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

NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the Department of Civil Service publishes new notices of proposed rule making in the NYS *Register.*

Jusisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-35-08-00002-P	August 27, 2008	August 27, 2009
CVS-35-08-00004-P	August 27, 2008	August 27, 2009

Crime Victims Board

NOTICE OF ADOPTION

Verification of Dependency and Financial Circumstances

I.D. No. CVB-27-09-00006-A
Filing No. 1012
Filing Date: 2009-08-26
Effective Date: 2009-09-16

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

Action taken: Amendment of section 525.12 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 631(2), (3) and 632(1)

Subject: Verification of dependency and financial circumstances.

Purpose: To decrease the Board's periodic verification of the dependency and financial circumstances of certain claimants.

Text or summary was published in the July 8, 2009 issue of the Register, I.D. No. CVB-27-09-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, NYS Crime Victims Board, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us

Assessment of Public Comment
The agency received no public comment.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-37-09-00001-E
Filing No. 1011
Filing Date: 2009-08-26
Effective Date: 2009-08-26

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

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

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

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

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

Subject: Empire Zones reform.

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

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

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16

as amended), which governs the empire zones program, is amended as follows:

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

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

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

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

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

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

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

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

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

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

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

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

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

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

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

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

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

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

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be ''grandfathered'' shall

be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 23, 2009.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

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

LOCAL GOVERNMENT MANDATES:

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

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

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

2. Compliance requirements

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

3. Professional services

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

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Licensure Requirements for Registered Professional Nurses and Licensed Practical Nurses and Certified Nurse Practitioners

I.D. No. EDU-35-09-00009-RP

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

Proposed Action: Amendment of sections 64.1, 64.2 and 64.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6507(2), 6905(2) and (4), 6906(2) and (4), 6910(1) and (5)

Subject: Licensure requirements for registered professional nurses and licensed practical nurses and certified nurse practitioners.

Purpose: Clarify education and examination requirements for licensure.

Text of revised rule: 1. Section 64.1 of the Regulations of the Commissioner of Education is amended, effective December 10, 2009, as follows:

§ 64.1 Professional study of nursing.

(a) As used in this section, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation in a fair, consistent, and nondiscriminatory manner, such as an agency recognized for this purpose by the United States Department of Education.

[(a)] *(b)* Registered professional nursing. To meet the professional education requirement, the applicant shall have graduated from:

(1) a program in nursing registered by the department, *accredited by an acceptable accrediting agency, or determined by the department to be the equivalent of a registered or accredited program* as preparation for practice as a registered professional nurse;

(2) a program in nursing approved by the licensing authority in another state, territory or possession of the United States as preparation for practice as a registered professional nurse; or

(3) a general nursing course of at least two academic years in a country outside the United States and its territories or possessions that is satisfactory to the department and that the licensing authority or appropriate governmental agency of said country certifies to the department as being preparation for practice as a registered professional nurse. [For issuance of a limited permit, an applicant shall obtain a score satisfactory to the department on a proficiency examination selected by the department as evidence of equivalent training, if the applicant's nursing education was obtained in a school of nursing outside the United States and its territories and has not been determined by the department to be equivalent in quality and scope to a program of nursing education registered by the department.]

[(b)] *(c)* Licensed practical nursing. To meet the education requirements, the applicant shall have graduated from high school or its equivalent, and shall have:

(1) graduated from a program in nursing registered by the department*, accredited by an acceptable accrediting agency, or determined by the department to be the equivalent of a registered or accredited program as preparation for practice as a licensed practical nurse;*

(2) graduated from a program in nursing [or] approved by the licensing authority in another state, territory, or possession of the United States as preparation for practice as a licensed practical nurse;

[(2) completed preparation in a program determined by the department to be equivalent to the programs described in paragraph (1) of this subdivision;]

(3) graduated from a program in practical nursing of at least nine months in a country outside the United States and its territories or possessions, which program is satisfactory to the department and which program the licensing authority of said country certifies to the department as being preparation for practice as a licensed practical nurse; or

(4) graduated from a general nursing course in a country outside the United States and its territories that is satisfactory to the department and that the licensing authority of said country certifies to the department as being preparation for practice as a professional nurse.

2. Section 64.2 of the Regulations of the Commissioner of Education is amended, effective December 10, 2009, as follows:

§ 64.2 Licensing examinations.

(a) Registered professional nursing. [(1) All parts of the registered professional nurse licensing examination shall be taken each time the candidate is examined.] *Each candidate for licensure as a registered professional nurse shall pass an examination that is acceptable to the State Board for Nursing.*

[(2) Each candidate for licensure as a registered professional nurse examined after November 22, 1961 shall have taken an examination acceptable to the State Board for Nursing. Except as provided in section 64.3 of this Part, each candidate examined after May 31,1974 shall have taken the same examination on the same dates such examination was given in this State.

(3) The registered professional nurse licensing examination results shall be reported as a single score. Applicants who have passed a part or parts of the registered professional nurse licensing examination prior to July 1, 1982 may not retain credit for such part or parts beyond that date.]

(b) Licensed practical nursing. [(1) A candidate for licensure as a practical nurse shall pass an examination acceptable to the State Board for Nursing. Each candidate examined after September 11, 1974 shall have taken the same examination on the same dates such examination was given in this State.] *Each candidate for licensure as a licensed practical nurse shall pass an examination that is acceptable to the State Board for Nursing.*

[(2) The passing score as determined by the State Board for Nursing for the licensed practical nurse licensing examination shall be reported as a single score.]

3. Subdivision (d) of section 64.4 of the Regulations of the Commissioner of Education is repealed and subdivision (e) is relettered as subdivision (d), effective December 10, 2009.

Revised rule compared with proposed rule: Substantial revisions were made in section 64.1(b) and (c).

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

Data, views or arguments may be submitted to: Frank Munoz, Associate Commissioner, New York State Education Department, 2nd Floor, West Wing, Education Building, Albany, NY 12234, (518) 474-1756, email: opopr@mail.nysed.gov

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

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subdivision (2) of section 6905 of the Education Law authorizes the Commissioner of Education to promulgate regulations regarding the education requirements for licensure as a registered professional nurse.

Subdivision (4) of section 6905 of the Education Law requires applicants for licensure as a registered professional nurse to pass an examination satisfactory to the State Board for Nursing and in accordance with regulations of the Commissioner.

Subdivision (2) of section 6906 of the Education Law authorizes the Commissioner of Education to promulgate regulations regarding the education requirements for licensure as a licensed practical nurse.

Subdivision (4) of section 6906 of the Education Law requires applicants for licensure as a licensed practical nurse to pass an examination satisfactory to the State Board for Nursing and in accordance with regulations of the Commissioner.

Subparagraph (iii) of paragraph (c) of subdivision (1) of section 6910 of the Education Law authorizes the Commissioner of Education to promulgate regulations establishing alternative criteria for certification as a nurse practitioner.

Subdivision (5) of section 6910 of the Education Law authorizes the Commissioner of Education to promulgate regulations regarding certificates for nurse practitioner practice.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by assuring that only those who have received an adequate nursing education are licensed and requiring that applicants for licensure as registered professional nurses or licensed practical nurses pass an examination acceptable to the State Board for Nursing. The proposed amendment also makes several technical amendments relating to the examination requirements for licensure as a registered professional nurse and licensed practical nurse and certification as a nurse practitioner.

3. NEEDS AND BENEFITS:

Existing regulations authorize the Department to accept the completion of nursing education completed in a licensure qualifying program registered by the Department in satisfaction of the professional education requirements for licensure as a registered professional nurse (RN) or as a licensed practical nurse (LPN). The proposed amendment authorizes the Department to accept education completed in a nursing program accredited by an accrediting agency acceptable to the Department, or a program determined by the department to be the equivalent of a registered or accredited program. The State Board for Nursing and the Department have determined that graduation from an accredited nursing program satisfactorily demonstrates the completion of the professional education required for licensure. The proposed amendment does not affect any of the other current regulatory alternatives for meeting the professional study requirements for licensure as a registered professional nurse or licensed practical nurse.

The proposed amendment also requires that any applicant seeking licensure as a registered professional nurse or a licensed practical nurse take a licensing examination acceptable to the State Board for Nursing and eliminates current provisions relating to the manner in which the exam is administered because these provisions no longer apply.

The proposed amendment also makes technical corrections to delete current provisions related to limited permits and a proficiency exam, which have not been in effect for at least 20 years, and provisions relating to alternative criteria for the certification of nurse practitioners in a second specialty, which are not available to applicants applying for certification after September 15, 2006.

(b) Cost to local government: None.

(c) Cost to private regulated parties: None.

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards regarding the education of nursing, licensing that are violated by these proposed changes.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Revised Regulatory Flexibility Analysis

The revised rule relates to professional education and examination requirements for licensure as a registered professional nurse or a licensed practical nurse and the certification of nurse practitioners. The purpose of the revised rule is to clarify what professional education is adequate for the licensure of registered professional nurses and licensed practical nurses and to make technical amendments to the examination requirements for licensure due to changes in the manner in which the examination is administered. The revised rule also eliminates the regulatory provisions relating to alternative criteria for certification in additional specialty areas of practice because these requirements are not available to applicants who apply for certification after September 15, 2006.

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

Revised Rural Area Flexibility Analysis

Since filing the Notice of Proposed Rule Making with the Department of State for publication in the State Register on September 2, 2009, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

The proposed amendment relates to professional education and examination requirements for licensure as a registered professional nurse or a licensed practical nurse and the certification of nurse practitioners and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed revised rule that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Definition of Firearms

I.D. No. ENV-37-09-00002-P

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

Proposed Action: Amendment of section 180.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0303

Subject: Definition of firearms.

Purpose: To allow pellet rifles for some hunting.

Text of proposed rule: Section 180.3 of 6 NYCRR is amended as follows:

Section 180.3. Definition *and use* of firearms.

For the purposes of the Fish and Wildlife Law and this Title:

Subdivision (a) of 6 NYCRR section 180.3 is repealed and a new subdivision (a) of 6 NYCRR section 180.3 added:

(a) The terms ''firearm'' and ''gun'' shall mean:

(1) any rifle, pistol, revolver or shotgun which by force of gunpowder expels a missile or projectile capable of killing, wounding or otherwise inflicting physical damage upon fish, wildlife or other animals.

(2) any air-powered rifle or pistol with a rifled barrel, using ammunition no smaller than.17 caliber, and capable of producing projectile velocities of not less than 800 feet per second. For the purposes of the Fish and Wildlife Law, an air-powered rifle or pistol meeting the above specifications shall be considered a gun, and may be used to take protected wildlife whenever such protected wildlife may legally be taken with a rimfire rifle.

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: wildliferegs@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.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

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. Environmental Conservation Law 11-0303 grants the department authority to efficiently manage fish and wildlife resources of the State.

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 hunting. Periodically, the department adjusts its hunting regulations in response to changes in hunting technology. By doing so, wildlife management tools are kept up to date.

3. Needs and benefits:

The department proposes to clearly allow the use of air powered firearms or guns for use in hunting (e.g., rabbits and squirrels). The popularity of these firearms is growing in New York, largely because of technological advancements.

Environmental Conservation Law section 11-0901 states that small game may only be taken with a longbow or gun. However, a ''gun'' is not defined in the ECL or in 6 NYCRR section 180.3 (''Definition of Firearms'') so hunters do not have clear legal guidance allowing the use of air-powered firearms. The department proposes adding language to 6 NYCRR section 180.3 to clearly allow the use of air-powered firearms for hunting.

Air-powered firearms are powered in one of three ways: (1) CO2 cartridges; (2) spring or lever-action to compress air in an internal cylinder; (3) a pneumatic pump to compress air in an internal cylinder. Air-powered firearms designed for small game fire a.22 or.17 caliber ''pellet'' capable of reaching velocities of over 1,200 feet per second. At suitable ranges (up to 50 yards), they are very effective in harvesting small game in a manner comparable to a.22 rimfire rifle. Rimfire rifles are commonly used for hunting squirrels and rabbits.

Air-powered guns are an ideal implement for use by new/young hunters. They are often single shot guns, have virtually no recoil, and they do not have a loud ''report.'' For these reasons, air-powered guns are frequently used in the department's hunter education courses to teach safe gun handling practices, and to develop shooting skills. This proposal would clearly allow the use of these guns for hunting as well.

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 only alternative considered was the ''no action'' alternative. However, this was rejected because the lack of a clear definition for a ''gun'' will mean continuing confusion about the interpretation of our current laws and regulations.

9. Federal standards:

There are no federal standards pertaining to the use of air-powered firearms.

10. Compliance schedule:

Hunters will be able to comply with this regulation during the 2009-2010 hunting season.

Regulatory Flexibility Analysis

The proposed regulation has no effect on small businesses or local governments. It simply clarifies that air-powered firearms or guns may be used for hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not needed.

Rural Area Flexibility Analysis

The proposed regulation has no effect on rural areas. It simply clarifies that air-powered firearms or guns may be used for hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not needed.

Job Impact Statement

The proposed regulation does not affect jobs. It simply clarifies that air-powered firearms or guns may be used for hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Job Impact Statement is not needed.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Sportfishing Regulations

I.D. No. ENV-37-09-00003-P

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

Proposed Action: Amendment of sections 10.2, 10.3 and 10.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316 and 11-1319

Subject: Sportfishing regulations.

Purpose: To revise regulations governing sportfishing and associated activities including use of bait fish.

Substance of proposed rule (Full text is posted at the following State website:www.dec.ny.gov): The purpose of this rule making is to amend the Department of Environmental Conservation's (department) general regulations governing sportfishing (6 NYCRR Part 10). Following biennial review of the department's fishing regulations, department staff have determined that the proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments that the department is proposing:

- Eliminate catch and release only regulations in Hempstead Lake (Nassau County).
- Eliminate the 15 inch minimum size limit for black bass at Fort Pond and Lake Ronkonkoma (Suffolk County).
- Establish a catch and release, year round, season at Randall Pond (Suffolk County).
- Delete the special walleye regulations for Burden Reservoir (Burden Lake) and Dunham Lake (Rensselaer County).
- Delete the baitfish prohibited regulation for Weed Mines Pond (Columbia County).
- Establish a creel limit of 10 fish for river herring (alewife and blueback herring) for the Delaware River and its West Branch bordering Pennsylvania.
- Ban possession of river herring (alewife and blueback herring) in the Waterford Flight (Lock 2-Guard Gate 2) on the Saratoga County side of the Mohawk River.
- Delete the any size limit regulation for northern pike in Lake Adirondack, Hamilton County.
- Apply the statewide regulation for pickerel, eliminating the any size limit regulation in: Essex, Hamilton, Saratoga, Warren and Washington County waters: Schroon Lake and Paradox Lake.
- Apply the statewide regulation creel limit of 50 fish per day for yellow perch and sunfish for Clinton, Essex, Franklin and Hamilton Counties, as well as for Schroon Lake.
- Add new State land trout waters to bait fish prohibited list for Essex, Hamilton, and Washington Counties.
- Allow ice fishing for rainbow trout in Glen Lake (Warren County).

