

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Administration of “Other Approved Agents” Such as Buprenorphine and the Ability to Also Prescribe Buprenorphine to Treat Addicts

I.D. No. ASA-49-08-00007-E

Filing No. 754

Filing Date: 2009-07-02

Effective Date: 2009-07-02

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

Action taken: Amendment of section 828.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(b), (e), 19.21(b), 19.40, 32.01, 32.05(b) and 32.07(a), (b)

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

Specific reasons underlying the finding of necessity: The proper administration, prescription and availability of buprenorphine along with the ability to administer any other approved agents to treat opioid addiction are necessary to ensure that those persons suffering from addiction can get the most advanced and most appropriate treatment for their disease.

Subject: Administration of “other approved agents” such as Buprenorphine and the ability to also prescribe Buprenorphine to treat addicts.

Purpose: To ensure that all persons will have equal access to the appropriate “approved agent” to treat their opioid addiction.

Text of emergency rule: PART 828

AMENDMENT TO: REQUIREMENTS FOR THE OPERATION OF CHEMOTHERAPY SUBSTANCE ABUSE PROGRAMS.

§ 828.1 Definitions.

(a) Methadone program means a substance abuse program using methadone *or other approved agents*, and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or synthetic drug of that group.

(1) Methadone maintenance means a treatment *protocol* using methadone or any of its derivatives, *or other approved agents*, administered, *and for purposes of prescribing Buprenorphine*, over a period of time to relieve withdrawal symptoms, reduce craving and permit normal functioning so that, in combination with rehabilitative services, patients can develop productive life styles.

(i) Methadone to abstinence means a treatment *protocol* using methadone, *or other approved agents*, administered, *and for purposes of prescribing Buprenorphine*, for a period exceeding 21 days, as part of a planned course of treatment involving reduction in dosage to the point of abstinence followed by drug-free treatment.

(ii) Methadone maintenance aftercare means a planned course of treatment for methadone, *or other approved agents*, maintenance patients, directed toward the achievement of abstinence and, through the aid of supportive counseling, the continuance of a drug-free life style.

(2) Methadone detoxification means a treatment *protocol* using methadone, or any of its derivatives, *or other approved agents*, administered, *and for purposes of prescribing Buprenorphine*, in decreasing doses over a limited period of time for the purpose of detoxification from opiates.

(b) Methadone clinic means a single location at which a methadone program provides methadone, *or other approved agent* and rehabilitative services to patients.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ASA-49-08-00007-P, Issue of December 3, 2008. The emergency rule will expire August 30, 2009.

Text of rule and any required statements and analyses may be obtained from: Deborah Egel, OASAS, 1450 Western Ave., Albany, NY 12203, (518) 457-2317, email: DeborahEgel@oasas.state.ny.us

Regulatory Impact Statement

Part 828 - Requirements for the operation of chemotherapy substance abuse programs will be amended to revise the definitions of methadone to include other approved agents to be administered or prescribed in the services instead of or in addition to methadone.

1. Statutory Authority.

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

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

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

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

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

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

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

2. Legislative Objectives.

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and ensure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, and those who are at risk of becoming chemical abusers. The amendment of Part 828 will allow methadone clinics to dispense, administer or prescribe buprenorphine to clients of the service as an alternative to methadone and thereby reducing the number of persons dependent on street drugs or illegally obtained prescription opioids.

3. Needs and Benefits.

The use of additional agents to treat opioid addiction will decrease the number of addicted persons using street drugs such as heroine or illegally obtained prescription opioids. The need for additional and varied treatment methodology's to treat opioid addiction is apparent, and the benefit to the service to be able to offer choices to their patients is that they may be able to keep more people on a "maintenance" program than if they have only one option.

4. Costs:

a. Costs to regulated parties.

There may be a change in the reporting requirements or the documentation requirements which may have a fiscal impact on regulated parties.

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

The state and local impact of the amendment of 828 will be minimal if at all. There is a difference between the reimbursement rates between methadone and buprenorphine. The weekly rates for buprenorphine are between \$170.78 and 259.78, depending on the dose, and for methadone the weekly reimbursement rates are \$136.05. Therefore it may cost the state, federal or local governments more money to provide buprenorphine. However, the number of persons receiving buprenorphine may not rise because the dispensing or prescribing of this approved agent is completely voluntary.

5. Local Government Mandates.

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

6. Paperwork.

The proposed rule does not impose additional paperwork requirements.

7. Duplication.

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

8. Alternatives.

The only alternative to the proposed regulation is to continue to use only methadone in clinics regulated under 828.

9. Federal Standards.

The CSAT Federal regulations preserve States' authority to regulate OTPs. The Federal regulations are considered minimal and the States are authorized to determine appropriate additional regulations. Federal regulations for dispensing or prescribing Buprenorphine in opioid treatment programs are more restrictive than minimal Federal regulations for dispensing for physician based practices. In support of reducing opioid dependence it is demonstrated that there are numerous benefits which include improved retention in treatment for patients, making OTP's more attractive to new patients, and giving patients more control over their treatment experience. In addition, patient quality of life may be improved through the reduction in daily attendance at an OTP clinic.

10. Compliance Schedule.

It is expected that full implementation of these Part 828 amendments shall become effective immediately.

Regulatory Flexibility Analysis

Effect of the Rule: The proposed emergency revision to Part 828 will impact certified and/or funded providers. It is expected that the emergency revision will require providers to amend some of their policies and procedures in their treatment modality. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking medication assisted treatment for opioid addiction due to more treatment options. As a result of patients receiving these services, local governments may see a decrease in services associated with active illicit drug use such as arrests and emergency room visits. Also, local governments and districts may see a nominal increase in cost due to the weekly Buprenorphine rate but this should be offset by better patient outcomes.

Compliance Requirements: It is expected that there will be no significant changes in compliance requirements. Since providers are already required to provide utilization review, it is not expected that this regulation, will have additional costs.

Professional Services: While it is expected that programs may require additional professional services when they choose to administer Buprenorphine during the induction phase this will last only a few days. In addition,

providers will now have the option of prescribing instead of administering.

Compliance Costs: Some programs may need to formally train staff to understand the pharmacology of Buprenorphine.

Economic and Technological Feasibility: Compliance with the record-keeping and reporting requirements of the emergency revision to Part 828 is not expected to have an economic impact or require any changes to technology for small businesses and government.

Minimizing Adverse Impact: This is an emergency adoption, no public comment is required, however, the subject matter experts within our agency, including the Medical Director have concluded that, in line with the Federal Standards, the addition of Buprenorphine through emergency regulation is necessary for the health, safety and welfare of the public. Any impact this rule may have on small businesses and the administration of State or local governments and agencies will either be a positive impact or the nominal costs and compliance are small and will be absorbed into the already existing economic structure. The positive impact for our patients and our health care system, outweigh any potential minimal costs.

Small Business and Local Government Participation: This is an emergency adoption, therefore even though there have been informal conversations with persons affected by this regulation and the subject matter experts within the agency have decided that this emergency is necessary to protect the health, safety and welfare of the public, a formal outreach to the business community was not performed. Small businesses should not be affected by this change, and local governments running methadone clinics are not required to provide Buprenorphine.

Rural Area Flexibility Analysis

A rural flexibility analysis is not provided since these proposed regulations would have no adverse impact on public or private entities in rural areas. The majority of Methadone providers are located in NYC. There are a few others upstate, but they are in cities, of various sizes. There are only three providers located in Ulster, Broome and Montgomery which may be considered a rural area however they are in towns where the density is greater than 150 people per square mile. The compliance, recordkeeping and paperwork requirements are the minimum needed to insure compliance with state and federal requirements and quality patient care.

Job Impact Statement

The implementation of emergency regulation Part 828 will have a minimal impact on jobs in that it may require some additional staffing, particularly during induction, if OTP's choose to administer Buprenorphine. This regulation will not adversely impact jobs outside of the agency.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special Housing Units

I.D. No. COR-29-09-00005-P

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

Proposed Action: This is a consensus rule making to repeal section 300.1(c) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 70 and 130

Subject: Special Housing Units.

Purpose: To remove the statement regarding Units for Condemned Persons and the Capital Punishment Unit, as they no longer apply to anyone.

Text of proposed rule: The Department of Correctional Services repeals and reserves section 300.1(c) of Title 7 NYCRR.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue - Building 2 - State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Maureen.Boll@DOCS.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed action because it merely repeals regulatory provisions which no longer apply to any person. See SAPA 102(11)(a).

7 NYCRR 300.1(c) currently stipulates that for the purposes of this rule the Unit for Condemned Persons at Clinton and Bedford Hills Correctional Facilities and the Capital Punishment Unit at Green Haven Correctional Facility are not to be considered SHU's.

The New York State Court of Appeals in *People vs. Taylor*, 9 N.Y.3d 129 (2007), determined that the New York State death penalty sentencing statute enacted in 1995 violates the New York State Constitution on its face and that it is not within the power of the judiciary to save the statute. Since then, the New York State Legislature has not passed a new death penalty statute. Accordingly, 7 NYCRR 100.15(d) which authorized Clinton Correctional Facility to be used to house male persons sentenced to death, 7 NYCRR 100.80(c)(5) which authorized Bedford Hills Correctional Facility to be used to house female persons sentenced to death and 7 NYCRR 100.21 which designated Green Haven Correctional Facility as the institution for the execution of the sentence of death have been repealed. Therefore, it is unnecessary to maintain this regulation.

The Department's authority resides in sections 70 and 130 of Correction Law. Section 70 mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law section 70(6). Section 130 assigns the Commissioner the discretion to designate appropriate correctional facilities to receive any person convicted of any crime punishable by death. See Correction Law section 130.

Job Impact Statement

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

	71 FR 27324-27348 (May 10, 2006)	*
	70 FR 74870-74924 (December 16, 2005)	*
Table 3	40 CFR Part 61 (July 1, 2003)	*
Table 4	40 CFR Part 63 (July 1, [2005]2007)	*

The remainder of Section 200.9 remains unchanged.

Existing subdivisions 200.10(a)-(c) remain unchanged.

Existing Section 200.10(d) is amended to read as follows:

(d) 'Table 4'.

Table 4
National Emission Standards for Hazardous Air Pollutants

'40 CFR 63 Subpart'	'Source Category'	'Page Number in July 1, [2005] 2007 Edition or Date of Promulgation & Federal Register Cite'
*A	General Provisions	[11-69] 11-70 Vol. 1
*B	Requirements for Control Technology Determination for Major Sources in Accordance with Clean Air Sections, Sections 112(g) and 112(j)	[69-91] 70-93 Vol. 1
*F	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry	[144-179] 153-188 Vol. 1
*G	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations and Wastewater	[179-339] 189-349 Vol. 1
*H	Organic Hazardous Air Pollutants for [Certain Processes Subject to the Negotiated Regulation for] Equipment Leaks	[339-380] 349-390 Vol. 1
*I	[Polyvinyl Chloride and Copolymers] Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulations for Equipment Leaks	[380-390] 390-400 Vol. 1
*J	[Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulations for Equipment Leaks] Polyvinyl Chloride and Copolymers Production	[390-391] 400-401 Vol. 1
*L	Coke Oven Batteries	[391-418] 401-428 Vol. 1
*M	Perchloroethylene Air Emission Standards for Dry Cleaning Facilities	[418-426] 428-438 Vol. 1
*N	Chromium Electroplating and Anodizing	[426-456] 438-467 Vol. 1
*O	Ethylene Oxide Commercial Sterilizers	[456-471] 467-482 Vol. 1
*Q	Industrial Process Cooling Towers	[471-474] 482-486 Vol. 1

Department of Environmental Conservation

NOTICE OF ADOPTION

Incorporation by Reference of Federal NESHAP Rules

I.D. No. ENV-44-08-00007-A

Filing No. 761

Filing Date: 2009-07-07

Effective Date: 30 days after filing

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

Action taken: Amendment of sections 200.9 and 200.10 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303 and 19-0305

Subject: Incorporation by reference of Federal NESHAP rules.

Purpose: The proposed rulemaking is an incorporation by reference of the Federal National Emission Standards for Hazardous Air Pollutants.

Text of final rule: Part 200, General Provisions

Sections 200.1 through 200.8 remain unchanged.

