

# RULE MAKING ACTIVITIES

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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.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-10-09-00002-A  
**Filing No.** 934  
**Filing Date:** 2009-08-10  
**Effective Date:** 2009-08-26

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 of final rule:** Amend 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,” by deleting therefrom the position of Special Deputy Investigator General and by adding thereto the position of Special Deputy Inspector General.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Appendix 1.

**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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and 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-10-09-00003-A  
**Filing No.** 937  
**Filing Date:** 2009-08-10  
**Effective Date:** 2009-08-26

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 March 11, 2009 issue of the Register, I.D. No. CVS-10-09-00003-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-10-09-00004-A  
**Filing No.** 936  
**Filing Date:** 2009-08-10  
**Effective Date:** 2009-08-26

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 March 11, 2009 issue of the Register, I.D. No. CVS-10-09-00004-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-10-09-00005-A**Filing No.** 935**Filing Date:** 2009-08-10**Effective Date:** 2009-08-26

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 March 11, 2009 issue of the Register, I.D. No. CVS-10-09-00005-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-10-09-00006-A**Filing No.** 938**Filing Date:** 2009-08-10**Effective Date:** 2009-08-26

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 of final rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "State University Colleges," by adding thereto the position of oSecretary 2 (1) at SUC at Cortland.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Appendix 2.

**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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and 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.

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

**Jurisdictional Classification****I.D. No.** CVS-34-09-00001-P

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

**Proposed Action:** Amendment of 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 of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "State Insurance Fund," by increasing the number of positions of Special Assistant from 2 to 3.

**Text of proposed 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification****I.D. No.** CVS-34-09-00002-P

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

**Proposed Action:** Amendment of 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 of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Correctional Services, by adding thereto the position of Director of Affirmative Action Programs.

**Text of proposed 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-09-00003-P

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

**Proposed Action:** Amendment of 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 of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Correctional Services, by adding thereto the position of Assistant Counsel and by increasing the number of positions of Associate Counsel from 4 to 5.

**Text of proposed 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-09-00004-P

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

**Proposed Action:** Amendment of Appendix 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 of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Homeland Security," by adding thereto the position of Homeland Security Assistant Director.

**Text of proposed 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-09-00005-P

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

**Proposed Action:** Amendment of 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 of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Human Rights," by adding thereto the position of Principal Hearing Officer (Division of Human Rights) (1) and by increasing the number of positions of Supervising Hearing Officer (Division of Human Rights) from 2 to 3.

**Text of proposed 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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification****I.D. No.** CVS-34-09-00006-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To delete positions from the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, under the heading "Miscellaneous," by deleting therefrom the subheading "Temporary State Commission of Investigation" and the positions of Assistant Counsel (6), Chief Investigations, Confidential Clerk (2), Confidential Legal Assistant, Counsel, Investigative Auditor, Investigator (12), Secretary (2), and Special Assistant.

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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification****I.D. No.** CVS-34-09-00007-P

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

**Proposed Action:** Amendment of Appendix 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 non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by deleting therefrom the positions of Revenue Crimes Specialist 2 (5) and Revenue Crimes Specialist 3 (1) and by adding thereto the positions of Revenue Crimes Specialist 2, Revenue Crimes Specialist 3 and Revenue Crimes Specialist 4.

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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification****I.D. No.** CVS-34-09-00008-P

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

**Proposed Action:** Amendment of Appendix 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 non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by deleting therefrom the positions of Support Services Assistant (10) and by adding thereto the positions of Support Services Assistant.

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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-09-00009-P

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

**Proposed Action:** Amendment of Appendix 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 non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by deleting therefrom the positions of Research and Collections Technician (16) and by adding thereto the positions of Research and Collections Technician.

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

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

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

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**Education Department**

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

**Museum Collections Management Policies**

**I.D. No.** EDU-01-09-00004-RP

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

**Proposed Action:** Amendment of section 3.27 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided) and 217(not subdivided)

**Subject:** Museum collections management policies.

**Purpose:** To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

**Text of revised rule:** 1. The amendment to paragraph (7) of subdivision (a) and paragraphs (6) and (7) of subdivision (c) of section 3.27 of the

Rules of the Board of Regents, which was adopted by emergency action at the July 27-28, 2009 meeting of the Board of Regents, is repealed, effective November 12, 2009.

2. Subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective November 12, 2009, as follows:

(a) Definitions. Whenever used in this section, the following terms shall have the meanings indicated:

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the institution by vote conducted on or before December 19, 2008, or on or after January 15, 2010;*

(8) . . .

(9) . . .

(10) *Collection management policy means a statement approved by the institution's governing body and administered by its board, officers, employees, and consultants which includes all policies and practices related to the institution's collections, which is modeled on, derived from and consistent with the institution's corporate purposes and mission statement.*

[(10)] (11) Deaccession means: (i) removing an object from an institution's collection, or (ii) the act of recording/processing a removal from an institution's collection.

[(11)] (12) Diversity means broadly inclusive participation in every aspect of governance, staff, operations and programs to represent the community and constituency served in terms of race, ethnicity, gender, economic background and geography.

[(12)] (13) Education/public programs and exhibitions means the full range of mission-related educational activities in which the institution engages, to promote understanding and appreciation of a subject, and to support life-long learning.

[(13)] (14) Hours of operation means publicly stated and promoted regular hours during which the public has reasonably convenient access to the institution's education/public programs and exhibitions.

[(14)] (15) Interpretation means the ways that the institution uses its collections, exhibits, and research to communicate meaning to the public.

(16) *Intrinsic value means a collection item's value attributed to its history, associations, ownership, provenance, artistic or esthetic qualities which produces value beyond or greater than its physical form or characteristics.*

(17) *Item means an individual element of a collection.*

[(15)] (18) Mission statement means a statement modeled on and derived from the institution's corporate purposes, as set forth in its charter or certificate of incorporation, that identifies the benefits derived from the institution's activities.

[(16)] (19) Operating budget means the amount of annual income or expenditures of the institution, excluding funds raised for capital improvements, funds received or designated for addition to endowments and funds raised or obtained from sale of collections.

[(17)] (20) Professional staff means at least one paid employee who commands an appropriate body of special knowledge in the area for which he or she is employed, and the ability to reach museological decisions consonant with the experience of his/her peers and apply accepted standards of practice, and who also has access to and acquaintance with the expertise, best practices, literature and scholarship of the field; provided, however, that a museum with an operating budget of \$100,000 or less shall be appropriately and professionally staffed by paid and/or volunteer personnel who possess sufficient training and knowledge to meet the requirements of its mission and the needs of its collections.

[(18)] (21) Public trust means the responsibility of institutions to carry out activities and hold their assets in trust for the public benefit.

[(19)] (22) Research means a studious inquiry conducted in support of an institution's stated purposes in order to bring to light new facts or to confirm or revise accepted conclusions.

3. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective November 12, 2009, as follows:

(6) Collections care and management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands

and/or other tangible and intrinsically valuable resources that are appropriate to its [mission] *corporate purposes, mission statement and collection management policy*;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes, [and] mission statement *and collection management policy*;

(iii) ensure that deaccessioning of items or materials in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision;

[(iii)] (iv) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision*, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph (vii) of this paragraph;

[(iv)] (v) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

[(v)] (vi) ensure that collections shall not be capitalized; and

[(vi)] (vii) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, *for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section*, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of Collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

(i) *the item or material is inconsistent with the mission of the institution as set forth in its corporate purposes, mission statement and collection management policy;*

(ii) *the item or material has failed to retain its identity;*

(iii) *the item or material has been lost or stolen and has not been recovered;*

(iv) *the item or material is redundant or duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes;*

(v) *the institution is unable to preserve or conserve the item or material in a responsible manner;*

(vi) *the item is deaccessioned to accomplish refinement of collections as required by and/or stated in its collection management policy;*

(vii) *the item has been established as being inauthentic;*

(viii) *the institution is repatriating the item or returning the item to its rightful owner;*

(ix) *the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;*

(x) *the item presents a hazard to people or other collection items.*

[(7)] (8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

**Revised rule compared with proposed rule:** Substantial revisions were made in section 3.27(a), (c)(6) and (7).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Jeffrey W. Cannell, Deputy Comm. for Cultural Education, State Education Department, Cultural Education Center, Room 10C34, Albany, NY 12230, (518) 474-5930, email: ppaolucc@mail.nysed.gov

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

### Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on January 7, 2009, the proposed rule has been substantially revised as follows:

Section 3.27(a)(7) has been revised to provide that historic structures owned by an institution shall be considered as part of a collection only when so designated by the board of trustees of the institution by vote conducted on or before December 19, 2008 "or on or after January 15, 2010." This change provides time for the Department to study the question as to whether the prohibition against allowing an institution to designate a historic structure as part of its collection should continue or lapse. During the Fall of 2009 the Department intends to discuss this question with legislators, institutions and constituents, and draft a report for Regents review and approval. The Department expects the Regents to make a decision on this question and adopt appropriate regulatory language no later than January 15, 2010.

New paragraphs (10), (16) and (17) have been added to subdivision (a) of section 3.27 to provide definitions, respectively, of "Collection Management Policy", "Intrinsic Value", and "Item." The terms "Collection Management Policy", "Intrinsic Value", and "Item," are found in the rule but are not defined; therefore the amendment adds definitions to make clear the meaning of these terms.

Section 3.27(c)(6)(i) and (ii) have been revised to require that the items in the collections of museums and historical societies be appropriate to its corporate purposes, mission statement and collection management policy, and that museums and historical societies with collections ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes, mission statement and collection management policy. This change requires that institutions refer to their corporate purposes and collection management policies, as well as to their mission statements, to provide guidance on decisions about accessioning or deaccessioning of collections, and thus ensures that institutions act consistently with respect thereto.

Section 3.27(c)(7) has been revised to clarify and add additional criteria that a museum or historical society with collections must meet in order to deaccession items or materials in their collections. This change adds ten criteria under which an institution may deaccession items or materials in its collection. These criteria are recognized by national and international museum associations and have been provided by the Department as guidance since 1998. Adding the specific criteria to the regulation provides clarity and allows institutions to clearly understand the reasons under which they may deaccession collections.