- Delete special walleye regulation for Muskellunge Lake (Jefferson County).
- Prohibit fishing from March 16 until the opening of walleye season in section of the Oswegatchie River (St. Lawrence County).
- Reduce the minimum size limit for lake trout from 21'' to 18'' at Lake Bonaparte (Lewis County).
- Delete special regulation that allows for the harvesting of an additional 5 brook trout (under 8 inches in size) to the statewide creel limit.
- Establish a catch and release artificial lures only trout fishing section Chittenango Creek (Madison County).

Several additional amendments are included, not for the purposes of proposing new regulation changes (i.e. substantive regulation modifications) but (1) to establish or clarify an earlier intended change (that was not correctly documented), or (2) to better clarify an existing regulation (by rewording etc.).

- Verify (as intended earlier) that trout fishing in the Amawalk Outlet (Westchester County) is limited to artificial lures only.
- Verify, as intended earlier that the minimum size for landlocked salmon for Upper Chateaugay Lake and Chazy Lake (Clinton County) is 15 inches.
- Establish more generic wording to protect additional hatchery broodstock (i.e. round whitefish) at Little Green Pond in Franklin County.
- Clarify current language to clarify precise location of where fishing is prohibited during the walleye spawning season, for Great Sacandaga Lake tributaries (Hamilton and Franklin Counties).
- Clarify that the lake trout daily limit of 2 fish, and Landlocked salmon daily limit of 3 fish applies to Warren County (as well as Essex) for Schroon Lake.
- Remove a separate and redundant prohibition against the use of alewives and blueback herring as bait in Lake Champlain, Clinton County, Essex County, Franklin County, Warren County, Washington County and Canadarago Lake (Otsego County).

Text of proposed rule and any required statements and analyses may be obtained from: Shaun Keeler, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, email: skeeler@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 Impact Statement pertaining to these actions is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory Authority

Sections 3-0301 of the Environmental Conservation Law (ECL) establishes the general functions, powers and duties of the Department of Environmental Conservation (department) and the Commissioner, including general authority to adopt regulations. Sections 11-0303 and 11-0305 of the ECL authorize the department to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Section 11-0317 of the ECL empowers the department to adopt regulations, after consultation with the appropriate agencies of the neighboring states and the Province of Ontario, establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara River and the St. Lawrence River. Sections 11-1301 and 11-1303 of the ECL empower the department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the ECL), in all waters of the State. Section 11-1316 of the ECL empowers the department to designate by regulation waters in which the use of bait fish is prohibited. Section 11-1319 of the ECL governs possession of fish taken in waters of the State.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are tools used by the department in achieving the intent of the legislation referenced above. The purpose of setting seasons is to prevent over-exploitation of fish populations during vulnerable periods, such as spawning, thereby ensuring a healthy population. Size limits are necessary to maintain quality fisheries and to ensure that adequate numbers survive to spawning age. Creel limits are used to distribute the harvest of fish among many anglers and optimize resource benefits. Regulations governing the manner of taking fish upgrade the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, and limit exploitation. Catch and release fishing regulations are used in waters capable of sustaining outstanding growth and providing a large population of desirable-sized fish, creating an outstanding opportunity for anglers willing to forego harvesting fish. Prohibiting the use of bait fish in specific waters preserves native fish communities by preventing the introduction of undesirable fish species.

3. Needs and Benefits

Most significant fishery resources in New York State are monitored through annual or periodic survey and inventory by Bureau of Fisheries staff. These fisheries surveys identify particular situations where changes in fishing regulations may be required to maintain the quality of a particular fishery or where significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of users groups or the need to correct or clarify existing regulations. Concepts for regulation amendments that address identified needs are developed by Bureau of Fisheries staff and reviewed with sportsmen's groups at the local, regional, or state-wide level, depending upon the significance of the proposal.

In order to facilitate compliance by the angling public, significant revisions of the department's fishing regulations are currently conducted on a biennial schedule. The proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

4. Costs

Enactment of the rules and regulations described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

6. Paperwork

No additional paperwork will be required as a result of these proposed changes in regulations.

7. Duplication

There are no other State or federal regulations which govern the taking of fish.

8. Alternatives

The primary alternative to the proposed regulations would be to retain current fishing regulations. In the absence of the proposed changes, opportunities to enhance the quality or public use and enjoyment of fisheries may be deferred or lost. Some fish populations may decline if the proposed regulations are not enacted in a timely manner. In addition, in a few instances, such as restriction of the use of bait fish, failure to adopt regulations in a timely manner could result in undesirable and irreversible changes in aquatic community structure.

9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

10. Compliance Schedule

These regulations, if adopted, will be in effect for the 2010-2012 license year, which begins on October 1, 2010. It is anticipated that regulated persons will be able to immediately comply with these regulations once they take effect.

Regulatory Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, record-keeping or other compliance requirements on small businesses or local governments. All reporting or record-keeping requirements associated with sportfishing are administered by the department. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the department's rule making proposal does not change this process.

Fishing guides are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions ECT) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. In fact, positive impacts are anticipated for these

businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Based on the above, the department has determined that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The department has determined that the proposed rules will not impose an adverse impact or any new or additional reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. All reporting or record-keeping requirements associated with sportfishing are administered by the department. The proposed regulations are not anticipated to negatively change the number of participants or the frequency of participation in regulated activities.

Fishing guides are the only entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions, etc.) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the department's rule making proposal does not change this process.

Since the department's proposed rule making will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, record-keeping, or other compliance requirements, the department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

Fishing guides are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions, etc.) are not measures that result in a overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes, and no fishing guide jobs should be lost. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Based on the above, the department has concluded that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a job impact statement is not required.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Prohibition of Motorized Equipment on Certain Lands in the Adirondack and Catskill Parks

I.D. No. ENV-37-09-00007-P

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

Proposed Action: Addition of section 196.8 to Title 6 NYCRR.

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

Subject: Prohibition of motorized equipment on certain lands in the Adirondack and Catskill Parks.

Purpose: To prohibit the use of motorized equipment on wilderness, primitive and canoe areas in the Adirondack Park and on wilderness or primitive bicycle corridor in the Catskill Park to enforce master plan guidelines.

Text of proposed rule: The title to Part 196 is amended to read as follows:

OPERATION OF MOTORIZED VEHICLES, VESSELS, [AND] AIRCRAFT *AND MOTORIZED EQUIPMENT* IN THE FOREST PRESERVE

A new section 196.8 is added to 6 NYCRR to read as follows:

§ 196.8 Operation of motorized equipment in wilderness, primitive, primitive bicycle corridor and canoe areas within the Adirondack and Catskill Parks.

(a) Applicability. This section applies to all state owned lands in the Adirondack Park which are classified as wilderness, primitive and canoe by the Adirondack Park Agency. These lands are depicted on the New York State Department of Environmental Conservation Adirondack Forest Preserve Land Classifications Map, 2009. This section also applies to all state owned lands in the Catskill Park which are classified as wilderness or primitive bicycle corridor by the department. These lands are depicted on the New York State Department of Environmental Conservation Catskill Forest Preserve Land Classifications Map, 2009.

(b) No person or employee of a city, village, town or county government agency or employee of a state government agency other than the department shall possess or operate motorized equipment within the boundaries of an area of state land classified as wilderness, primitive, or canoe in the Adirondack Park, or an area of state land classified as wilderness or primitive bicycle corridor in the Catskill Park, except at times and locations and for purposes authorized by the department or in the performance of activities authorized by an easement or use reservation on lands subject to such easement or use reservation.

(c) The New York State Department of Environmental Conservation Adirondack Forest Preserve Land Classifications Map, 2009 and Catskill Forest Preserve Land Classifications Map, 2009 are available from and published by the New York State Department of Environmental Conservation, 625 Broadway, Albany, New York and on file at the New York State Department of Environmental Conservation Central Office and Regions 3-6 Regional and Sub-Offices.

Text of proposed rule and any required statements and analyses may be obtained from: Peter Frank, Bureau of Forest Preserve Management, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4254, (518) 473-9518, email: pjfrank@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 Negative Declaration has been prepared in compliance with Article 8 of the Environmental Conservation Law.

Regulatory Impact Statement

1. Statutory authority

The Environmental Conservation Law (ECL) provides statutory authority for guaranteeing the beneficial use of the environment without risk to health or safety or unnecessary degradation (ECL Section 1-0101(3)(b)); preserving the unique characteristics of the Adirondack and Catskill forest preserves (ECL Section 1-0101(3)(d)); providing for the care, custody, and control of the forest preserve (ECL Section 3-0301(1)(d)); adopting rules and regulations (ECL Section 3-0301(2)(m)); and exercising care, custody and control of the preserves (ECL Section 9-0105(1)).

2. Legislative objectives

The proposed rulemaking for the prohibition of public use of motorized equipment in areas of the forest preserve classified as wilderness, primitive, canoe or primitive bicycle corridor will contribute to the fulfillment of the legislative objective of the ECL by ''preserving the unique qualities of special resources such as the Adirondack and Catskill forest preserves'' (ECL Section 1-0101(3)(d)). Further, the proposed rulemaking will contribute to the fulfillment of the Adirondack Park State Land Master Plan (APSLMP)and the Catskill Park State Land Master Plan (CPSLMP).

Pursuant to Executive Law Section 816, the Adirondack Park Agency (the Agency) developed the APSLMP for the management of State lands within the Adirondack Park. The APSLMP classifies such lands into nine basic categories: Wilderness; Primitive; Canoe; Wild Forest; Intensive Use; Historic; State Administrative; Wild, Scenic and Recreational Rivers; and Travel Corridors. The classifications are based upon the characteristics of the lands and their capacity to withstand use. The APSLMP sets forth general guidelines for public use and administrative activities in each unit. The APSLMP provides that in wilderness, primitive and canoe areas, ''Public use of motor vehicles, motorized equipment and aircraft will be prohibited.'' The APSLMP has been determined by the courts to have the force and effect of legislation (Helms v. Reid, 394 N.Y.S.2d 987; Supreme Ct., Hamilton Co., 1977).

Though the legislature did not specifically mandate the development of the CPSLMP as it did the APSLMP, the Department developed the CPSLMP to satisfy the general requirements of the ECL and to assure that the management of Forest Preserve lands in the Adirondack and Catskill Parks generally would be consistent. The CPSLMP classifies State lands within the Catskill Park into five basic categories: Wilderness, Wild Forest, Intensive Use, Administrative and Bicycle Corridor. The CPSLMP provides that in wilderness areas, ''Public use of motor vehicles, motorized equipment and aircraft will be prohibited.''

3. Needs and benefits

Since January 1, 1895, the New York State Constitution has directed that the forest preserve be ''forever kept as wild forest lands.'' The APSLMP and CPSLMP classified forest preserve lands within the Adirondack and Catskill Parks and established guidelines for the management of the lands in each classification. Both the APSLMP and CPSLMP define wilderness areas as State lands ''where the earth and its community of life are untrammeled by man-where man himself is a visitor who does not remain,'' having ''outstanding opportunities for solitude or a primitive and unconfined type of recreation.'' Both master plans provide that the primary management guideline for wilderness is to achieve and perpetuate a natural plant and animal community where man's influence is not apparent. Freedom from the sights and sounds of civilization is an essential characteristic of the recreational environment sought by wilderness visitors.

To protect wilderness character, both the APSLMP and CPSLMP require the Department to prohibit the public use of motorized equipment, such as chainsaws and generators, in wilderness areas. In the Adirondack Park, lands classified as primitive and canoe areas are to be managed essentially as wilderness. Therefore, the APSLMP requires the Department to prohibit the public use of motorized equipment in primitive and canoe areas as well.

Since the adoption of the APSLMP in 1972 and the CPSLMP in 1985, there have been numerous instances of the use of motorized equipment in wilderness, primitive and canoe areas by the public. Except with respect to two wilderness areas in the Adirondack Park, there is no law or regulation prohibiting the public use of motorized equipment in those areas. Existing regulations restrict the public use of motor vehicles, motorboats and aircraft on the Forest Preserve. Public motor vehicle use is addressed in 6NYCRR § 196.1. The public use of mechanically propelled vessels and aircraft is addressed in 6NYCRR § 196.4. In addition, regulations specific to the High Peaks Wilderness, 6NYCRR § 190.13, and the William C. Whitney Wilderness, 6NYCRR § 190.33, both within the Adirondack Park, include prohibitions against the public use of motorized equipment. However, no regulation prohibits the public use of motorized equipment on all Adirondack Forest Preserve lands classified as wilderness, primitive and canoe, as required by the APSLMP, and no regulation prohibits the public use of motorized equipment on all Catskill Forest Preserve lands classified as wilderness or primitive bicycle corridor as required by the CPSLMP. The proposed regulation will give Department enforcement staff the ability to enforce Master Plan guidelines intended to protect the wild character of all these areas.

The proposed regulation was discussed with representative groups at meetings of the Department's Forest Preserve Advisory Committee. The group is representative of recreational users, environmental groups and local government. All of the members were supportive of the proposed regulation. Prohibition of motorized equipment was also discussed at public meetings during development of the 2008 Catskill Park State Land Master Plan. No public comments were received opposing the prohibition during the Plan's development. Most people assume that motorized equipment is already prohibited in regulation.

4. Costs

This rulemaking would impose no costs on the regulated public. It would impose no costs on the Department, since existing staff and public information and education programs would be used to publicize and enforce the regulation. There would be no costs to local governments.

5. Local government mandates

This proposal would not impose any program, service, duty nor responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

With the possible exception of a slight increase in the number of citations issued by the Department during the first few months after the regulation would take effect, an increase in paperwork is not expected.

7. Duplication

The proposed regulation would not duplicate any existing State or Federal regulation.

8. Alternatives

The Department considered the proposed regulation to be the most beneficial of the alternatives considered. The ''no action'' alternative would not be acceptable, because the APSLMP and CPSLMP are explicit in requiring that the public use of motorized equipment in wilderness, primitive, canoe area and primitive bicycle corridor be prohibited. The Department could continue to adopt regulations periodically for individual management units. However, the guidelines of the APSLMP and CPSLMP regarding public motorized equipment use apply equally to all units within the wilderness, primitive, canoe area and primitive bicycle corridor classifications. The Department decided that a single comprehensive regulation would be more timely and efficient in implementing Master Plan guidelines and would send a strong message to the public that all wilderness, primitive, canoe area and primitive bicycle corridor deserve equal protection.

