendment does not duplicate any existing State or Federal requirement.

8. Alternatives -

a. The only alternative would be to maintain the current fee schedules which are outdated and confusing.

9. Federal Standards -

a. The amendment does not exceed any minimum standard of the federal government for the same or similar subject area.

10. Compliance Schedule -

a. OMRDD intends to finalize and file the proposed amendment within and according to the timeframes provided by the State Administrative Procedure Act. (SAPA).

Regulatory Flexibility Analysis

1. Types and number of small businesses and local governments rule applies -

a. These proposed regulatory amendments will apply to agencies which operate clinic services for persons with developmental disabilities. While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees would themselves be classified as small businesses. OMRDD estimates that approximately 36 clinic provider agencies would be affected by the proposed amendments.

b. Local governments do have a local share of the Medicaid costs for clinic services. However, there are no costs to local governments as a result of these amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

2. Reporting, recordkeeping, compliance requirements -

a. There will be no additional paperwork as indicated in the Regulatory Impact Statement. Providers will bill Medicaid for clinic services in the same way they have always billed.

3. Cost to implement and comply with this rule -

a. There will be no additional cost to providers of clinic services to implement and comply with the amendments. Providers will bill Medicaid for clinic services in the same way they have always billed.

b. There will be additional costs to the state and federal governments as a result of this fee schedule amendment. The aggregate will be \$4.2 million, which represents \$2.1 million in federal funds and \$2.1 million in state funds, of which OMRDD will be responsible for \$1.0 million and the Department of Health \$1.1 million.

c. There are no costs to local governments as a result of these specific

amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

4. Assessment of the economic and technological feasibility of compliance -

a. There is no new technology required by the rule.

5. How the rule is designed to minimize economic impact -

a. The amendments will allow OMRDD to reimburse providers of Article 16 clinic services at revised levels which addresses more current costs using a new base year of 2004 or 2004/2005 and eliminates the multitude of existing fee schedules. The revised clinic fee schedule will have positive impacts on small business providers of clinic services resulting from these reimbursements.

6. Small business and local government participation -

a. The Provider Council and Provider Associations have been made aware of the proposed regulations. The regulations were discussed at various meetings and presentations over the past several months. Both the Provider Council and Provider Associations have had the opportunity to comment during the pre-submission period. The Provider Council was set up years ago by the Commissioner to facilitate open communication and solicit input on various issues. The Provider Council has over 40 members representing various provider associations and provider agencies from across New York State.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the proposed amendment is not being submitted because the amendment will not impose any adverse economic impact on rural areas or on reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendment creates a revised schedule of fees, which addresses more current costs using a new base year of 2004 or 2004/2005 and eliminates the multitude of existing fee schedules. The existing fee schedules were last set using a base year of 1990 or 1989/1990 which no longer accurately reflect current provider costs.

Job Impact Statement

A Job Impact Statement for the proposed amendment is not being submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and/or employment opportunities. The rule creates a revised schedule of fees, which addresses more current costs using a new base year of 2004 or 2004/2005 and eliminates the multitude of existing fee schedules. The existing fee schedules were last set using a base year of 1990 or 1989/1990 which no longer accurately reflect current provider costs.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Water Supply Plant Assets

I.D. No. PSC-31-08-00024-A

Filing Date: 2008-11-26

Effective Date: 2008-11-26

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

Action taken: On November 12 2008, the PSC adopted an order approving the joint petition of Scott A. Tozzi and J.J. Gokey Properties, to transfer the water supply plant assets of Roland Properties, Inc. (f/k/a Knollwood Water Company).

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

Subject: Transfer of water supply plant assets.

Purpose: To approve the joint petition for the transfer of water supply plant assets.

Substance of final rule: The Commission, on November 12, 2008, adopted an order approving the joint petition of Scott A. Tozzi and J.J. Gokey Properties, to transfer the water supply plant assets of Roland Properties, Inc. (f/k/a Knollwood Water Company), subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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.
(08-W-0737SA1)

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

Commission's October 27, 2008 Order on Future of Retail Access Programs in Case 07-M-0458

I.D. No. PSC-51-08-00006-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 (Commission) is considering whether to approve, deny, or modify, in whole or in part, a Petition for rehearing of the Commission's October 27, 2008 Order in Case 07-M-0458 - Order on Future of Retail Access Programs.