Existing Section 200.9 is amended to read as follows:

Table 1

Regulation	Referenced Material	Availability
6 NYCRR Part/ sec./etc. 200.10(b) Table 2	CFR (Code of Federal Regulations) or other 40 CFR Part 60 (July 1, 2003)	 *

*R	Gasoline Distribution Facilities	[475-488] 486-499 Vol. 1	*YY	Generic Maximum Achievable Control Technology Standards	[511-572] 518-579 Vol. 2
*S	Pulp and Paper (P&P I and III)	[488-520] 500-532 Vol. 1	*CCC	Steel Pickling - HCl Facilities and HCl Regeneration	[572-581] 579-588 Vol. 2
*T	Halogenated Solvent Cleaning	[520-548] 532-563 Vol. 1	*DDD	Mineral Wool Production	[581-592] 588-599 Vol. 2
*U	Group I Polymer and Resins	[549-671] 563-683 Vol. 1	*EEE	Hazardous Air Pollutants From Hazardous Waste Combustors	[8-68] 9-111 Vol. 3
*W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and [n]Non- [n]Nylon Polyamides Production	[672-685] 683-696 Vol. 1	*GGG	Pharmaceuticals Production	[68-179] 111-222 Vol. 3
*X	Secondary Lead Smelters	[685-698] 696-709 Vol. 1	*HHH	Natural Gas Transmission and Storage Facilities	[179-208] 222-250 Vol. 3
*Y	Marine Tank Vessel Loading Operations	[698-728] 709-739 Vol. 1	*III	Flexible Polyurethane Foam Production	[208-237] 250-280 Vol. 3
*AA	Phosphoric Acid Manufacturing Plants	11-21 Vol. 2	*JJJ	Group IV Polymer and Resins	[237-358] 280-401 Vol. 3
*BB	Phosphate Fertilizers Production Plants	21-31 Vol. 2	*LLL	Portland Cement Manufacturing Industry	[358-379] 401-423 Vol. 3
*CC	Petroleum Refineries	31-93 Vol. 2	*MMM	Pesticide Active Ingredient Production	[380-461] 423-504 Vol. 3
*DD	Off-[s]Site Waste and Recovery Operations	93-146 Vol. 2	*NNN	Wool Fiberglass Manufacturing	[461-476] 504-519 Vol. 3
*EE	Magnetic Tape Manufacturing Operations	146-174 Vol. 2	*OOO	Amino/Phenolic Resins Manufacturing	[476-541] 519-584 Vol. 3
*GG	Aerospace Manufacturing and Rework Facilities	174-226 Vol. 2	*PPP	Polyether Polyols Production	[541-619] 584-663 Vol. 3
*HH	Oil and Natural Gas Production Plants	[226-259] 226-263 Vol. 2	*QQQ	Primary Copper	27-51 Vol. 4
*II	Shipbuilding/Ship Repair (Surface Coating)	[260-275] 263-278 Vol. 2	*RRR	Secondary Aluminum Production	51-94 Vol. 4
*JJ	Wood Furniture Manufacturing Operations	[276-304] 279-307 Vol. 2	*TTT	Primary Lead Smelting	95-103 Vol. 4
*KK	Printing and Publishing Industry	[304-333] 307-340 Vol. 2	*UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur [Plant] Recovery Units	[103-180] 103-179 Vol. 4
*LL	Primary Aluminum Reduction Plants	[333-353] 340-360 Vol. 2	*VVV	Publicly Owned Treatment Works	[180-189] 179-188 Vol. 4
*MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills	[353-371] 360-378 Vol. 2	*XXX	Ferrous Alloys Production: Ferromanganese and Silicomanganese	[189-201] 188-200 Vol. 4
*OO	National Emission Standards for Tanks-Level 1	[371-376] 378-383 Vol. 2	*AAAA	Municipal Solid Waste Landfills	[201-208] 200-207 Vol. 4
*PP	National Emission Standards for Containers	[376-384] 383-391 Vol. 2	*CCCC	Manufacturing of Nutritional Yeast	[208-221] 207-220 Vol. 4
*QQ	Surface Impoundments	[384-390] 391-397 Vol. 2	*DDDD	Plywood and Composite Wood Products	[221-270] 220-280 Vol. 4
*RR	Individual Drain Systems	[390-394] 397-401 Vol. 2	*EEEE	Organic Liquid Distribution (Non-Gasoline)	[271-303] 280-322 Vol. 4
*SS	Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process	[395-432] 402-439 Vol. 2	*FFFF	Miscellaneous Organic Chemical Manufacturing	[304-342] 322-367 Vol. 4
*TT	Equipment Leaks - Control Level 1	[432-454] 439-461 Vol. 2	*GGGG	Solvent Extraction For Vegetable Oil Production	[343-367] 367-391 Vol. 4
*UU	Equipment Leaks - Control Level 2	[454-487] 461-494 Vol. 2	*HHHH	Wet Formed Fiberglass Mat Production	[367-382] 392-407 Vol. 4
*VV	Oil-Water Separators and Organic-Water Separators	[487-495] 494-502 Vol. 2	*IIII	Surface Coating of Automobiles and Light-Duty Trucks	[382-440] 407-467 Vol. 4
*WW	Storage Vessels - Control Level 2	[496-502] 503-509 Vol. 2	*JJJJ	Paper and Other Web [Surface] Coating	[440-471] 467-499 Vol. 4
*XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations	[502-511] 509-518 Vol. 2	*KKKK	Surface Coating of Metal Cans	[471-529] 499-553 Vol. 4
			*MMMM	Surface Coating of Miscellaneous Metal Parts and Products	[530-584] 553-608 Vol. 4
			*NNNN	Large Appliance Surface Coating	[584-624] 608-648 Vol. 4

*OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	[624-688] 648-711 Vol. 4
*PPPP	Surface Coating of Plastic Parts and Products	[688-739] 711-762 Vol. 4
*QQQQ	Surface Coating of Wood Building Products	[739-782] 762-806 Vol. 4
*RRRR	Metal Furniture Surface Coating	[782-824] 806-848 Vol. 4
*SSSS	Metal Coil Surface Coating	[824-850] 848-874 Vol. 4
*TTTT	Leather Finishing Operations	[850-866] 874-890 Vol. 4
*UUUU	Cellulose [Production] Products Manufacturing	[867-913] 890-939 Vol. 4
*VVVV	Boat Manufacturing	[913-942] 939-967 Vol. 4
*WWWW	Reinforced Plastic Composites Production	[942-998] 967-1026 Vol. 4
*XXXX	Rubber Tire Manufacturing	[998-1033] 1026-1061 Vol. 4
*YYYY	Stationary Combustion Turbines	[1033-1049] 1061-1077 Vol. 4
*ZZZZ	Stationary Reciprocating Internal Combustion Engines	[15-38] 15-37 Vol. 5
*AAAAA	Lime Manufacturing Plants	[38-62] 38-61 Vol. 5
*BBBBB	Semiconductor Manufacturing	[62-71] 61-71 Vol. 5
*CCCCC	Coke Oven: Pushing, Quenching, Battery Stacks	[72-98] 71-97 Vol. 5
*EEEEE	Iron and Steel Foundries	[149-177] 150-178 Vol. 5
*FFFFF	Integrated Iron and Steel Manufacturing	[178-200] 178-202 Vol. 5
*GGGGG	Site Remediation	[200-254] 202-258 Vol. 5
*HHHHH	Miscellaneous Coating Manufacturing	[255-281] 258-282 Vol. 5
*IIIII	Mercury Emissions From Mercury Cell Chlor-Alkali Plants	[281-308] 282-309 Vol. 5
*LLLLL	Asphalt Roofing and Processing	[355-377] 356-378 Vol. 5
*MMMMM	Flexible Polyurethane Foam Fabrication	[377-391] 378-392 Vol. 5
*NNNNN	Hydrochloric Acid [& Fumed Silica] Production	[9-27] 10-28 Vol. 6
*PPPPP	Engine Test Cells/Stands	[27-53] 28-54 Vol. 6
*QQQQQ	Friction Products Manufacturing	[53-61] 54-62 Vol. 6
*RRRRR	Taconite Iron Ore Processing	[61-86] 62-86 Vol. 6
*SSSSS	Refractory Products Manufacturing	[86-134] 87-135 Vol. 6
*TTTTT	Primary Magnesium Refining	[134-146] 135-147 Vol. 6
*DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	147-148 Vol. 6
*EEEEEE	Primary Copper Smelting Area Sources	148-161 Vol. 6
*FFFFFFF	Secondary Copper Smelting Area Sources	161-166 Vol. 6

*GGGGGG	Primary Nonferrous Metals Area Sources – Zinc, Cadmium, and Beryllium	166-176 Vol. 6
*Appendix A	Test Methods	[146-347] 176-375 Vol. 6
*Appendix B	Sources Defined for Early Reduction Provisions	[348] 376 Vol. 6
*Appendix C	Determination of the Fraction Biodegraded in a Biological Treatment Unit	[348-379] 376-407 Vol. 6
*Appendix D	Alternative Validation Procedure For EPA Waste and Wastewater Methods	[379-380] 407-408 Vol. 6
*Appendix E	Monitoring Procedure For Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions	[380-392] 408-420 Vol. 6

Existing subdivision 200.10(e) remains unchanged.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 200.9 and 200.10(d).

Text of rule and any required statements and analyses may be obtained from: Rick Leone, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: airregs@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule was approved by the Environmental Board.

Revised Job Impact Statement

1. Nature of impact:

This proposed rulemaking will have no impact on numbers of jobs or employment opportunities in the State. The purpose of the rulemaking is to update the Table of National Emission Standards for Hazardous Air Pollutants to cite to the 2007 Code of Federal Regulations and to correct existing typographical errors. The proposed rulemaking adopts existing Federal standards only and does not impose additional requirements on regulated entities.

2. Categories and numbers affected:

This proposed rulemaking will not affect specific categories of jobs nor will it affect the number of jobs or employment opportunities.

3. Regions of adverse impact:

This proposed rulemaking will not affect any region of the state specifically.

4. Minimizing adverse impact:

Since this proposed rulemaking will not affect the number of jobs or employment opportunities, there have been no steps taken to minimize the impact on existing jobs.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

2009 Recreational Harvest Limits for Summer Flounder (Fluke) and Black Sea Bass

I.D. No. ENV-19-09-00005-A

Filing No. 759

Filing Date: 2009-07-02

Effective Date: 2009-07-22

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

Action taken: Amendment of section 40.1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b and 13-0340-f

Subject: 2009 recreational harvest limits for summer flounder (fluke) and black sea bass.

Purpose: To ensure that the recreational harvest of summer flounder and black sea bass is in compliance with Interstate Management Plans.

Text or summary was published in the May 13, 2009 issue of the Register, I.D. No. ENV-19-09-00005-EP.

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

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

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

Assessment of Public Comment

Three email comments related to fishing for summer flounder were received during the public comment period. In general, these comments indicated displeasure with the recreational regulations but were not specific enough for the department to craft a response.

All three blamed commercial fishing for the need for tighter regulations on recreational anglers.

Department of Labor

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enhanced Administration of the State's Apprenticeship Training Program and Enhanced Program Sponsor Accountability

I.D. No. LAB-29-09-00004-EP

Filing No. 758

Filing Date: 2009-07-02

Effective Date: 2009-07-02

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

Proposed Action: Amendment of Part 601 of Title 12 NYCRR.

Statutory authority: Labor Law, section 811; 29 CFR 29

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

Specific reasons underlying the finding of necessity: The Rule enhances consistency in administration of the State's Apprenticeship Training Program, stakeholder participation in program approval, and program sponsor accountability that will ensure a well-trained workforce for the state's future.

Subject: Enhanced administration of the State's apprenticeship training program and enhanced program sponsor accountability.

Purpose: To strengthen the Apprenticeship Training Program in New York and ensure a well-trained, skilled workforce for the future.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.labor.state.ny.us): Section 601.3(d)(4) of the regulations of the Commissioner of Labor is amended as follows:

(4) involves manual, mechanical or technical skills and knowledge which *ordinarily* requires a minimum of 4,000 hours of work and training, which hours may include the time spent at related instruction, except that at the discretion of the commissioner, a new [program] *trade* may require a minimum of 2,000 hours if the commissioner finds that the particular trade can be learned within such time;

Section 601.3 of the regulations of the Commissioner of Labor is amended by adding new subdivision (g) as follows:

(g) *Electronic media means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and include, but are not limited to, electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media and/or interactive distance learning.*

Section 601.4 of the regulations of the Commissioner of Labor is amended by adding a new subdivision (i) as follows:

(i) *A written public comment period is required for all proposed trades and new apprenticeship program applications. A list of all proposed trades and new apprenticeship program applications will be posted on the Department's website for a minimum period of 30 calendar days. The posting shall include the United States postal and e-mail addresses to which comments may be submitted and the last date by which any public comment must be received for each application or proposed trade. All comments must be submitted in writing and must include: the name, title, and organization name, if applicable, of the party submitting the comment(s). Comments may be submitted via mail or e-mail. Comments*

received will be considered as part of the Department's review of the application or proposed trade in question. Nothing in this section shall be construed as creating an entitlement on the part of the party submitting public comment to further participation in the deliberation or determination regarding the application for apprenticeship program or trade except as deemed appropriate by the Department.