9. Federal standards

The public use of motorized equipment is prohibited in Federally-designated wilderness areas. There is no Federal standard that applies to the public use of motorized equipment in State-owned wilderness, primitive, canoe area or primitive bicycle corridor.

10. Compliance schedule

The proposed regulation will become effective on the date of publication of the rulemaking in the New York State Register. No time is needed for regulated persons to achieve compliance with the regulations since compliance consists of not undertaking prohibited activities, as opposed to undertaking required activities. Once the regulations are adopted, they are effective immediately and all persons will be expected to comply with them.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal would impose no reporting, record keeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they would bear no economic impact as a result of this proposal. The proposed rule relates solely to the prohibition of motorized equipment on certain State land classifications within the Adirondack and Catskill Parks.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record keeping or other compliance requirements on rural areas. The proposed rule relates solely to the prohibition of motorized equipment on certain State land classifications within the Adirondack and Catskill Parks.

Job Impact Statement

A job impact statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed rule relates solely to the prohibition of motorized equipment on certain State land classifications in the Adirondack and Catskill Parks.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Drinking Water State Revolving Fund

I.D. No. HLT-37-09-00005-P

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

Proposed Action: Amendment of Part 53 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1161 and 1162

Subject: Drinking Water State Revolving Fund.

Purpose: To accommodate new requirements from the Federal American Recovery and Reinvestment Act (ARRA) of 2009.

Text of proposed rule: Paragraph (1) of subdivision (a) of section 53.2 is amended to read as follows:

(1) Act means Title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') 42 USC section 300-f et. seq*[.]; and as supplemented by the American Recovery and Reinvestment Act of 2009 (ARRA).*

A new Subdivision (e) is to be added to Section 53.4 and to read as follows:

(e) Notwithstanding the foregoing, an eligible project or portion thereof

listed in Category G, as identified in section 53.5(c)(5), shall be evaluated based upon criteria set forth in section 53.5(c)(5) of this part.

Subdivision (a) of Section 53.5 is amended to read as follows:

(a) *With the exception of Category G projects,* [All] *all* completed pre-applications received by the Department will be evaluated and assigned a score based on the priority ranking scoring system described in section 53.4 of this Part, provided, however, that:

A new Paragraph (5) is to be added to Subdivision 53.5(c) and to read as follows:

(5) Category G List: The Category G list shall include projects or portions thereof that address green infrastructure including, without limitation, water and energy efficiency improvements or other environmentally innovative activities or that qualify as a demonstration project of new green infrastructure technology as provided in the IUP. Such projects or portions thereof shall be determined based on an evaluation of benefits to the public and positive (or least negative) impacts on the environment and that shall include, without limitation: economic benefits generated; public health and safety; protection of water quality and the environment; demonstrated readiness; green energy production and/or reduction in energy consumption; regional distribution of projects, or water conservation as provided in the IUP.

Paragraph (2) of Subdivision 53.5(e) is amended to read as follows:

(2) No more than thirty percent (30%) of the annual federal capitalization funds shall be used to give loan subsidies to disadvantaged systems as determined by the Corporation[.]*, except a greater percent of the annual federal capitalization funds may be used to give additional subsidization to eligible recipients when required or authorized by federal laws or regulations. Such additional subsidization shall be provided in accordance with the Act and shall include forgiveness of principal, a negative interest loan or a grant.*

Paragraphs (2) and (3) of Subdivision 53.5(g) are amended to read as follows:

(2) the applicant fails to fulfill expectations, perform duties, or conform to deadlines or conditions established in the project schedule *or the applicant will not be able to satisfy any other conditions precedent to obtaining funding during the period specified in the IUP*; [or]

(3) the applicant has reached the fifty percent (50%) annual Fund resources cap for fundable projects on the Project Readiness List. All projects of an applicant that would cause the applicant to exceed the fifty percent cap will be by-passed for that annual funding cycle[.]*; or*

A new Paragraph (4) of Subdivision 53.5(g) is to be added and to read as follows:

(4) the department determines that another project better addresses water savings/conservation, or energy efficiency improvements or other environmentally innovative activities that meet green infrastructure mandates of the ARRA.

Text of proposed 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

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

Statutory Authority:

Public Health Law (PHL) Sections 1161 and 1162 authorize the Department of Health (Department) to revise 10 NYCRR Part 53 ''Drinking Water State Revolving Fund (DWSRF).''

Legislative Objectives:

The legislative objective of PHL Sections 1161 and 1162 was to expand and enhance public drinking water supplies within New York State. This is in keeping with the objectives of the Public Health Law to protect public health.

The DWSRF was created in 1996 as a result of State legislation and legislation enacted by the U.S. Congress. The DWSRF provides a significant financial incentive for municipally and privately owned drinking water systems to finance needed drinking water infrastructure improvements. The DWSRF is administered jointly by the Department and the New York State Environmental Facilities Corporation (EFC). The Department's primary role is to provide technical review of proposed projects and to develop the ''Readiness List'' for the Intended Use Plan (IUP). The EFC administers the financial aspects of the DWSRF.

Projects eligible for DWSRF financing include investments to upgrade or replace infrastructure needed to achieve or maintain compliance with federal or state drinking water standards, prevent contamination, provide the public with safe affordable drinking water, etc. The American Recovery and Reinvestment Act of 2009 (ARRA) will provide additional funding to New York State via the DWSRF to finance drinking water infrastructure improvements.

ARRA was signed into law by President Obama on February 17, 2009. ARRA (Section 2, Division A, Title VII, subsection (1)) will provide over 86.8 million dollars from the federal government (via the Environmental Protection Agency (EPA)) to New York State for distribution to eligible public drinking water improvement projects. The ARRA requires that at least fifty percent of the 86.8 million dollars be provided as additional subsidization in the form of grants, principal forgiveness, or negative interest loans and that the remainder can be distributed as low interest loans. In addition ARRA requires that twenty percent of the 86.8 million dollars be distributed for ''green infrastructure'' [see paragraph 53.5(c)(5) of the above Express Terms] projects. This twenty percent can be made up of a combination from the grants and loan programs.

Updating Part 53 to accommodate the receipt of additional funds from ARRA will significantly enhance the ability of New York State and the Department to protect public health and helps to assure that drinking water provided to the public meets Department drinking water standards.

Needs and Benefits:

Updating Part 53 to include ARRA funding is necessary for the Department to discharge its duties related to the fund and will significantly enhance and accelerate funding of projects on the Readiness List. (The Readiness List is developed by the Department. Staff experts review proposed projects based on eligibility criteria, scoring and ranking.)

COSTS:

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to State Government:

There will be no additional costs to the State. Existing staff and department resources, when possible, will be used to implement the program (e.g., reviewing projects, administrative support) which would have been used eventually in any event for selected Readiness List projects. This will enable staff to implement the program in a timely manner without the immediate need for additional staff resources. If necessary additional staff may be considered, using ARRA, to ensure the funding will be distributed in a timely and effective manner. Receipt of ARRA funds accelerates the funding of projects that would have had to wait their turn for several months or years if such funding had not been available over the next two years.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is ''shovel ready'' (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet ''green'' standards.

Local Government Mandates:

Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF program would be required to comply with existing DWSRF loan repayment terms. No new additional administrative requirements are mandated for local government. The proposed revisions to Part 53 do not impose new responsibilities on any county, city, town, village, school district, fire district or special district. Local governments choosing to participate will need to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements.

Paperwork:

There are no new ''paperwork'' requirements imposed by these amendments. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF program would be required to comply with existing DWSRF reporting and recordkeeping requirements, such as regular construction inspection reports, submittal of payment records, change orders, etc. Participating local governments will also be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements and also show that their project is shovel ready and, if applicable, ''green.'' It is anticipated that the EPA and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Duplication:

This regulation does not duplicate any existing federal, state or local regulation.

Alternatives:

One alternative to the proposed revisions is to take no action. In that case, however, the State would not be eligible for ARRA funds under the requirements of the ARRA law and the funds targeted for New York State would be distributed to other participating states.

Federal Standards:

Existing federal standards for implementation of the State's DWSRF program must be complied with by the Department. These standards include a capitalization grant agreement, Intended Use Plan, payment schedule, State environmental review process, etc. The capitalization grant agreement must define the types of performance measures, reporting requirements (annual), and oversight responsibilities. Local governments participating in the ARRA enhanced funding program will be required, according to March 2, 2009 guidance from the EPA, to comply with additional weekly reporting requirements, including more frequent construction progress reports, financial disbursements and contract statements. It is anticipated that the EPA and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Compliance Schedule:

Local projects that are selected will need to comply with federal requirements by submitting federally mandated weekly reports as mentioned above once funding can be executed.

Regulatory Flexibility Analysis

Effect of Rule:

ARRA will provide over 86.8 million dollars from the federal government to New York State for distribution to public drinking water improvement projects. At the present time it is estimated that 16 to 25 projects will be funded with the recipients being villages, towns and communities.

Compliance Requirements:

There are no new compliance requirements. Participation in the Drinking Water State Revolving Fund (DWSRF) by local government is voluntary. Local governments choosing to participate in the American Recovery and Reinvestment Act (ARRA) enhanced DWSRF program would be required to comply with existing DWSRF loan repayment terms and requirements. Participating local governments will also be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements.

Professional Services:

No new professional services will be required by this rule. Existing needs, under the present DWSRF program for professional involvement, such as cost accounting and construction oversight, will remain unchanged.

Costs:

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is ''shovel ready'' (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet ''green'' standards.

Costs to State Government:

There will be no additional costs to the State. Existing staff and department resources, when possible, will be used to implement the program (e.g., reviewing projects, administrative support) which would have been used eventually in any event for selected Readiness List projects. This will enable staff to implement the program in a timely manner without the immediate need for additional staff resources. If necessary additional staff may be considered, using ARRA, to ensure the funding will be distributed in a timely and effective manner. Receipt of ARRA funds accelerates the funding of projects that would have had to wait their turn for several months or years if such funding had not been available over the next two years.

Economic and Technological Feasibility:

Since this rule relies on existing Part 53 program requirements local governments and small businesses should be able to comply with existing DWSRF requirements with existing equipment and staff.

Minimizing Adverse Impact:

Federal requirements imposed by this proposal do not differentiate between the size of the municipality. We have adopted design rather than performance standards to provide additional flexibility for municipalities.

Small Business and Local Government Participation:

There has been significant media coverage and public comments on ARRA. In addition the Department staff has met with local and county officials (e.g. Conference of Environmental Health Directors), presented at conferences (e.g., American Waterworks Association) attended by local government and small businesses, and met with the AWWA Regulatory Committee. There has also been extensive outreach to small businesses and local government by the Governor's Office, the Environmental Facilities Corporation (which co-administers the DWSRF with the Department), and the Environmental Protection Agency (EPA).

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Many rural areas have access to public water and there are several hundred rural area water supplies on the New York State Drinking Water State Revolving Fund (DWSRF) Readiness List that would be eligible under the American Recovery and Reinvestment Act (ARRA) enhanced DWSRF program. At the present time it is estimated that 16 to 25 projects will be funded in villages, towns, communities and hamlets that come under the definition of a rural area.

Reporting and Recordkeeping:

The proposed amendments do not mandate new reporting and record keeping requirements. However, if a local government wishes to participate in the ''enhanced'' funding offered by these amendments, they will be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements. It is anticipated that the United States Environmental Protection Agency and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Other Compliance Requirements:

There are no additional compliance requirements other than those described in the Reporting and Record Keeping section above.

Professional Services:

No new professional services will be required by this rule. Existing needs, under the present DWSRF program for professional involvement, such as cost accounting and construction oversight, will remain unchanged and should be able to be handled by existing staff located at the local level.

Costs:

Projected Costs of Compliance:

None

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is ''shovel ready'' (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet ''green'' standards.

Costs to State Government:

There will be no additional costs to the State. Existing staff and department resources, when possible, will be used to implement the program (e.g., reviewing projects, administrative support) which would have been used eventually in any event for selected Readiness List projects. This will enable staff to implement the program in a timely manner without the immediate need for additional staff resources. If necessary additional staff may be considered, using ARRA, to ensure the funding will be distributed in a timely and effective manner. Receipt of ARRA funds accelerates the funding of projects that would have had to wait their turn for several months or years if such funding had not been available over the next two years.

Minimizing Adverse Impact:

Federal requirements imposed by this proposal do not differentiate between the size of the municipality. We have adopted design rather than performance standards to provide additional flexibility for municipalities.

Rural Area Participation:

There has been significant media coverage and public comments on ARRA. In addition the Department staff has met with local and county of-

ficials (e.g. Conference of Environmental Health Directors), presented at conferences (e.g., American Waterworks Association) attended by local government and small businesses, and met with the AWWA Regulatory Committee. There has also been extensive outreach to small businesses and local government by the Governor's Office, Environmental Facilities Corporation (which co-administers the DWSRF with the Department), and the Environmental Protection Agency (EPA).

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The significant additional funding for construction projects will in fact substantially increase employment opportunities, which is the prime objective of ARRA. It is believed that the infusion of several million dollars into the New York State Drinking Water State Revolving Fund (DWSRF) will preserve and create a significant number of jobs, primarily via funding for construction projects of public water supply improvement projects and the commensurate positive effect on preserving and creation of construction sector jobs. Small businesses comprise much of the water supply construction industry in New York State. These businesses include consultant/engineering firms, construction contractors, material and equipment suppliers, analytical laboratories, archaeology firms, etc. Until the number of projects to be funded has been determined it is not possible to precisely estimate the number of small businesses impacted or jobs created; however, at least a few hundred businesses will need to execute contracts to perform construction and affiliated activities necessary to assure completion of the projects. This will, in turn, provide an economic stimulus to localities, including creation and preservation of jobs, and additional tax revenues for local government.

Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Low-Income Housing Credit Qualified Allocation Plan

I.D. No. HCR-37-09-00006-P

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

Proposed Action: Amendment of Part 2040 of Title 9 NYCRR.

Statutory authority: Executive Order No. 135, dated February 27, 1990, as continued by Executive Order No. 9, dated June 18, 2008; U.S. Internal Revenue Code, section 42(m); Public Housing Law, section 19

Subject: Low-income Housing Credit Qualified Allocation Plan.

Purpose: To amend threshold criteria and application scoring utilized in the allocation of low-income housing credits.

