

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 Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authorizing Alternative Proofs for Audit by the Comptroller of State Payments

I.D. No. AAC-31-11-00005-P

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

Proposed Action: Repeal of Parts 6 and 21; and addition of section 3.13 and new Part 6 to Title 2 NYCRR.

Statutory authority: State Constitution, art. V, section 1; State Finance Law, sections 8(14), 109, 109-a and 110

Subject: Authorizing alternative proofs for audit by the Comptroller of State payments.

Purpose: To authorize the submission of electronic claims for payments by the State and to update the rates for overtime meal allowances.

Text of proposed rule: Section 3.13 is added to Part 3 Title 2 of NYCRR as follows:

Section 3.13 Overtime meal allowances.

(a) *Overtime meal allowances are paid through the New York State payroll system. Overtime meal allowances shall be granted when it is necessary and in the best interest of the State for an employee to work at least three hours overtime on a regular working day, or at least six hours on a day other than a working day. When an employee is required to work nine hours on a day other than a working day, two overtime meal allowances will be allowed.*

(b) *The overtime meal allowance rate is \$6.00 for represented employees and Management Confidential employees.*

(c) *This section is not applicable to overtime meals of employees in travel status whose expenses are subject to the provisions of travel rules and regulations, nor to employees of departments, agencies, schools or institutions where meal service facilities are available and where it is the policy to provide meals for employees required to work overtime.*

(d) *The Office of the State Comptroller may issue further guidance in the form of manuals and guidelines from time to time.*

Part 6 of Title 2 of the NYCRR is repealed and replaced as follows:
PAYMENTS OF VENDOR CLAIMS AND STATUTORY EXPENDITURES

6.1 Standard forms for claims.

All claims against the State for the delivery of materials, supplies and equipment, for the rendition of services by nonemployees, or for sums due under construction contracts, employee reimbursements, or petty cash reimbursements must be rendered in a format approved by the Comptroller or on a vendor invoice used in the normal course of the vendor's business. Claimants may elect to submit claims in either an electronic format, which may include a data transmittal, an image or other approved format; or a paper format.

6.2 General requirements for claims.

Each claim must be specific and submitted in compliance with State Finance Law § § 109 or 109-a to the agency against whom the claim is made. Claims for services rendered or articles furnished must show when, where, to whom and under what authority the services or articles were rendered or furnished. Claims presented for supplies, materials and equipment must show a detailed description of each item, the quantity of units, the price per unit and the total thereof. Claims submitted for employee travel reimbursements must identify the distance traveled, between what places, the duty or business for the performance of which the expenses were incurred, and the dates and items for each expenditure. If a claim is submitted in paper format, the form must be typewritten or completed in ink. Certification of claims shall be governed by section 6.3 of this Part. If a claim is made for a purchase under contract, the claim must be sent by the vendor to the designated payment office designated by the agency in accordance with Article 11-A of the State Finance Law, and the contract number must be given. If a claim is made for a purchase pursuant to a purchase order, the claim submitted must reference the purchase order in accordance with purchase order procedure. Each claim must contain an invoice number or other unique identifier to enable the identification of the payment issued in satisfaction of the claim. Claims lacking such notation will be considered incomplete and may not be processed.

6.3 Certification of claimant.

All claims submitted to the State must contain a certification by or on behalf of the party submitting the claim to the effect that the claim is just, true and correct, that no part has been paid, except as stated therein, that the balance therein stated is actually due and owing, and that taxes from which the State is exempt are not included therein; provided that no certification shall be required where a claim is submitted through an invoice used in the vendor's normal course of business. Each certification must be signed by the claimant, or authorized representative thereof, whose title must be shown in the space provided therefor. On electronic claims, the certification must include a valid electronic signature in compliance with Article III of the State Technology Law, the Electronic Signatures and Records Act.

6.4 Agency review of claim.

Upon receipt of a claim, the agency shall review the claim to determine whether it is due and payable in whole or in part under the applicable statute, appropriation, contract or purchase order.