The aforementioned changes require that the Needs and Benefits section of the previously published Regulatory Impact Statement be revised as follows:

### 3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(i) the item or material is inconsistent with the mission of the institution as set forth in its corporate purposes, mission statement and collection management policy;

(ii) the item or material has failed to retain its identity;

(iii) the item or material has been lost or stolen and has not been recovered;

(iv) the item or material is redundant or duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes;

(v) the institution is unable to preserve or conserve the item or material in a responsible manner;

(vi) the item is deaccessioned to accomplish refinement of collections as required by and/or stated in its collection management policy;

(vii) the item has been established as being inauthentic;

(viii) the institution is repatriating the item or returning the item to its rightful owner;

(ix) the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;

(x) the item presents a hazard to people or other collection items.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but allows such designations made by vote of a board of trustees prior to December 19, 2008 or on or after January 15, 2010. For designations made prior to or on or after such respective dates, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection. During the Fall of 2009, the Department intends to study the question as to whether the prohibition against allowing an institution to designate a historic structure as part of its collection should continue or laps, including discussions with legislators, institutions and constituents, and draft a report for Regents review and approval. The Department expects the Regents to make a decision on this question and adopt appropriate regulatory language no later than January 15, 2010.

#### **Revised Regulatory Flexibility Analysis**

The proposed revised rule applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the proposed revised rule that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

#### **Revised Rural Area Flexibility Analysis**

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on January 7, 2009, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The aforementioned changes require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services section of the previously published Rural Area Flexibility Analysis be revised as follows:

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

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (i) the item or material is inconsistent with the mission of the institution as set forth in its corporate purposes, mission statement and collection management policy;
- (ii) the item or material has failed to retain its identity;
- (iii) the item or material has been lost or stolen and has not been recovered;
- (iv) the item or material is redundant or duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes;
- (v) the institution is unable to preserve or conserve the item or material in a responsible manner;
- (vi) the item is deaccessioned to accomplish refinement of collections as required by and/or stated in its collection management policy;
- (vii) the item has been established as being inauthentic;
- (viii) the institution is repatriating the item or returning the item to its rightful owner;
- (ix) the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;
- (x) the item presents a hazard to people or other collection items.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but allows such designations made by vote of a board of trustees prior to December 19, 2008 or on or after January 15, 2010. For designations made prior to or on or after such respective dates, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection. During the Fall of 2009, the Department intends to study the question as to whether the prohibition against allowing an institution to designate a historic structure as part of its collection should continue or laps, includ-

ing discussions with legislators, institutions and constituents, and draft a report for Regents review and approval. The Department expects the Regents to make a decision on this question and adopt appropriate regulatory language no later than January 15, 2010.

The proposed amendment does not impose any additional professional services requirements.

#### **Revised Job Impact Statement**

The proposed revised rule applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed revised rule that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### **Assessment of Public Comment**

The agency received no public comment.

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## Insurance Department

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### EMERGENCY RULE MAKING

#### **Minimum Standards for the Form, Content and Sale of Medicare Supplement Insurance**

**I.D. No.** INS-34-09-00011-E

**Filing No.** 933

**Filing Date:** 2009-08-10

**Effective Date:** 2009-08-10

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

**Action taken:** Amendment of Parts 215 (Regulation 34), 52 (Regulation 62), 360 (Regulation 145) and 361 (Regulation 146); and addition of Part 58 (Regulation 193) to Title 11 NYCRR.

**Statutory authority:** Federal Social Security Act (42 U.S.C., section 1395ss); Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232 and 4235, and art. 43

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

**Specific reasons underlying the finding of necessity, above, are as follows:** The federal Social Security Act (42 U.S.C. § 1395ss) provides for the certification of Medicare supplement health insurance regulatory programs by the U.S. Secretary of Health and Human Services to ensure that state regulatory programs provide for the application and enforcement of standards with respect to Medicare supplement insurance equal to or more stringent than the standards set forth in the National Association of Insurance Commissioners (NAIC) Model Regulation. If the Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services.

New York's standards for Medicare supplement insurance are more stringent than the minimums set forth in the NAIC Model Regulation. Since 1993, New York has offered additional consumer protections including, for example, continuous open enrollment and community rating. New York also requires insurers to offer standardized Medicare supplement insurance Plan B in addition to Plan A, which is required by federal law.

The federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), however, included a number of changes to the standardized Medicare supplement insurance plans. The MIPPA charged the NAIC – specifically, the Senior Issues Task Force – with the task of updating the standards for Medicare supplement insurance. On September 24, 2008, the NAIC adopted a revised Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

In addition, the federal Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits insurers from discriminating on the basis of genetic information with respect to the issuance, pricing or medical underwriting of medical policies or certificates. GINA prohibits insurers from requesting that an individual or a family member of an individual undergo a genetic test. For purposes of GINA, a "genetic test" is defined as an analysis of human DNA, RNA, chromosomes, proteins or metabo-

lites that detect genotypes, mutations, or chromosomal changes. "Genetic information" is defined to mean, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. This rulemaking includes provisions to ensure that New York law complies with GINA. Pursuant to federal law, the prohibitions of GINA will be in effect for policies and certificates issued or renewed with an effective date for coverage on or after May 21, 2009.

The NAIC Model Regulation, revised to include the requirements of MIPPA and GINA, was adopted on September 24, 2008. MIPAA requires that each State shall have one year from the date the NAIC adopts the revised Model Regulation to adopt the provisions of GINA and MIPPA. Consequently, New York must take action by September 24, 2009 to ensure that it can continue to regulate Medicare supplement insurance.

The normal regulatory approval process will not allow for final adoption of this regulation prior to September 24, 2009. For this reason, and for the reasons stated above, the immediate adoption of this regulation is necessary for the preservation of the general welfare. The regulation must be kept in effect on an emergency basis until the regulation is formally adopted.

**Subject:** Minimum standards for the form, content and sale of Medicare supplement insurance.

**Purpose:** To conform the regulations with the requirements of federal law.

**Substance of emergency rule:** The federal Social Security Act (42 U.S.C. § 1395ss) provides for the certification of Medicare supplement health insurance regulatory programs by the U.S. Secretary of Health and Human Services to ensure that a state's regulatory program provides for the application and enforcement of standards with respect to Medicare supplement insurance equal to or more stringent than the standards set forth in the National Association of Insurance Commissioners (NAIC) Model Standards. If the Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services.

In 1992, the federal Omnibus Budget Reconciliation Act of 1990 (OBRA) became effective, establishing uniform requirements to govern Medicare supplement insurance. That federal law charged the NAIC with developing a model for the regulation and standardization of Medicare supplement insurance. The NAIC model (the "Model Regulation") was incorporated by reference into the federal statutory requirements. In 1992, New York amended provisions pertaining to the rules for the regulation of Medicare supplement insurance in 11 NYCRR 52 (Reg. 62) to ensure compliance with federal standards.

The federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), however, included a number of changes to the standardized Medicare supplement insurance plans. The MIPPA charged the NAIC – specifically, the Senior Issues Task Force – with the task of updating the standards for Medicare supplement insurance. On September 24, 2008, the NAIC adopted a revised Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

In addition, the federal Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits insurers from discriminating on the basis of genetic information with respect to the issuance, pricing or medical underwriting of medical policies or certificates. GINA prohibits insurers from requesting that an individual or a family member of an individual undergo a genetic test. For purposes of GINA, a "genetic test" is defined as an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detect genotypes, mutations, or chromosomal changes. "Genetic information" is defined to mean, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual.

The Superintendent of Insurance is empowered by the New York Insurance Law to promulgate regulations implementing the standards required by federal law, as well as additional protections and benefits as deemed appropriate.

In addition to requirements established by MIPPA and GINA, for purposes of conciseness and clarity, this rulemaking relocates, without substantive change, existing provisions in New York regulations pertaining to the rules for the regulation of Medicare supplement insurance from 11 NYCRR 52 (Reg. 62), which is a broad regulation addressing all types of accident and health insurance, to new Regulation 193 (11 NYCRR Part 58) addressing only Medicare supplement insurance.

Regulation 193 (11 NYCRR Part 58) consists of six sections addressing the regulation of Medicare supplement insurance.

Section 58.1 is relocated from subdivisions (a)-(c) and (f)-(o) of 11 NYCRR 52.22 (Reg. 62) with the addition of new subdivision (j) included to add the specific protections required by GINA, as specified in the revised NAIC Model Regulation.

Section 58.2 is relocated from subdivisions (d) and (e) of 11 NYCRR 52.22 (Reg. 62) and contains the standards for Medicare supplement insurance and the make-up of benefit plans issued with an effective date for coverage prior to June 1, 2010, which is the date applicable for changes made pursuant to MIPPA.

Section 58.3 is disclosure language relocated from 11 NYCRR 52.54 and 52.63 (Reg. 62) for Medicare supplement insurance plans issued with an effective date for coverage prior to June 1, 2010.

Section 58.4 is a new section conforming with Sections 8.1 and 9.1 of the NAIC Model Regulation to comply with MIPPA. The section describes each benefit of Medicare supplement insurance, and the combinations of the different benefits that comprise each benefit plan (A-D, F, G, K-N) set forth in the NAIC Model Regulation, for benefit plans issued with an effective date for coverage on or after June 1, 2010. The revised Medicare supplement insurance standards, as implemented by the revised NAIC Model Regulation, add a hospice benefit to the core benefit package for all Medicare supplement insurance plans.

Section 58.5 is a new section conforming to Section 17 of the NAIC Model Regulation, and sets forth new disclosure language for the plans issued with an effective date for coverage on or after June 1, 2010.

Section 58.6 is relocated from 11 NYCRR 52.14 (Reg. 62) and contains the standards for Medicare select insurance.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 7, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5585, email: amais@ins.state.ny.us

#### **Consolidated Regulatory Impact Statement**

1. Statutory authority: The Superintendent's authority for the promulgation of 11 NYCRR 58 (Regulation No. 193), the Forty-second Amendment to Part 52 of Title 11 NYCRR (Regulation No. 62), the Third Amendment to Part 215 of Title 11 (Regulation No. 34), the Sixth Amendment to Part 361 of Title 11 (Regulation No. 146), and for the Seventh Amendment to Part 360 (Regulation No. 145) derives from the federal Social Security Act (42 U.S.C. section 1395ss) and Insurance Law Sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, and 4235, and Article 43.