Public hearing(s) will be held at: 1:30 p.m., Nov. 2, 2009 at NYSDHCR, 38-40 State St., Hampton Plaza Ballroom, Albany, NY; 1:30 p.m., Nov. 2, 2009 at NYSDHCR, 25 Beaver St., Rm. 510, New York, NY; 1:30 p.m., Nov. 2, 2009 at NYSDHCR, 620 Erie Blvd. W, Suite 312, Syracuse Conference Rm., Syracuse, NY; 1:30 p.m., Nov. 2, 2009 at NYSDHCR, 535 Washington St., Suite 105, Buffalo Conference Rm., Buffalo, NY.

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

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

Text of proposed rule: 9 NYCRR Part 2040 is amended as follows:

Subdivisions (k) through (v) of section 2040.2 are renumbered as subdivisions (l) through (w), respectively.

A new subdivision (k) of section 2040.2 is adopted to read as follows:

(k) Historic building shall mean a structure that meets one of the following criteria:

(1) it is listed on the New York State or National Register of Historic Places, either individually or as a contributing building to a historic district; or

(2) it has been issued a Determination of Eligibility by the Keeper of the National Register of Historic Places; or

(3) it has been identified as a contributing building to a Local Historic District that has been certified by the Keeper of the National Register of Historic Places as substantially meeting the National Register Criteria for Evaluation; or

(4) it has been issued a State Historic Preservation Officer opinion or certification that the building is eligible to be listed on the National Register of Historic Places, either individually or as a contributing building to a historic district.

Subdivision (a) of section 2040.3 is amended to read as follows:

(a) Funding rounds. The division[, no later than January of each year,] will publish *at least annually* in the State Register a notice of credit availability which informs applicants of submission dates and deadlines for future funding rounds.

Subdivision (e)(15)(i) of section 2040.3 is amended to read as follows:

(i) it is a preservation project (as defined at section 2040.2[(q)] *(r)*of this Part); or

Subdivision (e)(18) of section 2040.3 is repealed and a new subdivision (e)(18) is adopted to read as follows:

(18) The project must meet the following green building measures:

(i) select native or non-invasive new trees and plants that are appropriate to the site's soil and microclimate;

(ii) where indicated by local conditions: for new construction, install a passive radon-reduction system to be activated should tests confirm the presence of radon gas in the building; or, for rehabilitation projects, install passive radon-reduction measures to be activated should tests confirm the presence of radon gas in the building upon completion; and

(iii) for properties built before 1978, use lead-safe work practices during renovation, remodeling, painting and demolition.

A new subdivision (e)(19) of section 2040.3 is adopted to read as follows:

(19) Projects must meet an energy efficiency standard as specified in a Request for Proposals published at least annually by DHCR, and shall include the following energy efficiency measures:

(i) new heating systems must utilize Energy Star heating equipment, or the equivalent which will produce the same or comparable energy efficiency or savings;

(ii) new lighting must be Energy Star labeled lighting fixtures in all residential units, and Energy Star or high efficiency commercial grade lighting fixtures in all common areas and exterior locations with the exception of light fixtures located in basements or storage areas;

(iii) new plumbing fixtures must be of a water-conserving type;

(iv) daylight sensors or timers on outdoor lighting must be installed to maximize energy efficiency;

(v) appliances that are labeled Energy Star, including refrigerators and other appliances must be utilized to the greatest extent possible.

Subdivision (f)(1)(iii) of section 2040.3 is amended to read as follows:

(iii) the project is part of a comprehensive community revitalization plan which includes the use or reuse of existing buildings, which may include the historic rehabilitation of existing buildings, and addresses employment, educational, cultural [and] *or* recreational opportunities within the community (5 points);

Subdivision (f)(4) of section 2040.3 is repealed and a new subdivision (f)(4) is adopted to read as follows:

(4) Green building (up to10 points).

Green building consists of three major components: mandatory criteria (required to qualify for points); standard green building criteria (points awarded for compliance); and green measures beyond the standard criteria (additional points awarded for compliance after meeting the standard criteria).

(i) Mandatory criteria (must satisfy all):

(a) submission of a green development plan outlining an integrated design approach for the operation and development of the project;

(b) a surface water management plan; and

(c) a green building operation plan that includes a manual prescribing proper building maintenance, a handbook and an orientation program for tenants and residents which provides information and training on the proper operation of relevant green features.

(ii) Standard green building criteria (7 points total). Scored to the extent the project includes:

(a) smart growth principles including location and neighborhood fabric measures (up to 3 points);

(b) a Phase I Environmental Site Assessment (1 point);

(c) healthy living environment measures, which promote the use of non-toxic materials and improves indoor air quality (up to 3 points).

(iii) Green measures beyond the standard criteria (3 points). Scored to the extent the project meets the minimum standard criteria in

(ii) above and includes at least one of the following green building measures:

(a) project is located on a brownfield, grayfield or adaptive reuse site;

(b) installation of an acceptable renewable energy system that will provide at least 10 percent of the project's estimated electricity; or

(c) utilization of various building products and techniques beneficial to the environment.

Subdivision (f)(5) of section 2040.3 is amended to read as follows:

(5) Long Term Affordability ([7]*5* points). Scored on the extent the applicant proposes to enter into an extended use agreement, which may include a commitment to convey ownership to a local non-profit organization, to operate the project as a qualified low-income housing project for a period longer than 30 years.

Subdivision (f)(6) of section 2040.3 is amended to read as follows:

(6) Fully accessible and adapted, move-in ready units ([6]*up to 5* points): Scored on whether:

(i) at least 5 percent (rounded up to the next whole number) of the project units are fully accessible and adapted, move-in ready*, which includes a roll-in shower,* for person(s) who have a mobility impairment and the unit(s) will be marketed to households with at least one member who has a mobility impairment; and at least 2 percent (rounded up to the next whole number) of the project units are fully accessible and adapted, move-in ready for person(s) who have a hearing or vision impairment and the unit(s) will be marketed to households with at least one member who has a hearing or vision impairment ([3] *2* points); or

(ii) the percentages of units meeting the requirements of subparagraph (i) of this paragraph are equal to or exceed 10 percent and 4 percent (rounded up to the next whole number) respectively (a minimum of two units each)([6]*5* points).

Subdivision (f)(9) of section 2040.3 is amended to read as follows:

(9) Energy efficiency (5 points). Scored to the extent the applicant demonstrates *that, if approved for a credit reservation by the division, [*it] *the project* will be eligible for, will participate in, and will meet the energy efficiency standards of the New York State Energy Research and Development Authority Multifamily Building Performance Program or the New York Energy Star Labeled Homes Program or, [if the project is not eligible to participate in the aforementioned programs,]*the applicant* demonstrates that*, if approved for a credit reservation by the division,* the project will meet comparable energy efficiency standards *acceptable to the division*.

Subdivision (f)(13)(iii) of section 2040.3 is amended to read as follows:

(iii) whether a non-profit organization that does not qualify as a local non-profit organization under section 2040.2([m]*n*), or its for-profit wholly owned subsidiary, has a defined and substantive role in the development or management of the project through the extended use period (1 point).

Subdivision (f)(15) of section 2040.3 is renumbered as subdivision (f)(16) and amended to read as follows:

([15]*16*) Project amenities (*maximum of* 2 points). Scored to the extent the project provides *any of the following (1 point each)*:

(i) access to discounted broadband internet service *to each residential unit*;

(ii) on-site Energy Star *appliances* or equivalent *in common* laundry facilities*,* or washer/dryer hookups *in each residential unit*;

(iii) Energy Star central air-conditioning or the equivalent that will produce comparable energy efficiency or savings;

(iv) an outdoor recreational area or garden space;

(v) Energy Star dishwashers or the equivalent that will produce the same or comparable energy efficiency or savings *in each residential unit and the community kitchen, if any*; [and/]or

(vi) a computer lab *equipped with Energy Star or equivalent computers and equipment, with a minimum of one computer for every 20 residential units*.

A new subdivision (f)(15) of section 2040.3 is adopted to read as follows:

(15) Historic nature of project (up to 3 points). Scored on whether:

(i) the project includes the rehabilitation of a historic building (2 points);

(ii) the applicant demonstrates that the project will include a building that will be eligible for, and the applicant will seek, a federal tax credit for the rehabilitation of historic buildings (1 point).

Subdivision (a) of section 2040.6 is amended to read as follows:

(a) Information requests. Requests for information made under the Freedom of Information Law, must be in writing, and may be mailed to DHCR's Office of Legal Affairs, 38-40 State Street, Albany, NY 12207, or e-mailed to FOIL@[dhcr.state.ny.us]*nysdhcr.gov*.

Subdivision (b)(2)(ii)(b) of section 2040.8 is amended to read as follows:

(ii)(b) *after initial income certifications have been completed for all units in a project,* the certification required by this subparagraph shall not be required *for projects in which 100 percent of the [*if a waiver of the annual income recertification has been obtained for the project from the U.S. Internal Revenue Service (the ''IRS'') and a copy of the recertification waiver has been attached to the annual certification required by this section. The division shall not provide a statement in support of an owner's application for a recertification waiver to the IRS that each] residential [rental] unit*s are LIHC qualified [*in the building was a] low-income unit*s*, [under section 42 of the code at the end of the most recent credit period for the building, if the division has] *unless*: (1) *DHCR has* determined that the project is not in compliance with the provisions of this low-income housing credit qualified allocation plan*, the code* or the regulatory agreement required by section 2040.5 of this Part; (2) *DHCR* has notified the project owner of the event(s) of noncompliance; and (3) the project owner has not documented correction of, or otherwise resolved, the noncompliance to the satisfaction of the division;

Subdivision (c) of section 2040.14 is amended to read as follows:

(c) Funding rounds. A notice of credit availability will be issued *annually* by the DHCR [within six months of] *following* enactment of statute providing credit allocation authority. Such notice shall remain in effect until such time as the SLIHC credit allocation authority is expended or expired.

Subdivision (d)(4) of section 2040.14 is repealed and a new subdivision (d)(4) is adopted to read as follows:

(4) Green building (up to10 points).

Green building consists of three major components: mandatory criteria (required to qualify for points); standard green building criteria (points awarded for compliance); and green measures beyond the standard criteria (additional points awarded for compliance after meeting the standard criteria).

(i) Mandatory criteria (must satisfy all):

(a) submission of a green development plan outlining an integrated design approach for the operation and development of the project;

(b) a surface water management plan; and

(c) a green building operation plan that includes a manual prescribing proper building maintenance, a handbook and an orientation program for tenants and residents which provides information and training on the proper operation of relevant green features.

(ii) Standard green building criteria (7 points total). Scored to the extent the project includes:

(a) *smart growth principles including location and neighborhood fabric measures (up to 3 points);*

(b) a Phase I Environmental Site Assessment (1 point);

(c) healthy living environment measures, which promote the use of non-toxic materials and improves indoor air quality (up to 3 points).

(iii) Green measures beyond the standard criteria (3 points). Scored to the extent the project meets the minimum standard criteria in (ii) above and includes at least one of the following green building measures:

(a) project is located on a brownfield, grayfield or adaptive reuse site;

(b) installation of an acceptable renewable energy system that will provide at least 10 percent of the project's estimated electricity; or

(c) utilization of various building products and techniques beneficial to the environment.

Subdivision (d)(6) of section 2040.14 is amended to read as follows:

(6) Long term affordability ([7]*5* points). Scored on the extent the applicant proposes to enter into an extended use agreement, which may include a commitment to convey ownership to a local non-profit organization, to operate the project as an eligible low-income housing building(s) for a period longer than 30 years.

Subdivision (d)(7) of section 2040.14 is amended to read as follows:

(7) Fully accessible and adapted, move-in ready units ([6]*up to 5* points): Scored on whether:

(i) at least 5 percent (rounded up to the next whole number) of the project units are fully accessible and adapted, move-in ready*, which includes a roll-in shower,* for person(s) who have a mobility impairment and the unit(s) will be marketed to households with at least one member who has a mobility impairment; and at least 2 percent (rounded up to the next whole number) of the project units are fully accessible and adapted, move-in ready for person(s) who have a hearing or vision impairment and the unit(s) will be marketed to households with at least one member who has a hearing or vision impairment ([3] *2* points); or

(ii) the percentages of units meeting the requirements of (i) above are equal to or exceed 10 percent and 4 percent (rounded up to the next whole number) respectively (a minimum of two units each)([6]*5* points).

Subdivision (d)(9) of section 2040.14 is amended to read as follows:

(9) Energy efficiency (5 points). Scored to the extent the applicant demonstrates *that, if approved for a credit reservation by the division,* [it] *the project* will be eligible for, will participate in, and will meet the energy

efficiency standards of the New York State Energy Research and Development Authority Multifamily Building Performance Program or the New York Energy Star Labeled Homes Program or, [if the project is not eligible to participate in the aforementioned programs,]*the applicant* demonstrates that*, if approved for a credit reservation by the division,* the project will meet comparable energy efficiency standards *acceptable to the division*.

Subdivision (d)(14) of section 2040.14 is renumbered as subdivision (d)(15) and amended to read as follows:

(1[4]5) Project amenities (*maximum of* 2 points). Scored to the extent the project provides *any of the following (1 point each)*:

(i) access to discounted broadband internet service *to each residential unit*;

(ii) on-site Energy Star *appliances* or equivalent *in common* laundry facilities*,* or washer/dryer hookups *in each residential unit*;

(iii) Energy Star central air-conditioning or the equivalent that will produce comparable energy efficiency or savings;

(iv) an outdoor recreational area or garden space;

(v) Energy Star dishwashers or the equivalent that will produce the same or comparable energy efficiency or savings *in each residential unit and the community kitchen, if any*; [and/]or

(vi) a computer lab *equipped with Energy Star or equivalent computers and equipment, with a minimum of one computer for every 20 residential units*.

A new subdivision (d)(14) of section 2040.14 is adopted as follows:

(14) Historic nature of project (up to 3 points). Scored on whether:

(i) the project includes the rehabilitation of a historic building (2 points);

(ii) the applicant demonstrates that the project will include a building that will be eligible for, and the applicant will seek, a federal tax credit for the rehabilitation of historic buildings (1 point).

Text of proposed rule and any required statements and analyses may be obtained from: Arnon Adler, Division of Housing and Community Renewal, 38-40 State Street, Albany, New York 12207, (518) 486-5044, email: aadler@nysdhcr.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. Statutory Authority:

Executive Order Number 135, dated February 27, 1990 (as continued by Executive Order Number 9, dated June 18, 2008) authorizes the Division of Housing and Community Renewal's (''DHCR'') Commissioner to administer New York State's annual allotment of federal low-income housing tax credits (''Credit''). U.S. Internal Revenue Code (''IRC'') Section 42(m) requires that Credit be allocated pursuant to a ''qualified allocation plan'' (''QAP''), which DHCR promulgates as a rule. The 2009-2010 State Budget authorizes DHCR to collect fees for Credit program administration (''LIHC Program'').