Statutory authority: Public Service Law, sections 2, 5 and 22

Subject: Commission's October 27, 2008 Order on Future of Retail Access Programs in Case 07-M-0458.

Purpose: To consider a Petition for rehearing of the Commission's October 27, 2008 Order in Case 07-M-0458.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, the Public Utility Law Project's petition for rehearing of its October 27, 2008 Order on the Future of Retail Access Programs. Among the issues the Commission may consider is price transparency for distribution utility and energy service companies provision of commodity service. The Commission may also consider all 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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.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

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-0458SA2)

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

Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078

I.D. No. PSC-51-08-00007-P

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

Proposed Action: The Public Service Commission (Commission) is considering whether to approve, deny, or modify, in whole or in part, Petitions for rehearing of the Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078.

Statutory authority: Public Service Law, sections 2, 5 and 22

Subject: Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078.

Purpose: To consider Petitions for rehearing of the Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078.

Substance of proposed rule: The Public Service Commission is consider-

ing whether to approve, deny or modify, in whole or in part, petitions for rehearing by Constellation Energy Commodities Group, Inc. and Constellation Newenergy, Inc., New York State Energy Marketers Coalition, Retail Energy Supply Association, National Energy Marketers Association, and Public Utility Law Project of its October 27, 2008 Order Adopting Amendments to the Uniform Business Practices, Granting in Part Petition on Behalf of Consumers and Rejecting National Fuel Gas Distribution Corporation's Tariff Filing. Among the issues the Commission may consider are the legality of early termination fees imposed on customers of energy services companies (ESCOs), enforcement of the Uniform Business Practices (UBP), propriety of customer complaint information, the effective date for the modifications to the UBP, and the extension of marketing standards to certain types of marketing activity and marketing activity involving non-residential customers. The Commission shall also consider all 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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.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

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.

(98-M-1343SA15)

Department of State

EMERGENCY RULE MAKING

Firefighter Training

I.D. No. DOS-51-08-00004-E

Filing No. 1219

Filing Date: 2008-12-02

Effective Date: 2008-12-02

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

Action taken: Addition of Part 438 to Title 19 NYCRR.

Statutory authority: Executive Law, section 156(6) (chapter 615 of the Laws of 2006)

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

Specific reasons underlying the finding of necessity: Chapter 615 of the Laws of 2006 required that regulations regarding firefighter training be adopted by February 12, 2007. Regulations were adopted on an emergency basis and this rule keeps the regulations in effect until a permanent rule can be adopted.

Subject: Firefighter training.

Purpose: To set standards for the state firefighter training program.

Substance of emergency rule: Section 438.1 Purpose. The purpose of this rule is to implement the requirements of subdivision 6 of section 156 of the Executive Law, as enacted by Chapter 615 of the Laws of 2006. This subdivision empowers the State Fire Administrator to plan, coordinate, and provide training related to fire and arson prevention and control for paid and volunteer firefighters and governmental officers and employees. Subdivision 6 also directs the Office of Fire Prevention and Control (OFPC) to adopt rules and regulations relating to training, including training standards, the allocation of training hours to counties and the establishment of a uniform procedure for counties to request and OFPC to provide additional training hours.

Section 438.2 contains definitions of terms used in Part 438.

Section 438.3 describes training standards to guide OFPC in its

implementation of the rule including instructor and student qualifications, live fire training requirements, and a listing of the standards, manuals, statutes, and regulations which will be used to provide the training authorized by subdivision 6 of section 156 of the Executive Law.

Section 438.4 deals with firefighter training hours, course allocations and scheduling procedures delivered through the Outreach Training Program.

Section 438.5 deals with the requirements and restrictions associated with creating and maintaining a supplemental firefighter training program.