The federal Social Security Act (42 U.S.C. § 1395ss) provides for the certification of Medicare supplement health insurance regulatory programs by the U.S. Secretary of Health and Human Services to ensure that a state's regulatory program provides for the application and enforcement of standards with respect to Medicare supplement insurance equal to or more stringent than the standards set forth in the National Association of Insurance Commissioners (NAIC) Model Regulation. If the Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, then the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Section 3201 authorizes the Superintendent to approve accident and health insurance policies for delivery or issuance for delivery in this state.

Section 3216 sets forth the standard provisions in individual accident and health insurance policies.

Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance.

Section 3218 authorizes the Superintendent to promulgate rules and regulations to establish minimum standards for the form, content and sale of Medicare supplement insurance.

Section 3221 sets forth the standard provisions in group and blanket accident and health insurance policies.

Section 3231 sets forth the requirement that individual and small group health insurance policies and Medicare supplement insurance policies be issued on a community rated and open enrollment basis.

Section 3232 establishes requirements for pre-existing condition provisions in certain health insurance policies.

Section 4235 establishes the types of permissible groups to which a group accident and health policy may be issued.

Article 43 of the Insurance Law sets forth requirements for non-profit

medical and dental indemnity corporations and non-profit health or hospital corporations.

2. Legislative objectives: The statutory sections cited above establish a framework for the form, content and sale of Medicare supplement insurance. States must have a regulatory program that provides a minimum level of coverage as established by 42 U.S.C. § 1395ss. If the U.S. Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, then the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services. The Superintendent is empowered by state law to promulgate regulations implementing the standards required by federal law, and to provide additional protections and benefits as appropriate.

3. Needs and benefits: In 1992, the federal Omnibus Budget Reconciliation Act of 1990 (OBRA) became effective, establishing uniform requirements to govern Medicare supplement insurance. That federal law charged the NAIC with developing a model for the regulation and standardization of Medicare supplement insurance. The NAIC model (the "Model Regulation") was incorporated by reference into the federal statutory requirements. In 1992, New York amended provisions pertaining to the rules for the regulation of Medicare supplement insurance in 11 NYCRR 52 (Reg. 62) to ensure compliance with federal standards.

The federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), however, included a number of changes to the standardized Medicare supplement insurance plans. The MIPPA charged the NAIC – specifically, the Senior Issues Task Force – with the task of updating the standards for Medicare supplement insurance. On September 24, 2008, the NAIC adopted a revised Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

In addition, the federal Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits insurers from discriminating on the basis of genetic information with respect to the issuance, pricing or medical underwriting of medical policies or certificates. GINA prohibits insurers from requesting that an individual or a family member of an individual undergo a genetic test. For purposes of GINA, a "genetic test" is defined as an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detect genotypes, mutations, or chromosomal changes. "Genetic information" is defined to mean, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. This rulemaking includes provisions to ensure that New York Law complies with GINA. Pursuant to federal law, the prohibitions of GINA will be in effect for policies and certificates issued or renewed with an effective date for coverage on or after May 21, 2009.

Federal law requires that states amend their regulatory programs to implement all new federal statutory requirements and applicable changes to the NAIC Model standards or lose their ability to regulate Medicare supplement insurance. The changes required by GINA and MIPPA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program.

In addition to effectuating requirements established by MIPPA and GINA, for purposes of conciseness and clarity, this rulemaking relocates, without substantive change, existing provisions in New York regulations pertaining to the rules for the regulation of Medicare supplement insurance from 11 NYCRR 52 (Reg. 62), which is a broad regulation addressing all types of accident and health insurance, to new Regulation 193 (11 NYCRR Part 58) addressing only Medicare supplement insurance. The rulemaking also makes conforming amendments to 11 NYCRR 52 (Regulation No. 62), 11 NYCRR 215 (Regulation No. 34), 11 NYCRR 361 (Regulation No. 146), and 11 NYCRR 360 (Regulation No. 145).

In addition, the federal Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits insurers from discriminating on the basis of genetic information with respect to the issuance, pricing or medical underwriting of medical policies or certificates. Insurers are also prohibited from requesting that an individual or a family member of an individual undergo a genetic test. For purposes of GINA, a genetic test is defined as an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detect genotypes, mutations, or chromosomal changes. Genetic information is defined to mean, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual.

As a result of the introduction of GINA, the Medicare supplement insurance standards also required revision to the regulation to add the protections required by GINA. Pursuant to federal law, the prohibitions of GINA will be in effect for policies and certificates issued or renewed with an effective date for coverage on or after May 21, 2009.

4. Costs: Insurers issuing Medicare supplement insurance in New York have been aware of the new requirements since the 2008 federal incorporation of the revised NAIC Model Regulation. The changes required by GINA and MIPPA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program.

The changes to the benefit structure, and the addition and elimination of plans, will necessitate changes to the requirements for Medicare supplement insurance applications and disclosure notices. Any additional cost of compliance with MIPPA for insurers and Article 43 corporations should be minimal. The insurers and Article 43 corporations in the Medicare supplement insurance market are staffed with existing salaried personnel tasked with compliance.

GINA prohibits an issuer of a Medicare supplement insurance policy from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. New York already requires continuous open enrollment and community rating for all Medicare supplement insurance. Insurers are currently prohibited from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. Thus, there should be no cost associated with compliance with the GINA provisions.

Costs to the Insurance Department also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. These rules impose no compliance costs on state or local governments or health care providers.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The regulations impose no new reporting requirements. However, insurers and Article 43 corporations will need to revise policy form filings to comply with the regulation.

7. Duplication: The regulations will not duplicate any existing state or federal rule for insurers that write accident and health insurance, but rather implement the federal requirements.

8. Alternatives: There are no viable alternatives. In order for the State to regulate Medicare supplement insurance, federal law requires that it adopt, at a minimum, the standards set forth in the NAIC Model Regulation. The NAIC Model Regulation was revised in 2008 to include the requirements of two additional federal Acts, MIPPA and GINA. Failure to adopt, at a minimum, the NAIC Model Regulation standards would result in the regulation of Medicare supplement insurance in New York State reverting to the federal U.S. Secretary of Health and Human Services. The changes required by GINA and MIPPA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program.

9. Federal standards: The existing New York standards exceed the federal minimum standards set forth in the NAIC Model Regulation, in order to offer longstanding additional protections, not imposed by federal law, for residents of the State. The existing provisions of Regulation 62 (11 NYCRR 52) require insurers (1) to utilize community rating, (2) to offer continuous open enrollment to individuals enrolled in Medicare by reason of age or disability, and (3) mandates that insurers selling Medicare supplement insurance must offer benefit plan B. Federal law specifically permits the state to establish more stringent standards for insurers offering Medicare supplement insurance, and since 1993, New York residents have benefited from the security of these extra protections. With this rulemaking, New York is substantially adopting the federal changes required by MIPPA and GINA while maintaining all of the existing protections currently afforded New York residents.

10. Compliance schedule: The provisions of the regulations will take effect upon filing with the Department of State. Pursuant to federal law, the prohibitions of GINA will be in effect for policies and certificates issued or renewed with an effective date for coverage on or after May 21, 2009. MIPPA applies to policies and certificates issued with an effective date of coverage on or after June 1, 2010.

#### **Regulatory Flexibility Analysis**

##### **1. Small Businesses:**

The Insurance Department believes that these rules will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this belief is that these rules are directed at all insurers that write accident and health insurance and Article 43 corporations, none of which falls within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act. Indeed, the Insurance Department has reviewed filed Reports on Examination and Annual Statements of these entities, and believes that there are none that are both independently owned and that employ fewer than 100 persons. Accordingly, there is no need to prepare any special guidance materials for small businesses with regard to this rule.

## 2. Local Governments:

The regulations do not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers that write accident and health insurance and Article 43 corporations, none of which are local governments.

**Rural Area Flexibility Analysis**

The Insurance Department finds that these rules do not impose any significant burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas.

The entities covered by these regulations – all insurers that write accident and health insurance and Article 43 corporations – do business in every county in this state, including rural areas as defined under SAPA § 102(10). Insurers issuing Medicare supplement insurance in New York have been aware of the new requirements since the 2008 federal incorporation of the revised NAIC Model Regulation. The changes required by the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and the Genetic Information Nondiscrimination Act of 2008 (GINA), as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program.

The changes to the benefit structure, and the addition and elimination of plans, will necessitate changes to the requirements for Medicare supplement insurance applications and disclosure notices. Any additional cost of compliance with MIPPA for insurers and Article 43 corporations should be minimal. The insurers and Article 43 corporations in the Medicare supplement insurance market are staffed with existing salaried personnel tasked with compliance.

GINA prohibits an issuer of a Medicare supplement insurance policy from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. New York already requires continuous open enrollment and community rating for all Medicare supplement insurance. Insurers are currently prohibited from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. Thus, there should be no cost associated with compliance with the GINA provisions.

**Job Impact Statement**

Adoption of the five consolidated regulations should not adversely impact job or employment opportunities in New York. The consolidated regulations will involve revision of some mandatory practices that insurers must follow in issuing Medicare supplement insurance policies to bring company practices into conformance with the revised NAIC Model Regulation for Medicare supplement insurance, as required by 42 U.S.C. § 1395ss. Such revisions to company practices will not have any negative affect on jobs or employment opportunities.

There is no evidence that these rules would have any adverse impact on self-employment opportunities.

The Insurance Department has no reason to believe that the rules will result in any adverse impacts.

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## Long Island Power Authority

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**NOTICE OF ADOPTION****Service Classification No. 13 of the Authority's Tariff for Electric Service****I.D. No.** LPA-15-09-00020-A**Filing Date:** 2009-08-11**Effective Date:** 2009-08-11

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

**Action taken:** The Long Island Power Authority adopted a proposal modifying its Tariff for Electric Service with regard to Classification No. 13, Negotiated Contracts.