Public Housing Law Article 2-A (the ''Act'') created the New York State Low-Income Housing Tax Credit Program (''SLIHC Program''). The Act authorizes DHCR to allocate New York State tax credits to those who invest in eligible housing, promulgate rules necessary to administer the SLIHC Program, and also provides that IRC Section 42 shall apply to the SLIHC Program. 9 NYCRR Sections 2040.1 - 2040.13 provide the framework for LIHC Program administration, and 9 NYCRR Section 2040.14 provides the framework for SLIHC Program administration.

2. Legislative Objectives:

Both the LIHC and SLIHC Programs were enacted to encourage private investment in housing that is affordable to low-income persons. The LIHC Program authorizes states to allocate Credit to owners of low-income housing which meets IRC section 42 requirements.

The most significant difference between the LIHC and SLIHC Programs is that LIHC Program is for housing for households earning up to 60 percent of the area median income (''AMI''), while the SLIHC is for housing for households earning up to 90 percent of AMI.

3. Needs and Benefits:

The changes to the existing plan (''Existing Rule'') made by the proposed rule (''Proposed Rule'') would amend 9 NYCRR, Part 2040 to:

(1) Add a defined term ''historic building'' at section 2040.2(k) to clarify the type of structure which qualifies for points under the new ''historic nature of project'' scoring category at 2040.3(f)(15). The federal Housing and Economic Recovery Act of 2008 amended the IRC, mandating that states' QAPs have this selection criterion. This will provide incentives for projects which include rehabilitation of a historic building and leverage funding through a federal historic tax.

(2) Revise, at section 2040.3(a), ''funding rounds'' to clarify DHCR's policy for publishing annual notices of credit availability.

(3) Revise the citation at section 2040.3(e)(15)(i) to reflect the new ordering of definitions.

(4) Delete current threshold green building requirements at section 2040.3(e)(18) and replace with DHCR's current mandatory green building standards. Also, move other current green building provisions to the energy efficiency threshold requirements section - (2040.3(e)(19)) of the Proposed Rule - as described in Paragraph 5 below.

(5) Add a new threshold requirement at section 2040.3(e)(19) requiring projects to incorporate energy efficiency standards to be set forth in DHCR's annual Request for Proposals. This provision provides the flexibility to adjust standards to accommodate constantly evolving industry energy efficiency standards without future rule revisions. This section also incorporates previous ''green building'' threshold requirements more appropriate to an energy efficiency category, such as Energy Star systems, appliances and lighting fixtures, water-conserving fixtures, and sensors or timers on outdoor lighting. Due to rising energy costs and their impact on project viability and rents, the fact that, over the last two years, most applications incorporated many or all these measures, and that most of these requirements are industry standards, DHCR has determined that these standards should be threshold requirements. DHCR anticipates that either there will continue to be no additional costs incurred, as most projects already incorporate these measures, or that additional costs will be offset by operational cost savings and by the Credit allocated.

(6) Amend the ''community revitalization plan'' scoring criteria at section 2040.3(f)(1)(iii) replacing the term ''and'' with ''or,'' to enable projects which are part of such plans to score points if the plan addresses community employment, educational, cultural or recreational opportunities, without addressing all these factors. The amended criteria better measures the need for the type of housing proposed, and recognizes that most locally adopted planning documents do not address all these factors.

(7) Revise the ''Green building'' scoring criteria at section 2040.3(f)(4) to clarify DHCR's current implementation of this provision. The revised provision clarifies which green building criteria must be satisfied prior to being evaluated for scoring points, which must be addressed to qualify for seven of the 10 points available, and which additional measures will qualify for the remaining three points. The revised criteria also set forth the point values associated with specific criteria. A few participants at the April 2009 roundtable discussion held with affordable housing industry representatives believed this criteria adversely impacted the rural projects. This revision shows that both rural and non-rural projects can qualify for points competitively.

(8) Amend the ''long term affordability'' scoring criteria at 2040.3(f)(5) to decrease the point value of the category from seven to five points. The points awarded under this provision, which provides points to projects committing to operating as qualified low-income housing projects for terms of longer than 30 years, are obtained by almost all applicants. As previously stated, two scoring points will be reallocated to new scoring criteria ''historic nature of project'' at section 2040.3(f)(16) in the Proposed Rule.

(9) Amend the ''fully accessible and adapted, move-in ready units'' scoring criteria at 2040.3(f)(6) to reduce points from six to five. DHCR determined that the reduction will not adversely affect the incentive for projects to include these units for persons with mobility or hearing/vision impairments, or the number of such units proposed. DHCR will reallocate the point to the ''historic nature of the project'' criterion at 2040.3(f)(16) in the Proposed Rule.

(10) Amend the ''energy efficiency'' scoring criteria at section 2040.3(f)(9), which provides an incentive to incorporate energy saving measures beyond the threshold requirements, by either involving the expertise and financial resources of NYSERDA or meeting comparable energy efficiency standards without NYSERDA participation. The revised language recognizes that demonstrating eligibility to participate in the NYSERDA Programs or demonstrating that the project will meet comparable energy efficiency standards may be costly and need not be fully explored until after the DHCR has approved for funding and issues a credit reservation.

(11) Revise the citation at section 2040.3(f)(13)(iii) to reflect the new ordering of definitions.

(12) Amend the ''project amenities'' scoring criteria at 2040.3(f)(16) (formerly 2040.3(f)(15)) clarifying that each of the six provisions is worth one point and that projects may obtain two points maximum. Essentially unchanged, the amended criteria clarify that: access to discounted internet service must be provided to each apartment; Energy Star, or equivalent, appliances can be in common laundry facilities or washer/dryer hook-ups in each apartment; Energy Star, or equivalent, dishwashers must be in each apartment and in any community kitchen; and, a resident's computer lab must be equipped with Energy Star, or equivalent, computer equipment, minimum of one computer for every 20 apartments.

(13) Amend 2040.6(a) to include DHCR's new email address for Freedom of Information Law purposes.

(14) Revise section 2040.8(b)(2)(ii)(b) to provide that certifications of tenant income subsequent to initial income certification, will not be required if all the project's units are LIHC qualified low-income units, to comport with the federal Housing and Economic Recovery Act of 2008, which amended the corresponding provision of the IRC.

(15) Delete and replace SLIHC section 2040.14(c) ''funding rounds'' to mirror the LIHC revision described in paragraph 2 above and 2040.14(d) ''project scoring and rating criteria'' as described in paragraphs 6 through 11 in order to coordinate, to the extent possible, the scoring mechanism for both the LIHC and SLIHC Programs.

4. Costs:

(1) Costs to State Government.

There will be no costs to state government because of the proposed amendments to the Existing Rule. DHCR will continue to administer the LIHC and SLIHC Programs with existing staff and resources.

(2) Costs to local government.

None.

(3) Cost to private regulated parties.

The changes made by the Proposed Rule should result in no increased costs to regulated parties. Any increase in costs which result from ''energy efficiency'' requirements will be offset by the Credit allocated to the project, and cost savings.

5. Local Government Mandates:

None.

6. Paperwork:

The rule requires the filing of an application and supporting documentation to establish eligibility for an allocation of the federal tax credits.

7. Duplication:

None.

8. Alternatives:

The alternative to the Proposed Rule is to retain the Existing Rule which does not adequately address DHCR's need to clarify its funding process and scoring criteria, and to revise its scoring criteria to meet new federal requirements. Specifically:

(1) The alternative to defining ''historic building'' at section 2040.2(k) and adding the ''historic nature of project'' scoring criteria at section 2040.3(f)(15) of the Proposed Rule is to fail to comply with a 2008 amendment to the IRC which requires this project selection criterion.

(2) The alternative to revising section 2040.3(a) is to retain the existing provision, which does not correctly indicate the timeframe for DHCR's issuance of a notice of credit availability.

(3) There is no practical alternative to correcting section 2040.3(e)(15)(i) to reflect the new order of the definition of ''preservation project'' at 2040.2(q).

(4) The alternative to replacing section 2040.3(e)18 is to retain the current text, which does not sufficiently reflect DHCR's current mandatory green building standards and includes provisions more appropriate to new section 2040.3(e)(19) ''energy efficiency standards''.

(5) The alternative to adding the ''energy efficiency'' threshold requirements at 2040.3(e)(19) is for the state to fail to incorporate these practices into the Existing Rule, and, as a result, fail to require measures which are needed to ensure affordability, long term viability and energy efficient operation of Credit projects, and conserve energy and water.

(6) The alternative to amending the ''community revitalization plan'' scoring criteria at section 2040.3(f)(1)(iii) is the current text, which made it virtually impossible for projects to qualify for scoring points. The proposed amendment recognizes that it is sufficient for a project to be part of a comprehensive community revitalization plan which addresses at least one of the community ''quality of life'' factors referenced in the criteria since most such local plans do not address all of them.

(7) The alternative to revising the ''green building'' scoring criteria at 2040.3(f)(4) is the current text, which does not clearly denote which mandatory green building criteria must be addressed for projects to qualify for the scoring points and the specific point values associated with the criteria. The language in the Existing Rule required prospective project applicants seeking these scoring points to obtain guidance outside the Rule and raised unwarranted concerns that the criteria adversely affected the competitiveness of rural projects.

(8) The alternative to reducing the point value of the ''long term affordability'' criteria at section 2040.3(f)(5) is to retain the current point value of this provision, resulting in the failure to reallocate the number of scoring points sufficient to provide projects with the incentive to access the new scoring points for ''historic nature of project'' at 2040.3(f)(15) in the Proposed Rule; a scoring criterion required by a recent amendment to the IRC.

(9) As noted directly above, the alternative to reducing the number of scoring points for ''fully accessible and adapted, move-in ready units'' scoring criteria at 2040.3(f)(6) is to fail to provide a sufficient scoring incentive for the new required scoring criteria at 2040.3(f)(15) in the Proposed Rule.

(10) The alternative to amending the ''energy efficiency'' scoring criteria at section 2040.3(f)(9) is to retain existing text which requires applicants, some with limited financial resources, to incur substantial costs prior to application, and which also fails to provide applicants seeking these points with the option of energy efficient projects that do not include NYSERDA's involvement.

(11) The alternative to amending (section 2040.3(f)(15)of the Existing Rule) the ''project amenities'' scoring criteria (section 2040.3(f)(16) of the Proposed Rule) is the current text which does not provide clear guidance regarding DHCR's requirements for accessing these points or the point values associated with the criteria.

(12) The alternative to amending section 2040.6(a) is the current text which contains an incorrect DHCR e-mail address for Freedom of Information requests.

(13) The alternative to revising section 2040.8(b)(2)(ii)(b) regarding tenant income certifications is to retain the current text, which would fail to address a recent amendment to the IRC.

(14) The alternative to deleting and replacing section 2040.14(c) ''funding rounds'' and 2040.14(d) ''project scoring and rating criteria'' is to retain the current SLIHC funding round and program scoring criteria which would then not track the proposed changes to the LIHC Program, nor the changes required by IRC amendments.

9. Federal Standards:

This Rule does not exceed the minimum standards of the federal government for the LIHC Program or the SLIHC Program.

10. Compliance Schedule:

Not applicable. The rule changes will affect only those who apply to DHCR for allocations of Credit after the amendments to the rule are effective.

Regulatory Flexibility Analysis

The Division of Housing and Community Renewal has found that the proposed amendments to the rule at 9 NYCRR Part 2040 (the ''Proposed Rule'') will have no negative impact on small businesses. DHCR sought and utilized the advice of persons who represent small businesses in order to ensure that the Proposed Rule would have no negative impact on small businesses. Prior to drafting the Proposed Rule, DHCR held a roundtable discussion in four regions of the State. The invitees included for-profit and not-for-profit housing developers, attorneys, Credit syndicators and representatives of government agencies with an interest in the Credit program. No participant expressed an opinion indicating that any of the roundtable's discussion topics would adversely affect small businesses. Based upon the roundtable, its prior experience in the allocation of Credit to projects which utilize small business services, and the nature of the amendments, DHCR does not anticipate that the Proposed Rule will have any adverse impact on small businesses or local government.

Rural Area Flexibility Analysis

The Division of Housing and Community Renewal (DHCR) has found that the proposed amendments to the Rule at 9 NYCRR Part 2040 will not impose any adverse economic impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The changes to the existing Rule which would be made by the proposed amendments impose no further requirements in rural areas, will not impose additional capital or compliance costs on person/entities which are located in rural areas, and will have no other adverse impacts on rural areas.

Prior to drafting the Proposed Rule, DHCR held a roundtable discussion in four regions of the State with members of the affordable housing industry who have been active in the Credit program. The invitees included for-profit and not-for-profit housing developers, attorneys, Credit syndicators and representatives of government agencies. No invitee expressed an opinion indicating that the roundtable discussion items would adversely affect rural areas. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no such impact should be anticipated.

Job Impact Statement

The Division of Housing and Community Renewal has found that the proposed amendments to the Rule at 9 NYCRR Part 2040 will have no adverse impact on jobs and employment opportunities. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no adverse impact should be anticipated. The proposed Rule's inclusion of requirements and incentives regarding energy conservation and the minimization of adverse environmental impacts may result in an increase in jobs in related industries.

Office of Mental Health

EMERGENCY RULE MAKING

Personalized Recovery-Oriented Services (PROS)

I.D. No. OMH-37-09-00008-E
Filing No. 1030
Filing Date: 2009-09-01
Effective Date: 2009-09-01

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

Action taken: Amendment of Part 512 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04 and 43.02; Social Services Law, sections 364(3) and 364-a(1)

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

Specific reasons underlying the finding of necessity: The amendments to the Personalized Recovery-Oriented Services (PROS) regs are a direct result of evaluations of operational PROS programs, feedback from PROS providers and new developments in Federal mandates. In order to conform to new billing features, the regulation must be in effect on September 1, 2009.

Subject: Personalized Recovery-Oriented Services (PROS).

Purpose: To modify PROS registration, documentation and program standards, and include the methodology for calculating capital add-on.

Substance of emergency rule: This rule will amend Part 512 of Title 14 NYCRR, which established the licensed program category for Personalized Recovery-Oriented Services (PROS) programs. The complete text of the rulemaking is available at www.omh.state.ny.us.

