

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

EMERGENCY RULE MAKING

To Add New Section 30.4 to Chapter II of Title 4 of NYCRR

I.D. No. CVS-12-09-00003-E

Filing No. 200

Filing Date: 2009-03-06

Effective Date: 2009-03-06

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

Action taken: Addition of section 30.4 to Title 4 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Following revocation of the 2008 Vacation Exchange program for employees serving in positions designated management/confidential (M/C), the Governor's Office of Employee Relations issued policy providing for the restoration of exchanged leave credits immediately following employees' maximum annual leave dates. This restoration of leave credits is not possible to employees who have separated or will soon separate from State service prior to the dates on which leave credits were or will be restored. The amendment to the Attendance Rules for Employees in New York State Departments and Institutions (Chapter II to Title 4 of NYCRR) permits monetary compensation for former or soon-to-be former employees who surrendered leave credits in the 2008 Vacation Exchange Program, notwithstanding limitations in sections 23.1 and 30.1 of the Attendance Rules regarding payment for leave accruals upon separation.

Participants in the 2008 Vacation Exchange Program who remain in

State service already have or will soon obtain restoration of all surrendered leave credits. Absent adoption of this emergency rule, no mechanism exists to provide timely monetary payment for surrendered earned leave credits to former or soon-to-be former employees. Accordingly, pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act (SAPA) this rule will be adopted as an emergency rule because immediate adoption of such rule is necessary for the welfare of all impacted former and soon-to-be former employees who would otherwise be uncompensated for their surrendered credits and compliance with the requirements of SAPA section 202(1) would be contrary to the public interest.

This rule is needed to authorize the one-time payment of the monetary value of exchanged leave credits for eligible former and soon-to-be former employees and is not proposed for permanent adoption.

Subject: To add new section 30.4 to Chapter II of Title 4 of NYCRR.

Purpose: To provide payment for leave accruals for former employees who participated in the revoked 2008 Vacation Exchange Program.

Text of emergency rule: RESOLVED, That subject to the approval of the Governor, a new Section 30.4 of Part 30 of the Attendance Rules for Employees in New York State Departments and Institutions be and hereby is added, as follows:

30.4 Restoration of vacation credits and payment for employees separated from service who submitted a vacation exchange election in 2008.

(a) A "qualified employee," for purposes of this section, shall be an employee in a management/confidential position who separated from service prior to January 2, 2009 or from a represented position prior to April 1, 2009, and who meets the following criteria:

(1) the employee, prior to his or her separation from service, filed a valid, written election during 2008 to participate in a vacation exchange option permitted by Chapter 10 of the laws of 2008;

(2) the employee was legally qualified to make such election; and
(3) as a result of such election, vacation credits for such employee were segregated from the employee's accrued vacation credits for future cash payment, and such vacation credits were not available to such employee for use prior to separation, or for payment upon separation.

(b) A qualified employee shall be credited, retroactive to the employee's date of separation from state service, with the amount of vacation credits which were segregated from the employee's accrued vacation credits pursuant to the employee's election of the vacation exchange option. Thereafter, such employee shall, as soon as practicable, be entitled to receive payment for such retroactively credited vacation credits pursuant to sections 23.1 and 30.1. Notwithstanding the provisions of sections 23.1 and 30.1, such payment may be made even where the total vacation credits for which the qualified employee receives payment exceeds thirty days.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 3, 2009.

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

1. Statutory Authority: Subdivision (1) of section 6 of the Civil Service Law.

2. Legislative Objectives: Subdivision (1) of section 6 of the Civil Service Law authorizes the State Civil Service Commission to prescribe and amend suitable rules for vacation leaves for employees subject to the Attendance Rules for Employees in New York State Departments and Institutions.

3. Needs and Benefits: Following revocation of the 2008 Vacation Exchange Program for employees in Management/Confidential (M/C) positions, the Governor's Office of Employee Relations authorized the return of surrendered leave credits on the days following employees' vacation maximum dates. This is not possible for employees who separated or will separate from State service after participating in the Vacation

Exchange Program and before leave credits could be or will be restored. This emergency rule provides for monetary payment for leave credits to former or soon-to-be former employees who participated in the 2008 Vacation Exchange Program and who cannot receive restoration of leave credits.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: See response to 4(d), below.

b. Costs to the agency, State and local governments for implementation and continuation of the rule: See response to 4(d), below.

c. The information, including the source(s) of such information, and methodology upon which the cost analysis is based: See response to 4(d), below.

d. Statement setting forth the agency's best estimate of costs, and the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided: At present, information regarding the number of employees who participated in the 2008 Vacation Exchange Program and have separated or will soon separate from State service have not been submitted to the Office of the State Comptroller by individual State agencies. Assuming that 150 eligible employees separated or will separate from State service prior to restoration of leave credits, and that exchanged leave credits are valued at the average projected cost of \$1800 per employee, total estimated monetary cost to New York State for implementation of this rule may approach \$270,000. Cost estimates are based upon original projected State expenditures for the entire 2008 Program and employee participation data from 2006, although compensation for individual employees will vary because of the wide range of State salaries in the M/C bargaining unit and employees' ability to exchange between one and five days for monetary compensation. Leave credits restored to other employees following revocation of the Vacation Exchange Program have no cash value prior to separation.

5. Local Government Mandates: This rule applies only to employees subject to the Attendance Rules for Employees in New York State Departments and Institutions and does not apply to any local government.

6. Paperwork: All recordkeeping and reporting requirements associated with this rule can be accommodated through existing New York State electronic personnel and payroll systems.

7. Duplication: This rule does not duplicate any State or federal requirement.

8. Alternatives: This rule presents the only method of compensating former and soon-to-be former employees who participated in the 2008 Vacation Exchange Program and who surrendered leave credits for such program.

9. Federal Standards: This rule does not exceed the minimum provisions of the federal government for the same or similar subject areas.

10. Compliance Schedule: The Division of State Payroll Services of the Office of the State Comptroller can promptly process all necessary payroll transactions upon adoption of the subject emergency rule.

Regulatory Flexibility Analysis

Since this rule serves only to provide for payment to certain former and soon-to-be former New York State employees for annual leave accruals pursuant to the 2008 Vacation Exchange Program, this rule has no economic impact and places no reporting, recordkeeping or other compliance requirements upon small businesses, as defined by section 102(8) of the State Administrative Procedure Act. Therefore, a Regulatory Flexibility Analysis (RFA) is not required by section 202-b of such Act.

Rural Area Flexibility Analysis

Since this rule serves only to provide for payment to certain former and soon-to-be former New York State employees for annual leave accruals pursuant to the 2008 Vacation Exchange Program, this rule will not impose any adverse economic impact or create reporting, recordkeeping or other compliance requirements for public and private entities in rural areas, as defined in section 102(10) of the State Administrative Procedure Act. Therefore, a Rural Area Flexibility Analysis is not required by section 202-bb of such Act.

Job Impact Statement

Since this rule serves only to provide for payment to certain former and soon-to-be former New York State employees for annual leave accruals pursuant to the 2008 Vacation Exchange Program, this rule will have no impact on jobs or employment opportunities for subject individuals, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act. Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendment of Wildlife Management Unit Boundaries

I.D. No. ENV-12-09-00007-P

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

Proposed Action: Amendment of Parts 1, 2, 4 and 6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903, 11-0905, 11-0907, 11-1103

Subject: Amendment of wildlife management unit boundaries.

Purpose: To amend wildlife management unit boundaries and make associated revisions to game species hunting and trapping seasons.

