

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.

Education Department

EMERGENCY RULE MAKING

Administration of Immunization Agents by Certified Pharmacists

I.D. No. EDU-47-08-00007-E

Filing No. 195

Filing Date: 2009-03-02

Effective Date: 2009-03-02

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

Action taken: Addition of section 63.9 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(7), 6801(1), (2), (3), 6802(22), 6828(1), (2) and 6909(7); and L. 2008, ch. 563

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

Specific reasons underlying the finding of necessity: The proposed amendment implements the requirements of Chapter 563 of the Laws of 2008, which authorizes licensed pharmacists with a certification of administration issued by the Department to administer immunizations for influenza and pneumococcal disease and medications for the emergency treatment of anaphylaxis to adults. The statute becomes effective on December 3, 2008.

We estimate that there are approximately 20,000 licensed pharmacists employed in New York State which will require certification by the Department if such pharmacists choose to administer immunizations pursuant to Chapter 563 of the Laws of 2008. The proposed amendment is

needed to expand access to immunizations, which is expected to reduce morbidity and mortality caused by influenza and pneumococcal disease and any related complications.

The recommended action is proposed as an emergency measure because such action is necessary to adopt revisions to the proposed amendment to provide clarification on the reporting requirements for certified pharmacists, and to otherwise ensure that the emergency rule adopted at the November 2008 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its April 2008 Meeting.

Subject: Administration of immunization agents by certified pharmacists.

Purpose: Establish criteria for the certification of licensed pharmacists and requirements for the administration of immunizations.

Substance of emergency rule: The Board of Regents proposes to amend the Regulations of the Commissioner of Education by adding a new section 63.9, effective December 3, 2008. Section 63.9 of the Regulations of the Commissioner of Education is added to establish requirements relating to the administration of immunizations for the prevention of influenza and pneumococcal disease and medications for the emergency treatment of anaphylaxis by certified pharmacists.

Section 63.9(a) defines the applicability of the provision, authorizing certified pharmacists to administer certain immunization agents and medications for the emergency treatment of anaphylaxis only to the extent that the applicable provisions in Education Law sections 6527, 6801, 6802, 6828 and 6909 have not expired or been repealed.

Sections 63.9(b)(1) and (b)(2) provide that a pharmacist with a certificate of administration issued by the Department is authorized to administer immunization agents to prevent influenza or pneumococcal disease to patients over the age of 18, pursuant to either a patient specific order or non-patient specific order and protocol ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered. If the immunization is administered in a county with a population of 75,000 or less, the immunization shall be prescribed or ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered or in an adjoining county.

Section 63.9(b)(3) establishes the requirements that a licensed pharmacist must meet in order to obtain a certificate to administer immunizations from the Department. The licensed pharmacist shall submit an application with the required fee and present satisfactory evidence of completion of one of the following: (1) a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health; (2) a training course associated with a Doctor of Pharmacy degree; or (3) possession of a current certificate of administration issued by another jurisdiction and continuous practice in the administration of immunizing agents since the pharmacist received such training or completion of a retraining program in the administration of immunization agents.

Section 63.9(b)(4) establishes the standards, procedures and reporting requirements for the administration of immunizing agents.

Section 63.9(b)(5)(i) provides that certified pharmacists shall maintain or ensure the maintenance of a copy of the patient specific order or the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner which authorizes the certified pharmacist to administer immunization agents. This section prescribes the information required to be included in patient specific orders and non-patient specific orders and protocol. Such orders and protocol shall be considered a record of the patient. The pharmacist shall maintain a record of the patient in either: (a) a patient medication profile, or (b) in instances where a patient medication profile is not required, on a separate form that is retained by the pharmacist who administered the immunization.

Section 63.9(b)(5)(ii) establishes the contents of patient specific orders and non-patient specific orders.

Section 63.9(b)(5)(iii) specifies additional provisions required to be included in non-patient specific orders, including the incorporation of a protocol.

Section 63.9(b)(5)(iv) requires the protocol, incorporated into the non-patient specific order, to include the standards, procedures and reporting requirements set forth in section 63.9(b)(4).

Section 63.9(c)(1) authorizes certified pharmacists to administer medications for the emergency treatment of anaphylaxis.

Section 63.9(c)(2) establishes the standards, procedures and reporting requirements for the administration of anaphylaxis treatment agents by certified pharmacists.

Section 63.9(c)(3)(i) requires a certified pharmacist to maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner that authorizes such pharmacist to administer medications for the emergency treatment of anaphylaxis. This section requires a record of each patient to be maintained in either a patient medication profile, or in instances where a patient medication profile does not exist, on a separate form that is retained by the pharmacist who has administered the immunization.

Section 63.9(c)(3)(ii) provides that the non-patient specific order shall authorize one or more named pharmacists, or certified pharmacists who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with pharmacists to provide pharmaceutical services, to administer specified anaphylaxis treatment agents in specified circumstances for a prescribed period of time. This subparagraph also prescribes the content for such non-patient specific orders.

Section 63.9(c)(3)(iii) requires that the protocol to be incorporated into the non-patient specific order include the requirements set forth in section 63.9(c)(2).

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. EDU-47-08-00007-P, Issue of November 19, 2008. The emergency rule will expire April 30, 2009.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 473-4921, email: legal@mail.nysed

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

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

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

Subdivision (1) of section 6508 of the Education Law provides that state boards for the professions shall assist the Board of Regents and Department on matters of professional licensing.

Subdivision 7 of section 6527 of the Education Law authorizes physicians to order non-patient specific regimens for the administration of immunizing agents by pharmacists.

Section 6801 of the Education Law authorizes certified pharmacists to administer immunizing agents and authorizes the Commissioner of Education to promulgate regulations regarding training and reporting requirements.

Subdivision 7 of section 6909 of the Education Law authorizes nurse practitioners to order non-patient specific regimens for the administration of immunizing agents by pharmacists.

Section 6828 of the Education Law authorizes the Commissioner to promulgate regulations relating to the issuance of a certificate of administration to a qualifying pharmacist.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by expanding access to immunizations to residents of the State of New York. The proposed amendment establishes procedures for the Department to certify licensed pharmacists to administer immunizing agents and anaphylactic treatments; prescribes standards, procedures, reporting and record keeping requirements for the administration of immunizations and anaphylactic treatments and sets forth the requirements for orders and protocols for the administration of immunizations and anaphylactic treatments.