OVERVIEW

The purpose of a PROS program is to assist individuals in their recovery from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where individuals live, learn, work and socialize. Providers are expected to create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery while supporting a harm reduction philosophy.

The PROS regulations adopted in February, 2008, included a stringent registration process, rigorous documentation requirements, and specific programmatic decisions reflecting current clinical practice. Since adoption of the 2008 PROS regulations, OMH has received valuable information through evaluation of operational PROS programs, feedback from PROS providers and new developments in the federal mandates. Therefore, changes within the PROS regulations are necessary in order to provide an updated, improved mental health delivery system. An overview of the revisions is provided below.

REVISIONS REGARDING REGISTRATION SYSTEM

OMH developed and implemented a PROS registration system that would alert PROS providers and other service providers of potential unauthorized co-enrollment issues. While the PROS registration process accomplished its goal of administering co-enrollment edits via an electronic pre-billing process, it proved to be a complex and costly process for both providers and OMH. Therefore, OMH, in conjunction with the New York State Department of Health, has modified the EMedNY system and the OMH registration system, creating a ''real-time'' registration process. This change will eliminate certain registration and documentation requirements, thus reducing cost to both PROS providers and to OMH.

REVISIONS REGARDING DOCUMENTATION

When the PROS regulations were adopted, modifications were made which increased the documentation requirements related to reimbursement. OMH has since determined that these requirements resulted in a difficult record keeping process which could reduce the efficient operation of a mental health program. The unfunded operational cost of the documentation requirements created clinical and financial strains on PROS providers. The amended regulations modify the PROS documentation requirements in a manner that is consistent with the requirements of other outpatient programs.

REVISIONS REGARDING GROUP SIZE

In many instances, PROS services are provided in a group format. Current regulations state ratios for groups within Community Rehabilitation and Support (CRS) to be 12 recipients to one staff person and, for Intensive Rehabilitation (IR), eight recipients to one staff person. Providers have the flexibility, on occasion, to include up to 15 individuals in CRS groups and 10 individuals in IR groups. However, the existing regulations limit providers, in these cases, to bill for only 12 individuals in CRS groups and eight individuals in the IR groups. Currently, if more than 15 individuals attend a CRS group or 10 individuals attend an IR group, the regulations do not permit billing for any member of the group. The amended regulations remove the provision that disallows payment for all group members when groups exceed 15 for CRS and 10 for IR. The ratios will be maintained in regulation but will be handled as a certification/clinical practice issue.

REVISIONS REGARDING ONGOING REHABILITATION AND SUPPORT

Ongoing rehabilitation and support (ORS) is a service which is designed to provide ongoing counseling, mentoring, advocacy and support for the purpose of sustaining an individual's role in competitive, integrated employment. Current regulations state that providers may only bill the ORS component add-on for individuals who work in an integrated competitive job for a minimum of 15 hours per week. However, provider feedback indicates that 15 hours per week is often unrealistic, and individuals are frequently working 10 hours or more per week, but not the necessary 15 hour minimum. OMH has amended the regulations to reflect a change from 15 hours to 10 hours per week for the minimum required for ORS services.

REVISIONS REGARDING CAPITAL ADD-ON FOR HOSPITAL-BASED PROS

Under the existing regulations, certain hospital-based providers may receive an add-on to their monthly case payment that reflects their capital costs. However, the current regulations do not include the methodology for calculating such add-on funding. The regulations have been modified to include such methodology.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 29, 2009.

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

Regulatory Impact Statement

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

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for services approved by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by the OMH such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner of Mental Health authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for services.

Sections 364(3) and 364-a(1) of the Social Services Law give OMH responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. Legislative Objectives: Articles 7, 31 and 43 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and establish rates of payments for services under the Medical Assistance program. Sections 364 and 364-a of the Social Services Law reflect the role of the Office of Mental Health regarding Medicaid reimbursed programs. The rulemaking furthers the Legislative intent under Article 7 by ensuring that the Office of Mental Health fulfills its responsibility to assure the development of comprehensive plans, programs and services in the care, treatment, rehabilitation and training of persons with mental illness.

3. Needs and Benefits: The Personalized Recovery-Oriented Services (PROS) initiative created a framework to assist individuals and providers in improving both the quality of care and outcomes for people with serious mental illness in New York State.

The PROS regulations adopted in February, 2008, included a stringent registration process, rigorous documentation requirements, and specific programmatic decisions reflecting current clinical practice. Since that

time, OMH has received valuable information through the evaluation of operational PROS programs, feedback from PROS providers, and new developments in the Federal mandates. The changes within the PROS regulations are necessary in order to provide an updated, improved mental health delivery system.

One issue that was needed to be addressed was the registration process. OMH had developed and implemented a PROS registration system, the intent of which was to alert PROS providers and other service providers of potential unauthorized co-enrollment issues that are not otherwise authorized. While the PROS registration process does accomplish its goal of administering co-enrollment edits via an electronic pre-billing process, it proved to be a complex and costly system for providers and OMH. In some cases, the registration system created delays in processing and limited payment for services within the lower pre-admission payment rate. For example, an individual may have received an entire month of PROS services, yet the provider was reimbursed at a level that did not cover the real costs of rendering those services because of the pre-admission payment rate.

It has become apparent that the three phases of PROS enrollment, each carrying a different set of documentation requirements, added greater complexity and costs to OMH and to PROS providers. In addition, OMH staff must be allocated to operate this system, which is difficult in this time of limited fiscal resources. As a result, OMH, in conjunction with the New York State Department of Health, has modified the EMedNY system and the registration system will be adjusted to serve as a ''real-time registration.'' This change will eliminate certain registration and documentation requirements, thus reducing costs to both PROS providers and OMH.

Another area of concern was the documentation requirements within the regulations. When the PROS regulations were adopted, modifications were made which increased the documentation requirements related to reimbursement. OMH has since determined that these requirements resulted in a difficult recordkeeping process which could potentially be disruptive to the efficient operation of a mental health program. The unfunded operational cost of the documentation requirements created clinical and financial strains on PROS providers.

The amended regulations modify the PROS documentation requirements in a manner that is consistent with the requirements of other outpatient programs. Providers will collect information essential to prove medical necessity for services, provide a road map for an individual's participation in the program, and justify individual monthly PROS bills. The changes, however, will allow providers to complete these critical functions effectively and efficiently in a manner that improves clinical care and fiscal accountability. In addition, the changes will allow providers to develop approaches and documentation practices that fit the intent of their program and integrate with their current practice and electronic record keeping and billing systems.

Revisions were also required to the billing processes for certain groups. In many instances, PROS services are provided in a group format. Current regulations state ratios for groups within Community Rehabilitation and Support (CRS) to be 12 recipients to one staff person and, for Intensive Rehabilitation (IR), eight recipients to one staff person. Providers have the flexibility to, on occasion, include up to 15 individuals in CRS groups and 10 individuals in IR groups. However, under existing regulations, providers are limited in these cases to bill for only 12 individuals in CRS groups and eight individuals in the IR groups. Currently, if more than 15 individuals attend a CRS group or 10 individuals attend an IR group, the regulations do not permit billing for any member of the group. The amended regulations remove the provision that disallows payment for all group members when groups exceed 15 for CRS and 10 for IR. The ratios will be maintained in regulation but will be handled as a certification/clinical practice issue.

Changes were also needed regarding ongoing rehabilitation and support (ORS) services. The ORS service is designed to provide ongoing counseling, mentoring, advocacy and support for the purpose of sustaining an individual's role in competitive, integrated employment. It is intended to assist individuals in managing symptoms and overcoming functional impairments as they integrated into a competitive workplace. The existing regulations state that providers may only bill the ORS component add-on for individuals who work in an integrated competitive job for a minimum of 15 hours per week. However, feedback from providers indicates that 15 hours per week is often unrealistic, and individuals are frequently working 10 hours or more per week, but not the necessary 15-hour minimum. In an effort to be responsive to current practice, sensitive to the present economy, and respectful of the clinical benefit to individuals, the agency has amended the regulations to reflect a change from 15 hours to 10 hours per week for the minimum required for ORS services.

Modifications were also needed to include a methodology for calculating add-on funding. Under existing regulation, certain hospital-based providers may receive an add-on to their monthly case payment that reflects their capital costs. As the existing regulations do not provide such methodology, the amended regulations have been modified accordingly.

4. Costs:

(a) Cost to regulated persons: The only potential costs to regulated persons would be for the expenditures incurred by the current 21 licensed PROS providers in making the necessary system changes to adapt their electronic medical records and billing systems to comport with the amended regulations. These costs should be offset by the savings that will be generated by the reduced staff time needed to meet the requirements under existing regulations. All new licensees will experience a savings in costs than would have otherwise occurred under the existing regulations.

(b) Cost to State and local government: None expected. Costs to the State may be lessened as a result of staff savings.

5. Local Government Mandates: The regulation will not mandate any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rulemaking should not result in an increase in paperwork requirements. One of the goals of this rulemaking is to lessen the paperwork burden placed on providers, so ultimately it should result in less paperwork requirements.

7. Duplication: The regulatory amendment does not duplicate existing State or federal requirements.

8. Alternatives: The only alternative would have been to continue with the current PROS regulations in place. As the amendments reflect input from PROS providers and new developments in Federal mandates and should ultimately result in an improved and more efficient mental health delivery system, that alternative was necessarily rejected.

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

10. Compliance Schedule: The regulatory amendment will become effective upon adoption.

Regulatory Flexibility Analysis

The amendments to 14 NYCRR Part 512, Personalized Recovery-Oriented Services, specify new registration processes, documentation requirements and program standards, and provide the methodology for calculating capital add-on funding associated with certain hospital providers. This rulemaking will not create an adverse economic impact upon small business or local governments; therefore, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The amendments to 14 NYCRR Part 512, Personalized Recovery-Oriented Services, specify new registration processes, documentation requirements and programs standards, and provide the methodology for calculating capital add-on funding associated with certain hospital providers. This rulemaking will not impose any adverse economic impact upon rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because there will be no adverse impact on jobs and employment opportunities. The rulemaking merely serves to modify registration processes, documentation requirements, and program standards for Personalized Recovery-Oriented Services (PROS) programs. In addition, it provides the methodology for calculating capital add-on funding associated with certain hospitals.

Division of Probation and Correctional Alternatives

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Graduated Sanctions and Violations of Probation

I.D. No. PRO-37-09-00004-P

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

Proposed Action: Repeal of Part 352 and addition of new Part 352 to Title 9 NYCRR.

Statutory authority: Executive Law, art. 12, § 243

Subject: Graduated Sanctions and Violations of Probation.

Purpose: Ensures a more swift, certain, and timely response to violative behavior to promote greater accountability and public safety.

Substance of proposed rule (Full text is posted at the following State website:www.dpca.state.ny.us): This proposed rule revision which repeals 9 NYCRR Part 352 and adds a new Part 352, is the primary work of the Division of Probation and Correctional Alternatives (DPCA) Violations of Probation Rule Revision Workgroup. It integrates current best supervision practices with respect to the handling of violations of probation involving criminal or family court probationers who are not in compliance with their court-ordered conditions of probation. DPCA's recommended regulatory changes revive many principles and procedures contained in a prior violation rule, in effect from 1982 to 1998, because the Workgroup believed numerous features were reflective of good probation practice and ensure greater consistency throughout the state. Other changes better clarify certain points and provide greater detail as to regulatory expectations to safeguard the public and/or victims, ensure offender accountability, and promote greater utilization of graduated sanctions where appropriate. Below is a summary highlighting noteworthy changes.

Section 352.1 Definitions

A new definitions section has been added to foster better understanding as to key operational concepts: absconder; court notification report; declaration of delinquency; graduated sanctions; reasonable cause or reasonable cause to believe that a person has violated a condition of probation; revocation; violation of probation; violation of probation petition and report.

Section 352.2 Objective

A new objective section has been added to clarify that the overall intent of the revised rule is multifaceted. Its aim is 1) to promote public safety and offender accountability through prompt and decisive action on the part of probation departments; 2) adopt uniform procedures to direct probation response to non-compliant behavior, and facilitate uniform decision-making, and 3) prioritize the use of graduated sanctions as appropriate and where available.

Section 352.3 Applicability

A new section clarifies the rule's applicability to probation violations in both family and criminal courts.

Section 352.4 Graduated and alternative sanctions

Although this is a new section, many of its provisions exist in the current rule (Section 352.1), albeit, with less specificity.

(a) Similar to the current rule Section 352.1(a), this section requires local directors to establish written policies and procedures for determining the appropriate actions to take with respect to any non-compliance with probation conditions. However, these local policies must provide for:

1. newly articulated considerations such as the probationer's history of compliance, gravity of the non-compliant behaviors, dangerousness to self/others, and the presence of victims;

2. newly articulated consideration as to which sanctions might achieve compliance without the need for formal court intervention;

3. similar in concept to current rule Section 352.1(d), the new rule requires the consideration of graduated sanctions, but requires that these sanctions be prescribed so as to be applied fairly and consistently soon after the non-compliant behavior occurs, predictably, and in proportion to the non-compliant behavior;

4. continuation of the current rule Section 352.1(e) requirement that, when a formal Violation Proceeding is being commenced, consideration be given to the viability of continuing the probation sentence with or without modification, extending the probation term, or revoking and resentencing to an irrevocable sentence. When revocation is being recommended, the department must consider proposing, where applicable, a split sentence.

Section 352.5 Procedures for non-compliant behaviors and/or technical violations in criminal courts and for all violations of probation in family courts

This is a significant new regulatory section that provides defined procedures for responding to non-compliant probationer behaviors while at the same time affording considerable local flexibility.

(a) Procedures for responding to such non-compliant behaviors are as follows:

1. Investigating the alleged non-compliance

i. when a probation officer has reasonable cause to believe a probationer has not complied with the conditions, s/he must commence an investigation;

ii. the investigation shall determine the facts and seriousness of the non-compliance.

2. The facts of the investigation shall be presented to the immediate supervisor;

3. With supervisory approval and pursuant to local policy, one of the following actions is to be taken:

i. Administrative Review. When local policy indicates that court involvement is not necessary, a meeting is held with the probation officer, the offender, and the supervisor/director to discuss the non-compliant behaviors and the probationer's progress in achieving the goals of the case plan;

ii. Judicial Reprimand and/or Modification of conditions. After an Administrative Review, the department may request a court hearing for the purposes of modifying the conditions of probation or judicial reprimand;

iii. If a conclusion is reached that a formal Violation of Probation hearing is appropriate, the Violation of Probation Petition and Report is to be prepared by the Probation Officer, approved by the supervisor and forwarded to the court with a request for a Declaration of Delinquency. The report shall be accompanied by a request for a Notice to Appear or a warrant for arrest of the probationer.