Substance of proposed rule (Full text is posted at the following State website:<http://www.dec.ny.gov>): The Department of Environmental Conservation (the department) proposes to amend the boundaries for wildlife management unit (WMU) boundaries. WMUs are the geographic areas within which hunting and trapping season dates are established. WMUs are also the areas in which hunters apply for deer management permits (DMPs). Since DMP quotas are established on a WMU basis, the proposed changes may affect the geographic distribution of DMPs as well. The last revision of WMU boundaries was completed in 1998. The proposed changes will result in a reduction from the current 96 WMUs to 92 WMUs. Several of the proposed changes will also result in minor changes to game species regulations (both hunting and trapping) incidental to the WMU boundary changes. The proposed changes primarily occur in the department's Regions 4, 5, 6 and 7. Minor changes are also made in parts of Region 3 and Region 8.

Text of proposed rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8885, email: WMUrevisions@gw.dec.state.ny.us

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

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

Additional matter required by statute: A Programmatic Environmental Impact Statement has been prepared and is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL sections 11-0903 and 11-0905 provide for the establishment of small game species harvest regulations. ECL section 11-0907 provides for the regulation of deer and black bear hunting seasons. The regulation of open trapping seasons is authorized by ECL Law section 11-1103.

2. Legislative objectives:

The legislative objective behind the statutory provisions listed above is to authorize the department to establish, by regulation, certain basic wildlife management tools, including the setting of open areas via described "wildlife management unit" boundaries, and restrictions on methods of take and possession. These tools are used by the department to maintain desirable wildlife species in ecological balance, and to protect public health and welfare.

3. Needs and benefits:

The department proposes to amend wildlife management unit (WMU) boundaries. The current WMU boundaries were adopted in 1998. This proposal would reduce the total number of WMUs to 92 (from 96) through the consolidation of units that no longer serve a significant management purpose as stand-alone units. Also, several units are redrawn primarily to address management needs pertaining to deer. In some cases, these changes also mean that season dates for other species are altered.

WMU 4N will be eliminated and combined with WMU 4F. These WMUs have similar forest land cover, similar land use practices, and similar deer management objectives. There is no management need to keep these areas separate.

WMU 4M will be eliminated and combined with parts of existing WMU 4K and 4L. A citizens task force recommended that deer populations be increased in the Taconic Mountains portion of WMU 4M, but decreased in those parts of WMU 4M with significant farm land use. Consequently, the Taconic Mountain portion of WMU 4M would be combined with WMU 4L to form a new unit managed for a higher deer population. The remaining portions will be managed for a lower deer density to protect agricultural interests. The western boundary of WMU 4L will be redrawn (moved east) to better distinguish between an intensively-farmed area and a heavily-forested area.

WMU 4X will be eliminated and included in WMU 3A. These two areas have similar land use and habitat conditions. There is no benefit to keeping them separate.

Existing WMUs 5K, 5N, and 5P (primarily Washington County) will be eliminated and redrawn to form new WMUs 5S and 5T. WMU 5P is a very small unit that is ecologically similar to areas to the north and south currently comprising WMU 5N. There is no management reason to keep these areas separate, so WMU 5P should be combined with the adjacent areas. WMU 5K is a very long and narrow unit within the Hudson River Valley that was originally defined to allow for a closed river otter trapping and bobcat hunting/trapping season. However, river otter and bobcat populations in this area are considered secure and similar to populations in the northern section of current WMU 5N. This area will be redrawn as WMU 5T while the remaining area of WMU 5N and 5P will be designated WMU 5S. The boundary between the two new proposed units is based on differences in land use, topography, and deer density. The reconfiguration of WMUs in this area will result in the opening of the river otter trapping season (November 25-March 15) and the bobcat hunting and trapping season (October 25 - February 15) in the area of current WMU 5K. Wildlife management unit 5K is a narrow unit that is between WMUs 5J (to the west) and 5N (to the east). Bobcat harvest in these neighboring WMUs has been consistent in recent years. Additionally, the Northern Taconics, of which WMU 5N is a part, contain high quality bobcat habitat and harvest rates are among the highest in the State. Similarly, river otter harvest in WMUs 5J and 5N has been consistent in recent years. Therefore, opening the bobcat and river otter season in existing WMU 5K should not have a significant impact to these populations. Eliminating this small, narrow WMU will also alleviate law enforcement issues resulting from having a small unit that is closed to bobcat and river otter harvest bordered by two larger units that have open seasons on these species.

The north boundary of WMU 5C will be moved northward into current WMU 5A. (WMU 5C will be larger and WMU 5A smaller.) This is needed to better define a primarily wooded area (WMU 5C) from the heavily-farmed area within WMU 5A, thereby facilitating deer management.

A portion of WMU 6K will be expanded north into WMU 6G, adjacent to WMU 6N. Presently, the deer population in WMU 6G is well above management objectives. The adjacent unit, WMU 6N (the Tug Hill Plateau) has very low deer densities. The new boundaries will create a "transition" zone allowing for more effective deer management in the three bordering units.

A portion of WMU 6C will be expanded east into current 6J to improve deer management in the Black River Valley. The deer population within the Black River Valley has increased significantly in recent years, and a more aggressive management strategy is required. The department currently uses nuisance deer permits and deer management assistance permits to reduce conflicts with farming. However, this approach is inadequate and the use of deer management permits is necessary within the newly defined unit, WMU 6C.

The small portion of WMU 6G that would become part of WMU 6K would change from a three week-long season with a bag limit of two turkeys to a three week-long season with a bag limit of one turkey, resulting in less hunting opportunity. However, the harvest of turkeys via the two bird limit in this location is very small, and the region believes that a reduction to one bird per season in this location will be inconsequential.

The portion of WMU 6J that would become part of WMU 6C means that a new area with a more liberal fall turkey hunting bag limit (two turkeys vs. one turkey) would be created, resulting in more hunting opportunity. This is consistent with the fact that the affected area, the Black River Valley, has high turkey densities. The region predicts a minimal change in total turkey harvest for this area.

The expansion of WMU 6C into part of WMU 6J means that land trapping seasons will close later in a small area of the Northern Zone. Cur-

rently, WMU 6J has a December 10 closing date. With the proposed change, the closing date will extend to February 15. Trappers in the Northern Zone have long called for a lengthened trapping season, and they are expected to strongly support this change to a portion of the land trapping season. While this will result in a longer trapping season, we do not expect to see a significant increase in harvest of these species, with the possible exception of coyote which are widespread and abundant in many areas of New York.

Bobcat hunting and trapping is currently not allowed in WMU 6K, therefore the small portion of WMU 6G that will become WMU 6K will result in some loss of opportunity. Department records of historical harvest from this area indicate that few bobcat have been harvested, and the effects of this change will be minimal.

Since WMU 6J would become smaller, and marten trapping is currently allowed in this unit, the proposed changes would result in a small loss of marten trapping opportunity in the Northern Zone. The department's records of marten harvest in the affected area show that very few marten are taken, and the effects of this change on trappers will be minimal. There will be two additional weeks of trapping for beaver and river otter in the area of WMU 6J that will become part of WMU 6C.

A new unit WMU 7P will be created primarily to provide more flexibility for bear and deer management. The bulk of the area from which 7P will be formed currently lies in WMU 7M. A small area from existing WMU 7S is also involved. The new unit more closely aligns with, or encompasses, areas with well established bear populations and will provide flexibility for future bear management decisions, specifically changes in season dates. Deer program interests, largely constituent interests, are also addressed with the proposed change. WMU 7M is the largest southern zone WMU and as such, generates a considerable amount of discontent from deer hunters, who believe that the unit is too diverse to be treated uniformly and that management efforts would be enhanced by subdividing the unit. The part of WMU 7M being realigned into WMU 7S differs from the remainder of WMU 7M in having significantly less State Forest land and thus different access opportunity for deer hunting. In combination with existing units, creation of WMU 7P will provide greater ability to align bear seasons with the likely gradient of bear populations in the Region and will also address a long standing complaint from sportsman that WMU 7M is too large. It will also provide more flexibility to manipulate deer populations in response to concerns about deer effect on forest regeneration on State Forest or other forested lands.