The first un-numbered paragraph of Section 601.5 of the regulations of the Commissioner of Labor is amended as follows:

No apprenticeship training program shall be registered or recertified unless the commissioner determines that the program meets all the following standards prescribed for an apprenticeship program:

Section 601.5(b) of the regulations of the Commissioner of Labor is amended as follows:

(b) The program must contain the equal opportunity pledge prescribed in part 600 of this title and, in programs having [more than] five or more registered apprentices:

Section 601.5(c), paragraphs (2) and (8) of the regulations of the Commissioner of Labor is amended as follows:

(2) the term of apprenticeship [, which] *in a trade* shall be not less than two years or 4,000 hours, consistent with training requirements [as] established by industry practice as determined by the commissioner, except that, at the discretion of the commissioner, the term of apprenticeship in a [new program] *trade* [shall] *may be established as not less than one year or 2,000 hours if the commissioner finds after review of written substantiation of the sponsor and the recommendation of the Apprenticeship Council that the particular trade [can] may be learned within such time;*

(8) the sponsor's statement that [he] *the sponsor* will comply with applicable Federal, State and local occupational safety and health standards, including [his] *the sponsor's* willingness to provide adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job;

Section 601.5 of the regulations of the Commissioner of Labor is amended by adding subdivisions (d), (e), (f), (g), (h), and (i) as follows:

(d) *All sponsors of apprenticeship training programs, and their signatories, if any, are required to ensure that each of their apprentices maintains a records that documents task rotation and the skills acquired through the program. The apprentice must maintain this record in a format and in a manner approved by the New York State Department of Labor. The apprentice's Blue Book is an acceptable method of recording task rotation and acquisition of skills through the program. Any alternative method of recording task rotation and skills acquisition shall be submitted to the New York State Department of Labor by the program sponsor for approval prior to implementing its use by apprentices. The apprentice's immediate supervisor is required to verify that the information contained in the record is accurate and shall do so by signing the record at least weekly.*

(e) *Newly approved apprenticeship programs must undergo a two year probationary period. Sponsors of newly approved programs will be advised that their programs are being approved contingent upon successful completion of the probationary period. During the probationary period, a sponsor may not submit any new apprenticeship program applications.*

(1) *Factors considered during the probationary period include the program sponsor's and signatories' compliance to the satisfaction of the Department with the following:*

(i) *The continuous enrollment of apprentice(s);*

(ii) *The payment of wages as specified in the apprenticeship agreement;*

(iii) *Acceptable and verifiable documentation of task rotation and skill development;*

(iv) *Acceptable and verifiable documentation of participation in related instruction;*

(v) *The provision of proper supervision;*

(vi) *The provision of a safe work environment;*

(vii) *The terms and conditions/provisions as indicated on the Apprenticeship Training Program Registration Agreement (Form AT10)*

(viii) *The provisions of Labor Law, Article 23 and 12 NYCRR Parts 600 and 601; and*

(ix) *Articles 8 and 9 of the Labor Law, the Workers' Compensation Law, and any other Federal or State laws governing the terms and conditions of employment.*

(2) *Probation Review Options:*

(i) *After a review of the new program's performance during the probationary period, the sponsor will be notified whether it:*

(a) *Passed probation; or*

(b) *Will have its period of probation extended for a period of no more than one year; or*

(c) *Failed probation.*

(ii) *A sponsor of a program that has had its probation extended pursuant to subdivision (e)(2)(i)(b) of this section, or that has failed proba-*

tion will be informed of the reasons why this decision was made. A sponsor whose program has been placed on an extended probation will be required to submit a proposed corrective action plan that addresses the deficiencies identified in the notice and a proposed time frame for its implementation. Both components of the proposed corrective action must receive New York State Department of Labor approval.

(iii) A sponsor whose program fails probation may file a written appeal of the decision by sending a letter to the commissioner setting forth its arguments why the sponsor's program should not have failed probation.

(f) A sponsor who fails probation will not be permitted to reapply for registration of any apprenticeship program for a period of one year. This period additionally applies to applications for registration of any apprenticeship program by any successor or substantially owned-affiliated entity, as those terms are defined in Labor Law section 220.

(g) All Apprenticeship Training Program sponsors will undergo a recertification process for each program at or about the time that the program completes its first training cycle following program certification, and at least every five years thereafter.

(1) Each sponsor seeking recertification and all applicants for new apprenticeship programs shall complete a new Apprenticeship Training Program Registration Agreement (Form AT-10), Sponsor Information Sheet (Form AT-9) and such other information as the commissioner shall deem appropriate for each of their programs.

(i) Simultaneously, every applicant for or sponsor of a Group Joint or Group Non-Joint program must submit a current list of program signatories' names, addresses, and Federal Employer Identification Numbers or Unemployment Insurance Employer Numbers in an electronic format as specified by the New York State Department of Labor.

(ii) The program sponsor must provide assurances in writing to the New York State Department of Labor that the sponsor will hold all signatories to the standards of their Apprenticeship Training Program Registration Agreement with the New York State Department of Labor.

(2) After a review of the sponsor's performance during the period prior to recertification, the sponsor will receive notification that:

(i) The sponsor's Apprenticeship Training Program has been renewed; or

(ii) The sponsor was found to have committed the violations specified, and is required to submit to the New York State Department of Labor a proposed Corrective Action Plan which addresses the deficiencies identified in the notice and a proposed time frame for the Plan's implementation. Both components of such Plan require Department approval. Formal deregistration will be pursued only if corrective action is not approved by the Department; or the sponsor has not taken the approved corrective action to resolve all issues within a reasonable period of time when compared to the approved time frame, as determined by the Department; or

(iii) The sponsor's Apprenticeship Training Program has been recommended for deregistration and deregistration proceedings will be initiated.

(h) Inter-Registration/Recertification Signatory Reporting Requirements.

All sponsors of group-joint and group non-joint programs must provide the Department with notification when an employer associates with, or disassociates itself from, a program, and must do so within ninety (90) days time. Such notification must include the employer's name, address, and either the employer's Federal Employer Identification Number (FEIN) or Unemployment Insurance Employer Number in an electronic format, as specified by the Department. Employers are considered to be associated with a program even if such association is through some intermediary organization. Employer inactivity in a program shall not, in and of itself, constitute disassociation.

(i) Related Instruction may be provided in person or via electronic media. All Related Instruction providers must be identified on an AT-8 Form and approved by the State Department of Education.

Section 601.7 of the regulations of the Commissioner of Labor is amended by adding a sub-section (d), as follows:

(d) Programs With No Apprentices:

(1) Any program, except for programs operated by the State Department of Correctional Services, that has not had an apprentice registered with the New York State Department of Labor for a period of twelve (12) consecutive months shall be deemed to have been voluntarily deregistered by its sponsor. The Department will follow up such deregistration with a letter acknowledging that the program has been voluntarily deregistered. The letter will include the effects that such deregistration may have on an employer. In order for a sponsor to re-register a program which was voluntarily deregistered, the sponsor must reapply and meet all the requirements contained in Article 23 and Parts 600 and 601.

(2) Within sixty (60) days before the conclusion of the twelve month period referred to in subdivision (1), a sponsor, who would otherwise be "deemed to have been voluntarily deregistered," may request that its program be placed in inactive status (Inactive Program).

(i) The commissioner, in his/her discretion may grant such status only to sponsors found to be in compliance with Article 23, Parts 600 and 601, and other State and Federal laws for the protection of workers.

(ii) If granted, inactive status shall run from the end of the twelve month period referred to in subdivision (1).

(iii) An employer who is associated with an Inactive Program shall not be deemed to have a registered New York State apprentice training program for purposes of work performed pursuant to Articles 8, 8A, and 9 of the Labor Law under that program.

(iv) An Inactive Program shall be deemed reactivated upon:

(a) The registration of an apprentice by filing form AT-401;

(b) The filing of newly updated AT-9 and AT-10 forms, and such other form(s) as the commissioner may require, by the sponsor; and

(c) The review and approval of such forms by the Department.

(v) After a period of twelve (12) months of inactive status, inactive programs will be deemed voluntarily deregistered by its sponsor.

Sections 601.4(a)(1), 601.4(b); 601.6(k); 601.7 subsections (b), (b)(2), and (c)(2); 601.8; 601.9; 601.11(e); and 601.12 of the regulations of the Commissioner of Labor are amended for gender neutrality and to make minor, corrective, non-substantive changes.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 29, 2009.

Text of rule and any required statements and analyses may be obtained from: Maria Colavito, New York State Department of Labor, Room 508, Building 12, State Office Campus, Albany, NY 12240, (518) 457-4380, email: NYSDDL@labor.state.ny.us

Data, views or arguments may be submitted to: Kevin E. Jones, New York State Department of Labor, Room 509, Building 12, State Office Campus, Albany, NY 12240, (518) 457-4380, email: NYSDDL@labor.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

Article 23, Section 811.1 (j) of New York State Labor Law authorizes the Commissioner of Labor to adopt rules and regulations for the operation of apprenticeship programs in New York State in accordance with the standards set forth in Section 815. Section 812 recognizes the New York State Department of Education as the entity responsible for the oversight and approval of related instruction for apprenticeship programs. Consistent with the authority conferred by New York State Education Law Article 5, Section 207, Section 3610, authorizes the allocation of state funds for the development of training and instructional programs for apprentices in registered apprenticeship programs. Regulations adopted by the Department of Education (8 NYCRR Part 160), outline a curriculum for Designated Local Educational Agencies (DLEA) to provide apprentice training and instruction, primarily through the Apprenticeship Related Supplemental Instruction Program (ARSIP), in counties throughout the state. To implement this legislation, Part 601 of the Regulations (12 NYCRR Part 601) was promulgated, and is being amended by this proposal.

In addition, under authority granted by the National Apprenticeship Act of 1937 [29 U.S.C. 50], the New York State Department of Labor (the Department) is recognized by United States Department of Labor (USDOL) Office of Apprenticeship as New York's Apprenticeship Agency, responsible for approving, registering, and supervising apprenticeship programs. By adopting these regulations the Department ensures that its apprenticeship programs conform to or exceed the federal program standards outlined in 29 CFR Part 29.

2. Legislative objectives:

Labor Law Article 23, Section 810 makes it the public policy of the State of New York to develop sound apprenticeship training standards and to encourage employers and labor to institute apprenticeship programs as a preferred method of training and preparing workers in New York. Through supervised training and education, apprenticeship programs develop skilled workers and help to meet the need for productive workers in the state's labor force. These amendments fulfill these legislative objectives and strengthen the Apprenticeship Training Program by bringing employers and labor together in a program designed to provide high quality on-the-job training and related instruction, increase participation in the state's skilled workforce, and reaffirm and clarify accountability of program sponsors.

3. Needs and benefits:

On August 28, 2007, former Governor Eliot Spitzer placed a moratorium on the approval of apprenticeship training programs in all trades while a thorough review of the State's Apprenticeship Training Program was conducted. This action was taken in an effort to overhaul the Program, which had been "diverted from its initial purpose" (Spitzer, Press

Release, August 28, 2007). Apprenticeship programs have a long tradition, and are established in order to assist employers and/or unions in providing workers with the essential skills necessary to practice their trade through hands-on work and classroom lessons. In recent years, many programs have evidenced notable inconsistencies in their instruction, promotion, and supervision of apprentices, yielding low graduation rates.

Two independent reviews were conducted, an internal review - the Process Mapping Report, and an external review conducted by Coffey Consultants. These two documents are available on the Department's website: <http://www.labor.state.ny.us/apprenticeship/apprenticereports.shtm>. These reviews sought input from various stakeholders and partners as well as Apprenticeship Training Program staff. Both the internal and external reviews echoed common themes and consistent recommendations to ensure the availability of a well-trained, skilled, experienced workforce. Those themes included the need for greater stakeholder involvement in the registration process, increased consistency in program implementation, and increased accountability by program sponsors to ensure the quality and effectiveness of apprenticeship programs. A number of significant recommendations which surfaced from the internal and external reviews are reflected in these regulatory amendments.

