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

Detoxification of Substance and Stabilization Services

I.D. No. ASA-49-08-00009-E
Filing No. 612
Filing Date: 2009-06-02
Effective Date: 2009-06-02

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

Action taken: Repeal of Part 816 and addition of new Part 816 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09, 19.15, 19.40, 21.09 and 23.02

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

Specific reasons underlying the finding of necessity: This emergency regulation must be promulgated for OASAS to be in compliance with Public Health Law Section 2708(c) and the rates Department of Health will implement upon CMS approval.

Subject: Detoxification of substance and stabilization services.

Purpose: To repeal and add Part 816 services that are in statutory alignment with the 2008-2009 Article 7 of the Executive budget.

Substance of emergency rule: The emergency regulation would revise Part 816 of Title 14 of the New York Codes, Rules and Regulations (Chemical Dependence Crisis Services) to allow for implementation of Chapter 58 of the Laws of 2008, Part C, § 14-b, which added language to Section 2807-c of the Public Health Law changing rates from a Diagnostic Related Group (DRG) system to a per diem system.

The amendment adds definitions in section 816.5 for Detoxification, Medically Managed Withdrawal Services, Medically Supervised Withdrawal services-Inpatient, Medically Supervised Withdrawal Services-Outpatient, Medically Monitored, Observation Bed, Prescribing Professional, Program Sponsor, Recovery Care Plan, and updates Qualified Health Professionals to include Licensed Mental Health Counselors, in order to effectively integrate operation of the proposed regulation.

The emergency regulation updates section 816.7 (Standards applicable to medically managed withdrawal and stabilization services) defining inpatient services that can be offered by providers in this service. The emergency regulation establishes that providers of medically managed services could also provide medically supervised services within the same setting with no change to their OASAS certification. The regulation also defines the differences in the two services.

The emergency regulation was developed by OASAS staff and providers of withdrawal and stabilization services to allow for greater clinical flexibility; reduced paperwork requirements; increased patient-centered focus and a more targeted focus on crisis stabilization and linkage to treatment. Recommendations from the Detoxification Task Force convened by the Commissioner in the summer of 2007 included revising Part 816 regulations and ''identify and modify, where appropriate the regulatory requirements that currently impede development of community-based medically supervised withdrawal programs''. The regulation has been revised to protect patient safety and quality of care while providing greater flexibility to the role of medical and clinical staff to exercise clinical judgment.

These changes are one means of encouraging communities to develop increased community-based withdrawal and stabilization programs to meet the overall goal of the Detoxification Task Force of reducing unnecessary hospital detoxifications and increasing access to community based care where safe and appropriate.

The emergency changes to Part 816 also update section 816.8 (Standards applicable to inpatient medically supervised withdrawal and stabilization services). The regulation changes the type of paperwork required and staffing configuration for outpatient settings. The proposed regulation provides a separate section, 816.9, applying to medically supervised outpatient withdrawal and stabilization services. Changes to the outpatient regulation allow for a face to face visit with a medical professional including a registered nurse and allow for the physician to schedule visits less than daily if deemed safe and appropriate. These changes address the biggest previous barrier to the provision of outpatient services: the need for daily physician contact.

The emergency regulation would reduce the amount of paperwork in both the inpatient and outpatient medically managed and medically supervised setting. The regulation no longer requires vocational and education assessments, changes the language from biopsychosocial assessment to a crisis assessment targeting only the information necessary to safely stabilize the patient, engage them in a change process and link them to appropriate treatment services. The emergency regulation requires targeted assessments aimed at crisis stabilization and linkages, thereby allowing more time for counseling services and providing more time to engage the client in the recovery process.

The emergency regulation expands clinical flexibility by providing individualized treatment when a patient is interested in withdrawal and stabilization services. By triaging the patient a more efficient and cost effective level of care determination can be made, allowing for more individualized crisis assessment and stabilization.

The emergency Part 816 regulation supports implementation of the enacted 2008-2009 Health and Mental Hygiene Budget, which amended section 2807-c of the Public Health Law to: reconfigure reimbursement for hospital based medically managed withdrawal / detoxification; and authorize the reimbursement methodology for a 48 hour detoxification observation period.

Section 816.9, entitled medically monitored withdrawal and stabilization services, remains the same.

In addition, the section entitled 816.12, savings and renewal clause has been added in order to provide continuity of the operating certificate during rule proposal and rule promulgation.

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-49-08-00009-P, Issue of December 3, 2008. The emergency rule will expire July 31, 2009.

Text of rule and any required statements and analyses may be obtained from: Deborah Egel, RN, Esq, OASAS, 1450 Western Ave., Albany, NY 12203, (518) 485-6244, email: DeborahEgel@oasas.state.ny.us

Regulatory Impact Statement

The emergency Chemical Dependence Withdrawal and Stabilization Services regulations are being promulgated in order for OASAS to be in alignment with the enacted 2008-2009 Health and Mental Hygiene Budget. The 2008-09 Health and Mental Hygiene Budget amended section 2807-c of the Public Health Law to reconfigure reimbursement for hospital based medically managed withdrawal/detoxification and authorize the reimbursement methodology for a 48 hour detoxification observation period, which has an effective date of December 1, 2008.

Chemical dependence is a chronic illness which can be treated effectively when medications are administered under conditions consistent with their pharmacological efficacy, and when withdrawal and stabilization services include necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, and medical services as needed. Chemical Dependence withdrawal and stabilization is the first step in facilitating recovery from addiction for many patients. The proposed regulations set forth standards to guide withdrawal services treatment.

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 adopt standards including necessary rules and regulations pertaining to chemical dependence services.

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 19.21 (b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to evaluate chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

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 32.05 of the Mental Hygiene Law requires providers to obtain an operating certificate issued by the Commissioner in order to operate chemical dependence services.

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.

The relevant sections of the Mental Hygiene Law cited above allow the Commissioner to regulate how chemical dependency services are administered. This regulation will alter the way those services are administered, providing greater flexibility within the State regulations and aligning the regulation with Statutory language. Chapter 58 of the Laws of 2008, Part C, § 14-b. The objective is to be aligned with the legislative intent behind enactment of Sections 19, 22 and 32 of the Mental Hygiene Law, allowing the Commissioner to certify, inspect, license and establish treatment standards for all facilities that treat chemical dependency. Promulgating this emergency regulation will establish a new standard for all facilities, which will assist withdrawal program in providing better health care services and withdrawal from chemical dependence.

2. Legislative Objectives:

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the State to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The legislature enacted Section 19 of the Mental Hygiene Law, enabling the Commissioner to establish best practices for treating chemical dependency.

3. Needs and Benefits:

Detoxification is a medical intervention that manages an individual safely through the process of withdrawal (McCorry et. al. 2000). The three successful components of detoxification have been identified in the Treatment Improvement Protocol (TIP) #45 as evaluation, stabilization and linkage to treatment (CSAT, 2006). In addition, the American Society of Addiction Medicine (ASAM) recognizes that patients should be placed in the least restrictive setting that provides safe and effective treatment.

Under the proposed Part 816 regulations, hospital based detoxification units will be able to operate two levels of care simultaneously: medically managed and medically supervised. Medically managed services are designed for patients who are acutely ill from alcohol-related and/or substance-related addictions or dependence, including the need for medical management of persons with severe withdrawal or risk of severe withdrawal symptoms, and may include individuals with or at risk of acute physical or psychiatric co-morbid conditions. This level of care includes the 48 hour observation bed. Inpatient medically supervised withdrawal and stabilization services are appropriate for persons who are intoxicated by alcohol and/or substances, who are suffering from mild to moderate withdrawal, coupled with situational crisis, or who are unable to abstain with an absence of past withdrawal complications. Medically supervised services may require less staff due to the decreased medical needs of patients who are appropriate for this level of care.

The proposed regulations provide more clinical expertise in the management of patients. The proposed regulations will encourage the appropriate use of a broader array of withdrawal and stabilization services. Hospitals will be required to more thoroughly assess patients for appropriate level of care and community providers have been provided more flexibility in providing community-based care. This approach to detoxification has been supported by consensus opinion (CSAT, 2006).

This is supported by OASAS statistics. In 2007, 72,099 patients, representing 24% of all patients admitted in addiction treatment, entered hospital and community based withdrawal and stabilization services in New York State. Among the 2007 admissions to Medically Managed detoxification services 10,029 patients representing 19% of all patients, arrived at another level of care within 14 days of discharge. Among the 2007 admissions to medically supervised withdrawal, 8,265 patients representing 40% of all patients arrived at another level of care within 14 days of discharge.

The purpose of this regulatory change is to capitalize on better linkage and engagement to prevent multiple admissions without sustained recovery. Patients are more likely to enter and remain in subsequent substance abuse treatment if they believe that the services will help them with life problems (Fiorentine et. Al 1999). Better linkages to inpatient or outpatient rehabilitation have been found when case managers are able to directly link patients through a warm-hand-off or provide incentives. (Chutuape, et.al. 2001; CSAT 2006).

Furthermore, information disseminated in the process of rewriting, reorganizing, and promulgating the Part 816 regulations will provide both patients and withdrawal services clear understanding of the intent of the regulation. This will result in better implementation and homogeneous services, improving patient care and more efficient use of staff resources.

4. Costs:

Additional costs are expected to be minimal. Any costs incurred by providers or the State will be offset by better treatment outcomes and healthier patients, which will result in lower costs for medical and other services.

a. Costs to regulated parties:

There should be no additional outlay to regulated parties as a result of this regulation. The regulation changes the focus of withdrawal services from treatment to stabilization and discharge planning. The regulation is also necessary to support the enacted 2008-09 New York State Budget which:

- The current hospital detoxification reimbursement methodology will change from a Diagnostic Related Group (DRG) case payment to a per diem methodology effective December 1, 2008 (pending Centers for Medicare and Medicaid Services (CMS) approval).
- The transition to per diem rates, based on 100 percent on the prices (established with 2006 base year cost, trended to the rate year) will take place over a four year period.
- The Phase in period begins December 1, 2008, and will ultimately end in the complete transition from DRGs to the reweighted and rebased per diem rate:
  - Effective December 1, 2008 thru December 31, 2009, the per diem rate will be based on 75 percent on the 2007 DRG rate converted to a per diem rate (trended to the rate year) and 25 percent on the regional prices (trended to the rate year).
  - In 2010 the per diem rate will be evenly split between these two components.
  - In 2011, the rate will be based 25 percent on the DRG rate (converted to a per diem and trended) and 75 percent regional prices trended).

- By 2012, the rate will be at 100 percent based on the regional prices.

Year One:

- All Part 816 hospital inpatient detoxification services: Observation period services; Medically Managed Detoxification; and Medically Supervised Inpatient Withdrawal Services, provided in an OASAS certified Part 816 bed will receive the same, hospital specific amount.

Years Two through Four:

- The Part 816 Hospital Based Observation Period and Medically Managed Detoxification (MMD) Services will be reimbursed at the same amount. The Part 816 Hospital Based Medically Supervised Inpatient Withdrawal Period will be reimbursed at 75 percent of the prevailing hospital specific MMD rate in 2010.

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

OASAS is not expected to see increased costs related to administering the rule. OASAS will need to modify the program review instrument currently used to certify chemical dependence withdrawal services along with providing technical assistance; however, this is not expected to result in a undue burden on OASAS.

Additionally, there is an anticipated cost saving with the regulation changing from a DRG to a per diem rate. DRGs are a system used to classify hospital cases into one of approximately 500 groups that are expected to have similar hospital resource use, developed for Medicare as part of the prospective payment system. DRGs are assigned by a ''grouper'' program based on International Classification of Diseases (ICD) diagnoses, procedures, age, sex, and the presence of complications or co morbidities. DRGs have been used since 1983 to determine how much Medicare pays a hospital, since patients within each category are similar clinically and are expected to use the same level of hospital resources.

Therefore, patients will treated within a system that is designed to appropriately place patients and move them from more intensive services into other levels of care that are more less expensive and effective in treating the patient resulting in savings for the State and local government.

5. Local Government Mandates:

There are no new mandates or administrative requirements placed on local governments.

6. Paperwork:

The proposed Part 816 regulation will decrease the amount of individual patient assessments and treatment plans, saving providers considerable time and effort. Assessments will be targeted for this distinct population. Time previously spent on vocation and educational assessments will be eliminated. Services will be focused on crisis intervention, stabilization and discharge planning. On average, 60 percent of counselors' time is currently spent filling in required paperwork which will now be dedicated to serving the patient population.

The proposed regulations also include changes to allow more flexibility by reducing paperwork, targeting interventions to crisis stabilization and linkages, which will allow clinicians more time for individual contact.

7. Duplication:

There is no duplication of other state or federal requirements.

8. Alternatives:

A Task Force was convened by the Commissioner in June 2007 to review all options and make recommendations on chemical dependence crisis services. The Task Force published recommendations in January 2008. To the extent possible the emergency Part 816 regulations reflect the task force recommendations.

OASAS continues to elicit comments on the regulation. The regulation was shared with New York's treatment provider community, representing a cross-section of upstate and downstate, as well as urban and rural programs. Many comments were received, reviewed and changes were made. Additionally, these proposed regulations were shared with New York State Alcoholism and Substance Abuse Providers (NYSASAP).

Finally, the regulation was shared with New York State's Advisory Council at the August meeting. At this meeting there were no comments generated by the group because the providers appeared to be comfortable with the current proposal.

9. Federal Standards:

Federal standards governing Medicaid requirements for these services are incorporated into the proposed changes to Part 816.

10. Compliance Schedule:

It is expected that full implementation of Part 816 will be completed by December 1, 2008 in order to be complaint with statutory language.

References

Center for Substance Abuse Treatment. *Detoxification and Substance Abuse Treatment*. Treatment Improvement Protocol (TIP) Series 45. DHHS Publication no. (SMA) 06-4131. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2006.

Chutuape, M.A., Jasinski, D.R., Fingerhood, M.I., and Stitzer, M.I. One- Three- and Six- Month Outcomes After Brief Inpatient Opiate Detoxification. *American Journal of Drug and Alcohol Abuse* 27(1): 19-44, 2001

Fiorentine, R., Nakashima, J., and Anglin,M.D. Client Engagement in Drug Treatment. Journal of Substance Abuse Treatment 17(3): 199-206, 1999.

McCorry, F., Garnick, D.W., Bartlett, J., Cotter, F., and Chalk, M> Developing Performance Measures for Alcohol and Other Drug Services in Managed Care Plans. Washington Circle Group. *Joint Commission Journal on Quality Improvement* 26(11): 633-643, 2000.