The creation of WMU 7P will have a localized effect on goose season dates and bag limits. For Canada goose hunting areas and seasons, the East Central boundary will be moved to the southern border of the newly created WMU 7P to limit harvest of migrant Atlantic Population Canada geese whose breeding population is currently below target. The goose hunting season length would be reduced from 80 to 45 days and the daily bag limit would be reduced from 5 to 3 geese after September. While the affected area is less than 70 square miles in size, the change would apply to lands along approximately 25 river miles on the Tioughnioga and Chenango Rivers, as well as in Chenango Valley State Park, thus reducing the ability to harvest nuisance geese in these areas. Consequently, the proposed change may result in more complaints of nuisance geese compared to the current levels.

WMU 8K will be eliminated (and combined in the current WMU 8J). WMU 8K was originally defined to accommodate special deer management needs at the Seneca Army Depot. With the availability of deer management assistance permits, this is no longer needed.

4. Costs:

None, except administrative costs associated with rule making, and production of a new map.

5. Local government mandates:

This rule making imposes no mandates upon local governments.

6. Paperwork:

No additional paperwork is associated with this rule-making.

7. Duplication:

None.

8. Alternatives:

Continuation of the current WMU boundaries would fail to address the necessary changes described above.

9. Federal standards:

There are no federal standards associated with this rule making.

10. Compliance schedule:

Hunters and trappers will need to comply with the new WMU boundaries beginning with the early bear season in the northern bear range (September 2009).

Regulatory Flexibility Analysis

The Department of Environmental Conservation (department) has determined that the proposed amendments to wildlife management unit boundaries rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Wildlife management unit boundaries are the basic regulatory framework for the establishment of hunting and trapping regulations and have no direct effect on either small businesses or local governments. Therefore, the department has concluded that a regulatory flexibility analysis is not needed.

Rural Area Flexibility Analysis

The Department of Environmental Conservation (the department) has determined that the proposed amendments to wildlife management unit boundaries rule will not impose any adverse impact on rural areas or reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Wildlife management unit boundaries are the basic regulatory framework for the establishment of hunting and trapping regulations with no adverse effect on rural areas. Therefore, the department has concluded that a rural area flexibility analysis is not needed.

Job Impact Statement

The Department of Environmental Conservation (the department) has determined that the proposed amendments to wildlife management unit boundaries rule will not have a substantial adverse impact on jobs or employment opportunities. Wildlife management unit boundaries are the basic regulatory framework for the establishment of hunting and trapping regulations and have no direct effect on jobs or employment. Therefore, the department has concluded that a job impact statement is not needed.

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

Hunting Wild Turkey

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

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

Proposed Action: Amendment of section 1.40 of Title 6 NYCRR.

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

Subject: Hunting wild turkey.

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

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

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

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

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

(3) A permittee may hunt turkey with a shotgun *or handgun*

loaded with shot no larger than number 2 and no smaller than number 8.

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

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

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

3. Needs and benefits:

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

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

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

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

Based on staff judgment about turkey harvest potential on Long

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

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

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

4. Costs:

None beyond normal administrative costs.

5. Local government mandates:

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

6. Paperwork:

No additional paperwork is associated with this proposed regulation.

7. Duplication:

There are no other regulations similar to this proposal.

8. Alternatives:

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

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

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

(c) Fall hunting season with different dates. The department considered a wide range of possible season lengths and dates, from October through January. The department concluded that for the first year, a very limited (5-day) season was prudent. Impacts on the turkey population should be relatively small, and potential conflicts with

non-hunting public should be minimized. The season timing most preferred by hunters was in October, but DEC does not have adequate seasonal staff on at that time to effectively manage the anticipated high demand for turkey hunting on DEC operated lands. The department also considered opening the season the second Saturday in November and running for 5 days. This would create opportunity for all but may increase user conflicts on the properties due to high hunting pressure.

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

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

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

9. Federal standards:

There are no federal standards associated with turkey hunting.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

The purpose of this rule making is to amend wild turkey hunting regulations to establish a fall wild turkey hunting season in Suffolk County and to allow the use of handguns loaded with shotshells/shot pellets for turkey hunting statewide. This rule will not impose any reporting, record-keeping, or other compliance requirements on small businesses or local government. Therefore, a Regulatory Flexibility Analysis is not required.

All reporting or record keeping requirements associated with wild turkey hunting are administered by the New York State Department of Environmental Conservation (department). Small businesses may, and town or village clerks do, sell hunting licenses, but this rule does not affect that activity. Thus, there will be no effect on reporting or record keeping requirements imposed on those entities. The New York State Penal Law requires a New York State Pistol Permit for anyone to possess handguns, and this regulation has no effect on that requirement. Based on the specialized nature and difficulty of hunting with a handgun, we anticipate few additional hunters to acquire a handgun that do not already legally own one, thus the impacts on reporting or record keeping for county governments that deal with pistol permits are expected to be negligible.

Based on the department's past experience in promulgating regulations of this nature, and based on the professional judgment of department staff, the department has determined that this rulemaking may slightly increase the number of participants or the frequency of participation in wild turkey hunting, particularly in Suffolk County. Some small businesses currently benefit from turkey hunting because hunters spend money on goods and services, and thus an increase in hunter participation should lead to positive economic impacts on such businesses.

Additional hunting activity will not require any new or additional reporting or record-keeping by any small businesses or local governments. For these reasons, the department has concluded that this rulemaking does not require a Regulatory Flexibility Analysis.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend the wild turkey hunting regulations to establish a fall wild turkey hunting season in Suffolk County and to allow hunters to use handguns loaded with shotshells/shot pellets to hunt wild turkeys statewide. This rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas, other than individual hunters.

All reporting or record keeping requirements associated with turkey hunting are administered by the New Department of Environmental Conservation (DEC or department). Small businesses may, and town or village clerks do, issue hunting licenses, but this rule making does not affect that activity.

Additional hunting activity will not require any new or additional reporting or record-keeping by entities in rural areas, and no professional services will be needed for people living in rural areas to comply with the proposed rule. Furthermore, this rule making is not expected to have any adverse impacts on any public or private interests in rural areas of New York State. For these reasons, the department has concluded that this rulemaking does not require a Rural Area Flexibility Analysis.

Job Impact Statement

The purpose of this rule making is to amend wild turkey hunting regulations. The Department of Environmental Conservation (DEC or department) has historically made regular revisions to its wild turkey hunting regulations. Based on DEC's experience in promulgating those revisions and the familiarity of regional department staff with the specific areas of the state impacted by this proposed rulemaking, the department has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually use the hunting of wild turkeys as a means of employment, but some licensed hunting guides benefit from turkey hunting by taking clients on hunting trips. This rule making could enhance this activity. Moreover, this rulemaking is not expected to significantly change the number of participants or the frequency of participation in the regulated activities. In fact, this rule making may slightly increase the number of participants or the frequency of participation in wild turkey hunting, particularly in Suffolk County.

For these reasons, the department anticipates that this rulemaking will have no impact on jobs and employment opportunities. Therefore, the department has concluded that a job impact statement is not required.

Department of Health

NOTICE OF ADOPTION

Payment for FQHC Psychotherapy and Offsite Services

I.D. No. HLT-45-08-00018-A

Filing No. 227

Filing Date: 2009-03-10

Effective Date: 2009-03-25

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

Action taken: Amendment of section 86-4.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201.1(v)

Subject: Payment for FQHC Psychotherapy and Offsite Services.