(b) Procedures for technical violations in cases of absconders are as follows:

1. A Violation of Probation Petition and Report with requests that a Declaration of Delinquency and warrant for arrest be filed to ensure greater offender accountability.

2. The probation department shall make reasonable efforts, consistent with local resources, to work with law enforcement agencies to address probation violations and warrants.

Section 352.6 Procedures for new offense violations for criminal supervision cases

This is a new regulatory section which incorporates appropriate steps to undertake and amplify procedures with respect to violations involving new criminal offenses.

(a) Procedures upon a probationer's arrest for a new offense prior to conviction are as follows:

1. Investigating the alleged non-compliance

i. when a probation officer has knowledge of a probationer's arrest, s/he must commence an investigation;

ii. the investigation shall determine the facts and seriousness of the alleged offense

2. The results of the investigation shall be presented to the immediate supervisor.

3. With supervisory approval, one of the following actions is to be taken based upon the nature of the alleged offense and the potential threat of probationer to self or community:

i. Arrest for a violation-level offense. Where any such alleged offense(s) occurred, no action shall be required, unless provided for in local policy, until such time as there is a conviction in which event, other provisions apply.

ii. Arrest for a crime. Where any alleged crime(s) occurred, the probation officer must notify the proper court(s) and provide a brief description of the alleged crimes(s) and the status of the case, no later than seven business days upon learning of an arrest from any source. Information shall be recorded in either a Court Notification Report or Violation of Probation Petition and Report. Either report may request issuance of a Notice to Appear to secure the probationer's appearance before the court. However, where the latter report is filed, it shall be accompanied by a request for a Declaration of Delinquency and either a request for a Notice to Appear or a request for a warrant.

iii. Clarified is the department's responsibility to continue to notify the court of any relevant changes in the status of the case.

(b) Procedures upon conviction of a new offense are as follows:

1. Investigating the alleged non-compliance

i. when a probation officer has knowledge of a probationer's conviction of an offense(s) which occurred during the period of probation supervision, he/she must commence an investigation;

ii. the investigation shall determine all relevant facts concerning the new conviction unless this information has been obtained in a prior investigation.

2. The facts of the investigation shall be presented to the immediate supervisor or other probation official;

3. Upon conclusion of the investigation and notification, the probation officer shall file either a Court Notification Report or a Violation of Probation Petition and Report within seven business days of the probation department's knowledge of the conviction.

i. Where the conviction is for a violation-level offense, a Court Notification Report may be filed. A copy of this report shall be retained in the official case record.

ii. Where a Violation of Probation Petition and Report is filed, it shall satisfy the requirement for court notification. Such a report shall be accompanied by a request for a Declaration of Delinquency, if not already granted and either a request for a Notice to Appear or a request for a warrant.

4. In lieu of a recommendation for formal court action, the probation officer, with supervisory approval, may initiate departmental administra-

tive procedures. If issues presented by the conviction can be administratively resolved, the court shall be apprised of the action taken, with a recommendation to the court to allow the probation department to adjust the case administratively.

Section 352.7 Issuance and management of probation warrants and notices to appear

This new regulatory section requires local written policies and procedures which provide greater specificity governing issuance and management of probation warrants than contained in existing DPCA peace officer regulatory provisions (9 NYCRR Section 355.3(d)) and requires that such policies and procedures address notices to appear. Specifically, it requires that such policies and procedures govern the following:

1. circumstances to be considered relative to recommendations of Notices to Appear and warrants where not otherwise required by this Rule,

2. timely preparation and delivery to the appropriate court and where necessary, follow-up communication and documentation of the court's response to such requests,

3. Where the probation department is the holder of warrants involving probationer rearrests:

i. a process that ensures chronological tracking of all warrants from the request, through issuance, receipt at the department, entry into the State's Wanted/Missing Persons file system, intradepartmental chain of responsibility, execution, and as appropriate cancellation. Clarified is that such procedures comply with electronic posting of warrants required by the Division of Criminal Justice Services and issued by the National Crime Information Center;

ii. a process that ensures timely entry of warrants and removal of warrants in compliance with electronic posting requirements and updating of information in DPCA's Integrated Probation Registrant System.

4. Where other law enforcement agencies enter and hold warrants for arrest of probationers, the written policy must clearly delineate the department's responsibility as to issuance, tracking, execution, and cancellation of warrants for arrest. Such policy shall not inhibit the entering/holding agency's ability to comply with aforementioned electronic posting regulations.

Section 352.8 Supervision during a violation proceeding.

This new regulatory section clarifies existing law that requires probation supervision to be continued while a Violation of Probation proceeding is pending before the sentencing/dispositional court, as there has been confusion regarding the role of probation during these proceedings, especially when a Declaration of Delinquency has been issued by the court.

Section 352.9 Notification of court upon probationer's failure to complete alcohol or substance abuse treatment program

Although a new separate regulatory section, it reflects existing regulatory language (Section 352.1(c)) which is based upon statutory language found in Executive Law Section 257(4-a). To optimize compliance, DPCA has retained regulatory language in this area which requires prompt probation officer notification to the director of probation where a probationer ceases participation or is terminated from an alcohol or substance abuse program and subsequent probation director notification to the court within ninety days where such probationer does not resume participation in a program approved by the director.

Text of proposed rule and any required statements and analyses may be obtained from: Linda J. Valenti, Counsel, NYS Division of Probation and Correctional Alternatives, 80 Wolf Road - Suite 501, Albany, New York 12205, (518) 485-2394, email: linda.valenti@dpca.state.ny.us

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

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

Summary of Regulatory Impact Statement

In the Statutory authority section, the Division of Probation and Correctional Alternatives (DPCA) cites Executive Law Section 243 as the statutory authority behind our agency promulgating a regulation in the area of violations of probation and graduated sanctions.

The Legislative objectives section expresses that these amendments are consistent with legislative intent that the State Director of Probation and Correctional Alternatives adopt regulations relating to critical probation functions and promote professional standards governing administration of probation services to ensure offender accountability and advance public/victim safety. Further detail is provided as to the rationale behind these regulatory changes.

The Needs and benefits section summarizes the needs served and benefits achieved by the proposed regulatory changes including but not limited to clarifying departmental responsibilities, implementing more standardized practices, incorporating model probation practices, and ensuring greater efficiency and consistency through specific requirements and general guidance. It highlights certain procedural requirements. Its aim is 1) to promote public safety and offender accountability through prompt and decisive action on the part of probation departments; 2) adopt uniform procedures to control probation response to non-compliant behavior, and facilitate uniform decision-making, and 3) prioritize the use of graduated sanctions as appropriate and where available.

In the Costs section, DPCA conveys that we do not foresee these reforms will lead to significant additional costs to local probation departments or DPCA. The reasoning behind our agency position is set forth.

Under the Local government mandates section, DPCA discusses certain aspects of the existing violation rule and the proposed rule in terms of any additional requirements and explains our justification as to particular new requirements. Additionally, this section explains that proposed changes provide local departments some flexibility and allow departments to create specific procedures that are narrowly tailored to their needs.

The Paperwork section explains that no additional State forms will be required by the proposed regulatory amendments. It further points out that the particular violation reports that the rule refers to are used currently by probation departments. This section also observes that existing DPCA rules require written policies and procedures in the area governing graduated sanctions and warrants, and the proposed changes will require probation departments to review and update such written procedures.

The Duplication section reiterates that the proposed rule does not conflict with any State or federal statute/regulation.

The Alternatives section sets forth why no rule in this area is not a viable option and the reasoning behind strengthening the existing violation of probation rule. Additionally, this section provides details as to DPCA's formation of a workgroup of state and local probation professionals and that the agency circulated two drafts to all probation departments to maximize professional input. Further, this section briefly summarizes DPCA's efforts in satisfactorily working out certain regulatory language to address an issue with respect to absconders raised by New York City Department of Probation and the Council of Probation Administrators to provide greater flexibility in this area.

The Federal standards section states that there are no federal standards governing the probation violation process.

Lastly, the Compliance schedule section concludes that DPCA believes that these regulatory changes will not prove difficult to achieve and that the regulatory amendments will take place 60 days after filing of its adoption.

Regulatory Flexibility Analysis

1. Effect of the Rule: No small business recordkeeping requirements, needed professional services, or compliance requirements will be imposed on small businesses, but the proposed rule does have a direct impact on local governments. There are 58 local probation departments in New York State and this rule applies to all of them.

2. Compliance Requirements: The proposed rule strengthens procedural requirements and improves probation practices. It should not impose significant additional requirements for local probation departments because many of these requirements already exist in law and regulations. For example, Executive Law Section 257(4-a) requires probation to notify the court under specific circumstances when a probationer ceases to participate or is unsuccessfully terminated from an alcohol or substance abuse program. Criminal Procedure Law Section 410.50 requires probation to supervise a defendant throughout the period of supervision. Current DPCA peace officer regulations require probation directors to have peace officer policies as to entry and cancellation of warrants and reciprocal notification. DPCA's existing violation rule requires, unless the court directs otherwise, court notification of conviction of a crime, significant violation, or absconder status within seven (7) business days of knowledge of such information. This rule additionally requires probation to have local written procedures as to the handling of new offense and technical violations and court notification of alleged violations and these procedures must include graduated sanctions. Further, prior to recommending a revocation of probation, such sanctions must be considered.

Also, many of the proposals are best practices and most local departments are currently implementing these practices. For example, many routinely investigate non-compliant behavior and/or any arrest to determine whether there is an alleged violation of probation, timely request declaration of delinquencies and warrants, and have implemented a graduated sanctions approach to the department's handling of non-compliant behavior prior to recommending formal court response to violations of probation. There are no current reporting requirements to the Division of Probation and Correctional Alternatives (DPCA) associated with this new rule. While the proposed rule specifies certain circumstances under which a Court Notification Report or Violation of Probation Petition and Report shall be issued and when a request for a Declaration of Delinquency, Notice to Appear, or a warrant for arrest shall be made, it also provides local departments some flexibility in this area.

Although one already existing form (Declaration of Delinquency) is expected to be completed more frequently, over 50 of the 58 local probation departments use software assisted caseload management systems that automatically create and fill-in the form using information from the case

database. While this new rule requires that written local policies and procedures be adopted in the area of graduated sanctions and the issuance and management of warrants for the arrest of probationers and notices to appear, all departments already have written policies pursuant to existing DPCA regulatory requirements. New language in the area of probation supervision and the response to probationers' failure to abide by court-ordered conditions of probation are normal business activities.

3. Professional Services: No professional services are required to comply with the rule.

4. Compliance Costs: DPCA does not foresee these reforms leading to significant additional costs. The majority of local probation departments have institutionalized most of the features of our prior rule (repealed in 1998) in their local violation policies and procedures. Many of our proposed changes restore these practices to regulation. As to any anticipated costs of in-service training of staff, DPCA believes that orientation can be readily accomplished through written memoranda and supervisory oversight. Other procedural changes where necessary may require internal re-examination of probation professional job responsibilities and revision of existing violation and peace officer policies. This should be able to be accomplished without additional staff resources and through reassignment of certain staff to ensure rule compliance.

DPCA does not foresee that these regulatory reforms will lead to staffing increases or additional costs to local probation departments. Any minimal costs including staff time to revise any local procedures in this area are outweighed by the significant benefits of greater offender accountability and increased public/victim safety interests.

5. Economic and Technological Feasibility: Caseload management technology, while not required, would enhance data collection and tracking. As part of DPCA's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, DPCA has supported the deployment of web-based case management software known as Caseload Explorer. Approximately 44 of the 58 local probation departments utilize or intend to utilize this software in the near future. Additionally, 13 other probation departments use similar software to achieve record-keeping cost efficiencies. These computer software systems facilitate timely generation of forms and reports, improve access to probationer specific case information and status, and assist in the department's management of warrants. The one remaining probation department is rural and its caseloads are extremely small. It uses a manual case management system and should not incur costs in connection with these regulatory revisions. This rule can be implemented using existing technology that all 58 local probation departments already have as all probation departments have access to and are required to input certain probationer specific information, including information regarding violations, into a statewide database referred to as the Integrated Probation Registrant System (I-PRS). This system is hosted by the New York State Division of Criminal Justice Services. Although the localities incur an expense for maintaining internet connectivity with this service there is no other usage costs and the proposed rule will have no impact on connectivity costs. All but one department have elected to purchase software assisted case management systems (such as Caseload Explorer) which assists with day-to-day department operations. Approximately 47 departments will have the capacity for their local case management system to electronically interface with the statewide I-PRS and automatically update I-PRS with probationer specific information. This will eliminate the double entry of data currently performed by these departments. Non-Caseload Explorer departments may elect, at local costs, to revise their software to take advantage of this DPCA supported interface or they may elect to purchase Caseload Explorer which will have that data exchange capability.

6. Minimizing Adverse Impact: DPCA prepared this new rule with the participation of local probation professionals throughout the state and circulated two drafts with opportunity for comment. Some of the recommended changes approved to minimize adverse impact were replacement of ''48-hour'' language regarding warrant issuance or cancellation to ''comply with NCIC requirements'' and elimination of the requirement for local directors to establish written procedural agreements with law enforcement agencies and courts regarding the handling of warrants. Additionally to address NYC concerns, DPCA eliminated certain language with respect to follow up action as to absconders that its department found problematic and reached agreement with NYC and COPA on replacement language that now establishes that each probation department shall make reasonable efforts, consistent with local resources, to work with law enforcement agencies to address probation violations and warrants. It is recognized that this new language takes into consideration the availability of local resources and provides sufficient flexibility in this area for departments so as not to prove burdensome.

7. Small Business and Local Government Participation: DPCA created a workgroup to initially draft a revised violation rule. This workgroup was comprised of representatives from departments across the state and various levels of staffing including: director, deputy director, supervisor, and senior probation officer. DPCA circulated two refined drafts to the members of the State Probation Commission, all probation directors/commissioners, the Council of Probation Administrators (COPA)--the statewide professional association of probation administrators which in turn, assigned it to a specific committee for review. DPCA incorporated numerous suggestions and sought to clarify several additional issues raised, providing flexibility in certain instances. Further, additional refinements were made to address certain COPA and NYC concerns and consensus reached by COPA and NYC and endorsed at a recent State Probation Commission meeting.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty of the 57 local probation departments outside of New York City are located in rural areas and will be affected by the rule amendments.