3. NEEDS AND BENEFITS:

Chapter 563 of the Laws of 2008, effective December 3, 2008, authorizes licensed pharmacists that are certified by the State Education Department to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. Section 6801(2) of the Education Law, as added by Chapter 563 of the Laws of 2008, directs the Commissioner of Education to promulgate regulations concerning a licensed pharmacist's execution of non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner. Section 6801(3) prohibits a pharmacist from administering immunizing agents without receiving training satisfactory to the Commissioner and the Commissioner of Health.

In order to timely implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes procedures for the certification of licensed pharmacists to administer immunizations. Specifically, the proposed amendment requires a licensed pharmacist to submit an application, with the required fee, to the Department and present satisfactory evidence of one of the following: (1) completion of a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health, within the three years immediately preceding application for a certificate of administration; (2) a Doctor in Pharmacy Degree and completion of training in the administration of immunization agents received as part of his/her pharmacy degree that is satisfactory to the Department; or (3) possession of a current certificate of administration issued by another jurisdiction and continuous practice in the administration of immunizing agents since the pharmacist received such training or completion of a retraining program in the administration of immunization agents.

The proposed amendment also establishes uniform requirements for certified pharmacists to meet when executing orders to administer immunizations and medications for the emergency treatment of anaphylaxis. For instance, the proposed amendment defines what information should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a certified pharmacist to follow when administering immunizations through a non-patient specific order. The proposed amendment also establishes uniform reporting requirements. Specifically, the proposed amendment requires a certified pharmacist (1) to inform the recipient, in writing, of potential side effects and adverse reactions prior to the administration of an immunization; (2) to provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions; and (3) to provide a signed certificate of immunization to the recipient containing certain prescribed information.

With the enactment of Chapter 563 of the Laws of 2008, New York State joins 48 other states and the District of Columbia in authorizing pharmacists to administer immunizations. The proposed amendment is needed to expand access to immunizations, which is expected to reduce morbidity and mortality caused by influenza and pneumococcal disease and any related complications. At the present time, there are approximately 20,000 pharmacists licensed to practice in New York State. Consequently, a significant number of individuals will be affected by the proposed amendment.

The proposed amendment is not expected to cause regulated parties to have to hire additional professional services in order to comply.

4. COSTS:

(a) There are no additional costs to state government beyond those imposed by statute.

(b) There are no additional costs to local government beyond those imposed by statute.

(c) Cost to private regulated parties: The amendment is likely to result in only nominal costs to entities that employ certified pharmacists to execute the non-patient specific orders to administer immunizations. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of immunization to each recipient who requests such a certificate. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.75 per recipient. The other paperwork requirements relate to maintenance of patient records, which are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment defines what information should be included in the orders and the requirements that must be set forth in the protocol, for a certified pharmacist to follow when administering immunizations through a non-patient specific order. The proposed amendment also establishes uniform reporting requirements. Specifically, the proposed amendment requires a certified pharmacist (1) to inform the recipient, in writing, of potential side effects and adverse reactions to prior to administration of the immunization; (2) to provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions; and (3) to provide a signed certificate of immunization to the recipient containing certain prescribed information.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment and none were considered because of the nature of the amendment, which implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements that certified professional nurses must meet to administer immunizations, pursuant to non-patient specific orders and protocol.

10. COMPLIANCE SCHEDULE:

The proposed amendment implements and clarifies statutory requirements. Regulated parties must comply with the proposed amendment on its stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

In order to implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes requirements for the certification of pharmacists to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. The proposed amendment also establishes requirements relating to the execution of patient specific and non-patient specific orders prescribed by licensed physicians or certified nurse practitioners for the administration of such immunizations. The proposed amendment does not regulate small businesses or local governments. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment applies to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At the present time, there are approximately 20,303 licensed pharmacists that will be subject to the requirements of the proposed amendment. Of these licensed pharmacists, approximately 2,613 licensed pharmacists report their permanent address of record in a rural county of New York State.

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

Chapter 563 of the Laws of 2008, effective December 3, 2008, authorizes licensed pharmacists that are certified by the State Education Department to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. Section 6801(2) of the Education Law, as added by Chapter 563 of the Laws of 2008, directs the Commissioner of Education to promulgate regulations concerning a licensed pharmacist's execution of non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner. Section 6801(3) prohibits a pharmacist from administering immunizing agents without receiving training satisfactory to the Commissioner and the Commissioner of Health.

In order to timely implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes procedures for the certification of licensed pharmacists to administer immunizations. Specifically, the proposed amendment requires a licensed pharmacist to submit an application, with the required fee, to the Department and present satisfactory evidence of one of the following: (1) completion of a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health, within the three years immediately

preceding application for a certificate of administration; (2) a Doctor in Pharmacy Degree and completion of training in the administration of immunization agents received as part of his/her pharmacy degree that is satisfactory to the Department; or (3) possession of a current certificate of administration issued by another jurisdiction and continuous practice in the administration of immunizing agents since the pharmacist received such training or completion of a retraining program in the administration of immunizing agents.

The proposed amendment also establishes uniform requirements for certified pharmacists to meet when executing orders to administer immunizations and medications for the emergency treatment of anaphylaxis. For instance, the proposed amendment defines what information should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a certified pharmacist to follow when administering immunizations through a non-patient specific order. The proposed amendment also establishes uniform reporting requirements. Specifically, the proposed amendment requires a certified pharmacist: (1) to inform the recipient, in writing, of potential side effects and adverse reactions prior to the administration of an immunization; (2) to provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions; and (3) to provide a signed certificate of immunization to the recipient containing certain prescribed information.

With the enactment of Chapter 563 of the Laws of 2008, New York State joins 48 other states and the District of Columbia in authorizing pharmacists to administer immunizations. The proposed amendment is needed to expand access to immunizations, which is expected to reduce morbidity and mortality caused by influenza and pneumococcal disease and any related complications. At the present time, there are approximately 20,000 pharmacists licensed to practice in New York State. Consequently, a significant number of individuals will be affected by the proposed amendment.

The proposed amendment is not expected to cause regulated parties to have to hire additional professional services in order to comply.