Purpose: Permit psychotherapy by certified social workers as a billable service under certain circumstances.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. HLT-45-08-00018-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Veterans Tuition Awards Program

I.D. No. ESC-12-09-00005-P

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

Proposed Action: This is a consensus rule making to repeal section 2201.3 of Title 8 NYCRR.

Statutory authority: Education Law, section 669-a

Subject: Veterans Tuition Awards Program.

Purpose: The rule conforms existing regulation with amendments to Education Law section 669-a.

Text of proposed rule: Section 2201.3 of Title 8 of the New York Code, Rules and Regulations is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: George M. Kazanjian, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1350, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.com

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

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

Consensus Rule Making Determination

This statement is being submitted pursuant to paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to repeal section 2201.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of this proposed consensus rulemaking.

Section 669-a of the Education Law was amended by Chapter 57 of the Laws of 2008 to expand eligibility for combat veterans residing in New York State. Education Law § 669-a now provides comprehensive program details such as new and higher award amounts, designation of non-duplicative awards, pro rata amounts for part time study, and the effective date of applications. Due to the detail of the statute, HESC has determined that the current regulatory provisions are unnecessary and should be repealed.

Repealing section 2201.3 of 8 NYCRR would have no negative effects on present, past or future recipients.

HESC has determined that this consensus rulemaking would eliminate duplicative language, and that the statute provides specificity such that regulatory provisions are unnecessary, this action will have no negative effects on present, past or future recipients, no one is like to object to this proposed consensus rule.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's "Notice of Proposed Rule Making" seeking to repeal section 2201.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any adverse impact on jobs or employment opportunities. The proposal repeals a regulation whose language duplicates statutory language. In addition, legislative revisions have made the current statute specific enough that the existing regulation has become unnecessary for the administration of the Veterans Tuition Awards Program.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Federal Family Education Loan Program "Federal Default Fee"

I.D. No. ESC-12-09-00006-P

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

Proposed Action: This rule is proposed pursuant to SAPA § 207(3), 5-Year Review of Existing Rules. This is a consensus rule making to amend section 2101.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 680

Subject: Federal Family Education Loan Program “federal default fee.”

Purpose: The rule amends existing 8 NYCRR section 2101.5 consistent with amendments to federal law.

Text of proposed rule: 8 NYCRR § 2101.5 [Insurance premium] *Default Fee*.

The [insurance premium] *default fee* charged by the Corporation for FFEL Program loans shall be no more than *what is prescribed by the Higher Education Act of 1965, as amended* [1.0%, except that the insurance premium charged by the Corporation for graduate student FFEL loans for the Academic Year 1998-99, where the period of the loan begins on or after July 1, 1998, shall be no more than 0.5%].

Text of proposed rule and any required statements and analyses may be obtained from: George Kazanjian, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1350, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.org

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

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

Five-Year Review of Existing Rules

Pursuant to section 207 of the State Administrative Procedure Act, 8 NYCRR § 2101.5 was subject to review by HESC during 2008. To that end, HESC filed its “Rule Review” in the March 19, 2008 edition of the *State Register* in which HESC anticipated amending this regulation in order to incorporate changes to federal law. After the required 45-day public comment period, no comments were received by HESC.

HESC examined the rule and found that federal law supporting this regulation had been amended. In 2005, the federal Higher Education Reconciliation Act (“HERA”) amended the Federal Higher Education Act (“HEA”) of 1965, as amended, to rename the federal student loan “insurance premium” the “federal default fee,” and to require, the collection of no more than a one percent (1%) default fee. Due to the revisions to federal law, HESC’s rule must be amended accordingly.

HESC has determined that modification of the rule is necessary to comport with present federal law.

Consensus Rule Making Determination

Among other things, the New York State Higher Education Services Corporation (“HESC”) guarantees federal student loans in accordance with the federal Higher Education Act (“HEA”) of 1965 as amended. Under the HEA, HESC was authorized to collect insurance premiums (also known as “guarantee fees”) of up to one percent (1%) of the principal amount of each student loan made under the Federal Family Education Loan Program (“FFELP”).

In 1998, HESC promulgated 8 NYCRR § 2101.5 to limit itself to charging no more than 0.5% of the 1% maximum allowable insurance premium on graduate level FFELP loans while continuing to charge the maximum allowable insurance premium of up to one percent (1%) on all undergraduate loans.

In 2005, the federal Higher Education Reconciliation Act (“HERA”) renamed the “insurance premium” the “federal default fee.” Under HERA, HESC is now required to deposit a federal default fee of no more than one percent (1%) of the principal amount of each FFELP loan into its federal fund. The default fee can either be charged to the borrower by a deduction from the proceeds of the loan or paid from other non-federal sources.

Since HESC must charge a federal default fee of no more than one percent (1%) to all FFELP loans under HERA, the present rule no longer comports with federal law.

Consensus rulemaking is warranted because no party is likely to object to this rulemaking. Federal law requires that HESC pay a default fee of up to one percent (1%). This rulemaking is needed to amend an existing state regulation in order to bring in into accord with the revised federal provision.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s “Notice of Proposed Rule Making” seeking to amend section 2101.5 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this consensus rule that it will not have any adverse impact on jobs or employment opportunities. The proposal would conform HESC’s regulation with recent amendments to federal law.

State Commission on Judicial Conduct

NOTICE OF ADOPTION

Use of Prior Cautionary Letters in Subsequent Matter Involving Same Judge; Designation of Records Access Officer; Address Change

I.D. No. JDC-53-08-00002-A

Filing No. 226

Filing Date: 2009-03-10

Effective Date: 2009-03-25

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

Action taken: Amendment of sections 7000.4, 7001.3 and 7001.4 of Title 22 NYCRR.

Statutory authority: Judiciary Law, section 42(5)

Subject: Use of prior cautionary letters in subsequent matter involving same judge; designation of records access officer; address change.

Purpose: To clarify when prior cautionary letter may be used, authorize designation of records access officer; address change.

Text or summary was published in the December 31, 2008 issue of the Register, I.D. No. JDC-53-08-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Robert H. Tembeckjian, Commission on Judicial Conduct, 61 Broadway, Suite 1200, New York, NY 10006, (646) 386-4800, email: rulemaking@scjc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incident Management

I.D. No. OMH-12-09-00001-P

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

Proposed Action: This is a consensus rule making to amend Part 524 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 7.09

Subject: Incident Management.

Purpose: To correct outdated references.

Text of proposed rule: 1. Subdivisions (c), (d), (e) and (f) of section 524.2 of Title 14 NYCRR are amended to read as follows:

(c) Section 29.29 of the Mental Hygiene Law requires the establishment of uniform standards and procedures for the compilation and analysis of incident reports in department facilities; the submission of aggregated information by department facilities to the Commissioner of the Office of Mental Health; the establishment of a committee in department facilities to review incidents; and the submission of reports, by the Commissioner of the Office of Mental Health, to the Commission on Quality of Care [for the Mentally Disabled] *and Advocacy for Persons with Disabilities* in response to recommendations following investigations of abuse or neglect involving clients under 18 years of age.

(d) Section 31.11 of the Mental Hygiene Law requires programs licensed by the Office of Mental Health to notify the district attorney or other law enforcement official and the [commissioner] *Commissioner* if it appears that a crime may have been committed against a client.

(e) Section 45.07 of the Mental Hygiene Law provides the Commission on Quality of Care [for the Mentally Disabled] *and Advocacy for Persons*

with *Disabilities* the authority to make recommendations of preventive and remedial actions to the Office of Mental Health in response to investigations of allegations of abuse or neglect involving clients under 18 years of age.