This proposal adds a new subsection (i) to Section 601.4 requiring lists of proposed trades and lists of applications for new apprenticeship programs be posted on the Department's website for a minimum of thirty days. This will allow for a public comment period, providing an opportunity for the regulated community to provide comments on all new program applications and proposed trades initiated in New York State.

The proposal also adds new subsections (d); (e); (f); (g); (h) and (i) to Section 601.5, re-enforcing the Department's oversight of apprenticeship programs. Section 601.5(d) of the proposed regulations requires sponsors to ensure that apprentices maintain records that document task rotation and acquired skills. The use of traditional "Blue Books" or other forms of documentation of task rotation will ensure that apprentices are being rotated through all aspects of their work process resulting in a skilled workforce with portable credentials. This is not a change in policy, but rather simply amplifies its importance. The addition of alternative methods of documenting an apprentice's work progression allows sponsors to request approval of electronic records or some other means of fulfilling this responsibility.

The two-year probationary period contained in Section 601.5(e) for newly approved programs will allow for closer oversight of the sponsors' compliance with apprenticeship standards and facilitate the removal of programs that do not measure up. Factors considered prior to final approval of registration are defined, and sponsors are apprised of the options available to the Department at the conclusion of the probationary period, including allowing sponsors of deficient programs to offer a plan of correction. Subsection (f) requires sponsors who fail probation to wait at least one year before re-applying for a program.

Subsection (g) applies to existing apprenticeship programs, by requiring recertification at or about the time the program completes its first training cycle following certification, and at least every five years thereafter. If needed, program sponsors who are deficient may be required to implement corrective action plans. The recertification process also provides sponsors an opportunity to ensure the Department has current and accurate information on their programs by requiring submission of a new registration form (Form AT-10) and a Sponsor Information Sheet (Form AT-9). In addition, consistent with federal and state case law, as well as Department policy, the proposed rule requires group non-joint and group-joint sponsors to identify their member signatories, and provide the Department with their names, addresses, and either their Federal Employer Identification Number or their NYS Unemployment Insurance Employer number in order to verify their compliance with applicable state and federal labor laws and regulations. Subsection (h) affirms the continuing obligation of group non-joint and group-joint sponsors to provide the Department with updated information on their member signatories. Both subsection (g) and (h) require that group non-joint and group-joint sponsors submit the names and identifying information on their member signatories in an electronic format in order to permit faster, efficient, and economical verification.

Section 601.5(i) is added to allow sponsors to provide related instruction to apprentices in person or by electronic media, provided it is approved by the State Department of Education. The term "Electronic media" is defined in a new subsection 601.3(g) to encompass a broad range of technology consistent with the definition contained in the federal rules which the Department is required to adopt by December 31, 2010.

Subsection 601.7(d) is added to reflect department policy that a program that has not had a registered apprentice for a period of twelve consecutive months is to be deregistered. The new regulations deem such programs to have voluntarily de-registered, saving the Department the time and expense of undergoing the formal process of deregistration. Because the

deregistration is voluntary, programs deregistered in such manner may apply for recertification immediately, if they so choose. The regulations exempt State Department of Corrections programs from this requirement. Due to comments from the public concerning the effects the regulation might have on small programs, especially during significant economic downturns, we added the ability to deactivate the program for up to one extra year with Department approval.

Section 601.8 is amended to reflect federal and state case law precedent and to express Department policy that sponsors of an involuntary program deregistration are barred from applying for another program for a period of three years.

Additional amendments to a number of sections clarify the meanings of several terms and add gender neutral revisions to the regulations.

This proposed rule includes additional changes to the Emergency Regulations filed on October 15, 2008 and January 12, 2009. Additional changes were made to align with USDOL's new apprenticeship regulations (29 CFR Part 29, effective December 29, 2008) and to address the public comments received by the Department.

4. Costs:

Costs to Employers and Labor:

Apprenticeship Training Programs cost businesses very little because the participants work while they learn. Because the apprentices are learning while they work, employers are allowed to pay apprentices lower wages than their journeyman workers and these wages are factored into the bids these employers submit to win projects. Further, having an apprentice training program allows construction companies to bid many more public work projects than those that are open to all bidders.

Sponsors incur only the costs associated with classroom learning. In programs jointly sponsored with an organized labor union and governed by a collective bargaining agreement, related instruction costs are frequently covered by the payment of dues, or deferred by the union itself. In addition, although minimal costs are incurred in the administration and operation of an Apprenticeship Program, this proposal will not result in any significant increase in costs to program sponsors. Additional costs related to the amount of time and resources needed to comply with the provisions of the proposal will be contingent upon the size of the program and the complexity of any corrective action issues.

Further, many of these changes were called for by the regulated community itself.

At present, apprenticeship program sponsors are given the option of registering, administering, and monitoring their programs using conventional printed forms, i.e. Blue Books, that have been pre-approved by the Department for documenting the work progression of apprentices. This proposal allows the use of computerized systems for recording and submitting this information by the apprentice, and permits the sponsor to maintain such information much more efficiently.

Prior to these regulations, the only way that an observer would know that a new trade had been proposed and was up for approval, or that a sponsor was seeking to register a program, was to regularly submit requests under the state's Freedom of Information Law for such information. Even then, there was no formal public comment period for providing input on these issues. These new rules provide for such information to be posted on the Department website so that the public can view proposed new program applications and pending trades, and electronically submit comments on these proposals for 30 days from the date of posting.

In addition, it requires group non-joint and group-joint sponsors to provide lists and identifying data for signatories, in an electronic format specified by the Department.

In the event that access to computers is not readily available, sponsors, stakeholders, and program participants may use computer equipment at any One-Stop Career Center located across the state to access the Department's website, submit comments, or maintain records. The electronic method of submitting program signatory data was designed to eliminate any extra costs associated with providing the information to the Department, and should increase the efficiency of administering apprenticeship programs by reducing the time and personnel needed to both fill out conventional printed forms and to process the information once received.

Costs to the Department:

It is not anticipated that adoption of these rules will result in any additional costs for the agency, which will administer any changes using existing Department personnel and resources.

5. Local government mandates:

Municipalities, school districts, fire districts and others who currently, or plan to, serve as program sponsors for apprenticeship training programs will be required to comply with the new requirements. These amendments will benefit such local governments by ensuring consistency and accountability among program sponsors. Apprenticeship Training Program staff will be available to provide technical assistance to program sponsors, including local governments choosing to undertake this role, by assisting them in complying with the rule.

Further, many local governments have enacted local laws requiring public work contractors to participate in state registered apprenticeship training programs in order to bid on public work construction projects. The collection, maintenance, and distribution of the names of program participants (signatories) by the Department will assist these local government entities in enforcing this requirement.

6. Paperwork:

The proposed regulations may have an impact on the following paperwork used in registering and administering apprenticeship programs:

- The Department posting of new program applications and proposed trades on its website allows the public to submit comments in writing, or electronically, within a 30-day period. The comments provided will increase DOL paperwork but assist the Department in making better decisions;
- The recording of task rotation/skills via "Blue Book," which requires the apprentice and the supervisor to document work progression and the completion of the work processes will not increase paperwork, as it is already required. However, allowing the submission of such records electronically would reduce paperwork;
- Documentation of participation and assessment in Related Instruction (during the two year probation), such documentation is already required, hopefully these new rules will garner better compliance;
- Submission of a proposed corrective action plan for extended probation will increase paperwork, but is essential if the program is going to be improved;
- Submission of Form AT-10 (the Sponsor Registration Form) at the time of program application and recertification is a new requirement that goes along with the requirement that programs be recertified every five years. The increase in paperwork will be substantial, but is imperative if the program is to be improved. Five year program recertification is also a new federal requirement;
- Submission of Form AT-9 form (the Sponsor Information Sheet) at the time of program application and recertification is also a new requirement that goes along with the requirement that programs be recertified every five years. The increase in paperwork will be substantial, but is imperative if the program is to be improved. Five year program recertification is also a new federal requirement;
- Submission of additional documents, as appropriate, at time of program application and recertification is also a new requirement that goes along with the requirement that programs be recertified every five years. The increase in paperwork will be substantial, but is imperative if the program is to be improved. Five year program recertification is also a new federal requirement; and
- Upon recertification, group non-joint or group-joint sponsors are required to electronically submit signatory information and to update such information as the program goes forward. This is a new requirement, but one that is essential if the program is to go forward. At present, the Department has no idea which, if any, employers are signatory to a given Group non-Joint or Group-joint program. This means that the Department is giving these employers a benefit without doing any checking on the background of such employers.

Apprenticeship programs traditionally require apprentices, and their supervisors, to track apprentices' progress through various task rotations included in their overall training program. While "Blue Books" have traditionally been used for this purpose, the proposed rule allows for flexibility in this regard by providing for skills attainment to be tracked in some other format approved by the Department.

Additional paperwork that will be required from regulated parties as a result of the fact that these rule changes include corrective action plans for program sponsors who fail to comply with program requirements.

At the same time, the Department will need to develop a number of new documents including form letters to address probationary and recertification determinations, form letters to acknowledge receipt of public written comments, as well as revisions to the Apprenticeship Training Program Registration Agreement.

Since Group-Joint and Group non-Joint program sponsors will be required to provide electronic lists of all program signatories, this proposed change will have the greatest impact on the amount of documentation required for those categories of sponsors. Although this is a new requirement, the Department's current policy requires a Sponsor Information Sheet (AT-9 form) from all signatories. The change to electronic lists will actually reduce the amount of paperwork currently of sponsors (the problem is that many sponsors are not in compliance with this requirement). It is increasingly difficult for the Department to monitor programs and their sponsors without knowing the employers (signatories) who are engaged in the program, and who may employ the apprentices in various phases of their apprenticeship training. Further, since many localities require employers to have an apprentice training program in order to bid on public work projects, and the Department is the only agency in a position to certify an employer as meeting this requirement, this new pro-

vision will allow the Department to maintain a database of all such employers (signatories) and thus, increase its ability to monitor task rotation and compliance with statutory and regulatory standards.

7. Duplication:

No duplication of rules was identified. Rather, these regulations are intended to clarify existing regulations found in Title 12 NYCRR Part 601 and to align New York State programs more effectively with the United States Department of Labor's recently revised Apprenticeship Regulations which can be found at 29 CFR Part 29.

8. Alternatives:

In addition to publishing emergency rules regarding certification and monitoring of Apprenticeship Training Programs, on October 15, 2008, and again on January 12, 2009, in the *New York State Register* and on the Department's website for easy public access, the Department sent copies of the emergency rule to all registered apprenticeship programs (800+) and pending applicants. In response, the Department received written comments regarding the Emergency Regulations from 29 individuals representing 30 organizations.

Public Comment Period:

The Emergency Regulations required the Department to post a list of all new trades and apprenticeship program applications on its website for a minimum period of ten business days to solicit public comments. Comments were received which suggested that new program applications and proposed trades be posted on the Department's website for a minimum of thirty days.

In response to the comments received, the proposal was changed to expand the ten business days to a minimum of 30 calendar days along with the posting of the last date in which any public comment must be received. Further clarifying language was added to indicate that new trades should actually be referred to as pending trades and to advise that the submission of comments does not create an entitlement on the part of the parties submitting comments to further participation in the Department's deliberations or decision-making regarding the pending application.

Task Rotation Requirements and Acceptable Documentation:

"Blue Books" have always been used to document task rotation during an apprentice's enrollment in the program. This requirement has been a long-standing policy which has been incorporated into this proposal. Comments were received which indicated the need to keep records but also asked for more flexibility and innovative approaches to document task rotation. In response, this proposal allows sponsors to be creative in their approach to document task rotation by allowing the Department to approve alternative methods of documenting an apprentice's task rotation, and at the last Apprentice Training Council meeting, the Department provided the attendees with one such alternative.

Two-Year Probationary Period for New Programs:

Various alternatives were considered for the probationary period, including the one-year period adopted by USDOL, as set forth in standards contained in 29 CFR 29.5(8). However, due to the length of apprenticeship programs, which average 48 months, it was decided that a two-year probation period would provide the optimal period of time for the Department to determine if the sponsor was capable of running a high-quality program. USDOL agrees that by making the probation period longer (i.e., more restrictive), that it still complies with the federal requirements.

Consideration was also given to which programs would be subject to probation. The Emergency Regulations provided for a probationary period for only newly approved programs whose sponsors were not already sponsors of an approved program, whereas the final proposal requires all newly approved programs to undergo probation to ensure fairness and consistency in implementation. This includes those with sponsors who now operate, or have previously operated, other programs.