3. COSTS:

The proposed amendment is likely to result in only nominal costs to entities that employ certified pharmacists to execute orders to administer immunizations, including those that are located in rural areas of the State. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of immunization to each recipient. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.75 per recipient. The other paperwork requirements relate to maintenance of patient records, that are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements statutory directives to establish requirements for certified pharmacists to execute orders prescribed by licensed physicians or certified nurse practitioners for the administration of immunizations and makes no exception for licensed registered professional nurses who live or work in rural areas. In any event, consistent practice requirements should apply no matter the geographic origin of the licensee to ensure a uniform high standard of competency across the State and that the administration of immunizations is performed safely in all areas of the State. Because of the nature of the proposed amendment, establishing different standards for licensed registered professional nurses in rural areas of New York State is inappropriate.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in promoting expanded access to important immunizations. Included in this group were members of the State Board of Pharmacy; educational institutions which currently offer professional pharmacy programs; professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York, the New York State Council of Health System Pharmacists and the New York State Chain Drug Association; the State Board for Nursing; the New York State Department of Health; the New York City Department of Health and Mental Hygiene; and many other interested parties. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and an opportunity to comment on the proposed amendment.

Job Impact Statement

In order to implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes requirements for the certifica-

tion of pharmacists to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. The proposed amendment also establishes requirements relating to the execution of patient specific and non-patient specific orders prescribed by licensed physicians or certified nurse practitioners for the administration of such immunizations. The amendment will not have a substantial adverse impact on jobs and employment opportunities, beyond those imposed by statute. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Firewood Restrictions to Protect Forests from Invasive Species

I.D. No. ENV-50-08-00015-A

Filing No. 194

Filing Date: 2009-02-27

Effective Date: 2009-03-18

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

Action taken: Addition of section 192.5 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), (d), 3-0301(1)(b), (d), (2)(m), 9-0105(1), (3) and 9-1303

Subject: Firewood restrictions to protect forests from invasive species.

Purpose: To protect New York State's forests from invasive insects and diseases carried on firewood and introduced into noninfested forests.

Text of final rule: A new section 192.5 is added to 6 NYCRR Part 192 to read as follows:

§ 192.5 Firewood Restrictions to Protect Forests from Invasive Species.

(a) Definitions. For the purposes of this section, these terms shall be defined as follows:

(1) "Department" shall mean the New York State Department of Environmental Conservation.

(2) "Dealer" shall mean any person or business, other than a firewood producer, that sells firewood.

(3) "Firewood" shall mean any kindling, logs, chunkwood, boards, timbers or other wood of any tree species cut and split, or not split, into a form and size appropriate for use as fuel.

(4) "Firewood producer" shall mean any person or business who processes kindling, logs, chunkwood, boards, timbers or other wood of any tree species into firewood for sale.

(5) "New York-Approved Treated Firewood / Pest-Free" shall mean a labeling standard for firewood that may be used by a firewood producer who complies with the provisions of subdivision (d) of this section.

(6) "New York-Sourced Firewood" shall mean a labeling standard for firewood used by a New York firewood producer who complies with the provisions of subdivision (e) of this section.

(7) "Person" shall mean an individual, organization, corporation or partnership, other than the department, public authority, county, town, village, city, municipal agency or public corporation.

(8) "Phytosanitary certificate" or "plant health certificate" shall mean an official document issued by a state or country from which firewood is being exported which certifies that the firewood meets the phytosanitary regulations of New York State.

(9) "Self-issued Certificate of Source" shall mean certification, on a form prescribed by the department, that is signed by a person who desires to move firewood, for personal use, from one location to another, within New York in compliance with the provisions of subdivision (f) of this section.

(10) "Source" shall mean the village, town or city, which a person declares as the source of the firewood. All trees or logs that are processed into firewood that is declared to be from the named source shall have been grown within 50 miles of the named source, prior to being obtained by a person.

(11) "Untreated Firewood" shall mean any firewood that has not been treated in accordance with the provisions of subdivision (d) of this section.

(12) "50 miles" shall mean a 50 mile linear distance determined by using the scale-bar on a New York State road map, atlas or gazetteer, from the point identified as the stated source of the firewood in question.

(b) Prohibition on Transport of Untreated Firewood into New York State.

No person shall transport, by any means, Untreated Firewood into New York State, for sale or use within the State from any location outside the State.

(c) Restrictions on Transport, Sale and/or Possession of Untreated Firewood within New York State.

(1) No person shall transport, sell or possess Untreated Firewood within the State unless its source is identified according to the criteria set forth in either subdivision (e) or (f) of this section.

(2) No person shall move Untreated Firewood produced, from trees that are grown in New York State, more than 50 miles from the source of the firewood.

(3) Dealers of New York-Sourced Firewood shall provide copies of the firewood source documentation, provided by the firewood producer, to all purchasers.

(4) Firewood producers shall maintain records of log or wood purchases or procurement to verify the sources of their firewood. Such records shall be made available for inspection by the department upon request.

(d) Standards for Treatment and Labeling.

(1) Firewood may be labeled "New York-Approved Treated Firewood / Pest Free" if accompanied by a Firewood producer's certification that it was heat treated to achieve a minimum wood core temperature of 71°C for a minimum of 75 minutes. Such treatment may employ kiln-drying or other treatments approved by the department that achieve this specification through use of steam, hot water, dry heat or other methods.

(2) A Firewood producer's certification shall indicate the producer's name, legal address and the village, town or city of the business on a label, bill of sale or lading, purchase receipt or invoice accompanying such firewood.

(3) Producers of "New York-Approved Treated Firewood / Pest-Free" firewood shall maintain, for at least one year from the date of treatment, records that document the treatment method and the volume of firewood treated, and shall also allow department officials to inspect such records and the facilities used to treat firewood upon request.

(4) Phytosanitary certificates from an out-of-state firewood producer's State Department of Agriculture or the United States Department of Agriculture Animal Plant Health Inspection Service (USDA APHIS) may be used to verify the treatment method and volumes of treated firewood that is produced out-of-state.

(e) "New York-Sourced Firewood" requirements.

(1) The "New York-Sourced Firewood" designation may be applied only to Untreated Firewood that has its source wholly within New York State, and is transported not more than 50 miles from the firewood producer's declared source of the firewood.

(2) Dealers of "New York-Sourced Firewood" shall provide to customers the name of the producer of the firewood, the producer's legal address and the source of the firewood, as provided by the firewood producer, on a label, bill of sale or lading, purchase receipt or invoice, attached to or accompanying such firewood they sell.