(f) Section 45.19 of the Mental Hygiene Law requires that directors of State-operated facilities and directors of licensed programs report deaths of individuals in their care and any allegations of abuse or neglect to the Commission on Quality of Care [for the Mentally Disabled] and *Advocacy for Persons with Disabilities*.

2. Subdivisions (c), (e) and (g) of section 524.7 of Title 14 NYCRR are amended to read as follows:

(c) Reportable deaths shall be reported immediately, and in any event within three working days, to the Commission on Quality of Care [for the Mentally Disabled] and *Advocacy for Persons with Disabilities*. Other types of client deaths, which are not otherwise subject to the requirements of this Part, shall be reported to the Commission on Quality of Care [for the Mentally Disabled] and *Advocacy for Persons with Disabilities* in accordance with the requirements of that agency.

(e) Allegations of abuse or neglect shall be reported immediately to the Commission on Quality of Care [for the Mentally Disabled] and *Advocacy for Persons with Disabilities*.

(g) Allegations of abuse or neglect of clients under the age of 18 shall be reported immediately to the New York [State] *Statewide Central Register of Child Abuse and Maltreatment* [Register] in accordance with the requirements of the New York State [Department of Social Services] *Office of Children and Family Services*. Such reports shall not alter the responsibilities of persons, pursuant to Social Services Law, who are required to report cases of suspected abuse or neglect of children other than as defined in section 524.4 of this Part (e.g., suspected abuse or neglect of a child by a parent). However, such an event does not constitute an incident.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, 8th Floor, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

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

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

Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to make technical corrections and is non-controversial. No person is likely to object to this rulemaking since it merely updates the incorrect names of two State agencies and clarifies the proper title of a State registry.

Pursuant to Chapter 58 of the Laws of 2005, two State agencies (the former Commission on Quality of Care for the Mentally Disabled and the former New York State Office of Advocate for Persons with Disabilities) merged on April 1, 2005, and the new name of the combined agency is Commission on Quality of Care and Advocacy for Persons with Disabilities.

Chapter 436 of the Laws of 1997 transferred certain functions, powers, duties and obligations of the former Department of Social Services and all of the functions, powers, duties and obligations of the former Division for Youth to the New York State Office of Children and Family Services.

Statutory Authority: Section 7.09 of the Mental Hygiene Law authorizes the Commissioner of the Office of Mental Health to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it merely corrects outdated references in the regulation. There will be no impact on jobs and employment opportunities as a result of this rulemaking.

Action taken: Amendment of Part 82 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 398-f and 398(g)(2)

Subject: Repair Shop Review Board.

Purpose: Makes technical amendments related to the composition and role of the Repair Shop Review Board.

Text of final rule: Subdivisions (a) and (b) of section 82.16 are amended to read as follows:

(a) The commissioner shall establish a review board. Such board shall consist of persons who have engaged in the automotive repair shop business for at least five years representing the automobile repair shop industry, persons who shall be laymen having no association with the automotive repair shop industry representing consumers, and persons who are attorneys admitted to practice in this State and who have no interest in or represent as an attorney an automotive repair shop. Members of the review board shall be appointed insofar as is practical to provide for representation of different geographic areas of the State, and shall serve in no other capacity in the Department of Motor Vehicles. The number of persons appointed to such review board shall be determined by the commissioner and shall be appointed to serve at his pleasure. [Five] Three persons, [two] one of whom shall be an automotive repair shop industry representative[s], [two] one of whom shall be a consumer representative[s], and one of whom shall be an attorney appointed pursuant to the provisions of this subdivision, shall as a panel review each appeal from a determination of the hearing officer. Such attorney shall serve as the chairman of such panel with respect to any such review. *At least two votes shall be required to take final action on each appeal.*

(b) The review board shall review and determine all appeals. [After such review, the board shall recommend to the commissioner whether to affirm, reverse or modify the initial determination of the hearing officer or to remand the case to a hearing officer to determine additional facts.] *Such determination may be to affirm, reverse or modify the initial determination of the hearing officer or to remand the case for a further hearing to determine additional facts.*

Final rule as compared with last published rule: Nonsubstantial changes were made in section 82.16(b).

Text of rule and any required statements and analyses may be obtained from: Carrie L. Stone, Department of Motor Vehicles, Counsel's Office, Room 526, Albany, NY 12228, (518) 474-0871

Revised Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it will have no adverse impact on job development in New York State.

Assessment of Public Comment

The agency received no public comment.

Niagara Falls Water Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

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

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

Proposed Action: This is a consensus rule making to amend section 1950.20 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-j

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

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

Text of proposed rule: Section 1950.20. Schedule of rates, fees and charges.

(a) This schedule sets forth the rates, fees and other charges applicable to the provision of water supply, wastewater and related services by the Niagara Falls Water Board to all property owners, users and other persons [during the period] as of January 1, 2008 [through December 31, 2008]. All property owners, users and other persons who receive services from the water board shall pay to the water board the rates, fees and charges set forth in this schedule.

Department of Motor Vehicles

NOTICE OF ADOPTION

Repair Shop Review Board

I.D. No. MTV-03-09-00010-A

Filing No. 228

Filing Date: 2009-03-10

Effective Date: 2009-03-25

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

Text of proposed rule and any required statements and analyses may be obtained from: William Bolents, Niagara Falls Water Board, 5815 Buffalo Avenue, Niagara Falls, New York 14304, (716) 283-9770, email: bbolents@nfwb.org

Data, views or arguments may be submitted to: John J Ottaviano, Harris Beach, PLLC, P.O. Box 1230, 172 East Avenue, Lockport, New York 14095, (716) 438-0488, email: jottaviano@harrisbeach.com

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

Consensus Rule Making Determination

The proposed amendment is non-controversial in that it seeks to eliminate the termination date of December 31, 2008 for the present rates, fees and charges. All rates, fees and charges will remain the same.

Job Impact Statement

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

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-45-00-00020-W	November 8, 2000
PSC-50-01-00011-W	December 12, 2001
PSC-50-01-00012-W	December 12, 2001
PSC-01-02-00008-W	January 2, 2002
PSC-09-02-00016-W	February 27, 2002
PSC-26-02-00014-W	June 26, 2002
PSC-29-02-00012-W	July 17, 2002
PSC-33-02-00011-W	August 14, 2002
PSC-42-02-00007-W	October 16, 2002
PSC-43-02-00010-W	October 23, 2002
PSC-49-02-00018-W	December 4, 2002
PSC-50-02-00016-W	December 11, 2002
PSC-20-03-00013-W	May 21, 2003
PSC-21-03-00016-W	May 28, 2003
PSC-26-03-00019-W	July 2, 2003
PSC-30-03-00011-W	July 30, 2003
PSC-36-03-00011-W	September 10, 2003
PSC-42-03-00008-W	October 22, 2003
PSC-43-03-00038-W	October 29, 2003
PSC-45-03-00009-W	November 12, 2003
PSC-45-03-00010-W	November 12, 2003
PSC-52-03-00023-W	December 31, 2003
PSC-14-04-00009-W	April 7, 2004
PSC-16-04-00002-W	April 21, 2004
PSC-16-04-00003-W	April 21, 2004
PSC-19-04-00009-W	May 12, 2004
PSC-21-04-00016-W	May 26, 2004
PSC-27-04-00024-W	July 7, 2004
PSC-30-04-00006-W	July 28, 2004
PSC-12-05-00008-W	March 23, 2005
PSC-12-05-00009-W	March 23, 2005
PSC-12-05-00014-W	March 23, 2005
PSC-15-05-00024-W	April 13, 2005
PSC-15-05-00025-W	April 13, 2005
PSC-29-05-00029-W	July 20, 2005
PSC-40-05-00010-W	October 5, 2005
PSC-49-05-00019-W	December 7, 2005
PSC-52-05-00023-W	December 28, 2005
PSC-04-06-00010-W	January 25, 2006
PSC-04-06-00025-W	January 25, 2006
PSC-06-06-00014-W	February 8, 2006
PSC-08-06-00010-W	February 22, 2006