Regulatory Flexibility Analysis

Effect of the Rule: The emergency Part 816 will impact certified and/or funded providers. It is expected that the development of Crisis Withdrawal and Stabilization services will require providers to amend some of their policies and procedures. The new service will result in greater clinical flexibility; reduced paperwork requirements; increased patient-centered focus and a more targeted focus on crisis stabilization and linkage to treatment. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking crisis withdrawal and stabilization services due to less restrictive procedures. 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 will not be affected because any nominal increase in cost will be offset by better patient outcomes.

Compliance Requirements: There are some minor changes in compliance requirements. In addition, providers are already required to provide utilization review, therefore, it is not expected that the proposed regulation will have additional costs.

Professional Services: Additional professional services are not expected.

Compliance Costs: Some programs may need additional formally trained staff to meet the emergency requirements. Training will be made available to hospital providers by OASAS and Island Peer Review Organization (IPRO), an independent, not-for-profit corporation which specializes in health care evaluation and quality improvement.

Economic and Technological Feasibility: Compliance with the recordkeeping and reporting requirements of the emergency Part 816 is expected to have a nominal economic impact on small businesses and government.

Minimizing Adverse Impact: Part 816 has been carefully reviewed to ensure minimum adverse impact to providers by Alcoholism and Substance Abuse Providers of NYS, Inc., New York State's Council of Local Mental Hygiene Directors and the New York State Advisory Council on Alcoholism and Substance Abuse Services, Greater New York Hospital Association, Healthcare Association of New York, and a statewide representative coalition from hospital and community based organizations that provide Withdrawal and Stabilization services. All comments received were reviewed and numerous changes were made. 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 have nominal costs. Compliance requirements are small and will be absorbed into the already existing economic structure. The positive impact for patients and the state health care system out weigh any potential minimal costs.

Small Business and Local Government Participation: The regulations were shared with New York's treatment provider community including Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare Association of New York, the Council of Local Mental Hygiene Directors and the New York State Advisory Council on Alcoholism and Substance Abuse Services and a statewide representative coalition from hospital and community based organizations that provide Withdrawal and Stabilization services.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: There are six (6) certified providers of medically managed detoxification services that are located in rural areas of the State, five of which are public.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There will be new documentation requirements to maintain clients in the higher level of care that will have some impact on providers.

3. Costs: There will be minimum impact for rural providers to implement Part 816. Under the emergency Part 816 hospital based units can now operate two levels of care simultaneously: medically managed and medically supervised. Medically supervised services may require less staffing.

4. Minimizing adverse impact: Regulatory reform of detoxification

rates was driven by language in the enacted 2008-09 budget. In order to achieve optimal results, OASAS solicited input from over 40 providers of service representing each modality statewide. This group met for a period of six months and the hospitals agreed that it was important to align detoxification care with detoxification rates. Hospitals also realized this could increase opportunities for outpatient detoxification units with increased income.

5. Rural area participation: These amendments were shared with New York's treatment provider community and included a cross-section of upstate and downstate, as well as urban and rural programs.

Job Impact Statement

The implementation of an emergency Part 816 may have a minor impact on staffing at hospital based detoxification units. Hospital based units under the current Part 816 solely operate as medically managed units which requires more staffing than any other withdrawal service. Under the emergency Part 816, hospital based units can now operate two levels of care simultaneously; medically managed and medically supervised. Staffing for medically supervised services may require less staffing. This regulation will not adversely impact jobs outside of the few hospital based detoxification units.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF WITHDRAWAL

Detoxification and Substances and Stabilization Services

I.D. No. ASA-49-08-00009-W

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

Action taken: Notice of revised rule making, I.D. No. ASA-49-08-00009-RP, has been withdrawn from consideration. The notice of revised rule making was published in the *State Register* on May 20, 2009.

Subject: Detoxification and Substances and Stabilization Services.

Reason(s) for withdrawal of the proposed rule: For consistency, as the revised rule was significantly different than the previously promulgated emergency regulation.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-24-09-00003-E

Filing No. 602

Filing Date: 2009-05-29

Effective Date: 2009-05-29

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

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

The specific reasons underlying the finding of necessity, above, are as follows: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009 and to realize $90 million in savings to the General Fund in the current fiscal year. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire zones reform.

Purpose: Allow department to continue implementing zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into ''distinct and separate contiguous areas.''

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of ''cost-benefit analysis'' and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise (''QEZE'') Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development (''the Commissioner''). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined

by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

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

17. The emergency rule clarifies the statutory requirement that certain defined ''regionally significant'' projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

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

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

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

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 August 26, 2009.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

This emergency rule supersedes the emergency rule I.D. No. EDV-16-09-00005-E Filing No. 346 Filing Date: 2009-04-03; Effective Date: 2009-04-03 contained in New York State Register - April 22, 2009/Volume XXXI, Issue 16.

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of business enterprises as to eligibility of benefits under the program and the decertification of business enterprises so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statutory changes contained in Chapter 57 of the Laws of 2009 and to realize $90 million in savings to the General Fund in the current fiscal year. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones

program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

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

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and larges businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development (''DED'') estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Hunting Wild Turkey

I.D. No. ENV-12-09-00009-A

Filing No. 611

Filing Date: 2009-06-02

Effective Date: 2009-06-17

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

Action taken: Amendment of section 1.40 Title 6 NYCRR.

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

Subject: Hunting wild turkey.

Purpose: To establish a fall turkey hunting season on Long Island, and to amend the methods of taking wild turkey statewide.

Text of final rule: Paragraph (1) of subdivision 6 NYCRR 1.40 (c) is amended as follows:

(1) Fall. A permittee may hunt wild turkey only during those open seasons and in those wildlife management units (as described in section 4.1 of this title) listed below.

Open season	Wildlife management units
October 1st through the first Friday after October 15th	5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K and 6N
October 1st through the day before the Southern Zone regular deer season	3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4A, 4B, 4C, 4F, 4G, 4H, 4J, 4K, 4L, [4M,] [4N,] 4O, 4P, 4R, 4S, 4T, 4U, 4W, [4X,] 4Y, 4Z, [5K, 5N, 5P,] 5R, *5S, 5T*, 6P, 6R, 6S, 7F, 7J, 7H, 7M, *7P*, 7R and 7S
14 consecutive days beginning 28 days prior to the Southern Zone regular deer season	7A, 8A, 8C, 8F, 8G, 8H, 8J, [8K,] 9A, 9C, and 9F
The 28 days immediately prior to the Southern Zone regular deer season	8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y
5 consecutive days beginning on the third Saturday of November	*1C*

Paragraphs (3) and (4) of subdivision 6 NYCRR 1.40 (f) are amended as follows:

(3) A permittee may hunt turkey with a shotgun *or handgun* loaded with shot no larger than number 2 and no smaller than number 8.

(4) a permittee may not take turkey with a rifle or handgun *except as provided in paragraph (3) of this subdivision*.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 1.40(c)(1).

Text of rule and any required statements and analyses may be obtained from: Michael Schiavone, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: Turkeyregs@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Revised Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (DEC or department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL sections 11-0903 and 11-0905 provides for the establishment of hunting regulations for wild turkey.

2. Legislative objectives:

The legislative objectives behind the statutory provisions listed above are to authorize the department to establish, by regulation, certain basic wildlife management tools, including the setting of open areas for hunting wild turkey, and the methods of taking wild turkey. These tools are used by the department in recognition of the importance of wild turkey hunting for recreational purposes.

3. Needs and benefits:

The department proposes to establish a limited (5-day) fall turkey hunting season in Suffolk County (Wildlife Management Unit 1C) to provide new outdoor recreational opportunities for people who live on Long Island or in the New York metropolitan area.

Fall turkey hunting is currently allowed throughout most of upstate New York, and it is a popular outdoor activity enjoyed by more than 65,000 hunters annually. Almost 16,000 licensed turkey hunters live on Long Island, and the vast majority would welcome an opportunity to pursue these exciting game birds closer to home.

Long Island's wild turkey population is a relatively recent phenomenon, but it is secure enough to sustain a limited harvest. In the early 1990s, DEC staff held public meetings in Suffolk County to propose restoring the wild turkey to Long Island. (The possibility of a future public hunting opportunity was openly addressed during this outreach effort). With strong public support, DEC trapped approximately 75 wild turkeys in upstate New York and released those birds at three locations in Suffolk County. The Long Island population is now estimated at more than 3,000 birds and growing. Turkeys are a common sight at many locations in Suffolk County, attracting the interest of local hunters and non-hunters alike. In some localities, turkeys have become a nuisance or caused property damage, and these problems are likely to increase in the future in both suburban and agricultural areas. A hunting season would help control population growth and may help prevent or provide relief from some of these problems.

This proposal would provide an important opportunity for hunters on Long Island to engage in the sustainable use of the wild turkey resource. Wild turkey populations are very resilient, and DEC is confident that a limited fall hunting season will not put the Long Island population at risk. We expect that the turkey population will continue to grow even with the implementation of a limited fall hunting season. In recent years, other small game hunting opportunities on Long Island have declined as a result of loss of habitat to suburban development and its concomitant impacts on wildlife populations and public access to those populations. Establishing a fall turkey season would help offset the loss of these other hunting opportunities.

Based on staff judgment about turkey harvest potential on Long Island, DEC proposes to establish a limited 5-day fall hunting season beginning on the third Saturday in November. (In 2009, these dates are November 21-25). Most other small game hunting seasons on Long Island are already open at that time, so potential new conflicts with the non-hunting public should be minimal. This season timing also accommodates administrative considerations for DEC staff, who operate several major cooperative hunting areas in Suffolk County beginning November 1 each year.

In addition to the season dates above, DEC proposes that hunters be allowed to take a season limit of only one bird of either sex, using archery, shotgun, or handgun loaded with birdshot (see below). The department will strongly encourage hunters to bring harvested birds to the hunter check station so we can record biological data; however, this will not be mandatory. Shooting hours (one-half hour before sunrise to sunset) and other general hunting regulations would be the same as for other small game hunting on Long Island and for fall turkey hunting elsewhere in New York State.

The department also proposes to allow the use of handguns loaded with shotshells to hunt wild turkeys statewide. Current regulations do not allow the use of a handgun of any kind to hunt wild turkeys. As originally contemplated in the early 1970s, this restriction primarily addressed the use of rifles and handguns shooting a single projectile (i.e., a bullet). However, handguns and handgun ammunition are now available that can safely and effectively harvest a turkey using shotshells that are loaded with the exact same ammunition as used in full-sized shotguns (shot pellets ranging from #2 - 8 in size). Turkeys are often called to within 20 yards or less of a hunter, and this is within the effective range for several styles of handguns available to hunters. Moreover, allowing the use of handguns firing shotshells will allow some persons with temporary or permanent disabilities to effectively hunt wild turkeys by allowing them the use of a smaller and lighter firearm. Accordingly, DEC proposes amending the turkey hunting regulations to allow the use of handguns loaded with shotshells firing shot pellets within the existing shot size restrictions established in the current turkey hunting regulations.

The department's final regulation includes some minor changes to the listings of wildlife management units because of recent changes to several boundaries and WMU designations.

4. Costs:

None beyond normal administrative costs.

5. Local government mandates:

There are no local governmental mandates associated with this proposed regulation.

6. Paperwork:

No additional paperwork is associated with this proposed regulation.

7. Duplication:

There are no other regulations similar to this proposal.

8. Alternatives:

The department considered the following alternatives related to turkey hunting on Long Island:

(a) No season. The department could defer opening a turkey hunting season on Long Island indefinitely, but valuable recreational opportunities would be lost. As the turkey population continues to grow in the absence of harvest, DEC expects nuisance and damage concerns to increase as well, requiring the issuance of depredation permits to remove offending birds.

(b) Spring turkey hunting season. Most hunters would favor a spring turkey hunting season on Long Island, because of the challenging and unique experience that comes from interacting with birds at that time of year. Many would favor a spring season also because there are no other hunting seasons open then, so it would provide another reason for people to spend time enjoying the outdoors. However, due to the multiple uses of public land where wild turkeys occur in eastern Long Island, DEC believes that a fall season would be more acceptable to implement, with fewer potential conflicts, than a more traditional spring hunting season.

(c) Fall hunting season with different dates. The department considered a wide range of possible season lengths and dates, from October through January. The department concluded that for the first year, a very limited (5-day) season was prudent. Impacts on the turkey population should be relatively small, and potential conflicts with non-hunting public should be minimized. The season timing most preferred by hunters was in October, but DEC does not have adequate seasonal staff on at that time to effectively manage the anticipated high demand for turkey hunting on DEC operated lands. The department also considered opening the season the second Saturday in November and running for 5 days. This would create opportunity for all but may increase user conflicts on the properties due to high hunting pressure.

The department considered the following alternatives relative to the use of handguns loaded with Shotshells for wild turkey hunting--

(a) No change to the existing regulations. As stated above, current regulations prohibit the use of all handguns for turkey hunting. The department could elect to continue this ban on handgun use; however, this does not address the limitations of hunters with disabilities who are not able to use a shotgun or bow. The department believes that use of handguns loaded with shotshells using shot pellets can be an effective tool for harvesting a wild turkey and does not pose a safety risk nor violate fair chase principles.

(b) Allow handguns and rifles with conventional single projectile ammunition. New York turkey hunters have long supported restricting ammunition to bird shot only as both a safety measure and as an ethical restriction to require hunters to use a combination of stealth, camouflage, and calls to lure or approach birds to relatively close range (less than 40 yards).

9. Federal standards:

There are no federal standards associated with turkey hunting.

10. Compliance schedule:

Hunters would have to comply with the new regulations beginning in the fall of 2009, if they are adopted as proposed.

Revised Regulatory Flexibility Analysis

The department made minor changes to the final rule because of new designations and boundaries for several wildlife management units. These minor technical changes do not have an impact on the regulatory effects of the proposed rule. Therefore, revision to the previously published Regulatory Flexibility Analysis is not needed.

Revised Rural Area Flexibility Analysis

The department made minor changes to the final rule because of new designations and boundaries for several wildlife management units. These minor technical changes do not have an impact on the regulatory effects of the proposed rule. Therefore, revision to the previously published Rural Area Flexibility Analysis is not needed.

Revised Job Impact Statement

The department made minor changes to the final rule because of new designations and boundaries for several wildlife management units. These minor technical changes do not have an impact on the regulatory effects of the proposed rule. Therefore, revision to the previously published Job Impact Statement is not needed.