Section 438.6 deals with the requirements and restrictions associated with creating and maintaining a municipal training program.

Section 438.7 deals with the requirements and restrictions associated with creating and maintaining a fire brigade training program.

Section 438.8 deals with firefighter training course allocations and scheduling procedures delivered through the Regional Training Program and Residential Training Program.

Section 438.9 deals with restrictions relating to the state fire training programs.

Section 438.10 deals with the State Fire Administrator's ability to suspend and/or terminate authorization to deliver state fire training courses if an officer, instructor or program violates one or more of the provisions of this Part.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 1, 2009.

Text of rule and any required statements and analyses may be obtained from: David Treacy, Esq., Department of State, 99 Washington Avenue, Albany, NY 12231, (518) 474-6740

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 156(6) of the Executive Law requires that the Office of Fire Prevention and Control of the Department of State (OFPC) provide fire and arson prevention and control training to firefighters and related governmental officers and employees. This section requires OFPC to adopt rules related to such training. These rules must include statements concerning training standards used by OFPC, the process by which OFPC allocates training hours to counties, and a uniform procedure for counties to request and OFPC to provide additional training hours.

2. LEGISLATIVE OBJECTIVES

The legislative objectives behind section 156(6) are to make the state training program more transparent, addressing the following processes: allocation of training hours to counties; the uniform procedure for counties to request and OFPC to provide additional training hours; and the training standards which OFPC and its representatives will follow when it delivers training. This rule fulfills the legislative objectives.

3. NEEDS AND BENEFITS

Section 156(6) of the Executive Law requires that OPFC adopt a rule related to firefighter training. Adoption of this rule would add transparency to the process by which firefighter training hours are allocated to counties, describe the training standards which will be followed by OFPC when it delivers training, establish the qualifications of instructors delivering state fire training courses and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours.

4. COSTS

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

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

b. Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule

This rule would not impose any additional costs to local governments or the State. The Department of State is currently appropriated approximately \$1,500,000 per year for outreach firefighter training.

5. LOCAL GOVERNMENT MANDATES

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts. Participation in the firefighter training provided for in this rule is voluntary.

6. PAPERWORK

Several new forms would be required as a result of the rule:

County fire coordinators desiring that training be provided to fire departments within their jurisdiction will be required to answer a survey related to such training and submit a proposed training schedule.

If this rule is adopted, state fire instructors, municipal fire instructors, and county fire instructors would be required to complete student attendance cards.

7. DUPLICATION

No rules or other legal requirements of either the state or federal government exist at the present time which duplicate, overlap, or conflict with the proposed rule.

8. ALTERNATIVES

Section 156(6) of the Executive Law requires that OPFC adopt a rule which deals with firefighter training. This section requires that the rule describe the process by which firefighter training hours are allocated to counties, the training standards which will be followed by OFPC when it delivers such training, and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours.

The Department of State considered several alternatives to this rule but established this rule to ensure public safety and compliance with the current federal regulations related to training. For instance, the Department of State considered assigning less state fire instructors per county, but needed to assign 4 instructors per county based on safety concerns, workload and the National Fire Protection Association standard for a required number of instructors based on student enrollment for certain firefighter training, such as live fire. The Department of State also considered using only full-time staff to conduct firefighter training statewide, but it would be cost prohibitive to consider that alternative. Another example of an alternative considered was not to require pre-requisites for training courses, but based on the hazardous nature of firefighting and the need for skills progression, such an alternative was not advisable.

9. FEDERAL STANDARDS

No standards have been set by the federal government for the same or similar subject areas addressed by this proposed rule.

10. COMPLIANCE SCHEDULE

Fire departments interested in receiving the training which is provided for in this proposed rule can comply immediately with the requirements of the rule.

Regulatory Flexibility Analysis

1. Effect of rule

The proposed rule potentially would affect all of the counties and all of the approximately 1850 fire departments located in New York State. The proposed rule would not affect small businesses located in New York State.

2. Compliance requirements

Counties and fire departments wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State.