PSC-13-06-00019-W	March 29, 2006
PSC-14-06-00018-W	April 5, 2006
PSC-31-06-00020-W	August 2, 2006
PSC-39-06-00023-W	September 27, 2006
PSC-41-06-00028-W	October 11, 2006
PSC-43-06-00012-W	October 25, 2006
PSC-48-06-00004-W	November 29, 2006
PSC-51-06-00020-W	December 20, 2006
PSC-52-06-00015-W	December 27, 2006
PSC-01-07-00030-W	January 3, 2007
PSC-18-07-00006-W	May 2, 2007
PSC-22-07-00017-W	May 30, 2007
PSC-35-07-00012-W	August 29, 2007
PSC-45-07-00007-W	November 7, 2007
PSC-47-07-00020-W	November 21, 2007
PSC-01-08-00025-W	January 2, 2008
PSC-01-08-00026-W	January 2, 2008
PSC-01-08-00027-W	January 2, 2008
PSC-01-08-00028-W	January 2, 2008
PSC-01-08-00029-W	January 2, 2008
PSC-01-08-00036-W	January 2, 2008
PSC-11-08-00005-W	March 12, 2008
PSC-11-08-00006-W	March 12, 2008
PSC-11-08-00007-W	March 12, 2008
PSC-11-08-00008-W	March 12, 2008
PSC-11-08-00009-W	March 12, 2008
PSC-18-08-00007-W	April 30, 2008
PSC-28-08-00005-W	July 9, 2008
PSC-33-08-00007-W	August 13, 2008
PSC-34-08-00009-W	August 20, 2008
PSC-39-08-00013-W	September 24, 2008
PSC-46-08-00009-W	November 12, 2008
PSC-04-09-00008-W	January 28, 2009

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charges for Commodity

I.D. No. PSC-12-09-00010-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 Rochester Gas and Electric Corporation to make various changes regarding commodity programs.

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

Subject: Charges for commodity.

Purpose: To charge customers for commodity costs.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Rochester Gas and Electric Corporation to not renew their Fixed Price Option for 2010 and provide a new market-based supply service as the sole offering for 2010. In addition Rochester Gas and Electric Corporation proposes to implement an interim adjustment to their non-bypassable wires charge effective July 1, 2009, with a potential interim adjustment on October 1, 2009.

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-E-0765SA10)

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

Fixed Transition Charge (Non-Bypassable Charge)**I.D. No.** PSC-12-09-00011-P

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

Proposed Action: The Commission is considering a proposed filing by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 19 — Electricity.

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

Subject: Fixed Transition Charge (Non-Bypassable Charge).

Purpose: To allow for an interim adjustment to the fixed transition charges (non-bypassable charge) that were established for 2009.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Rochester Gas and Electric Corporation to modify its tariff regarding fixed transition charges (non-bypassable charge) that were established for 2009. The proposed filing has an effective date of June 1, 2009.

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-0228SA1)

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

Charges for Commodity**I.D. No.** PSC-12-09-00012-P

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

Proposed Action: The Commission is considering a proposed filing by New York State Electric and Gas Corporation to make various changes regarding commodity programs.

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

Subject: Charges for commodity.

Purpose: To charge customers for commodity costs.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by New York State Electric and Gas Corporation to not renew their Fixed Price Option for 2010 and provide a new market-based supply service as the sole offering for 2010. In addition New York State Electric and Gas Corporation proposes to implement an interim adjustment to their non-bypassable wires charge effective July 1, 2009, with a potential interim adjustment on October 1, 2009.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New

York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

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

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

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

(07-E-0479SA4)

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

Rate Design and Collection, Temporary Rates**I.D. No.** PSC-12-09-00013-P

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

Proposed Action: The Public Service Commission is considering making rate design changes to the current rate plans for Gas, Steam and/or Electric service by Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 5, 65, 79, 107, 113 and 114

Subject: Rate design and collection, temporary rates.

Purpose: To consider a rate design mechanism for the Commission to provide for ratepayer credit or reimbursement.

Substance of proposed rule: The Public Service Commission is considering making rate design changes to the current rate plans for Gas, Steam and/or Electric service by Consolidated Edison Company of New York, Inc. The purpose of such changes would be to create a mechanism by which the Commission may, if necessary, order the Company to reimburse or credit ratepayers for overpayments or otherwise unlawful payments made by the Company as a result of, or otherwise related to improper and/or unlawful conduct by Company personnel including, but not limited to, construction personnel and management responsible for capital and operation and maintenance projects.

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) 474-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(09-M-0114 SA1)

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

Expansion of Orange & Rockland's ESCO Referral Program to Include New Customers

I.D. No. PSC-12-09-00014-P

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

Proposed Action: The Commission is considering whether, and to what extent, it should direct Orange & Rockland Utilities, Inc. (Orange & Rockland or Company) to expand its ESCO referral program to include customers who contact the Company for new services.

Statutory authority: Public Service Law, sections 5(1), 65(1) and 66(1)

Subject: Expansion of Orange & Rockland's ESCO referral program to include new customers.

Purpose: To determine whether, and to what extent, the Commission should direct Orange & Rockland to expand its ESCO referral program.

Substance of proposed rule: The Commission is considering whether, and to what extent, it should direct Orange & Rockland Utilities, Inc. (Orange & Rockland or Company) to expand its ESCO referral program to include customers who contact the Company for new service. In making its determination, the Commission will take into consideration the report on the feasibility of providing new customer referrals to ESCOs, submitted by Orange & Rockland on January 23, 2009 in accordance with the Commission's July 23, 2008 Order in Case 07-E-0523, any amendments to the report, any comments made by the parties, the record in this proceeding, and such other information as the Commission may deem appropriate. The filings in this case may be viewed on our website at www.dps.state.ny.us. The Commission may accept, reject, or modify, in whole or in part, any proposals made by the Company in its report or any proposals that may be developed there from, and it may also consider related matters.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0949SA4)

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

Waiver of Particular Requirements of Public Service Law, Section 95(1) and Part 641 of the Commission's Rules and Regulations

I.D. No. PSC-12-09-00015-P

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

Proposed Action: The PSC is considering whether to approve or reject, in whole or in part, a petition by Verizon New York Inc. for a waiver of section 95(1) and Part 641 of the PSC's rules and regulations and interim suspension of the March 31, 2009 Annual Report deadline.

Statutory authority: Public Service Law, sections 4(1), 23(1) and 95(1)

Subject: Waiver of particular requirements of Public Service Law, section 95(1) and Part 641 of the Commission's Rules and Regulations.

Purpose: To eliminate Verizon New York Inc.'s requirement to file an Annual Report.

Substance of proposed rule: Verizon New York Inc. ("Verizon") has requested waiver of the requirements of Public Service Law, Section 95(1), 4(1), 23(1) and Part 641 of the Commission's rules. In addition, Verizon requests suspension of the March 31, 2009 deadline for filing its 2008 Annual Report pending resolution of this petition. Verizon proposes to cease the Annual Report requirement which originates from the requirements outlined in the Public Service Law referenced above, claiming that the Annual Report is, and has been, obsolete for many years in the current regulatory environment.

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-0120SA1)

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

Fixed Transition Charge (Non-Bypassable Charge)

I.D. No. PSC-12-09-00016-P

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

Proposed Action: The Commission is considering a proposed filing by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 120 — Electricity.

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

Subject: Fixed Transition Charge (Non-Bypassable Charge).