In addition, public comments received at the March 18, 2009 State Apprenticeship and Training Council meeting included a suggestion that in order to pass probation the program must maintain at least one active apprentice; this requirement was added as a probationary requirement at 601.5(e)(1)(i).

Recertification of All Apprenticeship Training Programs:

The Emergency Regulations identified a three-year recertification period. Due to the numerous comments received that recertification should occur less frequently, and to align the period for review for quality and conformity of existing programs with the federal mandate contained in 29 CFR 29(3)(h), the recertification period was extended to "...at or about the time that the program completes its first training cycle following certification, and at least every five years thereafter."

One public comment identified an omission in the recertification process, indicating that Sponsor Information Sheets (AT-9 forms) were only being required of signatories, and not of sponsors. Additional language was incorporated to require the sponsor to complete the Sponsor Information Sheet at the time of recertification.

As described below, the AT-9 form will no longer be required of all signatories.

Many comments were received regarding which apprenticeship programs should be recertified first. To allow for greater administrative flexibility, this language was removed from the regulations and the order of recertification will be driven by policy.

Sponsors' Responsibilities for Employer Signatories:

The Emergency Regulations required that each signatory be identified, that each signatory complete AT-9 forms at time of recertification, and that the sponsor provide the Department with an electronic listing of the signatory's: name, address, and their Federal Employer Identification Numbers (FEIN). Most comments expressed the concern that this requirement would be unduly burdensome and costly to the sponsors and the program signatories. This revised proposal eliminates the requirement that all signatories complete an AT-9 form, and instead requires sponsors to provide an electronic listing of their signatories in an electronic format including names, addresses, and either their FEIN or their Unemployment Insurance Employer Number.

Sponsor Requirement to Maintain a Minimum of One Apprentice:

The new federal regulations do not allow a program to go without an apprentice for more than one year. This mirrors long-standing Department policy on this issue. However, at March 2009 Apprentice Training Council meeting, the issue that such programs were not being timely deregistered was raised by several parties in the regulated community. Accordingly, a new subsection 601.7(d) was added that provides that a program which has not had an apprentice registered with the Department for a period of 12 consecutive months will be deemed to have been voluntarily deregistered by its sponsor.

9. Federal standards:

In regulations set forth in 29 CFR Part 29, the United States Department of Labor (USDOL) requires state agencies administering apprenticeship programs to meet or exceed certain federal standards. Recently, USDOL adopted final rule changes to 29 CFR Part 29, effective December 29, 2008, which contain a number of changes to the federal rules. States are allowed two years to implement these new federal regulations. The following topics were added to this proposal to align with the federal changes:

Electronic Media -Previously, 29 CFR Part 29.5(b)(4) allowed for classroom instruction through trade or industrial courses, by correspondence courses of equivalent value, or other forms of self-study. USDOL amended this section to include electronic media for use in providing instruction in technical subjects related to the occupation. The definition of electronic media was incorporated into this proposal to keep pace with technological advances.

Two-Year Probationary Period for New Programs - 29 CFR Part 29.3(g) now requires that new programs be given provisional approval for a period of one year. At the conclusion of that year, they may be made permanent, may continue to be provisionally approved through the first full training cycle, or may be de-registered for failing to meet program standards. This proposal provides a two-year probationary period for all new apprenticeship programs which has been approved by USDOL as conforming to federal program requirements.

Recertification of All Apprenticeship Training Programs - 29 CFR Part 29.3(h) requires that all apprenticeship programs be reviewed for quality and conformity with program standards at the end of the first full training cycle, with subsequent reviews to be conducted at least every five years. This proposal amends the Emergency Regulations to align recertification with this longer review cycle. The regulations that the emergency regulations replace did not provide for a recertification process.

Deregistration of Programs - 29 CFR Part 29.8(b)(1)(ii) provides the grounds for a Registration Agency to deregister an apprenticeship program based on reasonable cause. One such basis for deregistration occurs when a program demonstrates a persistent and significant failure to perform successfully, which includes consistently failing to register at least one apprentice. This proposal deems sponsors which have not had an apprentice for a period of twelve consecutive months to have voluntarily deregistered their programs. Written notice will be provided to the sponsor stating the effects that deregistration may have on employers. The regulations exempt State Department of Corrections programs from this requirement.

10. Compliance schedule:

The moratorium on registration of new apprenticeship programs and sponsors ended on October 15, 2008. The two-year probationary requirement for new program sponsors became effective with the filing of the emergency regulations on October 15, 2008. The two-year probationary requirement for all new program applications became effective with the filing of the emergency regulations on January 12, 2009.

The requirement that a sponsor maintain at least one active apprentice at all times during the probationary period will become effective upon the filing of these regulations.

The recertification requirement became effective with the filing of the emergency regulations on October 15, 2008.

The establishment of a written public comment period for proposed trades and new program applications was also implemented on October 15, 2008.

New sponsor mandates requiring an electronic list of signatories was implemented by emergency regulations on October 15, 2008.

Provisions set forth in the rule clarifying task rotation requirements and acceptable documentation are simply a codification of an existing policy requirement and were implemented by Emergency Regulations on October 15, 2008.

The provision allowing Related Instruction to be provided via electronic media is a federal requirement that is already in effect in New York and as such the regulation simply restates Department policy.

The provision deeming a program to have been voluntarily deregistered if a program has not had an apprentice for twelve months, codifies Department policy, aligns state regulations with the new federal regulations, and is effective commencing on after the effective date of these regulations.

Additional revisions to the regulations clarifying terms and adding gender neutral language is effective upon the filing of this proposal.

Regulatory Flexibility Analysis

1. Effect of rule:

The provisions of this proposed rule which provide for the use of electronic recordkeeping will help to advance the Department's objectives in improving consistency and quality control of apprenticeship programs across the state without imposing any undue burden on small businesses.

While it is possible for a local government to be a program sponsor, the primary effect of these rules on local governments is incidental to the program. Many local governments have local requirements that require contractors performing work on public work projects have an apprentice training program. However, there is no single source of information from which such local governments may determine which contractors meet this requirement. By collecting and posting a list of program signatories to its website, the Department will be able to address this local government need.

Currently, all registered apprenticeship programs are regulated by the Department of Labor under a uniform set of standards, applicable to large and small businesses and local governments alike. Sponsors of Apprenticeship Training Programs may include building and construction trades, manufacturing trades, local governments (such as villages, school districts, and fire districts), as well as other non-traditional trades (such as baker, chef, or dental lab technician).

There are four types of Apprenticeship Training programs in this state, and each category may include small businesses and local government sponsors or signatories as follows:

- **Individual Non-Joint:** --- Involves a non-union employer and one or more apprentices or an employer with a union that does not wish to participate in the apprenticeship program. (584 Programs)
- **Individual Joint:** --- Involves a single employer and the union representing the employer's apprentices. (70 Programs)
- **Group Joint:** --- Involves a group of employers and one union, which represents the workers of the trade. (194 Programs)
- **Group Non-Joint:** --- Involves a group of non-union employers or an employer trade association whose members agree to apprenticeship standards among themselves or which contracts with a service provider to administer the apprenticeship program and to provide related instruction classes for the apprentices. (27 Programs)

The data listed above reflects the number of programs in each category, not individual sponsors, since one sponsor may operate multiple programs. The Department's records do not provide information to determine which sponsors are identified as small businesses or local governments. However, there are no exclusions in the types of programs a small business or local government may sponsor, which may include: construction, printing, metal-allied, manufacturing, service & repair, plant maintenance, business services, retail and wholesale, health service, justice, public order & safety, administration of human resources, as well as many others. Nor is the size of programs eligible for participation limited, as long as the sponsor maintains at least one apprentice. While a number of comments suggested that the rules should require a greater number of apprentices (as there is now an incentive for contractors to have programs solely in order to submit bids on certain public works projects), the Department considered the impact that requirement might have on local governments and small businesses, and elected to retain the current requirement of one apprentice.

2. Compliance requirements:

Participation in registered apprenticeship training programs is completely voluntary, and the effect of the proposed changes will be applicable to all programs, both large and small alike. In some instances, small businesses and local governments who already participate in registered programs as group or joint sponsors will be required to provide electronic record keeping, by listing and transmitting the names of member signatories and their identifying data to the Department. Other recordkeeping activities remain unchanged by this proposal, except to the extent that it

allows for greater flexibility in providing and recording the apprentices' training and task rotation activities.

Small businesses and local governments who choose to establish new apprenticeship programs will need to comply with all the record keeping required by Section 601, including tracking the apprentice's progress through various task rotations through use of a "Blue Book" or some other format approved by the Department. Small businesses and local governments sponsoring apprenticeship training programs will also be responsible for the preparation and implementation of a corrective action plan, if needed, to bring their program into compliance with statutory and regulatory requirements governing apprenticeship programs and the completion of paperwork for recertification every five years.

The amount of time needed for all these activities is contingent upon the size of the program and the degree to which existing programs are already in compliance with requirements of the current regulations. Newly registered programs will undergo a two-year probationary period in which they will be monitored by the Department to ensure they are in compliance with apprenticeship standards. During that time, Apprenticeship Training Representatives will be available to provide any assistance needed to meet program standards.

The Department is not aware of any local government program sponsors at this time.

3. Professional services:

Program sponsors will not be required to retain professional services to comply with the adoption of these regulations. The services and record-keeping required are performed by the sponsor's apprenticeship coordinator, project manager, or payroll/bookkeeping personnel in the ordinary course of administering an apprenticeship program.

4. Compliance costs:

Other than those small businesses or local governments who do not own or have access to computer services, and who elect to make a capital investment for that purpose, it is not anticipated that sponsors will incur any additional expenses, for personnel or equipment, due to the adoption of these regulations.

The completion of "Blue Books" or an alternative method of documentation of task rotation has been a requirement of the program as part of the Department's apprenticeship standards since its inception. All Apprentice Training Program Registration Agreements provide for a specified ratio of apprentices to journey workers, who act as the apprentice's supervisor. Since a supervisor is responsible for a limited number of apprentices and verifying their progress in "Blue Books," or some other approved method of documenting task rotation, the sponsor will not incur any additional expenses for personnel.

Only group non-joint or group-joint sponsors will be required to submit the names and identifying data of signatories to the Department by electronic means.

Every sponsor will be required to apply for the recertification of each of its programs at least once every five years, including completing the recertification paperwork (this is a new federal requirement). The implementation of these regulations will require those sponsors whose programs fail to meet minimum standards to prepare and implement a corrective action plan.

If a sponsor does not have a computer available to develop and send an electronic list of signatories to its group non-joint or group-joint program, sponsors may obtain access to computer equipment at One-Stop Career Centers located across the state. The amount of time needed to prepare such files is contingent upon the size of the program and the complexity of the issues, but it is not expected to have any significant impact on either small businesses or local governments.

5. Economic and technological feasibility:

The adoption of these regulations is not expected to place an undue burden on small business or local government program sponsors.

Wherever possible, the Department will utilize technology to make the filing of documents with the Department easier. For example, by adoption of this proposal, the Department will require group non-joint or group-joint sponsors to submit lists of apprenticeship program signatories in an electronic format, but does not require the purchase or installation of any new software or unique programming. If not already owned or available to the sponsor, computer equipment may be utilized at One-Stop Career Centers for this purpose.

In addition, public comments on new program applications and proposed trades will be accepted via an electronic format, providing better feedback and faster approval of new apprenticeship programs.

Small businesses and local governments may also utilize electronic recordkeeping to document apprentice task rotation, thereby increasing efficiency and reducing costs for time and personnel that otherwise would be needed to perform this function.

Finally, small businesses and local governments, especially those in rural areas, may utilize electronic media approved by the NYS Department of Education in providing related instruction to apprentices thus reducing costs associated with classroom instruction.

6. Minimizing adverse impact:

Sponsors who administer Group-Joint or Group Non-Joint programs currently maintain a list of program signatories in their normal course of business, but will be required to submit those lists and identifying data to the Department by electronic means under this proposal. It is possible that small businesses or local government might be a member of a group or entity that might constitute a program sponsor. However, it is extremely unlikely that this fact alone would result in such group having to purchase equipment to comply with this requirement.

Documentation of task rotation by alternative means approved by the Department, including the submission of electronic records by apprentices, will allow sponsors to be innovative in their approach as they seek to increase efficiency and reduce costs associated with administering apprentice training programs. Program sponsors are currently tracking task rotation using conventional means, i.e. on paper, such as "Blue Books." This proposal will provide more flexibility and a more consistent application of this requirement.