3. Professional services

Counties and fire departments will not need any additional professional services in order to comply with the proposed rule.

4. Compliance costs

There would be no costs to counties or fire departments which would be associated with compliance with the rule, or annual costs to these entities for continuing compliance with the rule.

5. Economic and technological feasibility

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. The only requirement that the rule imposes on these counties and fire departments is that they make requests for this training. It is therefore economically and technologically feasible for these counties and fire departments to comply with this rule.

6. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. Since the rule would regulate the administration of a state program rather than the activities of counties and fire departments, engaging in this voluntary process would not have any adverse economic impact on these entities.

7. Small business and local government participation

Representatives of fire departments and local governments participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006, which requires the promulgation of these rules.

OFPC has reached out to the regulated parties, including County Fire Coordinators, State Fire Instructors, Regional Fire Administrators and Municipal Training Officers to provide them with the processes and procedures OFPC will be following and requiring with respect to the state fire training program. OFPC has provided copies of the rulemaking to the regulated parties. In addition, this rule has been discussed at the instructor's conferences, the regional state fire administrators conference, county fire coordinators conferences, Association of State Fire Chiefs conference and it has been posted on the Office of Fire Prevention of Control's website. To date, the Department of State has not received any feedback based on its outreach.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed rule would apply throughout New York State. All of the counties and all of the approximately 1850 fire departments in New York

State, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA"), would potentially be affected by the rule.

The proposed rule would not regulate any activities of private entities in rural areas of the State.

2. Reporting, record keeping and other compliance requirements, and professional services

Counties wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State. Counties and fire departments located in rural areas will not need any additional professional services in order to comply with the proposed rule.

3. Costs

There would be no costs to counties and fire companies located in rural areas associated with compliance with the rule, or annual cost for continuing compliance with the rule by these entities.

4. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties may make requests for firefighter training. The rule would regulate the administration of a state program rather than the activities of public or private entities located in rural areas. Since this process is voluntary, it would not have any adverse economic impact on rural areas of New York State.

5. Rural area participation

Representatives of rural areas participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006.

OFPC has reached out to the regulated parties, including County Fire Coordinators, State Fire Instructors, Regional Fire Administrators and Municipal Training Officers to provide them with the processes and procedures OFPC will be following and requiring with respect to the state fire training program. OFPC has provided copies of the rulemaking to the regulated parties. In addition, this rule has been discussed at the instructor's conferences, the regional state fire administrators conference, county fire coordinators conferences, Association of State Fire Chiefs conference and it has been posted on the Office of Fire Prevention and Control's website. To date, the Department of State has not received any feedback based on its outreach.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. In fact, this rule may result in the employment of several additional Office of Fire Prevention and Control fire protection specialists and temporary part-time instructors by the Department of State.

NOTICE OF ADOPTION

Medium or Format by Which Copies of UCC Documents Filed with the Department of State Will be Available to the Public

I.D. No. DOS-51-07-00001-A

Filing No. 1210

Filing Date: 2008-12-01

Effective Date: 2008-12-17

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

Action taken: Amendment of section 143-5.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 96-a; L. 2001, ch. 84; Uniform Commercial Code, section 9-526-(a)

Subject: Medium or format by which copies of UCC documents filed with the Department of State will be available to the public.

Purpose: To revise existing regulation to provide for expanded forms of data transfer.

Text or summary was published in the December 19, 2007 issue of the Register, I.D. No. DOS-51-07-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Frament, Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231-0001, (518) 473-2278, email: Barbara.Frament@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

30 Hour Supplemental Course for Real Estate Brokers and Salespeople

I.D. No. DOS-42-08-00009-A

Filing No. 1230

Filing Date: 2008-12-02

Effective Date: 2008-12-17

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

Action taken: Addition of section 176.26 and amendment of section 177.18 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k

Subject: 30 hour supplemental course for real estate brokers and salespeople.

Purpose: To amend current regulations to conform with recent statutory amendments to Article 12-A of the Real Property Law.