Purpose: To allow for an interim adjustment to the fixed transition charges (non-bypassable charge) that were established for 2009.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by New York State Electric & Gas Corporation to modify its tariff regarding fixed transition charges (non-bypassable charge) that were established for 2009. The proposed filing has an effective date of June 1, 2009.

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-0227SA1)

Department of State

**EMERGENCY
RULE MAKING**

Document Destruction Contractors

I.D. No. DOS-12-09-00004-E

Filing No. 201

Filing Date: 2009-03-06

Effective Date: 2009-03-06

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

Action taken: Addition of Part 199 to Title 19 NYCRR.

Statutory authority: General Business Law, article 39-G, section 899-bbb(12)(a)

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

Specific reasons underlying the finding of necessity: The legislature enacted statutory authority, with effective date of October 1, 2008, for a new licensing category regarding contractors engaged in the business of

document destruction. The new law requires businesses that offer document destruction services to register with the Department of State, and enables the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the article. This new law is necessary for the protection of the public to prevent the unlawful taking of personal identification information from documents disposed of by the public. The bill would limit the amount of documents containing sensitive personal information subject to misappropriation by ensuring the availability of qualified and reputable document destruction contractors. The law will work in concert with recently implemented federal disposal rules (16 CFR Part 682), and New York's newly adopted Disposal Law (Chapter 65 of the Laws of 2006), which require businesses to take appropriate steps when disposing of personal information. In order to comply with these mandates, many businesses hire contractors that specialize in the destruction of records containing personal information. The new licensing category enacted by the NYS Legislature will ensure that information required to be destroyed under the federal Disposal Rule and New York's Disposal Law pursuant to a document destructions contract is disposed of properly by a contractor registered with the State of New York.

Subject: Document destruction contractors.

Purpose: To provide guidance regarding the process of applying for, and registering as, a document destruction contractor.

Text of emergency rule: Part 199 is added to 19 NYCRR to be entitled and read as follows:

19 NYCRR PART 199 Document Destruction Contractors

Section 199.1. Fingerprinting: principals and officers

(a) Applicants for registration as document destruction contractors must be fingerprinted, and the fingerprints must be taken by one of the following:

(1) an employee of the Department of State, Division of Licensing Services at designated locations and at appointed times, or at such other location designated by the Division of Licensing Services;

(2) a local police officer, a State police officer, a sheriff or deputy sheriff;

(3) a principal or officer of a document destruction contractor business; or

(4) a previously fingerprinted employee of security guard training school approved by the Division of Criminal Justice Services (Division).

(b) Each fingerprint card shall be signed and authenticated by the individual who took the fingerprints and shall state the individual's name along with his/her title of office or employment status.

(c) All fingerprints shall be taken on a form and in a manner approved by the Division of Criminal Justice Services.

Section 199.2. Investigation

Within five business days after receipt of an application, the Department of State (Department) shall transmit to the Division two sets of fingerprints and the fees required pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the Division's full search and retain procedures. The results will be used to ascertain whether or not the applicant has been charged with or convicted of a serious offense and may cause to be conducted an investigation to verify the information contained in the application; provided, however, that the Department shall cause such investigation to be conducted for applicants whose application has not been submitted and verified pursuant to section eight hundred ninety-nine-bbb of General Business Law article 39-G. The Department, in consultation with the Division, may waive such background checks, investigations and fees if in its opinion, the applicant has been subject to previous background checks and investigation requirements which meet or exceed the requirements of this section. The Department, in consultation with the Division, may not be required to conduct background checks or investigations for applicants who are also employed as security guards or peace officers.

Section 199.3. Supervisory responsibility

A registrant/licensee has an affirmative duty to provide supervision of all employees and for all business activities. Such supervision shall consist of regular, frequent and consistent personal guidance, instruction, oversight and superintendence by the qualifying registration/license holder with respect to the general business conducted by the firm and all matters relating thereto.

Section 199.4. Business and employee records

(a) Each business licensed under this Part shall keep and maintain for a period of three years records of all transactions performed by the business.

(b) All records must be retained for longer periods, in the event there is any litigation pending concerning such records and/or employee. Litigation shall include investigation or administrative action by the Department of State, initiated by complaint from the general public or by the department.

(c) A business which is registered to conduct activities as a document destruction contractor must maintain employee and business records at a central location within New York State. This is applicable to all company and personnel records pertaining exclusively to the conduct of business in this State.

(d) Each registrant/licensee shall prepare and retain a statement of services and charges which has been agreed upon between the registrant/licensee and the consumer, a copy of which must be presented to the consumer. The consumer must be presented with a copy of any document signed by the registrant/licensee and consumer. Any agreement signed by a representative of the registrant/licensee and the consumer for services to be performed must be retained by the registrant/licensee in the business records of the firm.

(e) In conjunction with any transaction, each registrant/licensee shall identify any and all employees who conduct activities constituting document destruction services.

Section 199.5. Employee and employer responsibility

(a) Any person who is or has been an employee of a registered document destruction contractor shall not divulge to anyone other than his employer, except as may be required by law, any information acquired by him/her during such employment in respect to any of the work to which he/she shall have been assigned by such employer.

(b) It is the duty and obligation of an employer of any individual believed to have violated this section to divulge all known facts and circumstances to the Secretary of State or such person in the Department of State who may be designated.

Section 199.6. License revocation and suspension

Any person, firm, company, partnership, corporation or organization licensed under Article 39-G of the General Business Law which has its registration/license revoked or suspended by the Department of State shall be ineligible to employ other persons in any capacity to conduct document destruction services for the period of the revocation or suspension.

Section 199.7. Criminal convictions

Any applicant, principal or qualifier convicted of any felony or misdemeanor may be denied licensure or subjected to license revocation and suspension. Department of State discretion shall be exercised pursuant to the standards articulated in Article 23-A of the Correction Law.

Section 199.8. Notice of criminal conviction

Any registrant/licensee who is convicted of a crime as defined in the Penal Law in this State or an offense which would constitute a crime if committed in New York in any other state or Federal or foreign jurisdiction, shall give notice of such conviction to the Department of State, Division of Licensing Services, at its Albany Office, by certified mail, return receipt requested, within 10 days from date of conviction. Such notice shall be given notwithstanding pendency of appeal.

Section 199.9. Advertising

All advertising placed by an individual or a business registered/licensed under this article must contain the following statement: "registered with the N.Y.S. Department of State."

Section 199.10. Statement of licensure

All documents or receipts issued by an individual or business licensed pursuant to this article must contain the unique identification number issued to such individual or business and the phrase "registered with the N.Y.S. Department of State."

Section 199.11. Contracts and agreements.

(a) Consumers conducting business with an individual or firm licensed under this article shall receive a copy of any signed contract and/or agreement.

(b) All contracts and agreements used by an individual or firm licensed under this article shall include the following statement under the name of the business: "This business is registered with the New York Department of State, Division of Licensing Services."

Section 199.12. Enforcement.

All principals, qualifiers and/or employees of the registered document destruction contractor shall be subject to the enforcement provisions contained in Article 39-G of the General Business Law. Service of process pursuant to said article, including but not limited to service of a notice of hearing to be conducted pursuant to the provisions of said article, shall be by certified mail sent to the last known registered or business address of the applicant or registered document destruction contractor.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 3, 2009.

Text of rule and any required statements and analyses may be obtained from: Linda D. Cleary, Department of State, Division of Licensing Services, 80 South Swan St., 10th Fl., Albany NY 12201, (518) 473-2728, email: linda.cleary@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

General Business Law Article 39-G, section 899-bbb (12)(a) authorizes

the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the article, which article contains new licensing/registration requirements for the discipline entitled "document destruction contractors".