Assessment of Public Comment

The department received comments on the proposed amendments. A summary of these comments and the department's response follows:

Fall Wild Turkey Hunting Season in Suffolk County, WMU 1C

Comment:

Comments simply stating support for or opposition to the department's proposed fall turkey hunting season in Suffolk County were received.

Response:

The department recognizes that the management of wild turkeys is important to many people. In 2007, the department surveyed the hunting and non-hunting public that use state lands in Suffolk County to assess public opinion regarding a potential turkey hunting season there. The department's proposal to open a fall turkey hunting season in Suffolk County is a partial outcome of that survey as well as formal and informal meetings with sportsmen's groups and others. Suffolk County has a healthy and growing wild turkey population. Opening the proposed area to hunting will not jeopardize this wild turkey population, but will provide a new opportunity for hunters in southern New York and enhance our ability to control turkey populations in agricultural and suburban areas where we have received complaints about nuisance birds.

Comment:

Fall turkeys hunters using shotguns will disrupt bow hunting activities or pose a safety risk to bow hunters pursuing deer.

Response:

Beginning on November 1, hunters may pursue several species of small game (e.g., rabbit, squirrel, pheasant, quail) in Wildlife Management Units 1A and 1C (Nassau and Suffolk counties, respectively) using a firearm. These seasons have run concurrently with the archery season for deer in WMU 1C (October 1-December 31) for several years, thus the presence of hunters with shotguns afield during the archery season will not be a new occurrence.

In upstate New York (north of the Bronx-Westchester boundary), fall turkey seasons and the archery seasons for deer have run concurrently for decades. Hunting accidents during the fall turkey seasons are rare (about two/year statewide, on average, of about 65,000 fall turkey hunters per year), and the number of incidents between turkey hunters and bow hunters is negligible.

Comment:

There should be a spring turkey hunting season in Suffolk County rather than a fall turkey hunting season.

Response:

Most hunters would favor a spring turkey hunting season on Long Island because of the special experience that comes from interacting with birds at that time of year. Many would also favor a spring season because there are no other hunting seasons open then, so it would provide another reason for people to spend time enjoying the outdoors. However, due to the multiple uses of public land where wild turkeys occur in eastern Long Island, the department believes that a fall season would be more acceptable to implement at this time, with fewer potential conflicts between the hunting and non-hunting public, than a spring hunting season.

Comment:

The proposed season dates for the fall turkey season in Suffolk County conflict with the opening date of the Southern Zone deer season in upstate New York. Change the season dates for the fall turkey season in Suffolk County (prior to or after the close of the Southern Zone deer season) to avoid any conflicts.

Response:

Based on the results of a survey of turkey permit holders and other hunters who use public lands on Long Island, there was a high level of hunter interest, and potentially a high level of participation, in a fall turkey season. The department will need to carefully manage hunter access to lands we oversee to ensure equitable opportunities are afforded and user conflicts are minimized. Based on staff judgment about turkey harvest potential on Long Island, and the public input we received, we proposed establishing a limited 5-day fall hunting season beginning on the third Saturday in November. Most other small game hunting seasons on Long Island are already open at that time, so potential new conflicts with the non-hunting public should be minimal. This season timing also accommodates administrative considerations for department staff who operate several major cooperative hunting areas in Suffolk County beginning November 1 each year.

Staff have discussed several different options for season dates and decided that the season would be most easily implemented if it were to open on the third Saturday in November and ran for 5 days. The DEC check station, which manages hunter access to DEC-managed lands, is better equipped to accommodate turkey hunters at this time due to a significant proportion of the hunting community that will opt to participate in the opening day of the regular deer season in the Southern Zone (upstate). While these dates might impact the ability of some to participate in the Long Island Turkey season, it would lessen the hunting pressure on both the state land and on private properties.

We considered a wide range of possible season lengths and dates, from October through January. We concluded that for the first year, a very limited (5-day) season was prudent until we gain some experience with turkey hunting on Long Island. Impacts on the turkey population should be relatively small, and potential conflicts with non-hunting public should be minimized. The season timing most preferred by hunters was October, but we do not have adequate seasonal staff available at that time to effectively manage the anticipated high demand for turkey hunting on DEC-operated lands. We also considered opening the season the second Saturday in November and running for 5 days. This would create opportunity for all, but may increase user conflicts on the properties due to high hunting pressure. We would be amenable to changing the dates after we had a chance to evaluate results and experiences during the first few seasons.

Comment:

Hunters should only be allowed to harvest adult male turkeys (toms).

Response:

The Long Island wild turkey population is now estimated at more than 3,000 birds and growing, and is secure enough to sustain a limited either-sex harvest. A fall season would provide an important opportunity for hunters on Long Island to engage in the sustainable use of the wild turkey resource. Wild turkey populations are very resilient, and we are confident that a limited fall hunting season will not put the Long Island population at risk. In addition, due to the presence of 1.5 year-old male turkeys, ''young-of-the-year'' birds, and bearded hens during the fall, it may be difficult for hunters to accurately differentiate sex and age classes.

In some localities, turkeys have become a nuisance or caused property damage, and we expect these problems to increase in the future in both suburban and agricultural areas. A hunting season where male or female turkeys can be harvested would help control population growth and may help prevent or provide relief from some of these problems.

The department will strongly encourage hunters to bring harvested birds to the DEC-operated check station so we can record biological data and track hunter success and the age and sex composition of the harvest. Based on our monitoring efforts, we can adjust hunting regulations in future years if needed.

Comment:

Hunters cannot be effective using traditional fall turkey hunting techniques (i.e., scattering a flock and calling them back together) on public lands in Suffolk County that may be limited in size and/or heavily hunted.

Response:

While scattering a turkey flock is one way of harvesting a wild turkey in the fall, it is not the only effective method. For example, individual birds as well as entire flocks may be called in without scattering them first. In addition, the department carefully manages hunting access on public lands in Suffolk County to avoid overcrowding and safety concerns. The department will carefully monitor hunting activity and satisfaction to determine whether any subsequent regulatory adjustments are needed to best match the interests of Long Island turkey hunters to the status and distribution of wild turkeys in Suffolk County.

Comment:

A fall turkey season should be limited to local residents only and should be restricted to the eastern end of Long Island.

Response:

The wild turkey resource is owned by the people of the State and New York and consequently, the opportunity to hunt them on Long Island should be available to all members of the public. The department will carefully monitor turkey hunting pressure and hunter satisfaction with this new opportunity. One likely benefit of holding the season in all of Wildlife

Management Unit 1C is that hunting activity will be dispersed over a broader area, and department surveys have documented the presence of turkeys in townships throughout Suffolk County.

Use of Handguns Loaded with Shot Shells/Pellets for Wild Turkey Hunting

Comment:

Handguns loaded with shot shells/pellets are an ineffective implement for harvesting a wild turkey and will result in an increase in ''crippling loss'' (birds mortally wounded but not recovered) and could have negative population-level impacts for wild turkeys.

Response:

The proposed regulation restricts shot size for handguns to size 2 through 8, the same as is currently allowed for shotguns. In addition, many handguns that fire shot shells/pellets actually use a.410 shot shell, an implement that has been allowed for turkey hunting for decades without detrimental impacts.

Due to the specialized nature of handgun hunting in general, and handgun hunting with shot shells/pellets in particular, the potential increase in the total number of turkey hunters based on this regulation change is negligible. The use of handguns for hunting is permitted for many game species (e.g., deer, bear, fox, coyote, and ruffed grouse). Handguns are used most frequently for deer and bear hunting, but even for these species, the number of hunters that use handguns is small relative to the total number of hunters.

When changing the regulations that govern the take of wild turkeys, our primary goal is to protect the long-term security of the wild turkey population while still providing responsible opportunities for hunters and others to enjoy the wild turkey resource now and in the future. We do not anticipate that this regulation change will increase overall hunting pressure, harvest, or crippling loss for wild turkeys; therefore, we do not feel that allowing the use of handguns loaded with shot shells/pellets poses a risk to the security of wild turkey populations. Moreover, by allowing the use of handguns firing shot shells, members of the disabled community will be accommodated in their interest to use a light weight firearm that can be shot with one hand.

Comment:

Handguns loaded with shot shells/pellets are a violation of hunting ethics because they are an ineffective implement for harvesting a wild turkey and will not result in a ''quick, clean kill''.

Response:

Based on consultation with staff and others familiar with available handguns and loads, as well as some simple ballistic tests, we concluded that hunters who select their equipment properly and practice to learn their capabilities and limitations could use certain handguns and loads to ethically take a turkey. As with other hunting implements (e.g., using a long bow for deer), the effective range of a handgun is more limited than some shotguns, but a hunter who practices and knows the limitations of their firearm can effectively harvest a bird. Regardless of the implement used or the species pursued, hunters are required to make difficult choices within the standards of fair chase when pursuing game. The department has established laws and regulations that help protect wildlife populations and public safety, but we often rely on hunters to decide on the most appropriate methods and conditions to harvest game in an ethical and safe manner.

Comment:

Hunters who need to use a handgun due to physical disabilities should be allowed to do so through a ''special license'' rather than a change to the turkey hunting regulations.

Response:

The special licenses currently offered by the department to accommodate hunters with disabilities (e.g., Modified Archery Permit, Modified Crossbow Permit, Non-Ambulatory Hunter Permit) are inappropriate for allowing the use of a handgun loaded with shot shells/pellets, and the department sees no strong justification for creating a new type of special license. In addition, some non-disabled hunters may have an interest in using a handgun for hunting wild turkey to enhance their hunting experience by challenging their skills and abilities (i.e., the challenge of calling a bird for a very close shot).

The department has determined that it remains appropriate to allow a limited fall hunting season for wild turkeys on Long Island, and to allow the use of handguns (using shot shells) on a statewide basis. Consequently, the regulation is being adopted as originally proposed.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Volatile Organic Compound (VOC) Limits for 11 New Consumer Products Categories and Revisions for One Existing Category

I.D. No. ENV-24-09-00005-P

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

Proposed Action: Amendment of Parts 200 and 235 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Volatile organic compound (VOC) limits for 11 new consumer products categories and revisions for one existing category.

Purpose: To assist in attaining the eight-hour ozone standard for New York's designated nonatainment areas.

Public hearing(s) will be held at: 1:00 p.m., July 20, 2009 at Department of Environmental Conservation, Region 8, Office Conference Rm., 6274 E. Avon-Lima Rd. (Rtes. 5 and 20), Avon, NY; 1:00 p.m., July 21, 2009 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129-A, Albany, NY; and 1:00 p.m., July 22, 2009 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dec.ny.gov): SUBPART 235-1

APPLICABILITY

Sec. 235-1.1 Applicability

The proposed revisions to Part 235 remove the reference to ''January 1, 2005'' in section 235-1.1. The applicable effective dates are addressed in the Table of Standards in section 235-3.1.

SUBPART 235-2

DEFINITIONS

Sec. 235-2.1 Definitions

The proposed revisions to Part 235-2.1 include definitions for eleven new categories of consumer products that are being regulated in the revised Part 235. The new categories are: adhesive remover (including subcategories), anti-static (non-aerosol), electrical cleaner, electronic cleaner, fabric refresher, footwear or leather care, graffiti remover, hair styling products, shaving gel, toilet/urinal care, and wood cleaner. The Department is also proposing to add definitions for the contact adhesive product category and is revising the definitions for two previously regulated product categories: air fresheners and general purpose degreasers.

The Department proposes to modify several of the existing definitions and add other new definitions. For example, the Department is modifying the existing definition of ''deodorant'' and is adding a new definition for ''deodorant body spray.'' Some of the new definitions come from the revised Ozone Transport Commission (OTC) model rule for Consumer Products. These definitions include: ''APC VOC Standard,'' ''Energized electrical cleaner,'' and ''Existing product.''

SUBPART 235-3

STANDARDS

Sec. 235-3.1 Standards

The proposed revisions to section 235-3.1 amend the Table of Standards to include the VOC limits for the new categories (including subcategories) and the revised VOC limits for the Contact Adhesive product category. The prohibitions concerning sale of these consumer products will apply to any such products manufactured on or after January 1, 2010 which contains volatile organic compounds (VOCs) in excess of the VOC content limits specified in the Table of Standards (Subpart 235-3.1[a]). The additions to the Table are listed below:

Additions to Table of Standards

Product Category	VOC Content Limit (percent by weight)
Adhesives Remover:	
Floor or Wall Covering	5
Gasket or Thread Locking	50
General Purpose	20
Specialty	70
Adhesives:	
Contact General Purpose	55
Contact Special Purpose	80
Anti-Static Product:	

Non-aerosol	11
Electrical Cleaner	45
Electronic Cleaner	75
Fabric Refresher:	
Aerosols	15
Non-Aerosols	6
Footwear or Leather Care Product:	
Aerosol	75
Solid	55
Other Forms	15
Graffiti Remover	
Aerosol	50
Non-Aerosols	30
Hair Styling Products:	
Aerosols and Pump Sprays	6
All Other Forms	2
Shaving Gel	7
Toilet/Urinal Care:	
Aerosol	10
Non-Aerosol	3
Wood Cleaner:	
Aerosol	17
Non-Aerosol	4

The proposed revisions to Part 235-3.1 include an unlimited sell through for products that are manufactured before January 1, 2010, except for the products that contain the following compounds: para-dichlorobenzene (solid air fresheners and toilet/urinal care products), methylene chloride, perchloroethylene, or trichloroethylene (adhesive removers (including subcategories), contact adhesives, electrical cleaners, electronic cleaners, footwear or leather care products, general purpose degreasers and graffiti removers). Products containing these compounds will have an one year limited sell through until January 1, 2011. The VOC standards for the FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) products listed under subdivision 235-3.1(a) will have an effective date of January 1, 2011.

The Department is also proposing modifications for Subpart 235-3.1(g), Requirements for aerosol adhesives. The Department is adding language to Subdivision 235-3.1(g)(2)(i) to help in determining the proper classifications of the spray adhesives products that fall under Part 235.

SUBPART 235-4

EXEMPTIONS

Sec. 235-4.1 Exemptions

Under the proposed revisions, solid air fresheners containing at least 98 percent para-dichlorobenzene are exempted from the VOC limits in Subpart 235-3.1(a) until January 1, 2010. On or after January 1, 2010, solid air fresheners containing para-dichlorobenzene would fall under new Subpart 235-3.1(n), ''Requirements for solid air fresheners and toilet/urinal care products.''