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

**Subject:** Service Classification No. 13 of the Authority's Tariff for Electric Service.

**Purpose:** To modify Service Classification No. 13.

**Text or summary was published** in the April 15, 2009 issue of the Register, I.D. No. LPA-15-09-00020-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

**Assessment of Public Comment**

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

**NOTICE OF ADOPTION****AMI Pilot Service****I.D. No.** LPA-15-09-00021-A**Filing Date:** 2009-08-11**Effective Date:** 2009-08-11

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

**Action taken:** The Long Island Power Authority adopted a proposal to add to the Authority's Tariff for Electric Service, a new Service Classification No. 16, Advanced Metering Initiative (AMI) Pilot Service.

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

**Subject:** AMI Pilot Service.

**Purpose:** To establish an AMI Pilot Service rate classification.

**Text or summary was published** in the April 15, 2009 issue of the Register, I.D. No. LPA-15-09-00021-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

**Assessment of Public Comment**

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

**PROPOSED RULE MAKING HEARING(S) SCHEDULED****Energy Efficiency and Renewables Cost Recovery Rate****I.D. No.** LPA-34-09-00019-P

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

**Proposed Action:** The Long Island Power Authority is considering a proposal to revise its Tariff for Electric Service to create an energy efficiency and renewables cost recovery rate that will allow LIPA to recoup the costs of its energy efficiency programs and renewables.

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

**Subject:** Energy efficiency and renewables cost recovery rate.

**Purpose:** To create an energy efficiency and renewables cost recovery rate.

**Public hearing(s) will be held at:** 10:00 a.m., October 14, 2009 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., October 14, 2009 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority ("Authority") is considering a proposal to revise its Tariff for Electric Service to create an energy efficiency and renewables cost recovery rate that will allow LIPA to recoup, in the year incurred, the costs of its energy efficiency programs and renewables. The cost recovery rate will be based upon the effective year's approved budgeted program expenditures and lost revenues. The Authority may approve, modify, or reject, in whole or part, the proposal.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

**Data, views or arguments may be submitted to:** Same as above.  
**Public comment will be received until:** Five days after the last scheduled public hearing.  
**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.

**PROPOSED RULE MAKING  
 HEARING(S) SCHEDULED**

**New York State Assessment**  
**I.D. No.** LPA-34-09-00020-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:  
**Proposed Action:** The Long Island Power Authority (“Authority”) is considering a proposal to revise its Tariff for Electric Service to recover the New York State Assessment imposed by Public Service Law, section 18-a(6).  
**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)  
**Subject:** The New York State Assessment.  
**Purpose:** To recover the New York State Assessment.  
**Public hearing(s) will be held at:** 10:00 a.m., October 14, 2009 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., October 14, 2009 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.  
**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.  
**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.  
**Substance of proposed rule:** The Long Island Power Authority (“Authority”) is considering a proposal to revise its Tariff for Electric Service to recover the New York State Assessment imposed by Public Service Law, section 18-a(6), through a percentage factor that is applicable to all of the components on a customer’s monthly bill. The Authority may approve, modify, or reject, in whole or part, the proposal.  
**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org  
**Data, views or arguments may be submitted to:** Same as above.  
**Public comment will be received until:** Five days after the last scheduled public hearing.  
**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.

**Office of Mental Health**

**NOTICE OF ADOPTION**

**Comprehensive Outpatient Programs**  
**I.D. No.** OMH-22-09-00013-A  
**Filing No.** 913  
**Filing Date:** 2009-08-06  
**Effective Date:** 2009-08-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of Part 592 of Title 14 NYCRR.  
**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.04, 43.02; Social Services Law, sections 364 and 364-a

**Subject:** Comprehensive Outpatient Programs.  
**Purpose:** To adjust the Medicaid reimbursement associated with certain outpatient treatment programs regulated by OMH.  
**Text or summary was published** in the June 3, 2009 issue of the Register, I.D. No. OMH-22-09-00013-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

**Assessment of Public Comment**  
 The agency received two letters of comment regarding the amendments to Part 592. The issues and responses are as follows:

**Issue:** The writer expressed concern over the reduction in rates of the approximately 102 of the 317 providers affected by these changes, and the potential for a negative impact on the mental health service delivery system.

**Response:** The changes in rates are consistent with the enacted State budget and the Financial Management Plan. The agency’s intent in this proposal was to begin to move the reimbursement for mental health services toward a more uniform reimbursement system, by raising the reimbursement amounts for the lowest paid providers and lowering the reimbursement amounts for the providers with the highest rates. This is consistent with the direction of the clinic restructuring process which the agency has begun to undertake.

**Issue:** The writer expressed general support for the graduated reimbursement methodology. However, the writer suggested a regional rate approach be incorporated into the methodology.

**Response:** As stated above, the modifications to the reimbursement methodology are designed to equalize the reimbursement system. The agency believes this approach is the most economically sound and feasible, and thus the policy decision was made to modify the reimbursement methodology as indicated in the regulation. Since the agency feels this is the best possible approach, no change is being made to the regulation.

**Department of Motor Vehicles**

**NOTICE OF ADOPTION**

**Posters on School Buses**  
**I.D. No.** MTV-15-09-00012-A  
**Filing No.** 912  
**Filing Date:** 2009-08-06  
**Effective Date:** 2009-08-26

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

**Action taken:** Repeal of section 56.11 of Title 15 NYCRR.  
**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 375(21-h)

**Subject:** Posters on school buses.  
**Purpose:** Repeal provision authorizing DMV to approve signs on school buses.  
**Text or summary was published** in the April 15, 2009 issue of the Register, I.D. No. MTV-15-09-00012-P.  
**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Heidi A. Bazicki, Department of Motor Vehicles, Counsels Office, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

**Assessment of Public Comment**  
 The agency received no public comment.

## Public Service Commission

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

#### Approval of a Financing and a Transfer of Ownership Interests in a 85 MW Generation Facility

I.D. No. PSC-34-09-00012-P

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

**Proposed Action:** The Commission is considering a petition from Power City Partners, L.P., MEG Development Company LLC and others requesting approval of a financing and a transfer of ownership interests in a 85 MW generation facility.

**Statutory authority:** Public Service Law, sections 69 and 70

**Subject:** Approval of a financing and a transfer of ownership interests in a 85 MW generation facility.

**Purpose:** Consideration of approval of a financing and a transfer of ownership interests in a 85 MW generation facility.

**Substance of proposed rule:** The Public Service Commission is considering a petition from RPL Holdings, Inc, Power City Generating, Inc., Power City Partners, L.P., and MEG Development Company LLC (MEG) requesting approval of a transfer of ownership interests, to MEG from the other petitioners, in a 85 MW generation facility located in Massena, NY, and requesting approval of a financing that would increase MEG's existing \$19.3 million term loan facility by approximately \$13.0 million in an acquisition and working capital loan to finance the purchase. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** 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\_brillling@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.

(09-E-0574SP1)

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

#### Interconnection of the Networks between Verizon and NET TALK.COM, INC. for Local Exchange Service and Exchange Access

I.D. No. PSC-34-09-00013-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with NET TALK.COM, INC., executed on June 19, 2009.

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

**Subject:** Interconnection of the networks between Verizon and NET TALK.COM, INC. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon and NET TALK.COM, INC.

**Substance of proposed rule:** Verizon New York Inc. and NET TALK.COM, INC. have reached a negotiated agreement whereby Verizon

New York Inc. and NET TALK.COM, INC. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** 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\_brillling@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.

(09-01364SP1)

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

#### Competitive Transition Charges (CTC)

I.D. No. PSC-34-09-00014-P

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

**Proposed Action:** The Commission is considering a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, PSC Nos. 214 and 220.

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

**Subject:** Competitive Transition Charges (CTC).

**Purpose:** To reset CTC in retail delivery rates and adjust delivery rates to reflect deferral recoveries.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid to (1) reset its Competitive Transition Charges in retail delivery rates to reflect changes in the forecast of commodity prices for the coming two years and (2) adjust delivery rates to reflect deferral recoveries. The proposed filing has an effective date of January 1, 2010.

**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\_brillling@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.

(01-M-0075SP44)

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

#### Rider U - Distribution Load Relief Program Data Access

I.D. No. PSC-34-09-00015-P

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

**Proposed Action:** The Commission is considering a proposed plan by Consolidated Edison Company of New York, Inc. to provide data access in a manner that supports market requirements and customer needs related to its Rider U - Distribution Load Relief Program.

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

**Subject:** Rider U - Distribution Load Relief Program data access.

**Purpose:** To approve, modify or reject the plan to provide data access related to the Rider U - Distribution Load Relief Program.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Consolidated Edison Company of New York, Inc. (Con Edison) to revise the Rider U - Distribution Load Relief Program. The proposed filing is intended to provide meter data access in a manner that supports market requirements and customer needs related to the Rider U - Distribution Load Relief Program.

**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\_brillling@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.

(08-E-1463SP2)

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

#### Recommendations Made in the Management Audit Final Report

I.D. No. PSC-34-09-00016-P

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

**Proposed Action:** The Public Service Commission is considering taking action on the Management Audit of Consolidated Edison Company of New York, Inc. Final Report.

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

**Subject:** Recommendations made in the Management Audit Final Report.

**Purpose:** To consider whether to take action or recommendations contained in the Management Audit Final Report.

**Substance of proposed rule:** Pursuant to Public Service Law Section 66(19), the Commission directed Consolidated Edison Company of New York, Inc. (Con Edison) to cooperate with The Liberty Consulting Group (Liberty) for a management audit. Liberty's final report concerning Con Edison's management of its electric, natural gas and steam businesses was released by the Department on August 7, 2009. The final report provides a detailed evaluation of Con Edison management and makes numerous recommendations to Con Edison for improvement.

The Commission is seeking comment regarding taking action with respect to the final report in general, and as to the recommendations contained therein.

**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\_brillling@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.

(08-M-0152SP1)

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

#### To Consider the Transfer of Control of Plattsburgh Cablevision, Inc. d/b/a Charter Communications to CH Communications, LLC

I.D. No. PSC-34-09-00017-P

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

**Proposed Action:** The Public Service Commission is considering a petition from Plattsburgh Cablevision, Inc. d/b/a Charter Communications requesting approval of a Transfer of Control to CH Communications, LLC.