Text or summary was published in the October 15, 2008 issue of the Register, I.D. No. DOS-42-08-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Linda Cleary, NYS Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 22001, Albany, NY 12231, (518) 473-2728, email: Linda.Cleary@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

EMERGENCY RULE MAKING

The Investment Opportunity Fund Program

I.D. No. UDC-51-08-00002-E

Filing No. 1211

Filing Date: 2008-12-02

Effective Date: 2008-12-02

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

Action taken: Addition of Part 4246 to Title 21 NYCRR.

Statutory authority: New York Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 2008, ch. 57, part QQ, section 16-p

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program will address the dangers to public health, safety and welfare by providing assistance to combat economic distress.

Subject: The Investment Opportunity Fund Program.

Purpose: To provide the basis for administration of the Investment Opportunity Fund including evaluation criteria and application process.

Text of emergency rule: INVESTMENT OPPORTUNITY FUND PROGRAM

Section 4246.1 General

These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Investment Opportunity Fund (the "Program"). The Program was created pursuant to § 16-p of the New York State Urban Development Corporation Act, as added by Part QQ of Chapter 57 of the Laws of 2008, and promotes economic development by facilitating the creation and retention of jobs by increasing private investment and business activity in the State of New York.

Section 4246.2 Definitions

For the purposes of this Part 4246, the terms below should have the following meanings:

(a) "The Act" shall mean the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968 (as amended).

(b) "The Corporation" shall mean the New York State Urban Development Corporation.

(c) "Cost" as applied to a project or portion thereof financed under this Part, means all or any part of the cost of construction, remediation, renovation, and acquisition of all lands, structures, real or personal property, rights, air rights, rights-of-way, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved, the cost of machinery and equipment, interest prior to, during, and for a period after, completion of construction, remediation, renovation, or acquisition, as determined by the corporation; for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, plans, specifications, estimates, and other expenses necessary or incidental to the construction, acquisition, and financing of any project, excluding lobbying and governmental relations expenses.

(d) "Distressed communities" shall mean areas as determined by the Corporation meeting criteria indicative of economic distress, including land value, employment rate; rate of employment change; private investment; economic activity, percentages and numbers of low income persons; per capita income and per capita real property wealth; and such other indicators of distress as the Corporation shall determine.

(e) "Facilities" means real and personal property, structures, air rights, conveyances, equipment, thoroughfares, buildings, and supporting components thereof located in the state, that are directly related to the acquisition, construction, reconstruction, rehabilitation, remediation, or improvement of a project which will achieve the purposes of facilitating the creation or retention of jobs or increasing investment or business activity within a municipality or region of the state or academic research and development efforts that promote the development of life sciences and high technology initiatives including genomics and biotechnology research.

(f) "Financial assistance" in connection with a project, includes, but is not limited to, grants, loans, equity investments, loan forgiveness, loan guarantees, or any combination thereof.

(g) "Not-For-Profit Corporation" shall mean a corporation organized under the provisions of the Not-For-Profit Corporation Law.

(h) "Project" shall include but not be limited to designing, acquiring, planning, permitting, entitling, demolishing, removing, constructing, improving, extending, restoring, financing, remediating and generally developing facilities.

(i) "Sponsor" or "project sponsor" shall be the state or any political subdivision of the state or a municipality, including but not limited to any departments, agencies, public benefit corporations, or commissions. In addition, a sponsor or project sponsor may include not-for-profit corporations formed on behalf of a sponsor, special districts, assessment districts, tax increment financing units or districts, business improvement districts, regional and community development organizations, not-for-profit organizations, not-for-profit organizations or businesses organized to do business under the laws of, or doing business within the state, or any combination of the aforementioned entities that makes application to the corporation for financial assistance in connection with an investment opportunity fund project in a manner prescribed by the corporation.

Section 4246.3 Types of Assistance

The Corporation is authorized to provide Financial Assistance to Project Sponsors for Costs associated with a Project.