SUBPART 235-5

INNOVATIVE PRODUCTS

Sec. 235-5.1

No revisions.

SUBPART 235-6

ADMINISTRATIVE REQUIREMENTS

Sec. 235-6.1 Administrative Requirements

Proposed section 235-6.1(a), ''product dating,'' has added language that if a manufacturer uses the proposed product date code (YY DDD = year year day day day) to indicate the date of manufacture then the manufacturer shall not be subject to section 235-6.1(b)(1), ''additional product dating requirements.'' The code must be listed separately from the other codes on the product container so that it is easily recognizable. Proposed section 235-6.1(b) has been updated to include language that if a manufacturer changes any code indicating the date of manufacture for any consumer product subject to section 235-3.6(b)(1) of this Part, an explanation of the modified code must be submitted to the Department before any products displaying the modified code are sold, supplied, or offered for sale in NYS. No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer. Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

Proposed section 235-6.1(c), ''most restrictive limit,'' has been amended so that if anywhere on the container or packaging, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in Subpart 235-3.1(a), then the lowest VOC limit shall apply. This revision applies to consumer products manufactured on or after January 1, 2010 and FIFRA registered products manufactured on or after January 1, 2011. For consumer products manufactured before January 1, 2010 and FIFRA registered products manufactured before January 1, 2011, the current Part 235 only requires the most restrictive limit to appear only on the product's principal display panel. The revisions to Part 235 also include additional labeling requirements for the following categories: adhesives removers, electronic cleaner, energized electrical cleaner and contact adhesives.

SUBPART 235-7

REPORTING REQUIREMENTS

Sec. 235-7.1 Reporting Requirements

Proposed revisions to section 235-3.7(a) would clarify that if the responsible party does not have or does not provide the information requested by the director, Division of Air Resources, Department of Environmental Conservation, the director may require the reporting of this information by the person who has the information, including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager. Other minor changes have made in this section to clarify the text for the purposes of reporting.

Subpart 235-7.1(d) had added language to include ''energized electrical cleaners'' as defined in Subpart 235-2.1(bf) for the purposes of reporting if the ''energized electrical cleaners'' contain 1.0 percent or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

SUBPART 235-8

VARIANCES

Sec. 235-8.1 Variances

No Revisions.

SUBPART 235-9

TEST METHODS

Sec. 235-9.1 Test methods

No Revisions.

SUBPART 235-10

SEVERABILITY

Sec. 235-10.1 Severability

No Revisions.

SUBPART 235-11

ALTERNATIVE CONTROL PLAN (ACP) FOR CONSUMER PRODUCTS

Sec. 235-11.1 Alternative control plan for consumer products

No Revisions.

PART 200

General Provisions

Section 200.9 of 6 NYCRR Part 200 contains a list of documents that have been referenced by the Department in regulations contained in 6 NYCRR Chapter III, Air Resources. The Department is proposing to amend this list to reflect references necessary to amending Part 235.

Text of proposed rule and any required statements and analyses may be obtained from: Arthur Robinson, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: 235product@gw.dec.state.ny.us

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

Public comment will be received until: 5:00 p.m., July 29, 2009

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 must be approved by the Environmental Board.

Summary of Regulatory Impact Statement

STATUTORY AUTHORITY

The statutory authority for these amendments to the revised Part 235 is the Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105.

LEGISLATIVE OBJECTIVES

It is the declared policy of the state of New York, as pronounced by the Legislature in the Environmental Conservation Law, to maintain a reasonable degree of purity of the air resources of the State consistent with the public health and welfare and the public enjoyment and the protection of physical property and other resources. In furtherance of this policy and the Legislature's objectives, the proposed rule will be protective of public health by providing limits to control ozone precursors.

NEEDS AND BENEFITS

New York faces a significant public health challenge from ground-level ozone: which causes health effects in humans ranging from respiratory disease to death. In response to this public health problem, New York has enacted a series of regulations designed to control ozone and its chemical precursors which include volatile organic compounds (VOCs). Among other regulatory actions, New York has promulgated regulations designed to limit the VOCs emitted by various product categories know as consumer products. 'See 6 NYCRR Part 235 (Consumer Products regulation)'.

The New York City, Poughkeepsie, Buffalo-Niagara Falls and Jamestown metropolitan areas and Essex County (Whiteface Mountain above 1,900 feet) are currently designated as nonattainment for the 1997 ozone National Ambient Air Quality Standards (NAAQS) of 0.08 parts per million. As part of its ozone attainment demonstration, the Department has requested that the New York City Metropolitan Area be reclassified in accordance with the provisions of section 181(b)(3) of the Clean Air Act as a serious ozone nonattainment area and have an attainment date of 2013. The Poughkeepsie Metropolitan Area was classified as a moderate nonattainment area with an attainment date 2010. The Albany-Schenectady-Troy Metropolitan Area, Jefferson County and the Rochester Metropolitan Area are currently designated as nonattainment under the 1997 ozone NAAQS, but have a clean data determination for having at least 3 years of data meeting the standard. The Department is applying for clean data determinations for Essex County and the Poughkeepsie, Buffalo-Niagara Falls and Jamestown metropolitan areas based on monitored data from 2006 to 2008. This leaves the New York City area as the lone area in the State currently monitoring nonattainment with the 1997 ozone NAAQS.

On March 27, 2008, EPA promulgated a stricter ozone NAAQS. On March 12, 2009, the Department after analyzing measured ozone data for the years 2006 - 2008 recommended that the New York City, Poughkeepsie-Newburgh-Kingston, Albany-Schenectady-Troy-Glens Falls, Rochester, Buffalo-Niagara Falls and Jamestown metropolitan areas be designated nonattainment for the 2008 ozone NAAQS. This represents 32 counties with a population of nearly 17 million people or over 86 percent of the State's population. EPA is expected to designate and classify ozone nonattainment areas by March 12, 2010 which will likely establish 2016 and 2013 as the attainment dates for the New York City Metropolitan Area and the rest of the State, respectively.

As can be seen by the above listing, ozone nonattainment is a pervasive problem that exists in areas throughout the State. The emission reductions from this proposed action will assist the New York City Area in coming into compliance with both the 1997 and 2008 ozone NAAQS, and other areas of the State in coming into compliance with the 2008 ozone NAAQS.

As part of the Ozone Transport Region (OTR), which is comprised of the 12 Mid-Atlantic and Northeast States and the District of Columbia, New York State has participated in the State-led Ozone Transport Commission (OTC) Workgroups. The OTC has developed model rules to address the EPA identified emission reduction shortfalls. One of the model rules developed by the OTC to assist the OTR States in making progress towards reducing the eight-hour ozone levels by regulating VOCs was the 2001 model rule for consumer products. On October 22, 2004, the New York State Department of Environmental Conservation (Department) promulgated the existing consumer products regulation which sought to limit or reduce the amount of VOCs released into the atmosphere from Consumer Products. 'See 6 NYCRR Part 235 (Consumer Products regulation)'. Consistent with New York's obligations under the Clean Air Act, New York submitted its Consumer Products regulation to EPA as part of New York's SIP. On January 23, 2004, EPA approved the incorporation of Part 235 into New York's SIP.

In order to continue making progress towards reducing the eight-hour ozone levels in the EPA designated nonattainment areas within New York State, the Department once again has worked with the OTC in the process of updating existing and developing new model rules. The 2006 Consumer Products model rule is one of the OTC model rules that have been revised and the reductions in ozone precursors (VOCs) will assist the Department in attaining and maintaining the eight-hour ozone standard for New York's designated nonattainment areas.

The Department now proposes to amend 6 NYCRR Part 235 ''Consumer Products'' based on the revised OTC consumer products model rule. The amendments to Part 235 will be based on the work performed by the OTC workgroup which used the California Air Resources Board (CARB) consumer products program amendments that took effect on December 31, 2006. The Department's proposal incorporates 11 new categories of consumer products, along with their respective VOC limits, for the following: adhesive remover (including subcategories), anti-static (non-aerosol), electrical cleaner, electronic cleaner, fabric refresher, footwear or leather care, graffiti remover, hair styling products, shaving gel (the first tier VOC limit of seven percent), toilet/urinal care, and wood cleaner. The Department also proposes to incorporate the CARB amendments that will revise the existing VOC limit for the contact adhesive product category and to include additional requirements for two previously regulated product categories: air fresheners and general purpose degreasers. The VOC content limit did not change in these two categories. The resulting revisions will result in an estimated VOC reduction benefit of 3.4 tons per day (tpd) for New York State.

The Department is proposing a prohibition on the use of three Toxic Air Contaminants (TACs), methylene chloride (MeCL), perchloroethylene (Perc), and trichloroethylene (TCE) in seven categories in the revised consumer products rule because they have the potential to cause cancer and could also cause non-cancer health issues. The seven categories are as follows: 1) adhesive removers (including subcategories: floor or wall covering, gasket or thread locking, general purpose, and specialty), 2) contact adhesive, 3) electrical cleaners, 4) electronic cleaners, 5) footwear or leather products, 6) general purpose degreasers, and 7) graffiti removers.

The Department is proposing a prohibition on the use of para-dichlorobenzene (PDCB), which is a chlorinated benzene compound, in the solid air fresheners and toilet/urinal care products categories. PDCB has been designated by the International Agency for Research on Cancer as a possible carcinogen to humans and has the potential to cause non-cancer health effects.

The Department is proposing modifications to several of the existing definitions. For example, the Department is proposing to modify the existing definition of ''deodorant'' to include certain body spray products. The amended definition will apply to products manufactured on or after January 1, 2010. Body spray products that contain language on the container or packaging, or on any sticker or label affixed thereto, stating that the product can be used on or applied to the human axilla are considered deodorants. Body spray products that are not so labeled are considered deodorant body sprays. The definition for ''deodorant body spray'' has been included in the proposed amendments to Part 235 to address body spray products which do not fall under the definition of ''deodorant.'' There is no VOC content limit proposed for ''deodorant body spray.''

The Department is proposing to amend 6 NYCRR Part 200 (Table 1; section 200.9) to reflect changes made to Part 235. The Department has added and updated reference documents under Referenced Material in Table 1, section 200.9.

COSTS

Costs to Regulated Parties and Consumers:

The cost of the proposed regulation will affect any person who sells, manufactures or buys an applicable consumer product in New York State. A Statewide regulation consistent with the other OTC states will reduce production and marketing costs associated with the distribution of complying products to meet uniform standards.

A CARB analysis of consumer product reformulation costs was estimated to be $2.00 per pound ($4,000.00 per ton) of VOCs reduced. This estimate may be high depending on whether a manufacturer needs to reformulate or can substitute products with compliant products that are already on the market. The Department estimates that the costs incurred to comply with the VOC limits in the OTC model rule are the same as those determined by CARB.

As explained in CARB's Technical Support Document, the average increase in cost per unit to the manufacturer is estimated to be about $0.16. Also, CARB expects most manufacturers to be able to absorb the added costs of the regulation without an adverse impact on their profitability.

Costs to State and Local Governments:

There are no direct costs to State and local governments associated with this proposed regulation. No record keeping, reporting, or other requirements will be imposed on local governments. Requirements for record keeping, reporting, etc. are applicable only to the person(s) who manufactures, sells, supplies, or offers for sale consumer products.

Costs to the Regulating Agency:

The Department will experience a small increase in workload as a result of this rule making. As noted above, the application of a Statewide regulation will help conserve resources as valuable staff time will not be required to track the trafficking of non-complying products across state and county lines.

LOCAL GOVERNMENT MANDATES

No additional record keeping, reporting, or other requirements will be imposed on local governments under the proposed rulemaking. The authority and responsibility for implementing and administering proposed Part 235 resides solely with the Department. Requirements for record keeping, reporting, etc. are applicable only to the person(s) who manufactures, sells, supplies, or offers for sale consumer products.

PAPERWORK

In the revised Part 235, the Department is proposing that manufacturers can use either the date of manufacture, the proposed specified code (YY DDD = year year day day day) or an explanation of the date portion of the code that must be filed with the Department if the proposed code is not used by the manufacturer.

Currently the most restrictive limit in existing Part 235 only applies to representations made on the principal display panel (front label) of the consumer product. If a representation is made that the same consumer product is suitable for use as a consumer product for which a lower VOC content limit is specified in existing Subpart 235-3.1(a) (Table of Standards), then the lowest VOC limit shall apply. In the proposed revisions to Part 235, any consumer product manufactured on or after January 1, 2010, or any FIFRA registered insecticide manufactured on or after January 1, 2011, is subject to the most restrictive VOC limit that applies. If a product represents anywhere on the label, packaging and all affixed labels or stickers, that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in revised Subpart 235-3.1(a) (Table of Standards), then the lowest VOC limit shall apply. This requirement to use the ''most restrictive limit'' does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.

Existing Part 235 carried only additional labeling requirements for aerosol adhesives but the revised Part 235, adds the following categories for additional labeling requirements: 1) adhesive remover, 2) electronic cleaner, 3) electrical cleaner, 4) energized electrical cleaner, and 5) contact adhesive.

Concerning Subpart 235-7.1(a) (Reporting requirements), revised Part 235 would clarify that if the responsible party does not have or does not provide the information requested by the director, Division of Air Resources, Department of Environmental Conservation, the director, Division of Air Resources, Department of Environmental Conservation may require the reporting of this information by the person that has the information, including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or re-packager.

DUPLICATION

The Department is the only government agency in New York State that regulates the VOC content in consumer products.

ALTERNATIVES

The following alternatives have been evaluated to address the goals set forth above. These are:

1. Take No Action:

The first alternative evaluated was to take no action in the hope compliant products would eventually find their way into the Northeastern marketplace and meet with consumer acceptance. This alternative would have no impact on manufacturers. Furthermore, if DEC's regulations are not amended as proposed, the substance of the proposed changes would not be enforceable and the VOC emissions reductions would not be creditable for purposes of assisting NYS in attaining and maintaining the eight-hour ozone standard for the State's designated nonattainment areas. However, the product categories that will be incorporated into the proposed revisions for Part 235 are currently available to consumers in California and are meeting the requirements of the OTC model rule VOC content limits. For these reasons, the Department rejected this alternative.

2. Regulating fewer product categories than the current CARB program:

The OTC 2006 model rule modifies the OTC 2001 model rule based on CARB's July 20, 2005 amendments. The OTC did not include the Anti-Static Aerosol products and the second tier Shaving Gel limit in its revisions to the OTC 2001 model rule because of industry concerns that meeting these VOC content limits may not be feasible. Reformulation is expected to be especially challenging for these two categories and in the case of shaving gel, CARB proposed a two-tiered limit to reflect technology and production challenges. We are proposing to adopt the first-tier VOC limit (seven percent) for shaving gel and the anti-static non-aerosol products from CARB's July 20, 2005 amendments.