2. Legislative objectives:

General Business Law, Article 39-G, requires the Department of State to license and regulate document destruction contractors. The statute requires registrants/licensees to meet certain requirements in order to qualify and maintain registration as a document destruction contractor. The statutory intent behind Article 39-G is consumer protection.

3. Needs and benefits:

The proposed rule making will protect consumers and meet the legislative intent in enacting Article 39-G. By setting forth specific regulations clarifying the procedures to be followed in obtaining approval from the Department of State to register and maintain registration as a document destruction contractor, registrants/licensees and prospective employees, as well as the public will be protected by ensuring that licensed document destruction contractors conduct their business in accordance with the principles set forth in General Business Law Article 39-G.

4. Costs:

a. Costs to regulated parties:

The rule making will not impose any new costs on document destruction contractors, beyond those imposed with their compliance with the statutory requirements of General Business Law Article 39-G. It is believed that there will be costs to the regulated public associated with obtaining the requisite NYS background check, estimated to be \$75. Regarding costs for fingerprints of principals, officers, or employees of the document destruction contractor, these are estimated to be approximately \$12 to \$30 for each set of fingerprints prepared and obtained pursuant to these rules, and the statute. The regulated public will likely incur costs associated with record retention, for those licensees who do not possess sufficient on-site storage for records. The cost of storage facilities varies depending on various factors such as location and size. It is estimated that the starting price for an off-site storage unit is approximately \$40.00 per month. It is not anticipated that the regulated public will incur any other costs.

b. Costs to the Department of State:

The Department of State does not anticipate any additional costs to the agency to implement and continue to administer the rules' requirements. The Department of State currently licenses and regulates in excess of twenty-eight different occupations. The Department did not hire additional staff to assist with the implementation and administration of the new document destruction contractor licensing requirements. As a result, existing staff will absorb the functions necessary to support the program, and the rules.

5. Local government mandates:

The rules do not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rules clarifies the already mandated statutory requirement that all applications for licensure be accompanied by two sets of fingerprint cards for all principals and officers; prospective registrants/licensees are already required to satisfactorily complete applications for registration, with accompanying documentation. The rule delineates and specifies the paperwork and record keeping requirements imposed on licensees by General Business Law Article 39-G. The statute mandates, in part, that document destruction contractors be subject to investigation and to supply documentation upon request, and this rule clarifies the requirements for document retention. The rule also required that advertisements and certain business records contain the license number and/or a statement that the licensee is licensed by the Department of State.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State considered not proposing any regulations, however since subpart 12 of § 899-bbb requires that the Secretary of State shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the legislation, it was deemed appropriate and necessary that the Department of State propose regulations to clarify the legislation. It was decided that not having any regulations would disadvantage both the regulated public and the Department of State insofar as certain vague statutory provisions would remain undefined and result in confusion and difficulties with enforcement. As a result, the Department of State is only proposing those regulations deemed necessary at this point in time, and has determined to hold in abeyance the possible need to file additional regulations to clarify and/or define other statutory issues.

9. Federal standards:

There are no federal standards regulating the registration of document

destruction contractors, although there are federal standards regulating the disposal of personal information, implemented a federal Disposal Rule (16 CPF Part 682), and New York has a Disposal Law (Chapter 65 of the Laws of 2006), which comports with the federal requirements. The proposed rulemaking does not exceed any existing federal standard.

10. Compliance schedule:

The rule making will be effective as of the date of adoption. Prospective registrants/licensees are already required to register pursuant to the statutory provisions of Article 39-G, on or before October 1, 2008, and are on notice of the Secretary's power to enact regulations in concert therewith, and will therefore be able to comply with this rule as of its effective date.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rulemaking create a framework for the successful process of businesses registering for approval to act as document destruction contractors, and to employ qualified workers to conduct services related thereto, as well as to allow for the continued qualifications for renewal of same, and the responsibilities of the companies for document preparation and retention, for ensuring the qualifications of workers, and for the standards by which such businesses shall operate.

The rule does not apply to local governments.

2. Compliance requirements:

The business of document destruction is now being regulated under the auspices of the Department of State (DOS), and any companies or persons meeting the criteria for registration must do so. The proposed rules are intended to amplify the legislation, and to clarify specifics as to the requirements for registration. Further, pursuant to the statute, the Department is required to publish and makes available a list of registered document destruction contractors who have properly qualified and registered with the Department. By statute, the list of registered document destruction contractors is to be made available to any interested parties by way of online viewing on the Department's website, and also by permitting an interested party to obtain a copy thereof, at a cost to be determined by the Department, which the rules now clarify to be a minimal amount. The proposed rules provide the mechanism for compliance.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Registrant licensees will not incur any significant compliance costs associated with these rules, although there will be compliance costs associated with obtaining the requisite fingerprints of the principals, officers and/or qualifiers for the registrant contractors, and for producing the proper identification cards. The rules do not mandate that any businesses will incur significant expense beyond the expenses made necessary in order to comply with the statutory requirements.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of the implementation of these rules, beyond the requirements already placed upon small businesses which are required to comply with the statute.

6. Minimizing adverse impact:

DOS did not identify any alternatives which would provide relief for registrant contractors, at the same time, be less restrictive and less burdensome on them in terms of compliance.

7. Small business and local government participation:

No comment has been received to the enacted legislation, and no comment has yet been received from the anticipated registrant pool, or the public. Simultaneously with the adopting of the rulemaking as an emergency adoption, the proposed rulemaking has been posted on the Department's website, in an attempt to alert any interested parties, and to seek public comment.

Rural Area Flexibility Analysis

These rules do not impose any adverse impact on rural areas. The rules complement the statutory adoption of the new licensing category of document destruction contractors, such that the procedures for obtaining and renewing registration in this area of business employment will be clear and readily apparent to the public. The Department of State has not received any objection to these procedures from approved providers.

Job Impact Statement

The proposed rule will not have a substantial adverse affect on jobs and employment opportunities for licensed document destruction contractors insofar as Article 39-G of the General Business Law already requires that such qualifying companies register with the Secretary of State. This rule making merely codifies the procedure to obtain Department of State approval to offer and provide services as a registered document destruction contractor.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. SUN-12-09-00002-P

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

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

Statutory authority: Education Law, section 360 (1)

Subject: Proposed amendments to the traffic and parking regulations at the State University of New York College at Delhi.

Purpose: To make certain technical changes and amend existing regulations to fee schedules.

Text of proposed rule: Section 564.11 is amended to read as follows:

§ 564.11 Enforcement.

(a) Routine enforcement of this Part is the responsibility of the [public safety] *university police* office.

(b) General oversight of these procedures in relation to student offenders is the responsibility of the vice president for student development, as is disciplinary action beyond the penalties specified above.

(c) General oversight of these procedures in relation to faculty is the responsibility of the vice president for academic affairs, as is disciplinary action beyond the penalties specified above.

(d) General oversight of these procedures in relation to classified staff members is the responsibility of the vice president for [finance and] administration, as is disciplinary action beyond the penalties specified above.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, System Administration, State University Plaza, S325, Albany, NY 12246, (518) 443-5400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory authority: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure makes technical amendments to the parking and traffic regulations applicable to the State University of New York College at Delhi and also will increase allowable fines for violation of parking regulations.

3. Needs and benefits: Parking fine thresholds applicable to violation of campus parking regulations have not been changed for a number of years. In the meantime, many municipalities have increased parking fines for violation of local parking ordinances, particularly for violation of handicapped parking rules. The increase proposed here will allow SUNY Delhi to have their fines increased to levels comparable to local municipal rules, thus strengthening incentives to avoid violation of campus parking rules.

4. Costs: Individuals who violate the parking rules will experience higher fines.

5. Local government mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY Delhi will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local

governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Delhi.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Delhi.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Delhi.