(f) Self-issued Certificate of Source.

(1) Persons who cut and transport Untreated Firewood for personal use must complete and possess a Self-Issued Certificate of Source from the department in accordance with this section.

(2) A Self-Issued Certificate of Source must specify the source of the firewood being cut and transported.

(3) Self-Issued Certificate of Source forms shall be available on the department's website, www.dec.ny.gov, and at the department's regional offices.

(4) No person who cuts and/or transports firewood for personal use shall move such firewood more than 50 miles from its source unless it is treated in accordance with subdivision (d) of this section.

(5) Persons who cut firewood from their own property, for their own use on that same property, are exempt from the requirements of this subdivision.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 192.5(a)(10).

Text of rule and any required statements and analyses may be obtained from: Bruce Williamson, Department of Environmental Conservation, Bureau of Private Land Services, 625 Broadway, Albany, NY 12233-4253, (518) 402-9425, email: firewood@gw.dec.state.ny.us

Additional matter required by statute: A Negative Declaration has been prepared in compliance with Article 8 of the Environmental Conservation Law.

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

The non-substantive revision to the rule clarifies the definition of "source" so that it applies equally to landowners and producers. This clarification

does not change the intent of the rule, therefore no revisions were made to the RIS, RFA, RAFA and JIS.

Assessment of Public Comment

Comment:

This regulation is unnecessary.

Response:

This regulation is necessary to protect New York State's forests and trees, which is the Department of Environmental Conservation's (the Department) mission. The State's rural and urban forests are increasingly threatened by numerous invasive, exotic tree-killing insects and diseases. Over the past 10-15 years, invasive exotic insects like the Asian longhorned beetle, emerald ash borer and hemlock woolly adelgid have killed millions of trees in cities and woodlots from Long Island, New York to upper Michigan. Other invasive diseases (e.g., oak wilt and sudden oak death) and insects (e.g., Sirex wood wasp, brown spruce longhorned beetle and Asian Gypsy moth) have the potential to devastate New York State's forests and urban trees. Many invasive tree and forest pests are extremely difficult to detect early enough in an infestation to be able to effectively eliminate them or control their spread. Preventing introductions of such pests is the best and least expensive defense of our forests and communities.

History has shown that humans have inadvertently assisted the spread of invasive forest pests through the long distance movement of infested plants and wood. Firewood is a significant contributor to this problem due to two factors: (1) firewood is a high risk host of these forest pests, and (2) campers frequently transport firewood long-distances. Unfortunately, this fact is evidenced by the frequency of new discoveries of invasive pest infestation at campgrounds and other recreational areas.

In order to protect our State's trees and forests, it is essential to take steps to prevent, delay and minimize the introduction and spread of invasive, exotic forest pests.

Comment:

This regulation will greatly increase the cost of firewood for homeowners and campers.

Response:

The Department recognizes that this regulation may result in a moderate increase in the cost of firewood for some homeowners and recreational users during the initial period of adjustment by the firewood industry and consumers to this regulation. It is anticipated that this regulation will shift consumption and procurement of firewood to local sources. For example, firewood producers that are currently procuring logs from out-of-state sources will find new sources of raw materials within the State. Dealers that have customers outside of the 50 mile limit will consolidate and localize their customer base. Campers that have traditionally transported their firewood from home over long distances to campgrounds will seek out local sources of firewood. As these adjustments are made, any increased costs associated with this regulation should lessen so that there will be no long-lasting economic impact. There will be no additional cost for landowners and homeowners that cut and burn their own firewood in compliance with this regulation because this regulation does not impose a tax or fee on that wood.

Comment:

A 50 mile limit for the movement of firewood is too restrictive.

Response:

Fifty miles was selected as the source radius because it was determined to be: (1) biologically appropriate; (2) economically reasonable distance within which to limit firewood movement; and (3) consistent with existing local distribution patterns. A 50 mile radius circle, 100 miles in diameter equals 7,854 square miles or 5,026,560 acres. This size area would cover almost the entire Adirondack Park, or all of western New York from Dunkirk to Bath and Lake Erie to the Pennsylvania border. This sourcing and distribution area for firewood producers should be large enough to have minimal impact on New York firewood businesses.

Firewood is a relatively low value commodity; therefore, trucking firewood beyond 50 miles will be cost prohibitive in most cases given

the increasing costs of fuel. Human assisted transport greatly increases the spread of an invasive forest pest outside this localized area. This restriction will help protect other regions of New York State, such as the Adirondack and Catskill Parks, from undetected infestations as well as western New York and Long Island.

Comment:

The 50 mile restriction on the movement of firewood is too difficult to measure; untreated firewood should be restricted to the town or county of its origin.

Response:

The 50-mile distance is measured on any map, using the scale bar, in a straight line from the point identified as the "source". It is the simplest means of measuring distance. Using town or county boundaries would make the regulation more restrictive for some people in smaller towns or counties.

Comment:

The regulation should allow for the unrestricted movement of untreated firewood during the winter season, when the insects and diseases are dormant, as long as all the wood is burned before spring.

Response:

It is not possible or practical for the Department to determine the date that a piece of firewood was cut and processed. Since firewood may be stored for one season or several years before it is burned, there would be many practical problems with requiring wood to be separated by the date it was cut and processed.

Comment:

This regulation should cover all forms of wood, not just firewood.

Response:

Experience and studies demonstrate that the movement of firewood presents a higher risk of spreading these invasive species than the movement of other forms of wood products. Monitoring conducted in areas around wood product facilities (e.g., sawmills, log yards, pulp and paper mills), indicates that pest outbreaks are not occurring around these facilities. Most frequently, pest outbreaks are discovered in the vicinity of recreational areas (e.g., campgrounds, picnic areas, and boat launches) and near private homes, and such outbreaks are directly linked to the movement of firewood. Generally, saw logs are transported to a mill or other facility where they remain until they are processed. Typically, industrial processing eliminates all life stages of any pest species of concern. On the other hand, firewood logs are transported to a processing center and then are widely distributed. Processing of logs into firewood does not eliminate these pests. Furthermore, firewood often comes from dead or dying trees, which are infested with insects and/or disease.

Comment:

This regulation will be impossible to enforce.