3. ''Sell-through'' Provision:

A.) No sell through

B.) Three year sell through

C.) Unlimited sell through

The third alternative involves adopting the rule without a no ''sell-through'' and/or the three-year ''sell-through'' period. The no ''sell-through'' provision requires immediate compliance with the standards regardless of the date of manufacture. A three-year ''sell-through'' provision would allow non-compliant products manufactured prior to the January 1, 2010 compliance date to be sold, supplied, or offered for sale for up to three years. Allowing an unlimited sell-through period for the sale of non-compliant products manufactured before the January 1, 2010 compliance date was determined to be less burdensome to small businesses, less labor intensive, and is appropriate, given that consumer products move through the marketplace rather quickly. This approach also reflects the Department's experience that there has been excellent compliance with the existing Consumer Products rule.

The only exception to the Department's unlimited sell through proposal is an one year limited sell through (until January 1, 2011) for the following: 1) for the categories of solid air fresheners and toilet/urinal care products that contain para-dichlorobenzene; 2) for the categories adhesive remover (including subcategories), contact adhesive, electrical cleaner, electronic cleaners, footwear or leather care products, general purpose degreasers and graffiti remover that contain methylene chloride, perchloroethylene, or trichloroethylene. The Department is proposing this limited sell through on para-dichlorobenzene, methylene chloride, perchloroethylene, or trichloroethylene because they are all suspected carcinogens and to be consistent with CARB and the OTC.

COMPLIANCE SCHEDULE

The proposed amendments to Part 235 and Part 200 would take effect on January 1, 2010. Manufacturers, distributors and sellers of consumer products must comply with the VOC content limits in the revised regulation as of that date.

Regulatory Flexibility Analysis

1. Effects on Small Businesses and Local Governments: No local governments will be directly affected by the revisions to 6 NYCRR Part 235, Consumer Products.

Small businesses that are manufacturers, distributors or sellers of consumer products in New York will be required to comply with the proposed amendments to Part 235 as of January 1, 2010. Small businesses that are manufacturers of consumer products that are affected by the proposed revisions to Part 235 will have to alter their manufacturing processes in order to produce these products so they will meet the new Volatile Organic Compounds (VOCs) limits. Small businesses that are distributors or sellers of these consumer products will have to verify with the manufacturer that the products are compliant. For example, distributors and sellers can request the Material Safety Data Sheet (MSDS) from the manufacturer for any of the products that are affected by the proposed revisions to Part 235.

2. Compliance Requirements: The products made by the various manufacturers of consumer products are currently required to meet certain Volatile Organic Compound (VOC) standards. The proposed revised rule would encompass additional consumer products and one existing consumer product to meet their respective new VOC standards. In order to comply, manufacturers would be required to make necessary adjustments to their manufacturing processes for the consumer products addressed in the proposed revisions to Part 235. However, the products made by most companies already meet the proposed standards for these products. Distributors and sellers of consumer products would also be required to verify that their products are compliant.

3. Professional Services: Local governments are not directly affected by the revisions to 6 NYCRR Part 235. It is not anticipated that businesses that manufacture consumer products will need to contract out for professional services to comply with this regulation.

4. Compliance Costs: Companies that already make products that comply with the updated VOC standards will have no additional costs. The Department estimates that the costs to comply with the VOC limits in the 2006 Ozone Transport Commission (OTC) model rule are the same as the estimate by the California Air Resources Board (CARB) in their Executive Summary (Volume 1; dated May 7, 2004). CARB expects most manufacturers to be able to absorb the added costs without adverse impact on their profitability, with an average increase in cost per unit to be about $0.16. CARB does not expect manufacturers to set up dual-distribution systems (one for California and one for the rest of the country) since they are expensive to establish and maintain.

5. Minimizing Adverse Impact: Any adverse impact to small businesses has been mitigated because manufacturers have been selling compliant products in California since December 31, 2006, the date the CARB amendments took effect. The 2006 OTC model rule is based on these CARB amendments. Consumer product manufacturers, either directly or through their representatives, have been involved in a dialogue with the Department and other states regulatory agencies through the OTC. The dialogue has been about restrictions on consumer products and the substantive provisions of the proposed rule. Based on this dialogue, the Department is proposing to adopt an unlimited sell-through provision and did not adopt the VOC limits for consumer product categories that could not be met by product manufacturers.

6. Small Business and Local Government Participation: Since local governments are not directly affected by this regulation, the Department did not contact local governments directly. Consumer product manufacturers have trade associations that have actively advocated for them during the CARB rulemaking process and the development of the 2006 OTC model rule.

7. Economic and Technological Feasibility: The Department's proposed amendments to Part 235 are based on the 2006 OTC model rule for consumer products. The OTC model rule is based on the CARB's consumer products program amendments that took effect on December 31, 2006. Businesses in the member OTC states will have to comply with the same proposed amendments as New York. Businesses in California, as stated under ''Minimizing Adverse Impact'' of this document, have been selling compliant consumer products in that state since December 31,

2006. Therefore, DEC has determined that compliance with the substance of the proposed amendments is feasible.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: As Part 235 will continue to apply on a Statewide basis, all rural areas are affected by this rule. Rural areas are not affected any differently than other areas in the State by the revisions.

2. Reporting, recordkeeping and other compliance requirements: The proposed revisions to Part 235 include revisions to reporting, record keeping, and labeling requirements contained in the existing Part 235, which was promulgated in 2004. These requirements apply to the manufacturers (formulator, supplier parent company, private labeler, distributor or repackager) of consumer products. Rural area businesses are not expected to be effected by these revisions. Professional services are not anticipated to be necessary to comply with this rule.

3. Costs: Any costs associated with the proposed amendments will affect manufacturers, distributors or sellers of applicable consumer products in all areas of New York State, including rural areas. Companies that already make products that comply with the updated VOC standards will have no additional costs. The Department estimates that the costs to comply with the VOC limits in the 2006 Ozone Transport Commission (OTC) model rule are the same as the estimate by the California Air Resources Board (CARB) in their Executive Summary (Volume 1; dated May 7, 2004). CARB expects most manufacturers to be able to absorb the added costs without adverse impact on their profitability, with an average increase in cost per unit to be about $0.16. CARB does not expect manufacturers to set up dual-distribution systems (one for California and one for the rest of the country) since they are expensive to establish and maintain.

4. Minimizing adverse impact: Any adverse impact to small businesses has been mitigated because manufacturers have been selling compliant products in California since December 31, 2006, the date the CARB amendments took effect. The 2006 OTC model rule is based on these CARB amendments. Consumer product manufacturers, either directly or through their representatives, have been involved in a dialogue with the Department and other states' regulatory agencies through the OTC. The dialogue has been about restrictions on consumer products and the substantive provisions of the proposed rule. Based on this dialogue, the Department is proposing to adopt an unlimited sell-through provision and did not adopt the VOC limits for consumer product categories that could not be met by product manufacturers.

5. Rural area participation: The department plans on holding public hearings at various locations throughout New York State. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments on the proposed regulation.

Job Impact Statement

1. Nature of impact: The Department of Environmental Conservation (Department) proposes to revise Part 235, with an effective date of January 1, 2010, to add new limits on VOC content in certain consumer product categories. The proposed Part 235 is based on the 2006 Ozone Transport Commission's (OTC) model rule for consumer products and will provide regulatory consistency and uniformity across the Ozone Transport Region (OTR) for consumer products.

These proposed revisions are not expected to have an adverse impact on jobs and employment opportunities in the State. Existing Part 235 has been applied Statewide since it took effect on January 1, 2005, and it will continue to apply on a Statewide basis. Since Part 235 went into effect on January 1, 2005, there has been no evidence of an adverse impact on jobs and employment opportunities as a result of regulating consumer products.

2. Categories and numbers affected: No adverse impacts on jobs or employment opportunities are expected.

3. Regions of adverse impact: The Department does not expect there to be adverse impacts in any regions of the State. The existing standards in Part 235 have applied Statewide since January 1, 2005, and there has been no resulting adverse impact on any particular region in the State.

4. Minimizing adverse impact: No adverse impacts are anticipated as a result of this rulemaking. Consumer products manufacturers, either directly or through their representatives, have been involved in a dialogue with the Department and other states regulatory agencies through the OTC. The dialogue has been about restrictions on consumer products and the substantive provisions of the proposed rule. Based on concerns raised by the manufacturers, the Department has included in this rulemaking an unlimited sell-through provision and did not include VOC limits for certain consumer products categories that could not be met by product manufacturers.

5. Self employment opportunities: Most consumer products are manufactured by large companies; however, some individuals may have the opportunity to manufacture consumer products in the future.

Department of Health

NOTICE OF ADOPTION

Fingerprinting and Criminal Background Check Requirements (CBCR) for Unescorted Access to Radioactive Materials

I.D. No. HLT-04-09-00002-A
Filing No. 610
Filing Date: 2009-06-02
Effective Date: 2009-06-17

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

Action taken: Addition of section 16.112 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225(5)(p), (q) and 201(1)(r)

Subject: Fingerprinting and Criminal Background Check Requirements (CBCR) for Unescorted Access to Radioactive Materials.

Purpose: US NRC requirements-fingerprint and CBCRs for individuals allowed unescorted access to large quantities of radioactive materials.

Text or summary was published in the January 28, 2009 issue of the Register, I.D. No. HLT-04-09-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Assessment of Public Comment

Comment (1):

The commentator disagreed with the information provided in the Statutory Authority section of the Regulatory Impact Statement. Specifically, he disagreed with the reference to U.S. Atomic Energy Act Sections 2021(o) and 2022 as applying to the New York State Agreement State Program. Further the commentator claimed that it would be difficult for the US Nuclear Regulatory Commission (NRC) to terminate or suspend its Agreement with New York State under AEA section 2021(j) if the proposed regulations are not implemented.

Response (1):

DOH's authority to implement these requirements through the proposed rule is derived, not from the Atomic Energy Act (AEA) but from the New York Public Health Law (Sections 225(5)(p), 225(5)(q) and 201(1)(r)). The commentator correctly pointed out that AEA Sections 2021(o) and 2022 apply to byproduct material as defined in AEA Section 2014(e) and was not related to the New York State Agreement with NRC. However the commentator acknowledged that under AEA Section 2021(j)(1), the NRC can terminate or suspend its agreement with New York State upon a finding that termination or suspension is required to protect the public health and safety. The commentator's claimed that ''it would be very difficult for the NRC to show that New York State's program did not protect public health and safety,'' and ''it is difficult to see how NRC could prevail in any objective forum were it to claim that New York's program was inadequate to protect public health and safety merely because the proposed regulation had not been promulgated'' are speculative.

Comment (2):

The commentator took issue with proposed section 16.112(c)(1) that requires licensees to certify that the licensee's Trustworthy and Reliable (T&R) Official is deemed trustworthy and reliable. He stated that this requirement is either not enforceable or not useful.

Response (2):

The requirement to certify a T&R Official is taken directly from NRC Orders to their licensees (NRC Order EA-07-305) and is a critical component of these regulations. A T&R Official is an individual who the licensee determines to be trustworthy and reliable, based on the three minimum requirements for background checks of the Increased Controls (employment history, education, and personal references). Fingerprinting and criminal history checks are only needed if the T&R Official has, or will have, unescorted access to radioactive material quantities of concern. Affected licensees that do not certify a T&R Official would be in noncompliance with this requirement and subject to enforcement action under Sections 12 and 206(4)(c) of the Public Health Law.

Comment (3):

The commentator discussed proposed section 16.112(c)(4) that requires the licensee to notify DOH and the NRC within 24 hours if the results

from a criminal history record check indicate an individual is listed on the FBI Terrorist Screening Data Base. The commentator was concerned about what DOH will do with this information.

Response (3):

The requirement for 24-hour notification of DOH and NRC if the results from a criminal history record check indicate an individual is listed on the FBI Terrorist Screening Data Base is taken from the NRC requirements. The Department will evaluate such information in conjunction with the NRC and make determinations, on a case by case basis, as to what actions, if any, are necessary.

Comment (4):

The commentator addressed the proposed section 16.112(e) that requires licensees to make a determination that the T&R Official is trustworthy and reliable in accordance with its Increased Controls license conditions. The commentator stated that the text of the increased controls was not provided with the proposed rulemaking and that DOH has refused to provide such information.

Response (4):

The Increased Control license conditions are not new requirements and were implemented in accordance with section 16.18(a) of Part 16 of the State Sanitary Code. The Department is not aware of any request for copies of Increased Control license conditions which are available upon request.

Comment (5):

The commentator discussed proposed section 16.112(f)(8) that exempts certain persons from the fingerprinting requirements. The commentator's claimed ''It is impossible to foresee any circumstance where an individual falling into one of these seven categories could ever be an employee, contractor, manufacturer or supplier of a DOH licensee.''

Response (5):

The Department disagrees. The categories include local law enforcement personnel and State Radiation Control Program Directors. Local municipalities and state agencies (including the Department of Environmental Conservation) are currently DOH radioactive material licensees.

Comment (6):

The commentator expressed concern that the licensee is offered too much discretion in determining who can have access to radioactive materials and suggests that the proposed rule be changed to provide criterion offenses which would trigger denial of unescorted access by the licensee.

Response (6):

The proposed rule incorporates requirements that are consistent with the requirements of all other Agreement States and the NRC.

Comment (7):

The commentator requested that the Department provide guidance for licensees to implement the proposed section 16.112(k)(2) which prohibits the licensee from using the information received from a criminal history records check in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States or Article 1 of the New York State Constitution, or in a manner which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Response (7):

The Department has concluded that this provision can be understood by licensees without Department guidance. This is apparent from the fact that this provision has been effective, as an emergency rule, since November 2008, and no licensee has requested guidance as to its meaning.

Comment (8):

The commentator was concerned that the proposed rule does not provide criteria for licensees to deny individuals access to radioactive materials in quantities of concern. The commentator provides examples of other New York State regulations that provide such criteria.

Response (8):

See response to comment 6.

Insurance Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Excess Line Placements Governing Standards

I.D. No. INS-24-09-00002-P

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

Proposed Action: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103 and 9102; and art. 59

Subject: Excess Line Placements Governing Standards.