**Statutory authority:** Public Service Law, section 222

**Subject:** To consider the transfer of control of Plattsburgh Cablevision, Inc. d/b/a Charter Communications to CH Communications, LLC.

**Purpose:** To allow the Plattsburgh Cablevision, Inc. to distribute its equity interest in CH Communications, LLC.

**Text of proposed rule:** The Public Service Commission is considering whether to adopt, reject, or modify, in whole or in part, a petition from Plattsburgh Cablevision d/b/a Charter Communications requesting approval of a Transfer of Control to CH Communications, LLC.

**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\_brillling@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.

(09-V-0583SP1)

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

#### Issues of Stock, Bonds and Other Forms of Indebtedness and Charges

I.D. No. PSC-34-09-00018-P

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

**Proposed Action:** The Commission is considering the petition of Long Island Water Corporation d/b/a Long Island American Water for authority to issue and sell up to \$20 million of long-term debt.

**Statutory authority:** Public Service Law, section 89-f

**Subject:** Issues of stock, bonds and other forms of indebtedness and charges.

**Purpose:** To allow Long Island Water Corporation to issue and sell up to \$20 million in debt.

**Text of proposed rule:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Long Island Water Corporation, d/b/a Long Island American Water (LIWC) to issue and sell long-term debt in one or more offerings from time to time up until December 31, 2010, in an aggregate amount not to exceed \$20,000,000 consisting of one or more series of general mortgage bonds, notes or other evidence of indebtedness. LIWC also requests authority to execute and deliver one or more supplemental mortgage indentures, loan agreements, notes and such other documents related to the issuance of the long-term debt as well as take other such actions as LIWC determines may be necessary in connection with the issuance of long-term debt. The proceeds from long-term debt will provide funds for

capital projects or to pay down short-term borrowings accumulated to date.

The Commission shall 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\_brillling@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.

(09-W-0596SP1)

## Susquehanna River Basin Commission

### INFORMATION NOTICE

#### Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: June 1, 2009, through June 30, 2009.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(f) for the time period specified above:

Approvals By Rule Issued:

1. Chesapeake Appalachia, LLC, Pad ID: Benscoter, ABR-20090601, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 2, 2009.

2. Chesapeake Appalachia, LLC, Pad ID: Strom, ABR-20090602, Monroe Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 2, 2009.

3. Chesapeake Appalachia, LLC, Pad ID: Evanchick, ABR-20090604, Granville Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 3, 2009.

4. Chesapeake Appalachia, LLC, Pad ID: Vargson, ABR-20090605, Granville Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 3, 2009.

5. Range Resources Appalachia, LLC, Pad ID: Ogontz 3, ABR-20090606, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: June 5, 2009.

6. Range Resources Appalachia, LLC, Pad ID: McWilliams 1, ABR-20090607, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: June 5, 2009.

7. Alta Operating Company, LLC, Pad ID: Ivey Pad Site, ABR-20090608, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: June 10, 2009.

8. Fortuna Energy, Inc., Pad ID: Shedden D 13-43, ABR-20090603, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: June 10, 2009.

9. Fortuna Energy, Inc., Pad ID: State Lands 587 Pad #1, ABR-20090609, Ward Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: June 16, 2009.

10. Chesapeake Appalachia, LLC, Pad ID: Welles 1, ABR-20090610, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: June 18, 2009.

11. Fortuna Energy, Inc., Pad ID: Williams 41-42, ABR-20090611, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: June 23, 2009.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808

Dated: July 8, 2009

Thomas W. Beauduy

Deputy Director

### INFORMATION NOTICE

#### Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Public Hearing and Commission Meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on September 10, 2009, in North East, Md. At the public hearing, the Commission will consider: 1) action on certain water resources projects; 2) the rescission of five previous docket approvals; 3) enforcement actions against two projects; and 4) one request for an administrative hearing on a project previously approved by the Commission. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: September 10, 2009.

ADDRESS: Chesapeake Lodge Hotel & Conference Center at Sandy Cove Ministries, 60 Sandy Cove Road, North East, Md.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: 1) hydrologic conditions of the basin; 2) the Maryland Lt. Governor's Water Summit Update; 3) panel discussion on the Chesapeake Bay and Ecosystems as SRBC "Priority Management Areas"; 4) the William Jeanes award; 5) final rulemaking regarding federal licensing/re-licensing of projects and other revisions; 6) an Access to Records Policy; and 7) ratification/approval of grants/contracts. The Commission will also hear a Legal Counsel's report.

Public Hearing - Compliance Actions:

1. Project Sponsor: Allegheny Energy Supply Company, LLC and UGI Development Company. Project Facility: Hunlock Power Station, Unit 4, Hunlock Township, Luzerne County, Pa.

2. Project Sponsor: Chief Oil & Gas LLC. Project Facility: Phelps 1H Well, Lathrop Township, Susquehanna County, Pa.

Public Hearing - Projects Scheduled for Action:

1. Project Sponsor and Facility: ALTA Operating Company, LLC (Berkowitz Pond), Forest Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

2. Project Sponsor: Antrim Treatment Trust. Project Facility: Antrim No. 1, Duncan Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

3. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for groundwater withdrawal of 0.099 mgd from Laurel Springs 1 and 2.

4. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for consumptive water use of up to 0.099 mgd.

5. Project Sponsor: Community Refuse Service, Inc. Project Facility: Cumberland County Landfill, Hopewell and North Newton Townships, Cumberland County, Pa. Modification to increase consumptive water use from a peak day of 0.090 mgd up to 0.140 mgd (Docket No. 20050907).

6. Project Sponsor: Community Refuse Service, Inc. Project Facility: Cumberland County Landfill, Hopewell and North Newton Townships, Cumberland County Pa. Application for groundwater withdrawal of 0.053 mgd from eight wells for consumptive water use.

7. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Tunkhannock Creek - Dixon), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

8. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek - Franklin Township Volunteer Fire Department), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

9. Project Sponsor and Facility: J-W Operating Company (Abandoned Mine Pool - Unnamed Tributary to Finley Run), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

10. Project Sponsor and Facility: LHP Management, LLC (Fishing Creek - Clinton Country Club), Bald Eagle Township, Clinton County, Pa. Application for surface water withdrawal of up to 5.000 mgd.

11. Project Sponsor and Facility: Mansfield Borough Municipal Authority, Richmond Township, Tioga County, Pa. Application for groundwater withdrawal of up to 0.079 mgd from Well 3.

12. Project Sponsor and Facility: Seneca Resources Corporation (Arnot No. 5), Bloss Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

13. Project Sponsor and Facility: Southwestern Energy Company (Cold Creek - Giroux), Herrick Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

14. Project Sponsor and Facility: Southwestern Energy Company (Mill Creek - Kennedy), Stevens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

15. Project Sponsor and Facility: Southwestern Energy Company (Ross Creek - Billings), Stevens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

16. Project Sponsor and Facility: Southwestern Energy Company (Sutton Big Pond), Herrick Township, Bradford County, Pa. Application for surface water withdrawal of up to 5.000 mgd.

17. Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek - Price), Gibson Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.380 mgd.

18. Project Sponsor and Facility: Southwestern Energy Company (Wyalusing Creek - Ferguson), Wyalusing Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

19. Project Sponsor and Facility: Southwestern Energy Company (Wyalusing Creek - Campbell), Stevens Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

20. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

21. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for consumptive water use of up to 0.870 mgd.

22. Project Sponsor and Facility: Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, Pa. Corrective modification to passby flow condition (Docket No. 20090631).

23. Project Sponsor: United Water Resources. Project Facility: United Water PA-Harrisburg Operation, Newberry Township, York County, Pa. Application for groundwater withdrawal of up to 0.172 mgd from Paddletown Well.

Public Hearing - Projects Scheduled for Rescission Action:

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080903), Town of Tioga, Tioga County, N.Y.

2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080906), Athens Township, Bradford County, Pa.

3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, Pa.

4. Project Sponsor and Facility: East Resources, Inc. (Tioga River) (Docket No. 20080609), Mansfield, Richmond Township, Tioga County, Pa.

5. Project Sponsor and Facility: Montrose Country Club (Docket No. 20020603), Bridgewater Township, Susquehanna County, Pa.

Public Hearing - Request for Administrative Hearing:

1. Petitioner Delta Borough, York County, Pennsylvania; RE: Delta Borough Public Water Supply Well No. DR-2; Docket No. 20090315, approved March 12, 2009.

Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General

Counsel, e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, e-mail: srichardson@srbc.net. Comments mailed or electronically submitted must be received prior to September 4, 2009, to be considered.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808

Dated: August 11, 2009

Thomas W. Beauduy

Deputy Director

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## Department of Transportation

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

#### Regulation of the Use of Highways by Large Trucks, Reasonable Access Highways

I.D. No. TRN-34-09-00021-P

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

**Proposed Action:** Amendment of Part 8000 of Title 17 NYCRR

**Statutory authority:** Vehicle and Traffic Law, section 1621(a)(9); Transportation Law, section 14(16) and (18)

**Subject:** Regulation of the use of highways by large trucks, Reasonable Access Highways.

**Purpose:** To reduce large truck traffic and improve safety in local communities and to reduce pavement maintenance costs.