Section 4246.4 Eligibility

Project Sponsors shall be eligible for Financial Assistance for Projects provided, the Project:

(a) is consistent with any existing local or regional comprehensive plan. A municipality which is a Sponsor for a project or projects shall submit a resolution that has been adopted by the legislative body or bodies of the lead project sponsor that certifies that the proposed project is consistent with existing local or regional plans; the proposed financing is appropriate for the specific project; the project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources; and the project develops or enhances infrastructure or other facilities in a manner that will attract, create, and sustain long-term investment and employment opportunities; and

(b) provides economic benefits to one or more regions of the state or, for projects that are not anticipated to have a regionally significant impact, provide economic benefits to localities that suffer from disproportionate levels of poverty, unemployment, population or job loss or other indicators of economic distress.

Section 4246.5 Evaluation Criteria

The Corporation shall give priority in granting assistance generally to those projects:

(a) with significant private financing or matching funds through private or other public entities;

(b) likely to produce a high return on public investment;

(c) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;

(d) deemed likely to increase the community's economic and social viability;

(e) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;

(f) located in distressed communities;

(g) whose application is submitted by multiple entities, both public and private; or

(h) such other requirements as determined by the Corporation as are necessary to implement the provisions of the Program.

Section 4246.6 Application and project process

(a) The Corporation may, at its discretion and within available appropriations, issue requests for proposals and may at other times accept direct applications for program assistance.

(b) Promptly after receipt of the application, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Rule. Applications shall be processed in full compliance with the applicable provisions of Section 16-p of the Act.

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the act and will take such further action as may be required by the act. After approval by the Corporation and a public hearing, if required, the project may then be reviewed by the state public authorities control board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies, and the investment opportunity fund capital approval board ("CAB") created pursuant to Section 16-p(6) of the Act. Following directors' approval, PACB approval, if required, and approval by CAB, the legal documents will be drafted by the Corporation. Until such time as the CAB is formally constituted, approval by the PACB shall be considered approval by CAB upon consent of the Director of Budget. Notwithstanding the foregoing, no project shall be funded if sufficient Program monies are not received by the Corporation for such project.

(d) No full-time employee of the state or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the state shall be eligible to receive assistance under this initiative, nor shall any business, the majority ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

Section 4246.7 Confidentiality

(a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Corporation, which is submitted by such person or entity to the Corporation in connection with an application for assistance, shall be confidential and exempt from public disclosures.

Section 4246.8 Expenses

(a) An application fee of \$250 must be paid to the Corporation for projects that involve acquisition, construction, reconstruction, rehabilitation alteration or improvement of real property, the financing of machinery and equipment and working capital loans and loan guarantees before final review of an application can be completed. This fee will be refunded in the event the application is withdrawn or rejected.

(b) The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to one percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project does not close. The Corporation will assess a fee of up to one percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

(c) The applicant will be obligated to pay for expenses incurred by the Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit

searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.

Section 4246.7 Affirmative action and non-discrimination

Program applications shall be reviewed by the Corporation's affirmative action department, which shall, in consultation with the applicant and/or proposed recipient of the program assistance and any other relevant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the public authorities law, article fifteen-A of the executive law and section 6254(11) of the unconsolidated laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 1, 2009.

Text of rule and any required statements and analyses may be obtained from:

Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation, as added by Chapter 174 of the Laws of 1968 (the Act) provides, in part, that the New York State Urban Development Corporation (Corporation) shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

Section 12 of the Act provides that the Corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.

Section 16-p of Part QQ of Chapter 57 of the Laws of 2008 provides for the creation of investment opportunity fund. The corporation is authorized, within available appropriations, to provide financial assistance pursuant to this section.

2. Legislative Objectives: Section 16-p Act sets forth the Legislative intent of the Investment Opportunity Fund to provide financial assistance to eligible entities by supporting projects in New York State that focus on: projects causing the creation or retention of jobs, increasing investment or business activity within a municipality or region, or academic research and development efforts that promote the development of life sciences and high technology initiatives. It further states that a project sponsor shall be the state, any political subdivision of the state, a municipality, including departments, agencies, public benefit corporations, commissions, not-for-profit corporations, businesses or organizations, special districts, assessment districts, tax increment financing units or districts, business improvement districts, regional and community development organizations, or any combination of these entities.