Purpose: Add additional coverages to the "export" list and reduce the requisite declinations for several other coverages.

Text of proposed rule: Section 27.3(a) is hereby amended to read as follows:

(a) [No] *Except as provided in subsection (g), no* excess line broker shall place coverage for a risk with any unauthorized insurer, unless the risk has been declined by at least three authorized insurers, each of which is authorized in this State to write insurance of the kind requested and is an insurer that the excess line broker has reason to believe might consider writing the type of coverage or class of insurance involved. An excess line broker shall be considered to have reason to believe that an authorized insurer might consider writing the type of coverage or class of insurance if the decision to offer the risk to such authorized insurer was based on any of the following:

Section 27.3 (g) is hereby amended to read as follows:

(g)(1)*(i)* Pursuant to the provisions of Section 2118(b)(4) of the Insurance Law, the superintendent has determined that *an* excess line [brokers] *broker* shall not be required to comply with the provisions of subdivisions (a), (b) and (c) of this section with regard to the placement of any of the following coverages:

Coverage

Amusement Parks and Carnivals

Property and/or liability coverage for the owners/operators of amusement parks, theme parks and carnivals.

Amusement Rides and Devices

Property and/or liability coverage for the owners/operators of amusement rides and devices including bumper cars, go-carts and go-cart[s] tracks, giant slides, skateboard tracks, roller-blade tracks, etc.

Animal Mortality

Coverage against the death of any domesticated or wild animal from any cause.

Armored Car, Couriers or Check Cashing Operations

Crime coverage for armored car services, couriers transporting valuable documents and securities, and check cashing operations.

Auto Racing and Automobile Race Track Liability

Coverage for claims of spectators, participants or other third parties in connection with the operation of an automobile race track or drag strip, or the staging or conduct of an automobile race.

Automobile Personal Injury Protection (PIP) Excess of $150,000

First party, New York No-Fault PIP benefits, excess of $150,000.

Blood Banks; Blood and Organ Facilities Liability

Liability coverage for facilities that primarily deal with the collection, storage and distribution of blood, blood products and human organs.

Boats and Yachts

1. High Speed Boats - Property and liability coverage for the owners and operators of boats capable of attaining speeds in excess of 40 miles per hour[; or].

2. Boat Rentals - Property and liability coverage for the owners and operators of boat rental facilities.

Commercial Excess and Umbrella Liability

1. Coverage for commercial excess liability where the underlying policy limits or self insured retention is at least $10,000,000 per occurrence.

2. Coverage for commercial umbrella liability where the underlying automobile and general liability policies or self-insured retentions contain limits of at least $10,000,000 per occurrence.

Commercial Property

1. Coverage for commercial excess property insurance where the policy provides in excess of $50,000,000 in underlying coverage.

2. Primary or excess property insurance coverage for property used for business purposes when the total insured values exceed $200,000,000.

Contract Frustration

Coverage as defined in section 1113(a)(17)(E) of the Insurance Law.

Employed Lawyers Liability

Employed lawyer's liability insurance for lawyers who are employed as lawyers by a business entity and not a law firm.

Environmental Impairment/Pollution Liability

Liability coverage and/or pollution clean-up expense [coverage] *risks or coverages* for the following:

Asbestos Abatement Contractors;

General Pollution Liability;

Environmental Impairment;

Lead Abatement Contractors;

Hazardous Waste Disposal Sites;

Hazardous Waste Haulers and Shippers;

Hazardous Waste Site Mitigation Contractors;

Radon Mitigation Contractors;

Radon Testing Firms;
Underground Storage Tanks - Marketers; and
Underground Storage Tanks - Non-Marketers.
Explosives, Munitions or Fireworks - Manufacturing or Display
Property and/or liability coverage for the manufacturer of explosives, munitions or fireworks and firms [which] *that* produce fireworks displays and exhibitions.
Fine Arts Dealers
All-risk or named perils coverage for property held for sale by fine arts dealers.
Flood Insurance
1. Flood Insurance Excess of Maximum Limits available from the Federal Flood Program[; or].
2. Primary Coverage on Property not eligible for Federal Flood Program.
General Liability, Owners, Landlords and Tenants and/or Manufacturers and Contractors
1. Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure.
2. Owners Contractors Protective - primary or excess liability coverage purchased by a contractor to protect the interests of the property owner relating to a specific construction project.
Golf Driving Range Liability
Personal injury or property damage liability coverage associated with the operation of a driving range, e.g., flying golf balls, improperly wielded golf clubs, etc.
Horseback Riding Establishments
Coverage for riding academies and pony rides.
House Movers and Building Demolition Contractors
Coverage for liability arising out of the moving of a house or the demolition of a building. For example, injury caused by falling brick, flying debris, etc., and structural or other damage to a house being moved.
Lead Liability Insurance
Coverage for personal injury resulting from the ingestion or inhalation of lead or lead dust.
Liquor Law Liability Coverage
Monoline liquor law liability coverage for taverns and restaurants only where liquor sales exceed 75% of total sales revenue.
Prize Indemnification
Coverage as defined in section 1113(a)(27) of the Insurance Law.
Product Liability Insurance
Product Liability Coverage for the following classes of [risk] *risks or coverages* only:
Aircraft Parts Manufacturers;
Automobile Parts Manufacturers;
Bioengineered Products;
Farm Equipment Parts Manufacturers;
Firearms Manufacturers;
Helmet Manufacturers; and
Pharmaceutical Products Manufacturers.
Product Recapture or Recall Insurance
Coverage for damages associated with the withdrawal, inspection, repair, replacement or loss of use of the insured's products or work, if such products, work or property are withdrawn from the market or use due to known or suspected defect or deficiency.
Recreational Guide Services
Coverage for outfitters and guides for camping, hiking, rafting and similar recreational activities.
Security Guards - Armed and/or Using Dogs
Professional Liability coverage for security guard firms which provide guards using firearms or dogs.
Skating Rinks
Liability coverage for injury to participants and spectators in ice and roller skating rinks.
Ski Area Liability
Liability coverage for owners and operators of ski resorts, ski lifts, ski equipment sales and rental, ski lessons, ski trail maintenance, snowmaking operations, etc.
Special Events
Primary or excess liability coverage for unique exposures of limited duration, which require varied and specialized terms, conditions and coverages generally issued to sponsors, organizers, performers and participants of trade shows, parades, flea markets, concerts, fairs and other similar events.
Special Multi Peril Coverage
Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure when the coverage is packaged along with property coverage.
Tractor Pulls/Mud Bogs
Liability coverage for claims of spectators, participants or other third parties in connection with the operation of organized exhibitions, races or demonstrations primarily involving ''Monster'' trucks, tractors and similar off-road vehicles.
Vacant Commercial Property
Primary or excess property insurance for vacant or unoccupied buildings used for commercial purposes.
Warehouseman's Liability
Coverage for the liability of a warehouse owner [and/or] *or* operator for loss or damage to the lawful goods of others in [their] *owner's or operator's* care, custody or control.
(ii) Pursuant to the provisions of Section 2118(b)(4) of the Insurance Law, the superintendent has determined that an excess line broker need only obtain two declinations from authorized insurers for the following risks or exposures:
Primary or excess Errors and Omissions/Miscellaneous Professional Liability Coverage (other than Medical Malpractice Insurance as described in subsection (e)(1)(ii) of this section), including general liability coverage (if included in the same policy) with respect to the following risks or coverages:
Alcohol and/or drug rehabilitation centers;
Alcohol and/or drug rehabilitation programs;
Residential facilities including convalescent centers, nursing homes, and assisted care facilities;
Day care centers for adults, children or the physically or mentally disabled;
Group homes for adults, children or the physically or mentally disabled;
Halfway houses for adults, children and/or the physically or mentally disabled;
Hospices care service providers;
Social services agencies;
Foster care service providers; and
Home health care providers.

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

Data, views or arguments may be submitted to: Buffy Cheung, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5587, email: bcheung@ins.state.ny.us

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

Summary of Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 9102 and Article 59 of the Insurance Law.

A complete discussion of the statutory references can be found on the Department's website (http://www. ins.state.ny.us).

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in this state. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from unauthorized insurers, the Legislature established statutory requirements to protect persons seeking insurance in this state. An excess line broker must exercise due care and make a diligent effort to obtain insurance from authorized insurers before utilizing an unauthorized insurer. Generally, an excess line broker must obtain declinations from three authorized insurers before placing business with an unauthorized insurer. The regulation sets forth an ''export'' list of coverages, which are not readily available in the authorized market, and which may be placed through an excess line broker without obtaining the requisite three declinations.

The Legislature has recognized that in some cases a different number of declinations may be appropriate and thus has permitted the Superintendent, after a public hearing, to change the number of necessary declinations. The proposed rule adds a number of additional coverages to the ''export'' list that will not require declinations, and also reduces the requisite number of declinations necessary for placement of several other coverages.

3. Needs and benefits: Regulation 41 governs the placement of excess lines insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from licensed insurers to obtain coverage from eligible excess line insurers. By adding to the ''export'' list coverages that are hard to place and whose declinations become pro forma (since New York authorized companies are not writing adequate coverage) the proposed rule will facilitate placement by excess line brokers of coverage with an eligible excess line insurer.

4. Costs: The rule should impose no additional compliance costs on excess line brokers. In fact, the proposed rule should produce a cost sav-

ings for excess line brokers, because it eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer. The proposed rule also should benefit New York insurance consumers, who will be able to obtain coverages not readily available in New York all the more quickly.

5. Local government mandates: The proposed rule does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: There is no additional paperwork required. In fact, the proposed rule should reduce paperwork, because the excess line brokers will not have to complete the declination sections of the affidavit for the coverages on the ''export'' list or will need only to complete fewer declinations for the other coverages added by the rule.

7. Duplication: The proposed rule will not duplicate any existing state or federal rule.

8. Alternatives: Pursuant to Section 2118(b)(4), the Department is to review the ''export'' list annually. In its review of the state of markets for difficult-to-place insurance coverages, the Department considers, among other things, the following: 1) complaints received regarding availability of coverages; 2) supporting documentation of requests to add additional coverages to the ''export'' list; and 3) responses to the Department's availability survey conducted every year pursuant to Section 308 of the Insurance Law.

The availability survey is sent to all authorized property/casualty insurance companies annually. The primary purpose of the survey is to ascertain the existence of markets for difficult-to-place insurance coverages.

In 2007, ELANY, an association representing excess line brokers, submitted a request to the Department to add certain coverages to the ''export'' list. Subsequent to publishing a notice in the State Register, the Department held a public hearing on June 13, 2008 at its New York City offices. All interested parties, including authorized property/casualty insurance companies, were invited to testify orally or submit written comments.

After careful consideration of the written comments and oral testimonies from the public hearing and discussions with the association representing excess line brokers, the Superintendent has determined that certain coverages should be added to the ''export'' list. The review of ELANY's requested additions to the ''export'' list started with the fundamental position that the authorized market is the preferred market. The excess line market exists specifically to meet the needs of New York residents only as a last resort. The Department's review of the proposal included an analysis of the annual availability survey, consultations with Department staff responsible for the particular lines of business, analysis of the Department's experience in processing inquiries from the public with respect to availability concerns, and a thorough review of all testimony, both oral and written, which was provided by interested parties. The Department now proposes to add to the export list a great number of the coverages requested by ELANY. If the proposed rule is adopted, it will add a number of additional coverages to the ''export'' list that will not require declinations, and will also reduce the requisite number of declinations necessary for placement of several other coverages. ELANY will provide the Department with data regarding the effect of the amendments to the Export List on the availability of coverage(s) in New York.

At that time, the Department will consider amendment of 11 NYCRR 16 (Department Regulation No. 86), which governs special risks, to add these additional coverages as ''Class 2'' risks. Class 2 risks are coverages that are of an unusual nature, a high loss hazard or difficult to place. Theses are risks placed through the admitted market but filing of forms and rates are not required, although the forms and rates must still satisfy governing standards set forth in the Insurance Law and regulations.

The proposed additional coverages are as follows:

- Commercial Excess and Umbrella Liability: Coverage for commercial excess liability where the underlying policy limits or self insured retention is at least $10,000,000 per occurrence. Also, coverage for commercial umbrella liability where the underlying automobile and general liability policies or self-insured retentions contain limits of at least $10,000,000 per occurrence.

This coverage was added based on the Department's analysis of information and after consultation with Property Bureau staff. The Department concluded that the availability of this coverage through admitted channels is limited and that addition to the export list is appropriate.

- Commercial Property: Coverage for commercial excess property insurance where the policy provides in excess of $50,000,000 in underlying coverage. Also, primary or excess property insurance coverage for property used for business purposes when the total insured values exceed $200,000,000.

This coverage was added based on the Department's analysis of information and after consultation with Property Bureau staff. The Department concluded that the availability of this coverage through admitted channels is limited and that addition to the export list is appropriate.

- Contract Frustration: Coverage as defined in section 1113 (a)(17)(E) of the Insurance Law.

Based on review of its records, the Department found that this coverage is not available through admitted channels. The characteristics of this type of coverage are unique and generally need to be customized or manuscripted to the features of the specific exposure. For these reasons, the Department favors adding this coverage to the export list.

- Employed Lawyers Liability: Employed lawyer's liability insurance for lawyers who are employed as lawyers by a business entity and not a law firm.

The Department, based on information provided at the hearing, and in consultation with experienced Property Bureau staff, concluded that the availability of this coverage through admitted channels is limited. The Department further concluded that the characteristics of this type of coverage are unique and generally need to be customized or manuscripted to the features of the specific exposure. For these reasons, the Department favors adding this coverage to the export list.

- General Liability, Owners, Landlords and Tenants and/or Manufacturers and Contractors: Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure. Also, Owners Contractors Protective, which is primary or excess liability coverage purchased by a contractor to protect the interests of the property owner relating to a specific construction project.

The Department added this coverage based on its analysis of information provided at the public hearing and its analysis of information regarding the various types of contractors that would be affected by offering this coverage through the export list. The Department determined that it is preferable to list a single comprehensive class for all contractors rather than listing all of the various subclasses, which may, in any event, not be exhaustive. Based on the testimony at the hearing, this class continues to be adversely affected by sections 240 and 241 of the New York Labor Law and the inherently dangerous nature of construction. Sections 240 and 241 of the New York Labor Law impose strict and absolute liability on employers for construction scaffolding and falling accidents. Claims alleging violations of these statutes often result in large judgments against the contractors' employers, and due to the severity of these claims, authorized insurers frequently decline to offer coverage to construction risks. For these reasons, the Department favors adding this coverage to the export list.