In addition, the new regulations allow the use of electronic media to provide related instruction to apprentices, after each such provider is approved by the New York State Department of Education. The addition of an alternative to traditional classroom instruction allows small business or local government program sponsors in more remote areas another means of providing apprentices with the courses needed to complete their apprenticeship programs, and does so at a lesser cost.

While the Department believes that the possibility that the proposed rule will have an adverse impact is minimal, the Department will provide technical assistance to program sponsors in order to minimize any such adverse impact from this rule on small business and local government sponsors, especially those located in rural areas.

7. Small business and local government participation:

On August 28, 2007, New York State placed a moratorium on the approval of apprenticeship training programs in all trades while a thorough review of the program was conducted. Two independent reviews were conducted which obtained input from various stakeholders and partners as well as Apprenticeship Training Program staff. Small businesses and local governments were given an opportunity to participate in these reviews by responding to questions asked by parties conducting the reviews. The final Reports, authored by Coffey Consulting LLC and the Department, were posted for public review on the Department's website. Also, seven public forums were held throughout the state in August and September 2008, offering the public, including small business and local government sponsors, an opportunity to provide their comments on the reports. All feedback received as a result of these activities was reviewed and considered and a number of recommendations received from stakeholders, interested parties, and the consultants are reflected in this rulemaking.

In addition, the Apprentice Training Council met three times (once in Albany and twice in New York City) since the Emergency Regulations were filed on October 15, 2008 and while this proposal was being developed. Many sponsors attended these meetings, including sponsors located in rural areas. The changes were explained, questions were asked, and input was taken. At the March 18, 2008 meeting of the Apprentice Training Council, for example, one representative identified himself as a "small upstate sponsor" of an apprenticeship program, and presented his views on the effect of the new regulations, including the difficulty his company might experience if the Department imposed a requirement of hiring more than one apprentice to be eligible for registration. Further, sponsors were asked to submit written comments and 29 individuals representing 30 organizations provided written comments to the Department. These comments were taken into account and changes were made based upon the input received.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Apprenticeship training programs may be sponsored by a single employer, a group of employers, or a joint apprenticeship committee representing both employers and a union. There are currently over 450 sponsors operating 650 programs with nearly 6,000 apprentices outside of New York City and Long Island. Many of these programs operate in rural areas of the State.

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

All Apprenticeship Training Program Sponsors in rural areas who conduct Group-Joint or Group Non-Joint programs must provide a list of all employer signatories to NYSDOL in an electronic format including names, addresses, and either their Federal Employer Identification Number (FEIN) or Unemployment Insurance Employer Number.

All program sponsors in rural areas will be required to ensure their apprentices are regularly keeping "Blue Books," or a comparable record, to ensure documentation of task rotation and the attainment of skills.

All program sponsors in rural areas will be required to apply for recertification of programs at or about the time that the program completes

its first training cycle following certification, and at least every five years thereafter. Deficiencies in program administration or operation identified during the review will have to be corrected.

All applications for new apprenticeship training programs by sponsors in rural areas will be subject to publication and public comment. Sponsors may be required to respond to inquiries from Apprenticeship Training Program staff in response to comments received from the public.

3. Costs:

The adoption of these regulations is not expected to place an undue burden on program sponsors located in rural areas.

Related Instruction: These new regulations provide no additional requirements over those in the prior regulations. Sponsors incur only the costs associated with classroom learning. Since the New York State Department of Education authorizes and approves instructional programs for apprentices, they are available on a statewide basis at local community colleges or BOCES Centers. Consequently, rural sponsors will not suffer any disadvantage in meeting program requirements. Although minimal costs are incurred in sponsoring and operating an Apprenticeship Program, this proposal will not result in any significant increase in costs. Further, these rules provide specifically for training to be done electronically, eliminating a significant cost to sponsors when they might have to travel to distant locations in order to secure appropriate related instruction.

Additional costs related to the amount of time and resources needed to comply with the following provisions of the proposal will be contingent upon the size of the program and the complexity of corrective action issues.

Although the proposal will require the use of a computer to submit an electronic list of signatories and their identifying data to NYSDOL for group non-joint and group non-joint sponsors, it is highly unlikely that this will result in capital expenses or annual operating costs. This data is already in the possession of each union's contract benefit program office or each group non-joint sponsor's membership office. Electronic data submission to NYSDOL was designed to provide DOL with crucial information necessary to the Department in administering the apprentice training program by the most cost effective method for the Department and the sponsors. Due to the large number of comments from the regulated community, this provision was significantly changed from what the Department's originally proposed (the original proposal required the sponsor to get AT-9 forms completed by each signatory).

The regulations, for the first time, allow electronic record keeping of task rotation. However, sponsors may continue to utilize conventional pre-printed forms or "Blue Books" for recording on-the-job training hours if they so desire. The electronic method of on-the-job training data collection was designed to eliminate costs and to aid in the administration of apprenticeship programs by reducing the time and personnel needed to complete and file conventional printed forms.

Also, the regulated community and any other interested individuals or groups will, for the first time, be able to view both applications for new programs and the details of proposals to recognize new trades on line. Such access was expressly requested by the regulated community and such information was not previously available except through the FOIL process.

Access to computer equipment in order to take advantage of electronic record-keeping of task rotation, access to applications for new programs and the details of proposals to recognize new trades, and a means to create the newly required electronic list of signatories, if not otherwise available to sponsors, will be available at One-Stop Career Centers located across the state.

4. Minimizing adverse impact:

Sponsors in rural areas who administer Group-Joint or Group Non-Joint programs currently maintain a list of program signatories in their normal course of business, but will be required to submit those lists and identity data to NYSDOL by electronic means under this proposal.

Documentation of task rotation by alternative means approved by the Department, including the submission of electronic records will allow sponsors to be innovative in their approach as they seek to increase efficiency and reduce costs associated with administering apprenticeship programs. Program sponsors are currently tracking task rotation using conventional means, such as "Blue Books and payroll records. This proposal will provide more flexibility and a more consistent application of this requirement.

In addition, the new regulations allow the use of electronic media, if approved by the New York State Department of Education, to provide related instruction to apprentices. The addition of an alternative to traditional classroom instruction allows sponsors in more remote areas a means of providing apprentices with the courses needed to complete their apprenticeship programs at reduced costs.

While the Department believes that the possibility of adverse impact of the proposed rule will be minimal, the Department will provide technical assistance to program sponsors. Such assistance will serve to minimize the

adverse impact, if any, from the new rules for sponsors located in rural areas.

5. Rural area participation:

On August 28, 2007, New York State placed a moratorium on the approval of apprenticeship training programs in all trades while a thorough review of the program was conducted. Two independent reviews were conducted which obtained input from various stakeholders and partners as well as Apprenticeship Training Program staff. Sponsors located in rural areas were given an opportunity to participate in these reviews by responding to questions asked by parties conducting the reviews. The final written Reports authored by Coffey Consulting, LLC., and the Department were posted for public review on the Department's website and seven public forums were held throughout the state in August and September 2008, offering the public, including sponsors located in rural areas, an opportunity to provide their comments on the reports. All feedback received as a result of these activities was reviewed and considered and a number of recommendations received from stakeholders, interested parties (some of whom were from rural areas), and the consultants are reflected in this rulemaking. A sampling of the written responses shows that comments received from upstate and rural employers and unions included the Apprenticeship Coordinator for the Bricklayers and Allied Craftsmen Local #3, Ithaca, New York; the Apprenticeship Coordinator for the Bricklayers and Allied Craftsmen Local #2, Albany, New York; the Plumbers and Steamfitters Local #7, Latham, New York; the Eastern New York Laborers' District Council, Glenmont, New York, and the Empire State Carpenters Apprenticeship Committee, Rochester, New York.

In addition, the Apprentice Training Council (ATC) met three times (once in Albany and twice in New York City) since Emergency Regulations were filed on October 15, 2008. Many sponsors attended these meetings, including sponsors located in rural areas. The changes were explained, questions were asked, and input was taken. At the March 18, 2008, meeting of the Apprentice Training Council, for example, one representative identified himself as a "small upstate sponsor" of an apprenticeship program, and presented his views on the effect of the new regulations, including the difficulty his company might experience if the Department imposed a requirement of hiring more than one apprentice to be eligible for registration. Further, sponsors were asked to submit written comments and 29 individuals representing 30 organizations provided written comments to the Department. These comments were taken into account, and changes made based upon the input received, and consideration of the Department's objectives.

Job Impact Statement

The emergency regulations will not result in the decrease of any jobs; in fact, apprentice training is designed as a program to increase employment opportunities by training workers and increasing their prospects for long-term employment in the state's skilled labor force. Further, as a part of the program, workers are not only trained, but their wages are set and monitored and they are provided with a safe working environment and provided with better health and safety training than they might otherwise obtain.

Office of Mental Health

EMERGENCY RULE MAKING

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-29-09-00001-E

Filing No. 753

Filing Date: 2009-07-01

Effective Date: 2009-07-01

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

Action taken: Amendment of section 578.8 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

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

Specific reasons underlying the finding of necessity: The amendments ensure consistency with the enacted 2009-2010 State budget by reducing the growth rate of Medicaid reimbursement associated with residential treatment facilities for children and youth regulated by the Office of Mental Health, effective 7/1/09.

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: To reduce the growth rate of medicaid reimbursement associated with residential treatment facilities for children and youth.

Text of emergency rule: Paragraph (4) of Section 578.8(a) is amended to read as follows:

(4) The allowable costs, as set forth in paragraph (1) of this subdivision, that meet the requirements stated in paragraphs (2) and (3) of this subdivision, shall be trended by the applicable Medicare inflation factor for hospitals and units excluded from the prospective payment system except for the rate periods effective July 1, 1996 through June 30, 1997, and July 1, 2009 through June 30, 2010, where the inflation factor used to trend costs will be limited to the inflation factor for the first year of the two-year period.

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 September 28, 2009.

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

Regulatory Impact Statement

1. **Statutory Authority:** Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth licensed by the Office of Mental Health.

2. **Legislative Objectives:** Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 578 are needed to reduce the growth rate of Medicaid reimbursement associated with residential treatment facilities for children and youth regulated by the Office of Mental Health (OMH) and ensure consistency with the enacted 2009-2010 state budget.

3. **Needs and Benefits:** The amendments remove the 2009-2010 trend factor from the Medicaid rate calculation for residential treatment facilities (RTF) for children and youth, which are identified as a subclass of hospitals under Section 31.26 of the Mental Hygiene Law. As a result, the rate of growth in Medicaid expenditures is slowed, yet the RTF's quality and availability of services are maintained. This is an Administrative Action consistent with the 2009-2010 enacted State Budget, and reflects the serious fiscal condition of the State. This action is consistent with actions taken in the enacted budget applicable to the Department of Health, where trend factors were eliminated from calculation of Medicaid rates for inpatient services effective April 1, 2009.

4. **Costs:**

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: This regulatory amendment will not result in any additional cost to regulated parties, but will reduce the rate of growth in Medicaid payments that the RTF providers receive. It is estimated that this action will result in an annual reduction in Medicaid growth of approximately \$1.9 million State share of Medicaid (\$3.8 million gross Medicaid).

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

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

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

8. **Alternatives:** As noted above, this amendment is consistent with the 2009-2010 enacted State Budget and the budgetary constraints included therein. OMH has determined that the elimination of the trend factor for RTFs would not affect the ability of those programs to continue to function and serve the children and youth who are receiving services there. The only alternative to this rulemaking would have been to make budgetary cuts to another program which would not have been as sustainable as the residential treatment facilities. Therefore, that alternative was not considered.

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

10. **Compliance Schedule:** The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The rulemaking will reduce the rate of growth in Medicaid reimbursement associated with the residential treatment facilities for children and youth regulated by the Office of Mental Health. The proposed change is consistent with the 2009-10 enacted State budget and recognizes the serious fiscal condition of the State. This change removes the program's 2009-10 trend factor from the Medicaid rate calculation and, as a result, slows the rate of growth in Medicaid expenditures, while maintaining the program's quality and availability of services. There will be no adverse economic impact on small businesses or local governments; therefore, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rulemaking, which serves to reduce the growth rate of Medicaid reimbursement associated with the residential treatment facilities for children and youth regulated by the Office of Mental Health, will not impose any adverse economic impact on rural areas. The proposed change is consistent with the 2009-10 enacted State budget and recognizes the serious fiscal condition of the State. This change removes the program's 2009-10 trend factor from the Medicaid rate calculation, and as a result slows the rate of growth in Medicaid expenditures, while maintaining the program's quality and availability of services.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the regulation eliminates the 2009-10 trend factor from the Medicaid rate calculation for residential treatment facilities for children and youth regulated by the Office of Mental Health. This is consistent with the 2009-10 enacted State budget. The result of this rulemaking is the rate of growth in Medicaid expenditures is slowed, but a program's quality and availability of services is maintained. There will be no adverse impact on jobs and employment opportunities.