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

The proposed rule strengthens procedural requirements and improves probation practice, yet should not impose significant additional local probation costs. There are no current reporting requirements to the Division of Probation and Correctional Alternatives (DPCA) associated with this new rule. While the new rule specifies certain circumstances under which a Court Notification Report or Violation of Probation Petition and Report shall be issued and when a request for a Declaration of Delinquency, Notice to Appear, or a warrant for arrest shall be made, it also provides some flexibility in this area. Our proposed revisions are consistent with good professional practice and have been widely accepted by probation departments across the state, including rural areas.

Although one already existing form (Declaration of Delinquency) is expected to be completed more frequently, over 50 departments use software assisted caseload management systems that automatically create and fill-in the form using information from the case database. While this new rule requires more specific written local policies and procedures be adopted in the area of graduated sanctions and the issuance and management of warrants for the arrest of probationers and notices to appear, DPCA's existing rule already requires language as to graduated sanctions be included in local procedures. Further, DPCA's existing Peace Officer Rule, 9 NYCRR Part 355, already contains language as to local peace officer policies and procedures and requires among other provisions, reciprocal notification and cancellation of violation of probation warrants. The peace officer rule provides the more general framework in the area of warrants and the proposed rule addresses this with more specificity to ensure uniform practice as to the violation and warrant process. New language in the area of probation supervision and the response to probationers' failure to abide by court-ordered conditions of probation are normal business activities.

3. Costs:

As part of DPCA's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, DPCA has supported the deployment of web-based case management software known as Caseload Explorer. Approximately forty-four probation departments utilize or intend to utilize this software in the near future and many rural counties benefit from this software. Additionally, thirteen other probation departments use similar software to achieve record-keeping cost efficiencies. The one remaining probation department is rural and caseloads are extremely small. It uses a manual case management system and should not incur costs in connection with these regulatory revisions.

All probation departments have access to and are required to input certain probationer specific information, including information regarding violations, into a statewide database referred to as the Integrated Probation Registrant System (I-PRS). This system is hosted by the New York State Division of Criminal Justice Services. Although the localities incur an expense for maintaining internet connectivity with this service there are no other usage costs and the proposed rule will have no impact on connectivity costs. All but one department have elected to purchase a software assisted case management system (such as Caseload Explorer) which assists with day-to-day department operations. Approximately 47 departments will have the capacity for their local case management system to electronically interface with the statewide I-PRS and automatically update I-PRS with probationer specific information. This will eliminate the double entry of data currently performed by these departments. Non-Caseload Explorer departments may elect, at local costs, to revise their software to take advantage of this DPCA supported interface or they may elect to purchase Caseload Explorer which will have that data exchange capability.

These changes denote specific requirements of effective probation supervision and the response to probationer failure to abide by court-ordered conditions. Any anticipated costs of training staff can be readily accomplished through memoranda, in-service training sessions, and supervision. Other procedural changes may require internal re-examination of probation professional job responsibilities and revision of existing

violation and peace officer policies. This should be able to be accomplished without additional staff resources and through reassignment of certain staff to ensure rule compliance. DPCA does not foresee that these regulatory reforms will lead to staffing increases or additional costs to rural probation departments. Clearly, any minimal costs incurred, including staff time to revise any local procedures in this area, will be strongly outweighed by the significant benefits of increased public safety interests and offender accountability measures in rural communities.

4. Minimizing adverse impact:

DPCA does not anticipate that these regulatory amendments will have any adverse impact on rural areas.

5. Rural area participation:

These revisions were developed by a DPCA working committee comprised of agency staff and representatives from eight local probation departments including all geographic regions of the state. Rural departments and officers involving various levels of probation staff, including directors, deputy directors, probation supervisors, and senior probation officers were part of this committee. Several of the rural probation departments that were part of DPCA's Warrant and Violation Workgroup provided positive feedback on prior drafts. DPCA circulated drafts to all probation directors/commissioners, the members of the State Probation Commission, and the Council of Probation Administrators (COPA)--the statewide professional association of probation administrators. COPA also referred our proposed rule to its Program and Research Committee (PARC), which includes representatives from rural communities for review. DPCA has discussed earlier proposed regulatory changes with COPA's Executive Committee, which includes a cross-section of urban, rural, and suburban jurisdictions.

The proposed regulatory amendments incorporate many verbal and written suggestions from probation professionals, including rural entities, across the state to address problems and situations which probation departments encounter when responding to non-compliant behaviors. The proposed rule has been embraced by the majority of probation departments, which welcome the return of procedural specificity that existed in prior rule. DPCA heard from many probation professionals that this rule is not a significant departure from what departments have instituted in their practices. DPCA did not find significant differences between urban, rural, and suburban jurisdictions as to issues raised or suggestions for change.

Job Impact Statement

A job impact statement is not being submitted with these proposed regulations because it will have no adverse effect on private or public jobs or employment opportunities. The revisions are procedural in nature. They update violation of probation procedures to ensure appropriate investigative activities as well as supervisory and/or court notification occurs where there is probationer noncompliance.

Public Service Commission

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-16-09-00014-A

Filing Date: 2009-08-26

Effective Date: 2009-08-26

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

Action taken: On 8/20/09, the PSC adopted an order approving the petition of Madison Park Owner, LLC, to submeter electricity at 15 East 26th St., New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Madison Park Owner, LLC, to submeter electricity at 15 East 26th Street, New York, New York.

Substance of final rule: The Commission, on August 20, 2009, adopted an order approving a Petition of Madison Park Owner, LLC, to submeter electricity at 15 East 26th St, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

Final rule as compared with last published rule: No changes

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

Assessment of Public Comment

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

(09-E-0265SA1)

NOTICE OF ADOPTION

Rules & Guideline for the Exchange of Retail Access Data between Jurisdictional Utilities & Eligible ESCOs

I.D. No. PSC-17-09-00018-A

Filing Date: 2009-08-26

Effective Date: 2009-08-26

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

Action taken: On 8/20/09, the PSC adopted an order approving changes to the TS810 Bill Ready (Invoice) Standard to enable ESCOs to transmit to the distribution utility budget bill data for presentation on the ESCO portion of the customers' consolidated bill.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guideline for the exchange of retail access data between jurisdictional utilities and eligible ESCOs.

Purpose: To approve uniform statewide Electronic Data Interchange Standards and business practices.

Substance of final rule: The Commission, on August 20, 2009, adopted an order modifying electronic interchange (EDI) standards and test plans for utility bill ready billing, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(98-M-0667SA58)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Sections 894.1 Through 894.4

I.D. No. PSC-20-09-00019-A

Filing Date: 2009-08-27

Effective Date: 2009-08-27

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

Action taken: On 8/20/09, the PSC adopted an order approving the petition of the Town of Colchester, Delaware County, for a waiver of certain provisions of 16 NYCRR Part 894 of the Commission's Rules to expedite cable television service with Time Warner Cable.

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

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To approve the Town of Colchester, Delaware County, and Time Warner Cable to expedite the cable television franchising process.

Substance of final rule: The Commission, on August 20, 2009, adopted an order approving the petition of the Town of Colchester, Delaware County, for a waiver of certain provisions of 16 NYCRR Part 894.1 through 894.4 of the Commission's Rules to expedite the cable television franchising process with Time Warner Cable, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commis-

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

Assessment of Public Comment

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

(09-V-0313SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Windstream and T-Mobile Northeast LLC for Local Exchange Service and Exchange Access

I.D. No. PSC-37-09-00009-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Windstream New York, Inc. for approval of an Interconnection Agreement with T-Mobile Northeast LLC executed on July 30, 2009.

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

Subject: Interconnection of the networks between Windstream and T-Mobile Northeast LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Windstream and T-Mobile Northeast LLC.

Substance of proposed rule: Windstream New York, Inc. and T-Mobile Northeast LLC have reached a negotiated agreement whereby Windstream New York, Inc. and T-Mobile Northeast LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 29, 2011, or as extended.

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

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

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

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

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

(09-01454SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Specific Multifamily and Multifamily Low-Income Residential Electric Energy Efficiency Programs

I.D. No. PSC-37-09-00010-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 petition for rehearing dated August 26, 2009 regarding the design of the New York State Energy Research and Development Authority (NYSERDA) electric and gas Multifamily Performance Program.

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

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

Purpose: To encourage electric energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, adopt with modifications, or reject, in whole or in part, the relief requested by the New York State Energy Research and Development Authority (NYSERDA) in a petition for rehearing dated August 26, 2009 regarding the design of NYSERDA's electric and gas Multifamily Performance Program. NYSERDA seeks rehearing of an order in Case 08-E-1127, *et al*., entitled ''Order Approving Multifamily Energy Efficiency Programs with Modifications'' issued by the Public Service Commission on July 27, 2009. The order was issued as part of the Energy Efficiency Portfolio Standard program.

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

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

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

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

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

(08-E-1132SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Windstream and Access Point, Inc. for Local Exchange Service and Exchange Access

I.D. No. PSC-37-09-00011-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Windstream New York, Inc. for approval of an Interconnection Agreement with Access Point, Inc. executed on July 17, 2009.

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

Subject: Interconnection of the networks between Windstream and Access Point, Inc. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Windstream and Access Point, Inc.

Substance of proposed rule: Windstream New York, Inc. and Access Point, Inc. have reached a negotiated agreement whereby Windstream New York, Inc. and Access Point, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 16, 2010, or as extended.

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

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

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

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

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

(09-01395SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Verizon and INetworks Group, Inc. for Local Exchange Service and Exchange Access

I.D. No. PSC-37-09-00012-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with iNetworks Group, Inc. executed on August 7, 2009.

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

Subject: Interconnection of the networks between Verizon and iNetworks Group, Inc. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Verizon and iNetworks Group, Inc.

Substance of proposed rule: Verizon New York Inc. and iNetworks Group, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and iNetworks Group, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until August 6, 2010, or as extended.

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

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

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

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

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

(09-01576SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of 49 CFR Part 192.233(a) and 16 NYCRR Section 255.233(a)

I.D. No. PSC-37-09-00013-P

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

Proposed Action: The Commission is considering a petition from Brooklyn Union Gas Company d/b/a National Grid NY requesting waivers of Federal and State requirements to permit an increase in the maximum allowable operating pressure of a portion of its Clove Lakes pipeline.

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

Subject: Waiver of 49 CFR Part 192.233(a) and 16 NYCRR section 255.233(a).

Purpose: To consider the Company's request for a waiver of 49 CFR Part 192.233(a) and 16 NYCRR section 255.233(a).

Substance of proposed rule: By petition dated July 15, 2009, the Brooklyn Union Gas Company d/b/a National Grid, (the Company) seeks approval for a waiver of the New York State and Federal pipeline miter joint requirements (16 NYCRR § 255.233(a) and 49 CFR § 192.233(a)) to enable the Company to increase the maximum allowable operating pressure of its Clove Lakes Pipeline on Staten Island, New York. The Company requests to increase the maximum allowable operating pressure of 419 psig to 550 psig, which would increase the specified minimum yield strength up to 40%, 10% greater than allowed in the current pipeline safety standards listed above. The Commission is considering whether to grant or deny, in whole or in part, approval of the waiver.

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

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

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

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

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

(09-G-0552SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether National Grid Should be Permitted to Transfer a Leasehold Interest in Property in Bethlehem, New York

I.D. No. PSC-37-09-00014-P

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

Proposed Action: The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, the petition of Niagara Mohawk Power Corporation, d/b/a National Grid, requesting approval to transfer a leasehold interest in a parcel of real property.

Statutory authority: Public Service Law, section 70

Subject: Whether National Grid should be permitted to transfer a leasehold interest in property in Bethlehem, New York.

Purpose: To decide whether to approve the request to lease National Grid's former Texaco Tank Farm property.

Substance of proposed rule: The Public Service Commission is considering a petition from Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid) and Innovative Municipal Products (U.S.), Inc. (IMUS), requesting approval to transfer a leasehold interest in the former Texaco Tank Farm property owned by National Grid to IMUS.

The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(09-E-0593SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Sale of Customer-Generated Steam to the Con Edison Steam System

I.D. No. PSC-37-09-00015-P

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

Proposed Action: The Commission is considering action under Case 09-S-0029 related to a mechanism for sale of customer-generated steam to the Consolidated Edison Company of New York, Inc. (Con Edison) steam system.

Statutory authority: Public Service Law, sections 79, 80 and 81

Subject: Sale of customer-generated steam to the Con Edison steam system.

Purpose: To establish a mechanism for sale of customer-generated steam to the Con Edison steam system.

Substance of proposed rule: The Commission is considering whether to establish a tariff for the sale of customer-generated steam to the steam system of Consolidated Edison of New York, Inc. (Con Edison). In considering this question, the Commission will take into account factors such as economic benefits for participating and non-participating customers, as well as potential impacts on Con Edison revenues, the potential number and volume of participating customers, system reliability impacts, quality and safety of steam delivered into the system, and potential impacts on air emissions and water quality. Actions of the Commission could include ordering Con Edison to file a tariff, or other actions pertinent to this issue.

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

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

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

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

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

(09-S-0029SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Applicability of Electronic Signatures to Deferred Payment Agreements

I.D. No. PSC-37-09-00016-P

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

Proposed Action: The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, the petition of National Fuel Gas Distribution Corporation requesting a declaratory ruling with respect to the applicability of electronic signatures.

Statutory authority: Public Service Law, sections 30, 37 and art. 2

Subject: Applicability of electronic signatures to Deferred Payment Agreements.

Purpose: To determine whether electronic signatures can be accepted for Deferred Payment Agreements.

Substance of proposed rule: The Public Service Commission is considering a petition from National Fuel Gas Distribution Corporation requesting a declaratory ruling with respect to the applicability of electronic signatures to deferred payment agreements (DPAs) under the Public Service Law. The Commission may adopt, reject or modify, in whole or in part, the relief proposed, and may also consider related matters.

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

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

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

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

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

(09-G-0636SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

S.C. No. 3 - Interruptible Sales and S.C. No. 8 - Interruptible Transportation

I.D. No. PSC-37-09-00017-P

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

Proposed Action: The Commission is considering a proposed filing by Orange and Rockland Utilities, Inc. (O&R) to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service - P.S.C. No. 4 - Gas.

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

Subject: S.C. No. 3 - Interruptible Sales and S.C. No. 8 - Interruptible Transportation.

Purpose: To revise provisions related to reserve requirements for customers served on S.C. Nos. 3 and 8.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Orange and Rockland Utilities, Inc. (the company) to revise tariff provisions related to reserve requirements for customers served on S.C. No. 3 - Interruptible Sales and S.C. No. 8 - Interruptible Transportation. The proposed filing has an effective date of December 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. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

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

(09-G-0638SP1)