**Text of proposed rule:** Part 8000 of Title 17 of the Codes, Rules and Regulations of the State of New York is hereby amended to add new Sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, 8000.14, and 8000.15 as follows:

*Section 8000 Regulatory Intent*

*As the movement of goods by truck continues to play a critical role in New York and across the nation due to evolving transportation patterns in the global economy and the public's rising demand for goods and services, responsible transportation management must balance the impacts of large trucks with the travel needs and quality of life of local communities. Truck transportation should exist in harmony with local economic development, environmental sustainability, and public safety and truck route choice should consider these factors.*

*Federal law precludes the States from enacting or enforcing any law or regulation that denies access to most large trucks between the National Network of highways (primarily the Interstate highways) and terminals and facilities for food, fuel, repairs and rest -- except "on the basis of safety and engineering analysis of the access route." (23 CFR 658.19[i][2][ii][A]) Subject to the criteria prescribed by federal law, the Department of Transportation has evaluated sixty four (64) State highways statewide known to the Department through expressed public concerns, and identified seven (7) State highways on which access to large through trucks can be restricted on the basis of safety and engineering analysis. These highways are set forth in Section 8000.13 of this regulation. The Department of Transportation remains mindful of the need to balance the efficient movement of goods by truck with the need to preserve and to improve the quality of life for people throughout New York State and promulgates Sections 8000.8 through 8000.15 of this regulation to address this need. It is the Department's intent to continue to monitor large truck traffic in the Finger Lakes region, where the seven identified highways are located. If the restrictions prescribed by this statewide regulation cause an unanticipated impact on other highways in the region (such as US Route 20, State Route 34, and others), or if federal law is changed to allow the Department to restrict large truck access to state highways for reasons other than safety and engineering, the Department of Transportation will conduct further analysis of such highways and will take such actions as are appropriate and allowed by federal law.*

*Section 8000.8 Truck*

*A "truck" as used in Sections 8000.9, 8000.10, 8000.11, 8000.12, 8000.13 and 8000.14 of this Part shall mean any combination of vehicles consisting of a tractor-trailer or truck-trailer combination with a trailer length of 45 feet or more, and vehicles authorized by the Federal Surface Transportation Assistance Act of 1982 (as amended), which include, but are not limited to: tractor-semi-trailer combinations with either a semitrailer of 48 feet or twin 28 (or 28 1/2) feet semitrailers, and Special-*

ized Equipment vehicles, as described in Title 23 of the Code of Federal Regulations (CFR), Part 658.13(e).

#### Section 8000.9 Freight Terminal

A "freight terminal" as used in Sections 8000.11, 8000.12, and 8000.13 of this Part shall mean any location where freight either originates or terminates, or is handled in the transportation process, or any location where a commercial motor carrier maintains operating facilities.

#### Section 8000.10 Facility

A "facility" as used in Sections 8000.11, 8000.12, and 8000.13 of this Part shall mean any location that is actually used to provide fuel or service for a truck or food or rest for a truck driver.

#### Section 8000.11 Reasonable Alternative Route

As used in Sections 8000.12 and 8000.13 of this Part, a "reasonable alternative route" is a route that (a) uses State highways that are not Qualifying highways and (b) is at least 25 miles shorter than the shortest alternative route over Qualifying highways. To compare alternative routes, the length of each route shall be measured from the beginning location to the ending location of the route.

#### Section 8000.12 Truck Highway Usage

In furtherance of the intent of this regulation, the Commissioner of Transportation recommends that trucks use the following hierarchy when planning routes:

(a) As a first choice, use the Qualifying highways, as such network is designated by the Commissioner of Transportation and the Federal Highway Administration, as the primary means for reaching freight terminals, facilities and sites for the delivery or pickup of merchandise or other property.

(b) As a second choice, use the State access highways, as such highways are designated by the Commissioner of Transportation, to reach freight terminals, facilities and sites for the delivery or pickup of merchandise or other property if the truck may lawfully use such highway in accordance with the length, width and weight restrictions of the Vehicle and Traffic Law and:

(1) such State access highway is the exclusive highway providing access to the specific freight terminal, facility or site for the pickup or delivery of merchandise or other property; or

(2) such State access highway provides a reasonable alternative route to access the specific freight terminal, facility or sites for the pickup or delivery of merchandise or other property, or to return to the network of Qualifying highways.

(c) Finally, as a third choice, use a State highway that is neither a Qualifying Highway nor a State access highway only if the truck may lawfully use such highway in accordance with the length, width and weight restrictions of the Vehicle and Traffic Law and:

(1) such highway is the exclusive highway providing access to the specific freight terminal, facility or site for the pickup or delivery of merchandise or other property; or

(2) such highway provides a reasonable alternative route to access the specific freight terminal, facility or sites for the pickup or delivery of merchandise or other property or to return to the network of Qualifying highways.

#### Section 8000.13 Reasonable Access Highways

(a) Trucks are excluded from following highways:

(1) NY Route 41 between U.S. Route 11 and US Route 20 in Cortland and Onondaga Counties;

(2) NY Route 41A between NY Route 41 and US Route 20 in Cortland, Cayuga, and Onondaga Counties;

(3) NY Route 90 between U.S. Route 11 and US Route 20 in Cortland and Cayuga Counties;

(4) NY Route 38 between NY Route 90 and the southern Auburn City line in Cayuga County;

(5) NY Route 79 between U.S. Route 11 and the eastern Ithaca City line in Broome, Tioga and Tompkins Counties;

(6) NY Route 89 between the western Ithaca City line and US Route 20 in Tompkins and Seneca Counties;

(7) NY Route 96 between the western Ithaca City line and NY Route 414 and between NY Route 414 and US Route 20 in Tompkins and Seneca Counties.

(b) As an exemption from Section 8000.13 (a), trucks may utilize the excluded highways:

(1) if these highways constitute a reasonable alternative route as defined in Section 8000.11, or

(2) if use of one of these highways is necessary because it provides exclusive access to a specific freight terminal, facility for food, fuel, service or rest, or site for the pickup or delivery of merchandise or other property; or

(3) if, from a freight terminal described in paragraph (b)(2) of this Section, the excluded highways provide the shortest trip to the truck's next freight terminal destination or the shortest trip to the network of Qualifying highways; or

(4) if use of the highway is necessary because highway closures, weather conditions, or other factors render alternative routes inaccessible or unavailable for truck travel.

#### Section 8000.14 Reasonable Access Highway Signs

Routes specified as reasonable access highways pursuant to Section 8000.13 will be identified by signs. Operation of a truck in violation of such exclusion shall be subject to penalties as provided in Section 1110 of the New York State Vehicle and Traffic Law.

#### Section 8000.15

The provisions of Sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, and 8000.14 shall be construed in accordance with the applicable provisions of 23 C.F.R. Part 658 and any other provisions of federal law or regulation relating to the use of State highways by trucks and shall not apply to the extent inconsistent with federal laws, regulations or requirements. The Commissioner of Transportation is hereby authorized to suspend sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, and 8000.14, in whole or in part, to the extent that the Commissioner of Transportation deems necessary, if the Commissioner determines that any of the provisions of sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, and 8000.14 are not consistent with applicable federal laws, regulations, or requirements or that the application of such provisions would jeopardize the State of New York's receipt of federal aid.

**Text of proposed rule and any required statements and analyses may be obtained from:** Yomika Bennett, Director of State and Local Relations, New York State Department of Transportation, 50 Wolf Road, Albany, NY 12232, (518) 457-2345, email: truckregcomment@dot.state.ny.us

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

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

#### Summary of Regulatory Impact Statement

The Regulatory Impact Statement (SAPA Section 202-a) submitted by NYSDOT provides details on the Statutory Authority, Legislative Objectives, Needs and Benefits, Costs, Local Government Mandates, Paperwork, Duplication, Alternatives, Federal Standards, and Compliance Schedule for the proposed Reasonable Access Highway Regulation. The proposed rule would reduce large truck traffic in local communities, improve community quality of life, safety and mobility for pedestrians and bicyclists, improve overall vehicle safety, reduce large truck related accidents, and reduce overall pavement maintenance costs of these highways.

NYSDOT analyzed existing truck traffic, alternate routes, stakeholder interest, facility type and characteristics, economic impacts, adjacent community impacts, and engineering considerations on 64 state highways statewide. The analysis identified seven such highways on which access to large through trucks can be restricted on the basis of safety and engineering (criteria prescribed by federal law). These highways are identified in Section 8000.13 of the proposed rule text.

There is a demonstrable public health, safety and welfare benefit to be accomplished by the proposed rule, as detailed in the full Regulatory Impact Statement, in Section 3 - Needs and Benefits. An annual estimated 71,000 large truck trips will remain on Interstate routes, which are safer and better equipped for this type of traffic, instead of using highways through identified community settings.

The proposed rule will not prevent delivery or pickup of property. The rule applies only to "through" trucks and will not affect local trips to businesses and consumers. The proposed rule recognizes that highways serve multiple purposes, to best serve public welfare, they must accommodate the economic, historical, natural and unique characteristics of communities, in addition to traffic. The goal is to advance balanced use of these highways and Interstates by large trucks consistent with the Commissioner's function (Subdivision 1 of Section 14 of Transportation Law) to develop a balanced transportation policy.

This regulation balances needs of local communities with the need to deliver goods and will result in large through trucks utilizing more appropriate and available routes. The benefits and costs are presented in NYSDOT's Final Environmental Assessment - Reducing Large Truck Traffic in Local Communities in New York State, November 2008 (<https://www.nysdot.gov/programs/truckpolicy/final-draft-env-assess>) in Chapter 1 Executive Summary. This Assessment was produced by the NYSDOT's Engineering Division. Several alternatives were considered before deciding on the final proposal, as stated in Section 8 Alternatives of the Regulatory Impact Statement.

The rule does not exceed any minimum standards of the federal government for the same or similar subject areas. Federal Law requires that trucks be given reasonable access to terminals and facilities for food, fuel, repair and rest. A "terminal" is defined by Federal regulations as any location where: 1) "Freight either originates, or is handled in the transportation process;" or 2) "Commercial motor carriers maintain operating facilities." (23 CFR 658.5) as described in Section 9, Federal Standards of the Regulatory Impact Statement. The compliance schedule is outlined in

Section 10, large trucks will have 90 days after the regulation is promulgated to achieve compliance.

#### **Regulatory Flexibility Analysis**

##### **1. Effect of Rule**

An unknown number of small businesses, as defined by Section 102(8) of SAPA, having less than 100 employees, would be affected by the rule. These businesses primarily include trucking companies and companies that rely on large trucks.

Freight shippers that rely on trucks as a shipping mechanism would be impacted by increased costs associated with using longer routes. Independent truck drivers and small trucking firms that operate on tighter profit margins would also be impacted by increased costs associated with using longer routes. Some of these companies would incur additional fuel, toll and operating costs for large trucks to use longer routes, which may adversely impact their profit margin. Small businesses receiving truck deliveries may also be adversely impacted by higher rates resulting from the higher costs incurred by trucking companies as a result of the rule.

Larger shipping companies may be more able to pass an increase in cost on to their customers than independent operators. Consumers will not likely see a significant effect on the price of goods where transportation costs are not a significant percentage of overall production costs.