Response:

The Department has carefully considered the difficulties relating to enforcement of this regulation, and it has determined that regulating the transportation of firewood would be the most effective approach to slow down the spread of these invasive species. Enforcement personnel at the Department and at the Office of Parks Recreation and Historic Preservation will receive training and enforcement guidance.

Another important aspect of enforcing any regulation is education and outreach. Department staff will continue to conduct public outreach and education efforts regarding this regulation to ensure that the public is aware of and understands the very real and significant threats these invasive, exotic pests pose to our trees, forests, communities and budgets. The Department recognizes that it would be impossible to check every piece of firewood in New York State. However, the inspection and the record keeping requirements of this regulation should provide an incentive for compliance. In addition, the firewood industry, for its own self-preservation has a strong incentive to comply with this regulation given the very real threats these invasive pests pose to forests-their livelihood- from an accidental pest introduction.

Comment:

This regulation will have a negative impact on the firewood industry.

Response:

Although there may be a significant impact on the long-distance movement of untreated firewood, many of the larger firewood producers in this market are already dealing with heat-treated firewood. There may be a small cost in the record keeping and labeling requirements of the regulation, but this may be offset by the added market value that treated firewood should produce.

Much of the long-term impact will be in the change of distribution pattern within the industry. The Department anticipates a consolidation of buying and selling behavior, but not of a great change in the overall industry itself. Many of the interstate dealers of firewood are already adapting to regulation adopted by other states and the federal government regarding the movement of logs.

New York firewood producers and dealers that continue to deal in untreated firewood will have to make changes in their business to incorporate the 50-mile limit. This means that firewood producers will have to procure their raw logs from within 50 miles. In an area of over 5 million acres, this should pose virtually no difficulties to most producers. They may have to seek new sources for their logs. Firewood dealers will have to confine their sales to the 50-mile limit. With increasing fuel costs, transporting firewood great distances makes little economic sense. Dealers will have to shift their customer base to within this 50-mile limit.

This regulation and similar regulations in other states are already creating new business opportunities for firewood producers who may choose to invest in kilns or heat-treating chambers to sterilize and dry firewood. Large firms such as Wal-Mart, Hannaford, Price Chopper, Stewarts, Lowes, Home Depot and Red Lobster all are interested in selling (or using) firewood, and all want packaged, clean, dry, "bug-free", compliant firewood that can be distributed in multiple states from central warehouses.

Comment:

This is just another means for the State to collect more taxes and fees.

Response:

There are no new taxes or fees associated with this regulation.

Comment:

State boundaries should not be used as a limit; artificial boundaries are not recognized by these organisms.

Response:

The Department realizes that these invasive species do not recognize state boundaries, but as a matter of jurisdiction, we have no authority to cross state lines to enforce this regulation. For example, the regulation requires that firewood producers keep a record of all logs that they buy (within a 50-mile radius) to verify the origin of those logs. The Department has the authority to inspect within State boundaries to verify that logs actually came from the designated location. If the regulation allowed these logs to be brought in from out-of-state, the Department would not have the authority to cross a state boundary to enforce the standards required by this regulation.

Comment:

This regulation should propose increased fines and penalties.

Response:

Section 71-0703 of the Environmental Conservation Law (ECL) sets fines and penalties with respect to this regulation and provides that any person who violates any provision of this regulation "shall be punished by a fine of not more than two hundred fifty dollars (\$250), or by imprisonment for not more than fifteen (15) days, or both such fine and imprisonment. . .". The Department can not increase fines by regulation. Only the New York State Legislature can amend the ECL to increase these fines and penalties.

Comment:

There is no scientific basis for this regulation.

Response:

In the development of these regulations Department staff have reviewed numerous studies that demonstrate that the movement of firewood is one of the primary methods of movement for some of the

most harmful invasive species. These studies are well documented on the internet, and in literature and reports (and are referenced in the full assessment of public comment). Department staff cooperated and consulted with the USDA, the US Forest Service, APHIS, other educational organizations and state agencies in developing these regulations.

Comment:

There has not been enough outreach on these regulations or the underlying problem.

Response:

For over three years, the Department has been conducting outreach regarding the risks associated with moving firewood in order to educate campers, firewood producers, dealers, forest owners, the logging arborist and forest products industries. In addition, the Department has posted forest pest and firewood related information on its website and on the Reserve America reservation system used by all State-run campgrounds, and has printed and distributed posters, bookmarks, tip strips, written articles, issued press releases, given radio interviews and written grant applications for federal funding to increase outreach and education efforts. The Department intends to continue and expand its education and outreach efforts. For a more extensive discussion of outreach and education activities see the full assessment of public comments available upon request from the Department.

Public Service Commission

NOTICE OF ADOPTION

Waiver of 16 NYCRR Part 894.1 Through 894.4

I.D. No. PSC-50-08-00017-A

Filing Date: 2009-02-26

Effective Date: 2009-02-26

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

Action taken: On 2/12/09, the PSC adopted an order approving the petition of the Town of Waverly, Franklin County for a waiver of Commission rules 894.1, 894.2, 894.3 and 894.4 regarding cable television service with Time Warner Cable.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR Part 894.1 through 894.4.

Purpose: To approve the Town of Waverly and Time Warner Cable to expedite the cable television franchising process.

Substance of final rule: The Commission, on February 12, 2009, adopted an order approving the petition of the Town of Waverly, Franklin County for a waiver of Commission rules 894.1, 894.2, 894.3 and 894.4 regarding cable television service with Time Warner Cable, 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-V-0533SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreement to Interconnect Telephone Networks for the Provisioning of Local Exchange Service

I.D. No. PSC-11-09-00003-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Eureka Telecom, Inc. to revise the interconnection agreement effective on April 1, 2008.

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

Subject: Intercarrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Eureka Telecom, Inc. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Eureka Telecom, Inc. in January 2001. The companies subsequently have jointly filed amendments to clarify the provision regarding conflict between this Amendment and the Interconnection Agreements.

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

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

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

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

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

(00-C-1944SA3)

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

Intercarrier Agreement to Interconnect Telephone Networks for the Provisioning of Local Exchange Service

I.D. No. PSC-11-09-00004-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and BridgeCom International, Inc. to revise the interconnection agreement effective on April 1, 2008.