- Prize Indemnification: Coverage as defined in section 1113 (a)(27) of the Insurance Law.

This line of business was first authorized in New York in 1997. The Department, based on information provided at the hearing, and in consultation with experienced Property Bureau staff, concluded that the availability of this coverage through admitted channels is limited. Further, characteristics of this type of coverage are unique and generally need to be customized or manuscripted to the features of the specific exposure. For these reasons, the Department favors adding this coverage to the export list.

- Special Events: Primary or excess liability coverage for unique exposures of limited duration, which require varied and specialized terms, conditions and coverages generally issued to sponsors, organizers, performers and participants of trade shows, parades, flea markets, concerts, fairs and other similar events.

The coverage provided by this insurance varies widely, including coverage to sponsors, organizers, performers and participants of trade shows, parades, flea markets, concerts, fairs and other similar events. The characteristics of this type of coverage are unique and generally need to be customized or manuscripted to the features of the specific exposure. The Department also has received a number of inquiries from insureds and brokers expressing difficulty in obtaining this coverage through admitted channels. For these reasons, the Department favors adding this coverage to the export list.

- Special Multi Peril Coverage: Primary or excess liability coverage for general contractors, subcontractors, and all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure when the coverage is packaged along with property coverage.

The Department proposes to add this coverage to the export list based on its analysis of information provided at the public hearing and its analysis of information regarding the various types of contractors that would be affected by offering this coverage thru the export list. The Department determined that it is preferable to list a single comprehensive class for all contractors rather than listing all of the various subclasses which may, in any event, not be exhaustive. Based on the testimony at the hearing, this class continues to be adversely affected by sections 240 and 241 of the New York Labor Law and the inherently dangerous nature of construction. Sections 240 and 241 of the New York Labor Law impose strict and absolute liability on employers for construction scaffolding and falling

accidents. Claims alleging violations of these statutes often result in large judgments against the contractors' employers, and due to the severity of these claims, authorized insurers frequently decline to offer coverage to construction risks. For these reasons, the Department favors adding this coverage to the export list.

- Vacant Commercial Property: Primary or excess property insurance for vacant or unoccupied buildings used for commercial purposes.

The Department proposes adding this coverage to the export list based on its analysis of information provided at the public hearing and after consultation with experienced Property Bureau staff. The Department concluded that the availability of the coverage through admitted channels is extremely limited. For this reason, the Department favors adding this coverage to the export list.

Other Coverages

The Department opted not to expand the export list with regard to other coverages requested by ELANY, and to limit expansion in ways not proposed by ELANY.

- Primary Or Excess Errors And Omissions /Miscellaneous Professional Liability Coverage (Other than Medical Malpractice Insurance as described in subsection (e) of this Section): Primary or excess Errors and Omissions/Miscellaneous Professional Liability Coverage (other than Medical Malpractice Insurance as described in section 27.3(e)(1)(ii) of the regulation), including general liability coverage (if included in the same policy) with respect to the following risks or coverages:

Alcohol and/or drug rehabilitation centers;

Alcohol and/or drug rehabilitation programs;

Residential facilities including convalescent centers, nursing homes, and assisted care facilities;

Day care centers for adults, children or the physically or mentally disabled;

Group homes for adults, children or the physically or mentally disabled;

Halfway houses for adults, children and/or the physically or mentally disabled;

Hospices care service providers;

Social services agencies;

Foster care service providers; and

Home health care providers.

The Department proposes to add the coverage -- primary or excess errors and omissions /miscellaneous professional liability coverage (other than medical malpractice insurance as described in subsection (e)(1)(ii) of this section), including general liability coverage if included in the same policy -- to the export list, by reducing the number of requisite declinations from three to two. Those testifying at the hearing regarding this coverage, both oral and in writing, provided limited documentation for this risk category. After research by experienced Property Bureau staff, the Department concluded that the availability of this coverage through admitted channels is somewhat limited, but not to the same extent as the coverages noted above that the Department proposes to add to the export list. Moreover, the Department has not received a significant number of inquiries from insureds reporting they cannot obtain this type of coverage. Accordingly, the Department proposes to reduce from three to two the number of declinations necessary before an excess line broker can place such coverage with an unauthorized insurer. The Department will consider revisiting this category of coverage if more empirical evidence about the lack of availability is developed.

With regard to medical malpractice insurance described in section 27.3(e)(1)(ii), the insurance is available from a residual market facility (i.e., the Medical Malpractice Insurance Plan) and therefore the Department determined that the number of declinations required for this coverage should remain at three.

- Homeowners Insurance In Nassau And Suffolk Counties: Homeowners coverage means liability and property insurance for residential property which consists of not more than four dwelling units where one or more natural persons are the named insureds who occupy on a full or part time basis residential dwellings in Nassau County or Suffolk County, New York.

The proposed rule does not add homeowners insurance in Nassau and Suffolk counties to the ''export'' list for several reasons.

The Department fields many inquiries from consumers regarding availability and affordability of coverage in coastal areas. The cost of homeowners insurance depends on a number of factors including location; age and type of building; the use of the building; local fire protection; choice of deductibles; application of discounts; and the scope and amount of insurance coverage purchased. Although homeowners may in some instances have to pay more for coverage then they would like, the Department is reluctant to add this proposed coverage to the export list in the absence of empirical evidence demonstrating that coverage is unavailable from authorized insurers or other market mechanisms. Indeed, recent statutory changes expand the scope and quality of coverage options provided by the New York Property Insurance Underwriting Association and the Coastal Market Assistance Program (CMAP), which should provide more choices and enhanced coverage to consumers seeking appropriate coverage via admitted channels.

- Primary And/Or Excess Property Insurance Coverage For Properties Used For Business Purposes Located Within One Mile of the Ocean or a Navigable Waterway: Primary and/or excess property insurance coverage for properties located within one mile of the ocean or a navigable waterway used for business purposes.

The Department does not propose to add to the export list primary and/or excess property insurance coverage for properties used for business purposes located within one mile of the ocean or a navigable waterway in the absence of empirical evidence demonstrating a lack of availability. Further, while the Department has received some inquiries involving availability of personal lines insurance coverage near the shore, there have only been a small number of such inquiries involving commercial property. In addition, in considering this proposal, the Department struggled to develop an appropriate and narrowly tailored delineation of the geographical areas where such a category should apply.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: It is expected that excess line brokers will be able to comply with this rule as soon as it is promulgated.

Regulatory Flexibility Analysis

1. Effect of rule:

Most excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The proposed rule is not expected to have an adverse impact on these small businesses because it liberalizes the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer. The present rule requires excess line brokers to obtain three declinations from authorized insurers before procuring a policy from an unauthorized insurer, except for those coverages set forth on the ''export'' list, which do not require declinations. The proposed rule adds additional coverages to the ''export'' list that will not require declinations, and in some instances reduces the requisite number of declinations required for other added coverages.

The proposed rule will facilitate and streamline the process for difficult-to-place risks in the excess line market because the excess line brokers will not have to complete the declination sections of the affidavit for the coverages on the ''export'' list or will need only to complete fewer declinations for the other coverages added by the rule.

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

2. Compliance requirements: None.

3. Professional services: No additional professional services are anticipated to be needed to comply with the proposed rule.

4. Compliance costs: This rule would impose no additional compliance costs on excess line brokers. In fact, the proposed rule should produce a cost savings for excess line brokers inasmuch as they no longer will have to obtain declinations for the additional coverages on the ''export'' list, or obtain as many declinations several other added coverages.

5. Economic and technological feasibility: Compliance with the rule is economically and technologically feasible as the rule merely eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

6. Minimizing adverse impact: There is no adverse impact and, in fact, the rule should produce a cost savings for excess line brokers because the rule eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

7. Small business and local government participation: In 2007, the Excess Line Association of New York (ELANY), provided a list of coverages to the Department on behalf of excess line brokers for consideration as additions to the ''export'' list. The Department held a public hearing on June 13, 2008 at its NYC offices regarding the list of coverages provided by ELANY. Prior notice of the hearing was published in the State Register on May 7, 2008. The public was invited to submit written comments, and numerous witnesses from around the state (and even some doing business outside the state) testified at the hearing.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Excess line brokers licensed in New York State and subject to the provisions of the proposed rule do business in most if not all counties in this state, including rural areas as defined under SAPA 102(13). Some or all of these licensees may have offices that lie within these rural areas.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The present rule requires that excess line brokers

obtain three declinations from authorized insurers before procuring a policy from an unauthorized insurer, except for those coverages set forth on the ''export'' list, which do not require declinations. The proposed rule adds additional coverages to the ''export'' list that will not require declinations and also reduces the requisite number of declinations required for several other added coverages.

There are no additional reporting, recordkeeping, or other compliance requirements.

3. Costs: There is no cost to the excess line brokers for the implementation of the proposed rule. In fact, the proposed rule should produce a cost savings for excess line brokers, because it eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

4. Minimizing adverse impact: The proposed rule applies to excess line brokers that do business in New York State, which includes both rural and non-rural areas. The proposed rule does not impose any adverse impact, because it eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

5. Rural area participation: In 2007, the Excess Line Association of New York (ELANY), provided a list of coverages to the Department on behalf of excess line brokers for consideration as additions to the ''export'' list. The Department held a public hearing on June 13, 2008 at its NYC offices regarding the list of coverages provided by ELANY. Prior notice of the hearing was published in the State Register on May 7, 2008. The public was invited to submit written comments, and numerous witnesses from around the state (and even some doing business outside the state) testified at the hearing.

Job Impact Statement

The Insurance Department finds that this rule should have no impact on jobs and employment opportunities, as it merely adds additional coverages to the ''export'' list that will not require declinations, and in some instances reduces the requisite number of declinations required for several other added coverages.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Trend Factors for 2009

I.D. No. MRD-03-09-00004-E

Filing No. 603

Filing Date: 2009-05-29

Effective Date: 2009-05-30

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

Action taken: Amendment of sections 81.10, 635-10.5, 671.7, 680.12, 681.14 and 690.7 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Emergency regulations are necessary to continue to reimburse providers and maintain the stability of the current service system, which ensures that individuals have access to necessary supports and services. The rapidly changing and deteriorating economy prevented the State from being able to determine an appropriate trend factor for the above facilities and services before 2009. This did not allow for proposal and promulgation of these amendments within the regular SAPA procedural time frames. The amendments continue the various reimbursement methodologies used to establish rates/fees for the above facilities and services, thereby maintaining current funding levels for these services and the stability of OMRDD's service system, which in turn ensures that New Yorkers with developmental disabilities continue to have access to necessary supports and services.

Subject: Trend Factors for 2009.

Purpose: To continue the methodologies used to calculate rates/fees for rate/fee periods beginning 1/1/09.

Text of emergency rule: Paragraph 81.10(b)(4) - Add new subparagraph (v):

(v) 0.00 percent for the 2009 fee period.

Paragraph 635-10.5(i)(1) - Add new subparagraph (xxvii):

(xxvii) 0.00 percent to trend 2008-2009 costs to 2009-2010.

Note: Rest of paragraph is renumbered accordingly.

Paragraph 635-10.5(i)(2) - Add new subparagraph (xxvii):

(xxvii) 0.00 percent to trend calendar 2008 costs to calendar year 2009.

Note: Rest of paragraph is renumbered accordingly.

Clause 671.7(a)(1)(vi)(a) - Add new subclause (17):

(17) For calendar year 2009:
NYC and Nassau, Rockland,
Suffolk, and Westchester Counties $ 31.97 per day
Rest of State $ 30.97 per day

Note: Rest of clause remains unchanged.

Clause 671.7(a)(1)(xvi)(a) - Add new subclause (15):

(15) 0.00 percent from January 1, 2009 through December 31, 2009.

Clause 671.7(a)(1)(xvi)(b) - Add new subclause (15):

(15) 0.00 percent from July 1, 2009 through June 30, 2010.

Paragraph 680.12(d)(3) - Add new subparagraph (xxii):

(xxii) 0.00 percent for 2009.

Add new subclause 681.14(c)(3)(ii)(b)(9):

(9) If a facility is subject to an expanded desk audit per subclause (2) of this clause, but the desk audit has not been completed by January 1, 2009 or July 1, 2009, OMRDD shall continue the rate established according to the first sentence of subclause (3) of this clause and, if applicable, further trended to 2009 or 2009-2010 dollars until OMRDD completes the expanded desk audit. Upon OMRDD's completion of the expanded desk audit, for the base period and subsequent periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section will apply.

Subparagraphs 681.14(h)(1)(xviii)-(xix) are amended and a new subparagraph (xx) is added as follows:

(xviii) 2.97 percent for 2006-2007 to 2007-2008; [and]

(xix) 3.52 percent for 2007-2008 to 2008-2009 [.] *; and*

(xx) 0.00 percent for 2008-2009 to 2009-2010.

Subparagraphs 681.14(h)(2)(xviii)-(xix) are amended and a new subparagraph (xx) is added as follows:

(xviii) From February 1, 2007 to December 31, 2007, facilities will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the rate period. On January 1, 2008, the trend factor for the previous rate period shall be deemed to be the 2.97 percent full annual trend; [and]

(xix) From February 1, 2008 to December 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the 2008 rate period. On January 1, 2009, the trend factor for the previous rate period shall be deemed to be the 3.52 percent full annual trend [.] *; and*

(xx) 0.00 percent for 2008 to 2009.

Subparagraphs 681.14(h)(3)(xxvi)-(xvii) are amended and subparagraph (xxviii) is added as follows:

(xxvi) 2.97 percent for 2006-2007 to 2007-2008; [and]

(xxvii) 3.52 percent for 2007-2008 to 2008-2009 [.] *; and*

(xxviii) 0.00 percent for 2008-2009 to 2009-2010.

Subparagraphs 681.14(h)(4)(xxvi)-(xxvii) are amended and subparagraph (xxviii) is added as follows:

(xxvi) From February 1, 2007 to December 31, 2007, facilities will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the rate period. On January 1, 2008, the trend factor for the previous rate period shall be deemed to be the 2.97 percent full annual trend; [and]

(xxvii) From February 1, 2008 to December 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the 2008 rate period. On January 1, 2009, the trend factor for the previous rate period shall be deemed to be the 3.52 percent full annual trend [.] *; and*

(xxviii) 0.00 percent for 2008 to 2009.

Subparagraph 690.7(d)(6)(iii) is amended by adding new clause (g) to read as follows:

(g) From April 1, 2009 to March 31, 2010 the trend factor shall be 0.00 percent for all facilities.