Niagara Falls Water Board

NOTICE OF ADOPTION

Elimination of the Current Expiration Date of December 31, 2008 for the Current Rates, Fees and Charges

I.D. No. NFW-12-09-00008-A

Filing No. 756

Filing Date: 2009-07-10

Effective Date: 2009-07-22

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

Action taken: Amendment of section 1950.20 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-j

Subject: Elimination of the current expiration date of December 31, 2008 for the current rates, fees and charges.

Purpose: To allow for the continued collection of fees to pay for costs necessary to operate, maintain and manage the system.

Text or summary was published in the March 25, 2009 issue of the Register, I.D. No. NFW-12-09-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: John J. Ottaviano, Niagara Falls Water Board, 172 East Avenue, PO Box 1230, Lockport, New York 14095, (716) 438-0488, email: jottaviano@harrisbeach.com

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-15-09-00019-A

Filing Date: 2009-07-02

Effective Date: 2009-07-02

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

Action taken: Update the service tariffs (HC-1, TN-1, NP-1, 37, and 8) applicable to the Power Authority's Niagara Relicensing, Niagara Frontier Transportation Authority, and Metropolitan Transportation Authority customers.

Statutory authority: Public Authorities Law, section 1005(5) and (13); and L. 1987, ch. 32

Subject: Rates for the sale of power and energy.

Purpose: Update service tariffs to streamline them/include additional required information.

Text or summary was published in the April 15, 2009 issue of the Register, I.D. No. PAS-15-09-00019-P.

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

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Assessment of Public Comment

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

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity at a Residential Senior Citizen Facility

I.D. No. PSC-29-09-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Shinda Management Corp. on behalf of Greater Allen Cathedral Senior Res., to submeter electricity at 107-37 166th St., Jamaica, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity at a residential senior citizen facility.

Purpose: To consider the request of Shinda Management Corp. to submeter electricity at 107-37 166th Street, Jamaica, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Shinda Management Corporation, on behalf of Greater Allen Cathedral Senior Residence, to submeter electricity at 107-37 166th Street, Jamaica, New York, located in the territory of Consolidated Edison Company of New York, Inc. Greater Allen Cathedral Senior Residence operates at this location a residential senior citizen facility.

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-0011SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuation of National Fuel Gas Distribution Corporation's Conservation Incentive Program

I.D. No. PSC-29-09-00007-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 National Fuel Gas Distribution Corporation's proposal to continue its Conservation Incentive Program for a third year with modifications to available rebates and the program's outreach and education budget.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Continuation of National Fuel Gas Distribution Corporation's Conservation Incentive Program.

Purpose: To encourage gas conservation in National Fuel Gas Distribution Corporation's service territory.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposal set forth by National Fuel Gas Distribution Corporation in a petition dated May 27, 2009, seeking approval for the continuation of its Conservation Incentive Program with slight modifications from its current form for a third program year – 2009-2010. The modifications proposed include adjustments to the available rebates and a reduction of the outreach and education portion of the program budget.

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.

(07-G-0141SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Specific Residential and Residential Low-income Electric and Gas Energy Efficiency Programs

I.D. No. PSC-29-09-00008-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 residential and residential low-income electric and gas energy efficiency program proposals as a component of the Energy Efficiency Portfolio Standard.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Specific residential and residential low-income electric and gas energy efficiency programs.

Purpose: To encourage electric and gas energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, (a) residential and residential low-income electric energy efficiency program proposals made in response to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008 [see Ordering Clauses 8, 10 & 17]; and (b) residential and residential low-income gas energy efficiency program proposals made in response to a notice in Case 07-M-0548 entitled "Notice Requesting Proposals" issued by the Secretary to the Public Service Commission on April 20, 2009. For potential independent program administrators that submitted updated proposals for programs in accordance with Ordering Clause 8 of the aforementioned June 23, 2008 Order, such submissions shall be considered as pre-filed comments responsive to this notice to the degree that they relate to the provision of energy efficiency programs for residential and residential low-income customers. The program proposals under consideration for this rule include the following:

1. Cases 08-E-1135 and 09-G-0363 - Central Hudson Gas & Electric Corporation, Petition letter from Thompson Hine, Robert J. Glasser, Esq., dated September 22, 2008: (a) Residential Lower Income Assistance Program (electric and gas); (b) Residential Appliance Recycling Program (electric); (c) Expanded Residential HVAC Program (electric and gas); and (d) Residential Lighting - Community Group CFL Sales Program (electric).

2. Cases 08-E-1127 and 09-G-0363 - Consolidated Edison Company of New York, Inc., "Residential and Commercial Energy Efficiency Programs" dated September 22, 2008: (a) Residential Direct Installation Program (electric), (b) Residential Room Air Conditioning Program (electric), (c) Appliance Bounty Program (electric), and (d) Targeted Demand Side Management Program (electric).

3. Cases 08-E-1129/08-E-1130 and 09-G-0363 - New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation, "Electric Program Plan of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation" dated September 22, 2008, and Updates dated April 30, 2009: (a) Residential Energy Star HVAC Electric Program (electric), (b) Residential Recommissioning/Early Replacement Program (electric), (c) Residential Lighting Program (electric), (d) Residential Limited Income Program (electric and gas).

4. Cases 08-E-1132 and 09-G-0363 - New York State Research and Development Authority, "Energy Efficiency Portfolio Program Administrator Proposal" dated September 22, 2008, Updates dated November 21, 2008, Updates dated June 2, 2009, and Updates dated June 5, 2009: (a) Power Management Pilot Program (electric), (b) ReModel With Energy Star Program (electric), (c) Residential Green Building Program (electric and gas), (d) EmPower New York (gas), (e) Home Performance With Energy Star Program (gas), (f) Assisted Home Performance With Energy Star Program (gas), and (g) New York Energy Star Homes (gas).

5. Cases 08-E-1133 and 09-G-0363 - Niagara Mohawk Power Corporation d/b/a National Grid, "Electric and Gas Energy Efficiency Program Proposals" dated September 22, 2008: (a) Enhanced Home Sealing Incentives Program (electric and gas), (b) Residential Energy Star Products and Recycling Program (electric and gas), (c) Residential Low Income Program (electric and gas), (d) Residential Internet Audit Program and E-Commerce Sales Program (electric and gas), (e) Residential Building Practices and Demonstration Program (electric and gas), and (f) Residential Pricing Pilot With Load Control Program (electric).

6. Case 08-E-1128 - Orange and Rockland Utilities, Inc., "Residential and Commercial Energy Efficiency Portfolio Programs" dated September 22, 2008: (a) Efficient Products Program (electric).

7. Case 09-G-0363 - The Brooklyn Union Gas Company/KeySpan Gas East Corporation, "Gas Energy Efficiency Program Proposals" dated September 22, 2008, Updates dated September 26, 2008, and Updates dated June 5, 2009: (a) Enhanced Home Sealing Incentives Program (gas), (b) Residential Energy Star Products Program (gas), (c) Residential Low Income Program (gas), (d) Residential Internet Audit Program and E-Commerce Sales Program (gas), (e) Residential Building Practices and Demonstration Program (gas), (f) Home Energy Audits Program (gas), and (g) Energy Star Homes Program On Long Island (gas).

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, Secre-

tary, 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-1127SP4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Securities and Other Forms of Indebtedness Including Derivative Contracts

I.D. No. PSC-29-09-00009-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 Orange and Rockland Utilities, Inc. to issue \$500 million in securities (\$100 million may be preferred stock), to enter into revolving credit agreements not to exceed \$200 million and issue long-term debt.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities and other forms of indebtedness including derivative contracts.

Purpose: To authorize the issuance of securities and other forms of indebtedness including derivative contracts.

Text of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by Orange and Rockland Utilities, Inc. (the Company) for the approval to issue and sell up to a total of \$500 million of securities, including up to \$100 million in preferred stock; to enter into or continue revolving credit agreements totaling \$200 million; and to issue and sell long-term debt for refunding existing debt (Refunding Securities) commencing immediately and from time to time through December 31, 2012.

In connection with issuance of the new securities and the Refunding Securities, the Company seeks authorization to use Treasury-related derivative contracts such as interest rate swaps, Treasury locks or other derivative products such as caps or collars as necessary to manage its interest rate risk and other financial exposures.

The Company will use the proceeds of the long-term debt for the refunding of maturing debt and to pay the costs and expenses of such refunding (including any premium).

The Company believes it needs a credit facility of \$200 million for the Company's commercial paper program and to provide letters of credit.

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-M-0529SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-29-09-00010-P

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

Proposed Action: The Public Service Commission is considering leaves Nos. 12, 13, and 14 filed by Emerald Green Lake Louise Marie Water Company, Inc. requesting approval to increase its annual revenues by \$148,565 or 38.7%.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by \$148,565 or 38.7%.

Text of proposed rule: On June 30, 2009, Emerald Green Lake Louise Marie Water Company, Inc. (Emerald Green or the company) filed Leaf No. 12 Revision 4, Original Leaf No. 13, and Rate Escalator Statement No. 1, as amendments to its electronic tariff, P.S.C. No. 1 – Water to become effective on October 1, 2009. The company's filing proposes to increase its current year-round customer annual rate from \$454 to \$671.54 and to implement a new rate of \$504.45 for its seasonal customers (less than 10 months of water service per year) which together will produce additional annual revenues of \$148,565 or approximately 38.7%. Emerald Green's filing also includes a request to be authorized to implement an automatic annual rate escalator based on the U.S. Department of Labor's Consumer Price Index for Water and Sewer Management. The company's current rate has been in effect since June 1, 2007. The company provides water service to 845 residential customers in total, which includes 634 all-year-round customers and 211 seasonal customers, in real estate developments known as Lake Louise Marie and Emerald Green in Sullivan County.

Details of the company's filing are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Access to Commission Documents – Tariffs. The Commission may approve or reject, in whole or in part, or modify the company's rates.

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, NY 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, NY 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-0537SP1)

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

Consideration of Utility Compliance Filings

I.D. No. PSC-29-09-00011-P

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

Proposed Action: The Public Service Commission (Commission) is considering utility proposals for ESCO Referral Programs funded by ESCOs.

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

Subject: Consideration of utility compliance filings.

Purpose: Consideration of utility compliance filings.

Substance of proposed rule: In the Public Service Commission (Commission) Order issued on October 27, 2008 in case 07-M-0458, the Commission required The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to file proposals for funding ESCO Referral Programs by ESCOs. The Commission is considering whether to approve, deny, or modify, in whole or in part, these filings, and may also consider 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.

(07-M-0458SP3)

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

Petition for the Submetering of Electricity at a Residential Senior Citizen Facility

I.D. No. PSC-29-09-00012-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Highland Senior Residence, LLC, to submeter electricity at 34 Highland Avenue, Yonkers, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity at a residential senior citizen facility.

Purpose: To consider the request of Highland Senior Residence, LLC to submeter electricity at 34 Highland Ave., Yonkers, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Highland Senior Residence, LLC, to submeter electricity at 34 Highland Avenue, Yonkers, New York, located in the territory of Consolidated Edison Company of New York, Inc. Highland Senior Residence, LLC intends to house and operate a residential senior citizen facility.

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-0231SP1)

Department of State

EMERGENCY RULE MAKING

Electrical Bonding of Gas Piping, and Protection of Gas Piping Against Physical Damage

I.D. No. DOS-29-09-00002-E

Filing No. 755

Filing Date: 2009-07-02

Effective Date: 2009-07-02

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

Action taken: Amendment of sections 1220.1 and 1224.1 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 377 and 378

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

Specific reasons underlying the finding of necessity: At its meeting held on June 16, 2009, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve public safety by clarifying requirements for electrical bonding of gas piping, clarifying requirements for protection of gas piping against physical damage, and adding new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST), which will increase protection against fires caused by lightning strikes in the vicinity of buildings equipped with CSST gas piping and fires caused by accidental punctures of CSST gas piping.

Subject: Electrical bonding of gas piping, and protection of gas piping against physical damage.