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

Subject: Intercarrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and BridgeCom International, Inc. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and BridgeCom International, Inc. in March 2005. The companies subsequently have jointly filed amendments to clarify the provision regarding conflict between this Amendment and the Interconnection Agreements.

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

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

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

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

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

(04-C-0739SA3)

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

Intercarrier Agreement to Interconnect Telephone Networks for the Provisioning of Local Exchange Service

I.D. No. PSC-11-09-00005-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Broadview NP Acquisition Corp. to revise the interconnection agreement effective on April 1, 2008.

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

Subject: Intercarrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Broadview NP Acquisition Corp. International, Inc. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Broadview NP Acquisition Corp. in January 2005. The companies subsequently have jointly filed amendments to clarify the provision regarding conflict between this Amendment and the Interconnection Agreements.

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

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

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

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

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

(04-C-1285SA3)

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

Ratemaking Treatment for Changes in Uncollectible Expense and Arrearages for the 2008-2009 Heating Season

I.D. No. PSC-11-09-00006-P

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

Proposed Action: The Commission is considering comments and proposals for rate treatment of the financial impacts on New York State's energy utilities for the changes in uncollectible expense and arrearages for the 2008-2009 heating season.

Statutory authority: Public Service Law, section 66

Subject: Ratemaking treatment for changes in uncollectible expense and arrearages for the 2008-2009 heating season.

Purpose: To determine appropriate ratemaking treatment and conditions, for changes in uncollectibles expense and arrearages.

Substance of proposed rule: On December 16, 2008, the New York State Public Service Commission issued an Order and instituted a proceeding seeking comments to consider the financial impacts on New York State's energy utilities for changes in uncollectible expense and arrearages in the current economic environment. The Commission is considering the appropriate ratemaking and accounting procedures for the New York State energy utilities to address the financial impacts of any increases to customer arrears and uncollectible expense for the 2008-2009 heating season. The Commission is also considering all comments, proposed rate mechanisms, and any conditions that should be required that have been

submitted by interested parties in Case 08-M-1312, and may also consider related matters.

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

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

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

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

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

(08-M-1312SA1)

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

Interconnection of the Networks between Citizens and Warwick Valley Telephone for Local Exchange Service and Exchange Access

I.D. No. PSC-11-09-00007-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Citizens Telecommunications of New York (Citizens) for approval of an Interconnection Agreement with Warwick Valley Telephone executed on January 16, 2009.

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

Subject: Interconnection of the networks between Citizens and Warwick Valley Telephone for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Citizens and Warwick Valley Telephone.

Substance of proposed rule: Citizens Telecommunications Company of New York (Citizens) and Warwick Valley Telephone have reached a negotiated agreement whereby Citizens and Warwick Valley Telephone will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their network lasting until January 16, 2011, or as extended.

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

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

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

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

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

(09-C-0149SA1)

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

Transfer of Property

I.D. No. PSC-11-09-00008-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 petition by Niagara Mohawk Power Corporation d/b/a National Grid for the sale of a 500kVA pad mount transformer and 475 feet of 3-1/c #2 cable located on the Utica College Campus, Utica, NY, Oneida County.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: Consideration of a petition for the transfer (sale) of property by Niagara Mohawk d/b/a National Grid.

Substance of proposed rule: On February 10, 2009 Niagara Mohawk Power Corporation d/b/a National Grid (the "Company") petitioned the Public Service Commission for the sale of a 500 kVA pad mount transformer and 475 feet of 3-1/c #2 AL cable (the "Facilities") to Utica College (the "College") for \$20,594. The Facilities were originally installed by the Company to provide electric service to the College's New Hall Dorm. The College will now use the Facilities to aggregate the loads of its New Hall Dorm to its Science Center, which continues to receive electric service directly from the Company. The College is part of a new Combined Heat and Power facility which is still under construction. The Public Service Commission may approve, reject, or approve with modifications, the Company's petition, and may also consider related matters.

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

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

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

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

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

(09-E-0108SA1)

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

Intercarrier Agreement to Interconnect Telephone Networks for the Provisioning of Local Exchange Service

I.D. No. PSC-11-09-00009-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Broadview Networks, Inc. to revise the interconnection agreement effective on April 1, 2008.

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

Subject: Intercarrier agreement to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Broadview Networks, Inc. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Broadview Networks, Inc. in July 2003. The companies subsequently have jointly filed amendments to clarify the provision regarding conflict between this Amendment and the Interconnection Agreements.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-C-0616SA4)

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

Mini Rate Filing

I.D. No. PSC-11-09-00010-P

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

Proposed Action: The Commission is considering a proposed filing by Bath Electric, Gas and Water Systems 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: Mini Rate Filing.

Purpose: To increase annual electric revenues by approximately \$290,741 or 6.3%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Bath Electric, Gas and Water Systems (BEGWS) to increase its annual electric revenues by approximately \$290,741 or 6.3%. The proposed filing has an effective date of June 1, 2009. The Commission may approve, reject or modify, in whole or in part, BEGWS' request.

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

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

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

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

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

(09-E-0201SA1)

**Office of Real Property
Services**

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

Agricultural Assessment Program Definitions

I.D. No. RPS-37-08-00002-RP

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

Proposed Action: Amendment of section 194.1 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 202(1)(1); and Agriculture and Markets Law, section 307

Subject: Agricultural Assessment Program definitions.

Purpose: To conform the definitions set forth in section 194.1 with the Agriculture and Markets Law.

Substance of revised rule: Section 194.1 of Title 9, NYCRR, which sets forth many definitions applicable to the agricultural assessment program, was last amended in 1995. The proposed regulatory amendment would

revise § 194.1 to conform its provisions to the current provisions of Agriculture and Markets Law [AML], Article 25-AA, that now apply to the program.

Since publication of a Notice of Proposed Rule Making in the State Register on September 10, 2008, the following substantial revisions were made to the proposed rule: (1) a new paragraph ten has been added to subdivision i to include "apiary products" in the definition of "crops, livestock and livestock products"; (2) a new paragraph eight has added to subdivision k which states that the proceeds from the sale of "compost, mulch or other biomass crops", up to an annual maximum of \$5,000, are included in "gross sales value"; (3) a new paragraph six has been added to subdivision m that amends the definition of "land used in agricultural production" to include "the agricultural land of a qualified newly established farm operation"; (4) a new paragraph seven has been added to subdivision m that amends the definition of "land used in agricultural production" to include rented land located within an agricultural district used by a not-for-profit institution for agricultural research; (5) subdivision o and paragraph one of subdivision o have been amended to state that the eligibility of a newly established farm operation's land for an agricultural assessment is based on the farm operation's annual gross sales value; (6) paragraph four of subdivision o has been amended to state that a qualified newly established Christmas tree farm must plant Christmas trees "that will be available for sale"; and (7) subdivision ag has been amended to include "land used to support an apiary products operation" in the definition of "support land."