Consumers may experience an increase in the price of goods where transportation costs constitute a higher percentage of overall production, as is the case with agricultural products.

The proposed rule will benefit businesses associated with outdoor recreation, tourism, shopping, dining, and lodging along specified Reasonable Access Highways. The Finger Lakes area is one of New York State's premier tourism areas and there are approximately 36 Bed and Breakfasts and 119 restaurants located along specified Reasonable Access Highways. A reduction in large truck traffic will contribute to an environment conducive to these activities.

Impacts to local governments will be positive. With fewer large trucks on local roads, fewer resources will be needed for pavement repair and addressing quality of life complaints from citizens. Local governments expected to be positively impacted include Cortland, Auburn, Moravia, Aurora, Union Springs, Cayuga, Lisle, Ithaca, Canoga, Trumansburg, Interlaken, Ovid, Waterloo, Seneca Falls, and Skaneateles.

##### **2. Compliance Requirements**

No reporting, recordkeeping or other affirmative acts will be required by local governments to comply with the rule. Small trucking companies may need to conduct additional route planning to comply with the rule. Route planning can be accomplished using any readily available mapping tool such as Microsoft's Streets and Trips, Google Maps, or Mapquest.

##### **3. Professional Services**

No professional services will be required by small businesses or local governments to comply with the rule.

##### **4. Compliance Costs**

Comments submitted by New York State Motor Truck Association (NYSMTA), on July 14, 2008 to NYSDOT indicate that trucking companies that qualify as small businesses will incur continuing compliance costs as a result of increased fuel usage, increased toll expenses and increased operational expenses. The annual cost for a company will vary, depending upon the actual mileage covered by the company's carriers, the extent of their toll road usage, and the extent to which they have previously used restricted highways as through routes. As determined in NYSDOT's Final Environmental Assessment - Reducing Large Truck Traffic in Local Communities in New York State - November 2008, the estimated expected annual increase in fuel, toll, and operating costs for large through trucks to remain on the Interstate is \$4.2M (2008\$) annually. Not all of the affected companies qualify as small businesses, but in the above-reference memo, NYSMTA states that there are "...nearly 37,000 trucking companies based in New York, most of them are small businesses...". The actual portion of the increase that small business trucking companies would sustain is not known.

Refer to Appendix F of the NYSDOT's Final Environmental Assessment - Reducing Large Truck Traffic in Local Communities in New York State - November 2008 for detailed estimates of fuel and toll costs associated with restricting large through truck traffic on specified highways.

Local governments would not incur any initial or continuing compliance costs.

##### **5. Economic and Technological Feasibility**

Compliance with the rule by small businesses is economically feasible. Some carriers will experience higher costs due to increased fuel consumption, and higher toll expenditures. Travel times will be reduced due to higher speeds and no at grade intersections associated with Interstate routes. NYSMTA predicted in its memo to NYSDOT that carriers will raise the price of their service to cover the costs.

Compliance with the rule by small businesses is technologically feasible. No additional technology is necessary to comply, and safer, alternate routes along the Interstate are well known and available for speci-

fied restricted highways. Global Positioning Navigation systems (GPS) may facilitate compliance for some carriers, but it is not essential to achieve compliance.

##### **6. Minimizing Adverse Impact**

To minimize any unnecessary adverse economic impacts on small businesses, NYSDOT has proposed no unwarranted measures or regulation. The proposed rule is limited to only those trucks greater than 45 feet in length, and those meeting Federal STAA size requirements that use specific state highways with documented quality of life, safety and highway maintenance issues associated with heavy truck traffic. The rule applies only to through truck traffic and trucks using highways as shortcuts. All truck traffic will be provided reasonable access. Local deliveries will still be permitted on these highways to maintain shipping services to and from local businesses.

The proposed rule was redrafted as a result of comments received during the June 10 through October 10, 2008 comment period, to minimize industry impacts. In the original preliminary draft proposal, the burden of determining reasonable usage was on individual carriers and enforcement officials, and the original proposal included all highways in New York State. The proposed rule removes the burden from the carrier/individual driver/enforcement official, for each unique trip, to determine if a route is 'reasonable'. The proposed rule lists highways that have been carefully selected through detailed engineering evaluation as Reasonable Access Highways. The proposed rule uses a clear definition of a reasonable alternative route: "a 'reasonable alternative route' is a route that (a) uses State highways that are not Qualifying highways and (b) is at least 25 miles shorter than the shortest alternative route over Qualifying highways. To compare alternative routes, the length of each route shall be measured from the beginning location to the ending location of the route." For example, if the desired route along a specified Reasonable Access Highway saves 30 miles on a single one way trip, then it is reasonable to use, but if the desired route along a specified Reasonable Access Highway saves only 10 miles, then it would not be reasonable to use as a short cut. Using this "25 mile" definition enables an average person to determine if a route choice is reasonable, clarifies the context of the regulation, and minimizes the potential economic and logistic impacts to the trucking industry by removing longer routes from consideration.

The proposed rule, Section 8000.12, provides a recommendation on how the highway system should be used in New York State by large trucks when considering route selection, large trucks should first use the National Network (Interstate), next designated truck access highways, and then all other highways. Section 8000.12 is advisory in nature, and is consistent with NYSDOT's existing large truck policy.

The rule will have a positive impact on local governments, by minimizing the resources they devote to addressing citizen complaints and highway maintenance issues that originate from heavy truck traffic.

##### **7. Small Business and Local Government Participation**

Small businesses and local governments have been involved in multiple meetings with NYSDOT, including:

Stakeholder Meeting - August 12, 2008

Attendance included representatives from:

- o City of Ithaca
- o Village of Skaneateles
- o Town of Owasco
- o Village of Interlaken
- o City of Auburn
- o Cortland Chamber of Commerce
- o Cayuga County Chamber of Commerce
- o Tompkins County Chamber of Commerce
- o West Shore Home Owners Association, Ithaca
- o Upstate Safety Task Force
- o New York State Motor Truck Association
- o New York State Construction Materials Association
- o Seneca Meadows Inc.

o New York State Department of Agriculture  
Focus Group Meetings- July and August 2008

Meetings with Town Representatives - June and July 2008

Agricultural interest stakeholders - September 23, 2008

o These groups expressed concerns about the need for access to markets and the impacts that the proposed regulation would have on their businesses.

Public Informational Meeting - September 24, 2008

o The meeting was attended by about 150 people, including four elected officials (Senator Nozzolio, Assemblywoman Lifton, Assemblyman Bacalles, and Assemblyman Finch.) Executive Deputy Commissioner Stan Gee provided an overview of the effort, NYSDOT's findings to date, and proposed actions and schedule. The presentation was followed by a public comment period, where about 25 speakers provided comments to the Department. NYSDOT also provided about a dozen informational displays that were staffed with Department experts who were available to answer questions.

Meeting with NYS Motor Truck Association and other Industry Representatives - October 10, 2008

- o Staff answered questions and provided an overview of the engineering justification for the restrictions on the seven Reasonable Access Highways.

Meeting with New York Farm Bureau and the NYS Department of Agriculture and Markets Representatives - November 26, 2008

- o The Farm Bureau has 30,000 members statewide. Their representative indicated there was concern over the proposed rule and how it would affect farm related truck traffic. The Farm Bureau representative provided several example origins and destinations and asked NYSDOT to identify how these would be affected by the proposed rule. NYSDOT staff answered questions and most examples were considered local traffic not impacted by the proposed rule.

In June 2008, NYSDOT also launched a public web site to provide information and an e-mail address to collect feedback on the draft regulation (TruckRegComment@dot.state.ny.us).

NYSDOT has received 22 Letters from local government officials in support of regulating large truck traffic. NYSDOT has also received 75 emails from small businesses opposed to or concerned about any regulations. However a review of this correspondence revealed that large truck traffic for many of these businesses (including agricultural businesses) would be considered local traffic and not effected by the proposed rule.

#### **Rural Area Flexibility Analysis**

##### **1. Types and Estimated Numbers of Rural Areas**

The highways subject to this proposed regulation for reasonable access for large trucks, and the Interstate routes that large trucks will remain on instead of using these short cuts, are located in seven counties. According to U.S. Census Bureau Data from the 2002 Census, five of these counties qualify as rural areas (with a county population of less than 200,000 people): Cortland County, Cayuga County, Tioga County, Tompkins County, and Seneca County. Within the remaining two counties, Onondaga County and Broome County, there are eight towns, along specified Reasonable Access Highways or the alternative routes along the Interstate that qualify as rural areas (with a population density of 150 people per square mile or less): Spafford, LaFayette, Tully, Lisle, Triangle, Nanticoke, Barker and Colesville.

These highways travel through the following rural area communities, Cortland, Auburn, Moravia, Aurora, Union Springs, Cayuga, Lisle, Ithaca, Canoga, Trumansburg, Interlaken, Ovid, Waterloo, and Seneca Falls. Populations most directly affected include residents of communities on specified Reasonable Access Highways, owners of properties adjacent to these highways, truck operators and drivers, businesses and individuals depending on large truck services, and local and state highway users sharing the right-of-way with large trucks.

Residents along specified Reasonable Access Highways have asserted that large truck traffic negatively impacts their quality of life. Negative impacts include noise and visual disruptions, emissions, and concerns of safety in village and community settings, state tourism areas, school areas, environmentally and historically unique areas, scenic byways (NY Route 89 and NY Route 90) and designated bike routes. There is also concern for increased wear on pavement surfaces in some communities that are responsible for maintenance jurisdiction.

The proposed regulation would improve quality of life for these rural area communities. Neighborhood and community cohesion would be enhanced by reducing the number of large trucks utilizing these highways and minimizing negative impacts attributed to large truck traffic.

##### **2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services**

No reporting, recordkeeping or other compliance requirements, or professional services are needed in a rural area to comply with the rule. Since large truck use of the specified highways is allowed for accessing locations for pick up and delivery and for other exceptions, truck operators may need to keep and monitor records concerning their origins and destinations. However, it is expected that such records are kept in the ordinary course of operating trucks or truck fleets.