The selection of projects shall be governed by rules and regulations to be created with public notice of the development objectives, the features of which shall be: minimum standards with respect to economic impact; consistency with existing local or regional comprehensive plans including adoption of local legislative resolutions; the proposed financing is appropriate for the specific project; effective and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources; and projects which develop or enhance infrastructure or other facilities in a manner that will attract, create, and sustain long-term investment and employment opportunities; assistance to projects that will provide economic benefits to one or more regions of the state or, for projects that are not anticipated to have a regionally significant impact, that will provide economic benefits to localities that suffer from disproportionate levels of poverty, unemployment, population or job loss or other indicators of economic distress. Each project shall be considered and reviewed by a five member investment opportunity fund capital approval board.

The Legislative intent of Section 16-p of the Act is to assist in the retention and creation of jobs and investment in the state through business development in a time of need.

The adoption of 21 NYCRR Part 4246 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Investment Opportunity Fund.

3. Needs and Benefits: Chapter 53 of the Laws of 2008, page 882, lines 3 thru 21 allocates \$50 million in capital funds to the Investment Opportunity Fund (Fund) to support investment in projects that would promote local and regional economic development and revitalization. Projects in high growth/high tech to be financed with Fund assistance are expected to provide significant growth opportunities. Fund criteria for project selection will give preference to projects in localities with

disproportionate levels of poverty, unemployment, or population and job loss.

The Fund allocation of \$50 million in new capital spending could support approximately 542 construction-related jobs, generating an additional \$28 million in personal income in distressed communities. The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity. Implan® is used by a number of state and federal agencies to include the U.S. Forest Service and the U.S. Census Bureau. Over the past fifteen years, Implan® has grown to become the industry standard for determining the total economic outputs of an industry or specific project.

New York State may collect nearly \$1.8 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

This level of capital spending (assumed to be primarily on site development, infrastructure, building rehabilitation and new construction) will provide the basis for further investment in a broad range of economic activity.

4. Costs: The Fund as identified in Chapter 53 of the Laws of 2008, page 882, lines 3 thru 21 will be funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6% of the total amount borrowed.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

5. Paperwork/Reporting: There are no additional reporting or paperwork requirements as a result of this rule on regulated parties. Standard applications used for most other Corporation assistance will be employed keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients. The rule provides that the Corporation may, however, require applicants to submit materials prior to submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

6. Local Government Mandates: The Fund imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district. However, if a private entity wishes to participate in this program, the projects must be sponsored by the state or any of its political subdivisions or municipalities, including not-for-profit corporations formed on behalf of a sponsor. Eligible projects require consistency with existing local government or regional comprehensive plans and must include adoption of a resolution by the legislative body to this effect.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance (loans, loan guarantees, and grants), eligible applicants (municipalities, industrial development agencies, local development companies, public authorities and public benefit corporations, private developers or businesses, and other entities), and eligible uses (planning, sewer and water systems, energy facilities, transportation facilities and systems, pipelines, land acquisition, demolition and site clearing, etc.) Preference will be given to projects with significant financing, with a likely high return on public investment, with significant local support, in distressed areas, among other criteria.

The Fund criteria were developed through an extensive outreach process conducted by Upstate ESDC in Fall 2007. These seven, half-day regional blueprint sessions (1 in each Upstate economic development region designated as Western New York, Finger Lakes, Central New York, Southern Tier, North Country, Mohawk Valley, and Capital Region) gathered input from regional economic leaders across five categories: infrastructure, innovation, intellectual capital, international, and investment. Additional input for Downstate and the State overall was gathered in a report issued for the Corporation by A. T. Kearney, Delivering on the Promise of New York State, issued in mid-2007.

The following are two examples of alternatives that were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local

governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4246.4, Part (a) provides that “the project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources.”

2. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4246.6 “Application and project process” from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

Regulatory Flexibility Analysis

1. Effects of Rule: “Small business” is defined by the State Economic Development law to be an enterprise with 100 or fewer employees. The vast majority - roughly 98 percent - of New York State businesses are small businesses.

We applied this criterion to ESD’s models of the NYS economy to determine how many small businesses could benefit from the Investment Opportunity Fund. We limited the analysis to industries that are likely to have eligible businesses: manufacturing, transportation and warehousing, information, finance and insurance, professional and technical services, management of companies and enterprises, and arts, entertainment and recreation.

Across these 7 broad sectors our analysis indicates that approximately 155,000 small businesses will be eligible for funding under the Investment Opportunity Fund.

In addition approximately 4,000 municipalities and local economic development-oriented organizations will be eligible for funding.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: To the extent that there are existing capabilities at the local level to administer the projects funded through this program, there should be relatively little, if any additional administration costs.

5. Economic and Technological Feasibility: Compliance with these regulations should be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact: This rule was designed to facilitate the provision of loans, loan guarantees, equity investments, grants and other economic development financing to public and private sector project sponsors. As such, positive impacts are anticipated. Local governments, when acting as lead project sponsor, must submit a resolution adopted by their legislative body indicating the project is consistent with local or regional plans, and certify other local project characteristics such as economic development leverage and infrastructure enhancement.

7. Small Business and Local Government Participation: The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also notified.

ESDC received 10 responses to its outreach to interested parties on the proposed regulations. Much of the responses received consisted of general supporting statements for the programs or critique of the enabling legislation.

Listed are several comments received on the proposed rules related to the Investment Opportunity Fund and our response to the comment.

1. Regulations should clearly define “distressed communities” using specific, objective criteria.

Section 4246.2, Part (b) defines “Distressed Communities”

2. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4246.6 “Application and project process” from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

3. Regulations should allow for municipal comments when the applicant is not a municipality.

Section 4246.5, Part (c) gives preference to projects with the “existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties.”

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Much of New York State is rural. According to the Executive Law § 481 (7), some 44 counties, all located in the ESD Upstate Region, are rural, defined as having a population less than 200,000. Portions of an additional 9 counties have certain townships with population densities of 150 persons or less per square mile. Only 10 counties - all Downstate - have no rural character, according to Executive Law.

We applied these criteria to ESD’s models of the NYS economy to determine how many rural businesses could benefit from the Investment Opportunity Fund. We limited the analysis to industries that are likely to have eligible businesses: manufacturing, transportation and warehousing, information, finance and insurance, professional and technical services, management of companies and enterprises, and arts, entertainment and recreation.

Across these 7 broad sectors our analysis indicates that approximately 20,000 rural businesses will be eligible for funding under the Investment Opportunity Fund. In addition approximately 4,000 municipalities and local economic development-oriented organizations will be eligible for funding.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements; no affirmative acts will be needed to comply; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development.

4. Minimizing Adverse Impact: The purpose of the Investment Opportunity Fund program is to maximize the economic benefit of new capital investment in areas in need of economic revitalization. The program requires that such investments coordinate with local area comprehensive development plans in order to maximize its effectiveness and minimize any negative impacts. It also requires that cost-benefit analyses be completed to demonstrate the effectiveness of projects undertaken and contribute to the assessment of overall impact.

5. Rural Area Participation: Under this rule all communities and businesses in rural areas of the state are eligible to apply for financial assistance. In addition, since many rural areas are also economically distressed places, this rule emphasizes projects in those areas as one of the criteria for selection. The extent of local government support and involvement for loan, loan guarantee, and grant project applicants are two of the criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. To gauge rural and non-rural reaction to this rule the National Federation of Independent Business, the New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups, and 10 local government associations were also notified. Examples of questions that were received and the Corporation’s answers to these questions include the following:

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4246.4, Part (a) provides that “the project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and appropriate use of natural resources.”

2. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4246.6 “Application and project process” from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of the state through strategic investments that facilitate the creation and retention of jobs by increasing private investment and business activity in the state.

There will be no adverse impact on job opportunities in the state.