Revised rule compared with proposed rule: Substantial revisions were made in subdivisions (i),(k),(m), (o) and (ag).

Text of revised proposed rule and any required statements and analyses may be obtained from Robert J. Mark, Office of Real Property Services, 16 Sheridan Avenue, Albany, N.Y. 12210-2714, (518) 474-8821, email: internet.legal@orps.state.ny.us

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

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

Revised Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on September 10, 2008, the proposed rule has been revised as set forth in the Summary of the Rule. The aforementioned changes in the rule proposal are intended to improve the rule's conformity with statutory definitions that are summarized in the original proposal (Agriculture and Markets Law [AML], § § 301(4)(h) and 301(4)(j)) and with new statutory provisions (AML, § § 301(2)(j) and 301(4)(k), added by L.2008, c.341; AML, § 301(4)(a-1), added by L.2008, c.611; and AML, § 301(9)(g), added by L.2008, c.536). Accordingly, a revision of the previously published Regulatory Impact Statement is not required.

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on September 10, 2008, the proposed rule has been revised as set forth in the Summary of the Rule. The aforementioned changes in the rule proposal will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Accordingly, a revision of the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on September 10, 2008, the proposed rule has been revised as set forth in the Summary of the Rule. The aforementioned changes in the rule proposal will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, a revision of the previously published Rural Area Flexibility Analysis is not required.

Revised Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on September 10, 2008, the proposed rule has been revised as set forth in the Summary of the Rule. The aforementioned changes in the rule proposal will not impose a substantial impact on jobs or employment opportunities. Accordingly, a revision of the previously published Job Impact Statement is not required.

Assessment of Public Comment

The changes in the rule proposal that are explained in the Summary of the Rule were written after Real Property Services considered the comments we received from the State Department of Agriculture and Markets and New York Farm Bureau, Inc., in response to the Notice of Proposed Rule Making published in the State Register on September 10, 2008.

Only one requested change has not been included in the revised

proposal. In our opinion, it is not necessary to amend the proposal's definition of "gross sales value" to state that eligibility for an agricultural assessment is generally based on "average farm gross sales." Subdivision k of the current proposal defines "gross sales value" as "the proceeds from the sale" of various crops, livestock and livestock products that are enumerated therein. In addition, subdivision m of the current proposal states that qualified agricultural land generally must be "used as a single operation in the preceding two years for the production for sale of crops, livestock and livestock products of an average gross sales value of \$10,000 or more" (emphasis added).

Department of State

EMERGENCY RULE MAKING

Firefighter Training

I.D. No. DOS-11-09-00002-E

Filing No. 196

Filing Date: 2009-03-02

Effective Date: 2009-03-02

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 that regulations regarding firefighter training be adopted by February 12, 2007. Regulations were adopted on an emergency basis and this rule keeps the regulations in effect until a permanent rule can be adopted.

Subject: Firefighter training.

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

Substance of emergency rule: 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 May 30, 2009.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

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

2. LEGISLATIVE OBJECTIVES

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

3. NEEDS AND BENEFITS

Section 156(6) of the Executive Law requires that OFPC 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 alternative. 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 and 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 and Control's website. To date, the Department of State has not received any feedback based on its outreach.

Job Impact Statement

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

Department of Transportation

NOTICE OF ADOPTION

Allow Trailers to be Longer Than 48 Feet on Qualifying and Access Highways

I.D. No. TRN-48-08-00002-A

Filing No. 198

Filing Date: 2009-03-03

Effective Date: 2009-03-18

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

Action taken: Amendment of section 154-2.4 of Title 17 NYCRR.

Statutory authority: Transportation Law, section 14(18); and Vehicle and Traffic Law, section 385(3)(g)

Subject: Allow trailers to be longer than 48 feet on qualifying and access highways.

Purpose: To update the regulation to reflect the current standard.

Text or summary was published in the November 26, 2008 issue of the Register, I.D. No. TRN-48-08-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kenneth Dodge, Director Office of Modal Safety and Security, NYS Department of Transportation, 50 Wolf Road, Albany, NY 12232, (518) 457-1795, email: kdodge@dot.state.ny.us

Assessment of Public Comment

Use of Legal Length Trailers on Divisible Load Overweight Permits

Public comment was positive in response to the proposed amendment of section 154-2.4 of Subpart 154-2 of Part 154 of Title 17 of the NYCRR, which upon adoption will allow 53 foot trailers on qualifying and access highways within New York State. The following paragraph from the comment signed by Nicole Willis, Assistant Director of Public Policy of the New York Farm Bureau, is indicative of the New York Farm Bureau's support. Ms. Willis wrote:

We are supportive of amending the regulation to reflect the current standard of 53 foot trailers being allowed on qualifying access highways. This helps to clarify the ability of carriers to load more products on fewer trailers resulting in fewer trips by carriers, lower fuel costs, less truck traffic, and lowered truck emissions. While we understand why these regulations previously did not include 53 foot trailers, we greatly appreciate the expansion of the regulation to now include them and also, to not affect the allowable maximum weights.

This was the only public comment received.

Urban Development Corporation

EMERGENCY RULE MAKING

The Downstate Revitalization Fund Program

I.D. No. UDC-11-09-00001-E

Filing No. 193

Filing Date: 2009-02-27

Effective Date: 2009-02-27

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

Action taken: Addition of Part 4249 to Title 21 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Subject: The Downstate Revitalization Fund Program.

Purpose: Provide the basis for administration of The Downstate Revitalization Fund including evaluation criteria and application process.

Text of emergency rule: Part 4249

DOWNSTATE REVITALIZATION FUND PROGRAM

Section 4249.1 General

These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund (the "Program"). The Program was created pursuant to § 16-r of the New York State Urban Development Corporation Act, as added by Chapter 57 of the Laws of 2008 (the "Act") for the purposes of supporting investment in distressed communities in the downstate region and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Section 4249.2 Definitions

For purposes of these regulations, the terms below will have the following meanings:

(a) "Corporation" shall mean the New York State Urban Development Corporation doing business as Empire State Development Corporation.