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. MRD-03-09-00004-EP, Issue of January 21, 2009. The emergency rule will expire July 27, 2009.

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory authority:

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

b. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative objectives: These amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The promulgation of these amendments concerns methodologies for rates or fees for voluntary agency providers of the following services:

a. Programs authorized by OMRDD to operate as integrated residential communities (amendments to section 81.10).

b. Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5).

c. Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7).

d. Specialty Hospitals (amendments to section 680.12).

e. Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD) (amendments to section 681.14).

f. Day treatment facilities serving people with developmental disabilities (amendments to section 690.7).

3. Needs and benefits: OMRDD has historically increased operating revenues to providers on an annual basis through the implementation of trend factors. Their purpose has been to ensure that provider reimbursement stays abreast of inflation and to provide resources that enable providers to attract and appropriately compensate staff. The foremost goal to sustain operations was complemented by an eagerness to develop and expand programs. For the last nine years, relatively robust economies have dictated annual trend factors averaging 4.84 percent. Once applied, the trend factors accumulated and compounded.

The current economic landscape is vastly different from those that gave impetus to the previous trend factors. The recessionary nature and high unemployment that define the current economy suggest that inflation may be in check and that staff recruitment and retention achieved through additional monetary stimulus may not be required. The tentative economy suggests a conservative and limited approach to expansion with an aim to conserve resources and to promote efficiency and economy. In this vein, OMRDD will not, at this time, be implementing a positive trend factor for 2009 and 2009/2010. OMRDD views the economy as having slowed sufficiently so that existing reimbursement levels should be adequate.

The amendments continue the various reimbursement methodologies used to establish rates/fees for the above services, thereby maintaining current funding levels for these services and the stability of OMRDD's service system, which in turn ensures that New Yorkers with developmental disabilities continue to have access to necessary supports and services.

4. Costs:

a. Costs to the Agency and to the State and its local governments. Since the amendments establish trend factors of zero percent, there are no costs associated with the emergency amendments. They only continue the various reimbursement methodologies used to establish rates/fees for the referenced developmental disabilities facilities and services, thereby maintaining current funding levels.

There are no additional costs to local governments resulting from the emergency amendments.

The amendments to section 671.7 also update the SSI per diem allowances consistent with levels determined by the Federal Social Security Administration. There are no additional costs attributable to this conforming amendment, either to the State or to local governments.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency amendments are necessary to continue funding of the affected facilities at levels of reimbursement that are currently in effect.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork will be required by the amendments.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these emergency amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these trend factors were considered. There is no alternative to emergency adoption that would allow for prompt, timely implementation of the trend factor provisions contained in the amendments.

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

10. Compliance schedule: The emergency rule is effective May 30, 2009. OMRDD has previously filed the rule as a Notice of Emergency Adoption and Proposed Rule Making that was published in the State Register January 21, 2009. This represents the second emergency readoption of these amendments. They do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These regulatory amendments will apply to voluntary not-for-profit corporations that operate the following facilities and/or provide the following services for persons with developmental disabilities in New York State:

- Programs certified by OMRDD as integrated residential communities (amendments to section 81.10). As of December 2008, there were only two such programs authorized by OMRDD to operate as integrated residential communities. They serve approximately 105 persons.
- Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite and prevocational services for the approximately 63,920 persons receiving such services as of December 2008.
- Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). As of December 2008, OMRDD funds voluntary operated community residence facilities which serve approximately 400 persons.
- Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2008, there were approximately 5,530 people served in ICF/DD facilities in New York State.
- Day Treatment Facilities for Persons with Developmental Disabilities, (amendments to section 690.7). As of December 2008, there were approximately 2,260 people served in Day Treatment facilities in New York State.

While most of the above services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities operated by these agencies at discrete sites (e.g. IRAs or Day Habilitation programs) employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses.

There is only one Specialty Hospital (amendments to section 680.12) which serves approximately 50 people, certified to operate in New York State. It employs more than 100 persons and would therefore not be considered a small business as contemplated under the State Administrative Procedure Act (SAPA).

The emergency amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services.

Since the amendments do not increase funding of the referenced services or programs, they will not result in any costs to local governments.

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these amendments.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The amendments do not alter this requirement. Therefore, no additional professional services are required as a result of most of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these amendments. OMRDD has considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new

section 102-a of the State Administrative Procedure Act. However, since the emergency rule requires no compliance effort on the part of the regulated service providers (most of which could be considered as small businesses under SAPA), OMRDD does not, at this time, contemplate the development of any such small business regulation guide.

5. Economic and technological feasibility: The emergency amendments are concerned with rate/fee setting in the affected facilities or services. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: The purpose of these emergency amendments is to continue to reimburse providers of the referenced services at current levels. The trend factor provisions do not increase or decrease funding of small business providers of services.

These amendments impose no adverse economic impact on regulated parties or local governments. Therefore, regulatory approaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

7. Small business and local government participation: OMRDD has discussed the proposal for 0% trend factors with the provider associations. In addition, the proposal was a part of the 2009-10 Executive Budget which has been widely disseminated among local governments and the provider community.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with the reimbursement methodologies which OMRDD uses in determining the reimbursement of the affected developmental disabilities services or facilities. Since the amendments do not decrease funding for the affected facilities or services, OMRDD expects that their adoption will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodologies are primarily based upon reported budgets and costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments continue to reimburse the various facilities or services at current levels of reimbursements for the rate/fee periods beginning January 1, 2009. As discussed in the Regulatory Impact Statement, the amendments are not expected to have any adverse impacts on jobs or employment opportunities in New York State.

Assessment of Public Comment

Comments:

OMRDD has received several comments responding to regulations regarding implementing a zero trend factor. Providers representing four voluntary agencies responded. Additionally, sixteen individuals from Lexington Center, Fulton ARC wrote independently and 35 from Lexington Center collectively submitted their comments.

Essentially, all the comments expressed the writers' conclusions that without a trend factor, the quality of services provided to individuals and the health, safety and even happiness of the individuals served by the affected agencies may be compromised. Additionally, employees predict that if voluntary providers do not receive a trend factor to increase reimbursement for operations, they, the employees, are not likely to receive cost of living raises. They cite existing low wages that pose difficulties for them to ''make ends meet'' and expect this situation to become exacerbated. Many employees interpreted the regulations as demonstrating the low value the State assigns to direct support staff. They commented about the disparity between wages paid by voluntary providers as compared to wages paid to State employees. They also expect increased turnover to be another consequence of the absence of a trend. Finally, the comments stated that a trend factor would not cost the State anything because the federal government would reimburse the State for the cost of the trend.

Response:

The current economic recession, high unemployment rate, and extremely low inflation rate eliminate the need to increase provider reimbursement. In fact, the state of the economy means the State must conserve resources and limit spending.

Providers should recognize that the imposition of the zero trend factor was a State policy decision that was uniformly applied across all human services agencies. It should also be recognized that the budget provides additional funding to OMRDD providers in the form of Health Care Adjustments intended to enable them to augment or sustain employee health care benefits.

The assumption that a trend factor increase in reimbursement has no fiscal impact to the State is incorrect. The State and the Federal government share the costs of Medicaid reimbursement. For example, the trend factors for 2008-2009 and for 2007-2008 represented annualized aggregate costs to the State alone of $50.15 million and $41 million respectively with a similar cost borne by the Federal government.

Department of Motor Vehicles

NOTICE OF ADOPTION

Slow-Moving Emblems and Lighting Equipment on Agricultural Vehicles

I.D. No. MTV-08-09-00003-A

Filing No. 608

Filing Date: 2009-06-02

Effective Date: 2009-06-17

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

Action taken: Amendment of Parts 43 and 68 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 375(4), (36) and 376

Subject: Slow-moving emblems and lighting equipment on agricultural vehicles.

Purpose: Makes conforming amendments to Parts 43 and 68 in light of Chapter 350 of the Laws of 2008.

Text or summary was published in the February 25, 2009 issue of the Register, I.D. No. MTV-08-09-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Property

I.D. No. PSC-07-09-00016-A

Filing Date: 2009-05-28

Effective Date: 2009-05-28

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

Action taken: On 5/14/09, the PSC adopted an order approving, with modifications, the petition of Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of approximately 53 acres of property to the City of North Tonawanda, NY.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To approve, with modifications, the transfer of approximately 53 acres of property to the City of North Tonawanda, NY.

Substance of final rule: The Commission, on May 14, 2009, adopted an

order approving, with modifications, the petition of Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of approximately 53 acres of property, commonly known as Gratwick Riverside Park, located in North Tonawanda, New York, to the City of North Tonawanda, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-E-1390SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Electric Rate Filing

I.D. No. PSC-24-09-00007-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 a proposal filed by Plattsburgh Municipal Lighting Dept. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service — P.S.C. No. 1.

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

Subject: Major electric rate filing.

Purpose: To consider a proposal to increase annual electric revenues by approximately $1.4 million or 8.2%.

Public hearing(s) will be held at: 10:00 a.m., August 11, 2009 and continuing through August 12, 2009 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY*

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.state.ny.us) under Case 08-E-1227.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Plattsburgh Municipal Lighting Dept. (Plattsburgh) to increase its annual electric operating revenues by approximately $1.4 million or 8.2%. The statutory suspension period for the proposed filing runs through September 14, 2009. Plattsburgh has since requested an extension of the suspension period until January 31, 2010. The Commission may adopt in whole or in part or reject terms set forth in Plattsburgh's proposal.

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. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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

(08-E-1227SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Rate Filing

I.D. No. PSC-24-09-00008-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 a proposed filing by the Village of Groton to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 1 — Electricity.

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

Subject: Minor Rate Filing.

Purpose: To increase annual electric revenues by approximately $218,001 or 24%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, an amendment to the initial filing by the Village of Groton (the Village) made on March 17, 2009 to increase its electric revenues by approximately $125,511 or 13.3%. On June 2, 2009, the Village filed an amendment to its initial March 17, 2009 filing to adjust its proposed revenue increase to approximately $218,001 or 24% due to the recent loss of its largest industrial customer. The Village proposes to have one-half of the increase become effective on September 1, 2009 and the second half on September 1, 2010.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(09-E-0247SP2)

Department of State

EMERGENCY RULE MAKING

Firefighter Training

I.D. No. DOS-24-09-00006-E

Filing No. 609

Filing Date: 2009-06-02

Effective Date: 2009-06-02

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

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

Statutory authority: Executive Law, section 156(6); L. 2006, ch. 615

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

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

Subject: Firefighter training.

Purpose: To set forth standards concerning the state firefighter training program.

Substance of emergency rule: PART 438

MINIMUM STANDARDS REGARDING OUTREACH FIRE TRAINING PROGRAM

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

Section 438.2 contains definitions of terms used in Part 438.

Section 438.3 describes training standards to guide OFPC in its implementation of the rule including instructor and student qualifications, live fire training requirements, and a listing of the standards, manuals, statutes, and regulations which will be used to provide the training authorized by subdivision 6 of section 156 of the Executive Law.

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 30, 2009.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

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

2. LEGISLATIVE OBJECTIVES

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

3. NEEDS AND BENEFITS

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

4. COSTS

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

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

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

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

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between $20 and $22 per hour.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

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

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

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

7. DUPLICATION

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

8. ALTERNATIVES

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

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

9. FEDERAL STANDARDS

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

10. COMPLIANCE SCHEDULE

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

Regulatory Flexibility Analysis

1. Effect of rule

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

2. Compliance requirements

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

3. Professional services

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

4. Compliance costs

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

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

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for

a county fire instructor at an estimated rate of between $20 and $22 per hour.

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed rule would apply throughout New York State. All of the counties and all of the approximately 1850 fire departments in New York State, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act (''SAPA''), would potentially be affected by the rule.

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

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

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

3. Costs

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

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

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between $20 and $22 per hour.

4. Minimizing adverse impact

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

5. Rural area participation

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

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

Job Impact Statement

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

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations at the State University of New York College at Delhi

I.D. No. SUN-15-09-00004-A

Filing No. 607

Filing Date: 2009-06-01

Effective Date: 2009-06-17

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

Action taken: Amendment of Part 574 of Title 8 NYCRR.

Statutory authority: Education Law, section 360

Subject: Traffic and parking regulations at the State University of New York College at Delhi.

Purpose: To make technical changes and amend existing regulations to fee schedules of SUNY College at Delhi.

Text or summary was published in the April 15, 2009 issue of the Register, I.D. No. SUN-15-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, Albany, New York 12246, (518) 443-5400, email: lisa.campo@suny.edu

Assessment of Public Comment

The agency received no public comment.

Triborough Bridge and Tunnel Authority

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Enact a New Crossing Charge Schedule for Use of Bridges and Tunnels Operated by Triborough Bridge & Tunnel Authority

I.D. No. TBA-24-09-00004-EP

Filing No. 606

Filing Date: 2009-06-03

Effective Date: 2009-06-03

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

Proposed Action: Repeal of section 1021.1 and addition of new section 1021.1 to Title 21 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The new section 1021.1 establishes crossing charges for use of Authority bridges and tunnels which contain increases but in substantially smaller amounts than the prior section 1021.1 which became effective on March 27, 2009 but has not yet been implemented. Compliance with the requirements governing permanent adoption of the new section 1021.1 would delay implementation of the new charges to the detriment of the general public, which would benefit from the smaller increases of the new section 1021.1. Immediate adoption of the new section 1021.1 would also preserve the general welfare by providing additional revenue to the Metropolitan Transportation Authority's mass transit system as soon as practicable.

The new section 1021.1 is being adopted as an emergency measure because it is essential to the public interest that the new crossing charges with smaller increases be enacted and implemented as soon as practicable.

Subject: To enact a new crossing charge schedule for use of bridges and tunnels operated by Triborough Bridge & Tunnel Authority.

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

Text of emergency/proposed rule: See Appendix in the back of this issue.

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 August 29, 2009.

Text of rule and any required statements and analyses may be obtained from: Robert M. O'Brien, General Counsel, Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, New York 10004, (646) 252-7617, email: robrien@mtabt.org

Data, views or arguments may be submitted to: Judie Glaves, Triborough Bridge and Tunnel Authority, 2 Broadway, 22nd Floor, New York, NY 10004, (646) 252-7276, email: jglaves@mtabt.org

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is 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.

Rural Area Flexibility Analysis

A rural area flexibility analysis is 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.

Job Impact Statement

A job impact statement is 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.