Purpose: To clarify requirements for electrical bonding of gas piping, protection of gas piping against physical damage, and add new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST).

Substance of emergency rule: This rule amends several existing provisions in, and adds several new provisions to, the 2007 edition of the Residential Code of New York State (the "2007 RCNYS"), the publication which is incorporated by reference in 19 NYCRR Part 1220, and the 2007 edition of the Fuel Gas Code of New York State (the "2007 FGCNYS"), the publication which is incorporated by reference in 19 NYCRR Part 1224. The new and amended provisions in the 2007 RCNYS and 2007 FGCNYS:

(1) Clarify the situations in which a gas piping system that contains no corrugated stainless steel tubing ("CSST") will be considered to be "likely to become energized" and, therefore, required to be bonded to an effective ground-fault current path;

(2) Specify that a gas piping system that contains no CSST may be bonded in any manner described in Section E3509.7 of the 2007 RCNYS, in cases where the 2007 RCNYS applies, or in any manner described in Section 250.104(B) of NFPA 70-2005, in cases where the 2007 FGCNYS applies;

(3) Require gas piping systems that contain any CSST to be electrically continuous and bonded to the electrical service grounding electrode system at the point where the gas service enters the building or structure;

(4) Specify standards for the installation and bonding of CSST, including standards for the size of the bonding jumper, standards for bonding clamp, standards for the place and manner of attachment of the bonding clamp, and standards for separation of the CSST from other electrically conductive systems;

(5) Specify standards for protection of piping other than black or galvanized steel from physical damage, including standards for the types of shield plates to be used, standards for determining the location where shield plates are required, and additional standards for protection of piping made of CSST; and

(6) Clarify the situations in which section E3509.7 in the RCNYS (entitled "Bonding other metal piping") will apply.

This rule also provides that the 2005 edition of standard NFPA 70,

entitled "National Electrical Code" shall be deemed to be one of the standards incorporated by reference into 19 NYCRR Part 1224.

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 September 21, 2009.

Text of rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-6740, email: joseph.ball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

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

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

2. LEGISLATIVE OBJECTIVES.

Executive Law section 371 provides that it is be the public policy of the State of New York to provide for the promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. The Legislative objective sought to be achieved by this rule is a reduction in the number of fires caused by lightning strikes in the vicinity of buildings equipped with gas piping made of corrugated stainless steel tubing (CSST), and the number of fires caused by accidental puncturing of such piping.

3. NEEDS AND BENEFITS.

The purpose of this rule is to reduce the number of fires caused by lightning strikes in the vicinity of buildings equipped with gas piping made of corrugated stainless steel tubing (CSST), and the number of fires caused by accidental punctures of such piping. This rule is necessary because it has been determined that the existing provisions of the Uniform Code relating to electrical bonding and physical protection of gas piping could be construed as permitting electrical bonding which is not adequate to prevent fires caused by lightning strikes, and as permitting physical shielding which is not adequate to prevent accidental punctures by nails driven into walls containing piping, and because it has been determined that more detailed requirements relating to installation of CSST piping are appropriate. The benefits to be derived from this rule will be a reduction in the number of fires caused by lightning strikes and by accidental punctures of CSST gas piping.

A report or study that served as a basis for this rule is Corrugated Stainless Steel Tubing for Gas Distribution in Buildings and Concerns Over Lightning Strikes, dated August 2007, published by The NAHB Research Center, Inc., which is summarized as follows: "... the primary issue is safeguarding against an electric potential in metallic piping. In the case of proximity lightning, a high voltage can be induced in metallic piping that may cause arcing; and for CSST there is concern that arcing may cause perforation of the CSST wall and therefore cause gas leakage. The fuel gas code, electric code, plumbing code, product standards, and manufacturer installation instructions have different methods of providing dissipation of electrical energy through techniques called bonding and grounding. Since the codes, product standards, and installation requirements are not harmonized, builders and contractors may find differing and possibly conflicting requirements. Generally, the local jurisdiction having authority and code official will rely upon the manufacturer's installation recommendations in lieu of other requirements." This report was used to determine the necessity for and benefits derived from this rule in the following manner: CSST manufacturers have always required that CSST systems be bonded to the electrical system in accordance with the local codes (i.e. FGCNYS, NFGC and the NEC). Based on this report, the bonding methods prescribed within these documents are minimum requirements and are designed to protect the consumer against ground-faults from the premise wiring system only. The intent of this rule is to harmonize the requirements for bonding of metallic piping while providing protection from proximity lightning strikes.

4. COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the Uniform Code provisions which are amended by this rule, as compared to complying with the provisions as currently written, will be negligible.

Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

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

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

First, if the State or any local government constructs a building equipped with gas piping (including gas piping made of CSST), or installs any such piping in an existing building, the State or such local government, as the case may be, will be required to bond the piping and protect the piping from physical damage in the manner required by this rule.

Second, since this rule amends provisions in the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections.

5. PAPERWORK.

This rule will not impose any new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

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

First, any county, city, town, village, school district, fire district or other special district that constructs a building equipped with gas piping (including gas piping made of CSST), or installs any such piping in an existing building, will be required to comply with the electrical bonding and physical protection provisions amended and/or added by this rule.

Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code; since this rule amends provisions in the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

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

7. DUPLICATION.

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

8. ALTERNATIVES.

The alternative of making no change to the Uniform Code provisions relating to electrical bonding and physical protection of gas piping was considered. However, it was determined that the existing provisions of the Uniform Code could be construed as permitting inadequate electrical bonding and inadequate physical shielding of gas piping, particularly in the case of gas piping made of CSST. Therefore, this alternative was rejected.

The alternative of banning the use of CSST was considered. However, it was determined that the principal concerns about the use of CSST piping (viz., fires cause by lightning strikes in the vicinity of buildings equipped with CSST piping and puncturing of CSST piping by nails driven into walls in which CSST piping is concealed) could be adequately addressed by the increased electrical bonding and physical protection requirements to be added by this rule. Therefore, this alternative was rejected.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule.

10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with this rule in the normal course of operations, either as part of the installation or construction of a new building or the renovation of an existing building.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code"). The amended provisions clarify requirements for electrical bonding of gas piping and for protection of gas piping against physical damage, and add new requirements for installation of gas piping made from corrugated stainless steel tubing (CSST). Any small business or local government that constructs a building equipped with gas piping (including gas piping made of CSST), or that installs any such gas piping in an existing building, will be affected by this rule. Small businesses that manufacture, sell or install gas piping (including gas piping made of CSST), bonding jumpers, bonding clamps, shield plates, and other related equipment may also be affected by this rule.

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

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install gas piping (including gas piping made of CSST) in accordance with the rule's provisions. In most cases, such installation will be incidental to the construction of a building or will otherwise involve the issuance of a building permit; in such cases, the local government responsible for administering and enforcing the Uniform Code will be required to consider the requirements of this rule when reviewing plans and inspecting work.

3. PROFESSIONAL SERVICES:

The rule will clarify the requirements relating to electrical bonding of gas piping, clarify the requirements relating to protection of gas piping against physical damage, and add new requirements relating to the installation of gas piping made from CSST. No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the provisions amended by this rule, as compared to complying with the provisions as currently written, will be negligible. Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

Any variation in costs of complying with this rule for different types or sizes of small businesses and local governments will be attributable to the size and configuration of the gas piping installed by such entities, and not to nature or type or sizes of such small businesses and local governments. To the extent that larger businesses and larger local governments may tend to own larger buildings, or more than one building, the total costs of compliance would be higher for larger businesses and larger local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. This rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

6. MINIMIZING ADVERSE IMPACT:

The economic impact of this rule on small businesses and local

governments will be no greater than the economic impact of this rule on other regulated parties, and the ability of small businesses and local governments to comply with the requirements of this rule should be no less than the ability of other regulated parties to comply. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. Participants in the conference calls included members of the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee, representatives of CSST manufacturers, and local government representatives. The Department of State also participated in several meetings on this topic, including a meeting with local fire officials and electrical inspectors held on June 26, 2007 in East Meadow, NY, and a meeting with code officials, plumbing inspectors, a utility company representative and a CSST manufacturer representative held on January 21, 2009 in Hicksville, NY. Finally, speakers provided comments at the Code Council meetings where earlier versions of this rule were considered for adoption by the Code Council as emergency rules. Comments received in the conference calls, meetings, and Code Council meetings described above included:

(1) a suggestion that all metal gas piping, and not just CSST piping, should be subject to the bonding requirements, since all metal piping could be susceptible to damage from nearby lightning strikes (this suggestion has been incorporated into the proposed rule);

(2) a suggestion that non-CSST metal piping should be considered to be bonded when it is connected to appliances that are connected to the appliance grounding conductor of the circuit supplying that appliance (this suggestion was not incorporated into the proposed rule);

(3) suggested changes to the wording of the proposed rule, to clarify its intent (these suggestions have been incorporated, in whole or in substantial part, into the proposed rule);

(4) a suggestion that earlier versions of the proposed rule may have confused the concept of bonding with grounding (the Department of State believes that the current version of the proposed rule eliminates any such confusion); and

(5) a suggestion that it is inappropriate to attempt to address concerns about lightning damage to CSST by requiring bonding of CSST systems, since that shifts responsibility from CSST manufacturers to electrical inspectors (the Department of State believes that the weight of expert opinion is that with appropriate bonding, CSST can be as safe from lightning damage as non-CSST metal piping, and that given a choice between banning the use of CSST or permitting its use but requiring that it be bonded, the better choice is to permit its use and require that it be bonded).

The Department of State will publish a notice of the emergency adoption of this rule in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code"). The amended provisions clarify requirements for electrical bonding of gas piping and for protection of gas piping against physical damage, and add new requirements for installation of gas piping made from corrugated stainless steel tubing (CSST). Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will clarify the requirements relating to electrical bonding of gas piping, clarify the requirements relating to protection of gas piping against physical damage, and add new requirements relating to the installation of gas piping made from CSST. No professional services are likely to be needed in a rural area in order to comply with such requirements.

3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the provisions amended by this rule, as compared to complying with the provisions as currently written, will be negligible. Compliance with this rule will occur when gas piping or is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule. Any variation in costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the gas piping installed by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

4. MINIMIZING ADVERSE IMPACT.

The economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry in all areas of the State, including rural areas.

In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. Participants in the conference calls included members of the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee, representatives of CSST manufacturers, and local government representatives. The Department of State also participated in several meetings on this topic, including a meeting with local fire officials and electrical inspectors held on June 26, 2007 in East Meadow, NY, and a meeting with code officials, plumbing inspectors, a utility company representative and a CSST manufacturer representative held on January 21, 2009 in Hicksville, NY. Finally, speakers provided comments at the Code Council meetings where earlier versions of this rule were considered for adoption by the Code Council as emergency rules. Comments received in the conference calls, meetings, and Code Council meetings described above included:

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confused the concept of bonding with grounding (the Department of State believes that the current version of the proposed rule eliminates any such confusion); and

(5) a suggestion that it is inappropriate to attempt to address concerns about lightning damage to CSST by requiring bonding of CSST systems, since that shifts responsibility from CSST manufacturers to electrical inspectors (the Department of State believes that the weight of expert opinion is that with appropriate bonding, CSST can be as safe from lightning damage as non-CSST metal piping, and that given a choice between banning the use of CSST or permitting its use but requiring that it be bonded, the better choice is to permit its use and require that it be bonded).

The Department of State will publish a notice of the emergency adoption of this rule in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

Job Impact Statement

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

The rule adds new paragraphs (9), (10), (11), and (12) to subdivision (d) of section 1220.1, amends subdivision (b) of section 1224.1, and adds new paragraphs (2), (3), and (4) to subdivision (c) to section 1224.1 of Title 19 NYCRR. New paragraphs (9), (10), (11), and (12) of subdivision (d) of section 1220.1 and new paragraphs (2), (3), and (4) of subdivision (c) of section 1224.1 will clarify requirements in the Uniform Fire Prevention and Building Code ("Uniform Code") relating to electrical bonding of gas piping and protection of gas piping against physical damage, and will add new requirements relating to installation of gas piping made of corrugated stainless steel tubing (CSST).

It is anticipated that builders will be able to comply with the electrical bonding and physical protection requirements, as clarified and added by this rule, by using equipment that is currently available and techniques that are currently known. It is also anticipated that any increase costs of compliance resulting from this rule will be negligible. Therefore, it is anticipated that this rule will have no significant adverse impact on jobs or employment opportunities in the building industry, or in businesses that manufacture or install gas piping, other metal piping, or CSST piping.