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

(c) "Downstate" shall mean the geographical area defined by the Corporation. The defined geographical area will be disseminated to eligible parties by the Corporation.

Section 4249.3 Types of Assistance

The Program offers assistance in the form loans and/or grants to for-profit businesses, not-for-profit corporations, public benefit corporations, municipalities, and research and academic institutions, for activities including, but not limited to, the following:

(a) support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited, to smart growth and energy efficiency initiative; intellectual capital capacity building;

(b) support for the attraction or expansion of a business including, but

not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law;

(c) support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery and equipment associated with a project; and

(d) support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the General Municipal Law.

4249.4 Eligibility

(a) Eligible applicants shall include, but not be limited to, business improvement districts, local development corporations, economic development organizations, for profit businesses, not-for-profit corporations, public benefit corporations, municipalities, counties, research and academic institutions, incubators, technology parks, private firms, regional planning councils, tourist attractions and community facilities.

(b) The Corporation shall be eligible for assistance in the form of loans, grants, or monies contributing to projects for which the Corporation or a subsidiary act as developer.

(1) The Corporation may act as developer in the acquisition, renovation, construction, leasing or sale of development projects authorized pursuant to this Program in order to stimulate private sector investment within the affected community.

(2) In acting as a developer, the Corporation may borrow for purposes of this subdivision for approved projects in which the lender's recourse is solely to the assets of the project, an may make such arrangements and agreements with community-based organizations and local development corporations as may be required to carry out the purposes of this section.

(3) Prior to developing and such project, the Corporation shall secure a firm commitment from entities, independent of the Corporation, for the purchase or lease of such project. Such firm commitment shall be evidenced by a memorandum of understanding or other document describing the intent of the parties.

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed communities, for which there is demonstrated demand within the particular community.

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

Section 4249.5 Evaluation criteria

(a) The Corporation shall give priority in granting assistance to those projects:

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

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

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

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

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

(6) located in distressed communities;

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

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

Section 4249.6 Application and Approval Process

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

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

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law

and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

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

Section 4249.8 Expenses

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

(b) The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to 1 percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project does not close. The Corporation will assess a fee of up to 1 percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

(c) The applicant will be obligated to pay for expenses incurred by the Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.

Section 4249.9 Affirmative action and non-discrimination

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 27, 2009.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

Regulatory Impact Statement

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

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

Section 16-r of the Act provides for the creation of the downstate revitalization fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the

purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. **Legislative Objectives:** Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

It further states such activities include but are not limited to: support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiatives, intellectual capital capacity building; support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law; support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery, and equipment associated with a project; and support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the general municipal law.

The Legislative intent of Section 16-r of the Act is to assist business in downstate New York in a time of need and to promote the retention and creation of jobs and investment in the region.

The adoption of 21 NYCRR Part 4249 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund.

3. **Needs and Benefits:** Chapter 53 of the Laws of 2008, page 884, lines 5 thru 15 allocated \$35 million to support investment in projects that would promote the revitalization of distressed areas in the downstate region. As envisioned, the program would focus new investments on business, community and technology-based development. While the downstate region has experienced relatively strong growth in recent years, there still remain a significant number of areas that demonstrate high levels of economic distress. As measured by the poverty rate, the Bronx, at over 30%, ranks as the poorest urban county in the U.S. Brooklyn (Kings County) continues to rank among the top ten counties with the highest poverty rates in the country (22.6%). Overall, the poverty rate in New York City is just over 20%. The Community Service Society study, *Poverty in New York City, 2004: Recovery?*, concluded that if the number of New York City residents who live in poverty resided in their own municipality, they would constitute the 5th largest city in the U.S. Beyond the New York metro area in the Hudson Valley, the poverty rate exceeds 9%. Disproportionate levels of unemployment, population and job loss have left significant areas of the downstate region with shrinking revenue bases and opportunities for economic revitalization.

If it is assumed that at least half of the \$35 million allocation to the Fund is used for new capital investment, this would support approximately 160 construction-related jobs, generating an additional \$10 million in personal income in downstate distressed areas. The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity.

New York State may collect approximately \$0.66 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

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

4. **Costs:** The Fund as identified in Chapter 53 of the Laws of 2008, page 884, lines 17 thru 27 will be funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6%.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed

projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

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

6. **Local Government Mandates:** The Fund imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district. To the contrary, the Fund offers local governments potentially enhanced resources, either directly or indirectly, to encourage economic and employment opportunities for their citizens. Participation in the program is optional; local governments who do not wish to be considered for funding do not need to apply.

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

8. **Alternatives:** The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses.

These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, *Delivering on the Promise of New York State*, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy.

The following are three examples of alternatives that were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

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

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines "Distressed Communities"

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

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

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

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

Regulatory Flexibility Analysis

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

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

Across these 7 broad sectors our analysis indicates that approximately 115,000 small businesses will be eligible for funding under the Downstate Revitalization Fund.

In addition approximately 2,000 municipalities and local economic development-oriented organizations will be eligible for funding.

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

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

4. **Compliance Costs:** To the extent that there are existing capabilities at the local level to administer projects involving Downstate Revitalization

Fund investments, there should be relatively little, if any additional administration costs.

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

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local business community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

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

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

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

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

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines "Distressed Communities"

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

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

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

Section 4249.5, Part 3 gives preference to projects with the "existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties."

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: The ESD Downstate region is almost non-rural character. Of the 44 counties defined as rural by the Executive Law § 481(7), none are in are in the Downstate region Of the 9 counties that have certain townships with population densities of 150 persons or less per square mile, only two counties - Dutchess and Orange - are in the Downstate region.

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

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

4. Minimizing Adverse Impact: The purpose of the Downstate Revitalization Fund Program is to maximize the economic benefit of new capital investment in distressed areas of the downstate region. The statute stipulates that projects must be located in distressed communities for which there is a demonstrated demand. This suggests that cooperation among state, local, and private development entities will seek to maximize the Program's effectiveness and minimize any negative impacts.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New

York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to support investments in distressed communities in downstate regions and to support projects that focus on encourage responsible development.

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