##### **3. Costs**

No initial capital cost or annual costs will be required to comply with the rule for public entities in rural areas. Some businesses in the trucking industry, and businesses which rely on shipping goods by trucks, which are utilizing these specific highways would be affected by increased fuel costs associated with longer routes. Increased fuel consumption costs would likely be passed on by truck operators to customers. There is no data to as to how many of these businesses are located in rural areas. Economic impacts to businesses located in the rural areas listed in Section 1 (Types and Estimated Number of Rural Areas) have been minimized by specifying only predetermined, signed highways as Reasonable Access Highways, where through trucks are present and where the difference in length resulting from utilizing the National Network (Interstate) route in

less than 25 miles. This approach provides predictability of truck access, which is more likely to be absorbed into the shipping process.

##### **4. Minimizing Adverse Impact**

To minimize any unnecessary adverse economic impacts on rural areas, NYSDOT has proposed no unwarranted measures or regulation. The proposed rule is limited to only those trucks greater than 45 feet in length, and meeting Federal STAA size requirements, that use specific state highways as short cuts, where documented quality of life, safety and highway maintenance issues originate from large truck traffic. The rule applies only to through truck traffic. Local deliveries and reasonable access will still be permitted on these highways, to maintain shipping services to and from local businesses. The proposed rule minimizes adverse economic impacts by specifying only predetermined, signed highways as Reasonable Access Highways, where through trucks are present, and where the difference in length from the utilizing the National Network (Interstate) route is less than 25 miles. This approach provides predictability of truck access, which is more likely to be absorbed into the shipping process.

The rule will have a positive impact on rural areas. It will minimize the resources that local governments devote to addressing citizen complaints and highway maintenance issues originating from large truck traffic. It will enhance safety and quality of life for motorists, residents and visitors in these areas.

##### **5. Rural Area Participation**

Rural areas and local governments have been involved in multiple meetings, including:

###### **a. Stakeholder Meeting - August 12, 2008**

Attendance included representatives from:

- o City of Ithaca
- o Village of Skaneateles
- o Town of Owasco
- o Village of Interlaken
- o City of Auburn
- o Cortland Chamber of Commerce
- o Cayuga County Chamber of Commerce
- o Tompkins County Chamber of Commerce
- o West Shore Home Owners Association, Ithaca
- o Upstate Safety Task Force
- o New York State Motor Truck Association
- o New York State Construction Materials Association
- o Seneca Meadows Inc.
- o New York State Department of Agriculture

###### **b. Focus Group Meetings- July and August 2008**

###### **c. Meetings with Town Representatives - June and July 2008**

###### **d. Agricultural interest stakeholders - September 23, 2008**

- o These groups expressed concerns about the need for access to markets and the impacts that the proposed regulation would have on their businesses.

###### **e. Public Informational Meeting - September 24, 2008**

- o The meeting was attended by about 150 people, including four elected officials (Senator Nozzolio, Assemblywoman Lifton, Assemblyman Bacalles, and Assemblyman Finch.) Executive Deputy Commissioner Stan Gee provided an overview of the effort, NYSDOT's findings to date, and proposed actions and schedule. The presentation was followed by a public comment period, where about 25 speakers provided comments to the Department. NYSDOT also provided about a dozen informational displays that were staffed with Department experts who were available to answer questions.

###### **f. Meeting with NYS Motor Truck Association and other Industry Representatives - October 10, 2008**

- o Staff answered questions and provided an overview of the engineering justification for the restrictions on the seven Reasonable Access Highways.

Meeting with New York Farm Bureau and the NYS Department of Agriculture and Markets Representatives - November 26, 2008

- o The Farm Bureau has 30,000 members statewide. Their representative indicated there was concern over the proposed rule and how it would affect farm related truck traffic. The Farm Bureau representative provided several example origins and destinations and asked NYSDOT to identify how these would be affected by the proposed rule. NYSDOT staff answered questions and most examples were considered local traffic not impacted by the proposed rule.

In June of 2008, NYSDOT also launched a public web site to provide information and an e-mail address to collect feedback on the draft regulation (TruckRegComment@dot.state.ny.us). NYSDOT has received 22 Letters from Local Government in support of regulating large truck traffic.

#### **Job Impact Statement**

##### **1. Nature of Impact**

The impact that the proposed rule will have on full-time annual jobs and employment opportunities within the next 2 years is unknown.

NYSDOT is requesting the assistance of other state agencies and the public in obtaining information concerning the potential impact on jobs and employment opportunities of the Reasonable Access Highway Regulation.

2. Categories and Numbers Affected

The New York State Motor Truck Association (NYSMTA) stated in a memorandum to NYSDOT, dated July 14, 2008, that 500,000 people in New York are employed by the trucking industry. This figure included executives, office managers, dispatchers, diesel technicians, human resource professionals, safety directors, maintenance directors and drivers. The rule will affect an indeterminate but minimal subset of these jobs and employees, due to the limited number of specified Reasonable Access Highways, and the limited number of large trucks which utilize these highways as through routes.

NYSDOT met with the New York Farm Bureau and the NYS Department of Agriculture and Markets Representatives on November 26, 2008. The Farm Bureau has 30,000 members statewide. Their representative indicated there was concern over the proposed rule and how it would affect farm related truck traffic. The Farm Bureau representative provided several example origins and destinations and asked NYSDOT to identify how these would be affected by the proposed rule. NYSDOT staff answered questions and most examples were considered local traffic and not impacted by the proposed rule.

Another large truck traffic generator in proximity to the proposed Reasonable Access Highways is the Cargill Salt Mine in Lansing, NY. While rail car and smaller trucks carry a majority of the salt, some of the large trucks returning empty from the municipal solid waste landfills transport salt. This salt mine generates approximately 40 large truck trips per day. Most of the trips are estimated to travel from area landfills and use NY Routes 414, 318, 20, 90 and 34B to reach the salt mine and depart using NY Route 13 to I-81. These trucks would not be allowed to use Route 90, and would have to reach the salt mine traveling along either NY 34 or 34b. This would add an additional 3.5 miles to the trip.

The proposed rule benefits businesses associated with outdoor recreation, tourism, shopping, dining, and lodging along specified Reasonable Access Highways, by contributing to an environment conducive to activities such as tourism, shopping, outdoor dining, and lodging. The Reasonable Access highways are located in a frequently visited tourism area, which includes 36 area Bed and Breakfasts and 119 restaurants. Parks and recreational areas are important resources in these communities and residents and tourists select these locations, in part, for their safety, tranquility, aesthetics, recreational opportunities and clean air.

3. Regions of Adverse Impact

The Reasonable Access Highways are located in the Finger Lakes region of the state, and trucking companies operating in this area could potentially use these highways more frequently than other companies. However, there are no data to indicate that this action will have a disproportionate adverse impact on jobs or employment opportunities in any specific geographical region.

4. Minimizing Adverse Impact

To minimize any unnecessary adverse impacts on existing jobs, NYSDOT has proposed no unwarranted measures or regulation. The proposed rule is limited to only those trucks greater than 45 feet in length and those meeting Federal STAA size requirements that use specific state routes with documented quality of life, safety and highway maintenance issues originating with large truck traffic. The rule applies only to through truck traffic, and reasonable access for trucks is still provided. Local deliveries will still be permitted on these routes to maintain shipping services to and from local businesses.

The proposed rule was redrafted as a result of comments received during the June 10 through October 10, 2008 comment period, to minimize industry impacts. In the original proposal, the burden of determining reasonable usage was on individual carriers/enforcement officials, and the original proposal included all highways in New York State. The redrafted proposed rule removes the burden from the carrier/individual driver/enforcement official for each unique trip to determine if a route is 'reasonably necessary.' The redrafted proposed rule lists highways that have been carefully selected through detailed engineering evaluation as Reasonable Access Highways. These specified Reasonable Access Highways would be signed.

The proposed rule uses a clear definition of a reasonable alternative route: "a 'reasonable alternative route' is a route that (a) uses State highways that are not Qualifying highways and (b) is at least 25 miles shorter than the shortest alternative route over Qualifying highways. To compare alternative routes, the length of each route shall be measured from the beginning location to the ending location of the route." For example, if the desired route along a specified Reasonable Access Highway saves 30 miles on a single trip, than it is reasonable to use, but if the desired route along a specified Reasonable Access Highway will save only 10 miles, then it would not be reasonable to use as a short cut. This "25 mile" definition enables an average person to determine if a route

choice is reasonable, clarifies the context of the regulation, and minimizes the potential economic and logistic impacts to the trucking industry by removing longer routes from consideration. It provides predictability of truck access, and is more likely to be incorporated into the shipping process.

This rule does not contain any measures to promote the development of new employment opportunities.

5. (IF APPLICABLE) Self-employment Opportunities

The rule will have no measurable impact on opportunities for self-employment.

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## Triborough Bridge and Tunnel Authority

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### NOTICE OF ADOPTION

**To Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Adopted by Triborough Bridge and Tunnel Authority**

**I.D. No.** TBA-24-09-00004-A

**Filing No.** 932

**Filing Date:** 2009-08-11

**Effective Date:** 2009-08-11

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

**Action taken:** Repeal of section 1021.1; and addition of new section 1021.1 to Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 553(5)

**Subject:** To establish a new crossing charge schedule for use of bridges and tunnels adopted by Triborough Bridge and Tunnel Authority.

**Purpose:** To increase crossing charges in amounts smaller than those enacted in prior Part 1021.1, effective March 27, 2009.

**Text or summary was published** in the June 17, 2009 issue of the Register, I.D. No. TBA-24-09-00004-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Joyce Mulvaney, Director of Public Affairs, Triborough Bridge and Tunnel Authority, 2 Broadway, 22nd Floor, New York, NY 10004, (646) 252-7416, email: jmulvaney@mtabt.org

**Assessment of Public Comment**

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

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## Urban Development Corporation

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### EMERGENCY RULE MAKING

**Investment Opportunity Fund Program**

**I.D. No.** UDC-34-09-00010-E

**Filing No.** 926

**Filing Date:** 2009-08-07

**Effective Date:** 2009-08-07

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:** Urban Development Corporation Act, section 5(4); L. 2008; ch. 57; part QQ, section 16p; L. 1968, ch. 174

**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 assistance 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 00 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 proj-

ects 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 November 4, 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 region-

ally 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 ben-

efit 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.