6.5 Agency claim certification.

The head of the department concerned, or such authority in the department as has been designated by the head of the department by a rule or written direction, must certify to the Comptroller that the claim as approved is just, true and correct and therefore appropriate to pay. The agency certifier should satisfy himself or herself that acceptable evidence of receipt and/or inspection is on file. The submission of claims by State

agencies to the Comptroller's Office shall be made by an electronic transfer of information into the Statewide Financial System, either directly, or indirectly through the state agency's financial management system. The submission of claims shall be certified by the agency certifier by entry of the unique identification and password that identifies the agency certifier. This unique identification and password is provided by either (i) the Statewide Financial System for those agencies submitting information directly or (ii) the agency's financial management system for those agencies submitting information indirectly.

Electronic certification by a designated officials shall be deemed the equivalent of a conventional written certification by such individuals and shall constitute such individuals' certification that the information entered into the Statewide Financial System, or the agency's financial management system, is correct and just and that payment is approved and the goods or services rendered or furnished are for use in the performance of the official functions and duties of the agency. The individual shall be subject to the same penalties for improper certification that would be applicable if the individual had made such certification in writing.

6.6 Certification of internal controls over the payment process.

(1) Each agency must maintain adequate internal controls over the payment process to support the validity of the agency claim certification. The agency should establish sufficient internal controls over claims processing to ensure claims are appropriate to pay. These controls must include, but are not limited to, the following:

(a) To the extent feasible, separation of duties relating to vendor registration, ordering, receiving and payment functions;

(b) To the extent feasible, separation of on-line data entry of claims from claim certification functions; and

(c) Security over authorized access to agency controlled systems in the form of operator identification and passwords.

(2) The commissioner or head of each agency will be required, annually or upon change of commissioner or agency head, to submit an Internal Controls Certification to the Comptroller's Office certifying that the agency has established such a system of internal controls over the payment process.

6.7 Supporting documentation and retention of records.

(a) Any claim entered into the Statewide Financial System shall be supported by sufficient original source documentation including, but not limited to, a vendor invoice or a vendor claim and a receiving report.

(b) No hard copy material shall be delivered to the Office of the State Comptroller unless specifically requested by the Office of the State Comptroller. However, all such original source documentation and other agency records in support of financial transactions must be retained in accordance with records disposition schedules approved by the State Archives and Records Administration. Agencies must maintain effective audit trails to such records and upon request provide the records promptly to the State Comptroller via electronic transmission or hard copy.

6.8 Appropriation titles.

All claims must identify the appropriation or appropriations being charged, and for such purposes, the appropriation titles furnished by the Comptroller must be utilized. Where articles purchased from two or more appropriations are billed on the same claim, the claim must show the amount chargeable to each appropriation in the space provided therefor.

6.9 Claims for reimbursement of cash expenditures.

Claims for reimbursement must be supported by receipted bills maintained by the state agency. Claims for reimbursement to the petty cash account will name the petty cash account as the claimant. Except where otherwise specifically authorized, claims against the State should be paid only from established, authorized funds.

6.10 Cash discounts.

It is the policy of the State to take cash discounts for which the State is eligible. The agency shall identify any discounts available and the conditions and restrictions applicable thereto and establish the extent to which the State qualifies for such discounts.

6.11 Prepayment of certain expenses.

Claims for certain articles may be paid in advance of receipt. Such articles will be limited to articles normally prepaid, such as postage, subscriptions and rent. Appropriate documentation must be maintained at the agency.

6.12 Agency reconciliation of claims to payments.

If the amount of any claim is reduced, or the claim is rejected in the Comptroller's audit, the certifying agency must notify the claimant. Subsequent to payment, the Statewide Financial System will provide each agency with a record of payments made on behalf of the agency. Agencies should use these records as a basis for posting and reconciliation to expenditure records.

6.13 Petty cash account.

The head of a department or agency may request that a petty cash account be established for his or her department or agency in accordance with section 115 of the State Finance Law. The monies in the account

shall be used in accordance with accounting policies and procedures established by the Comptroller.

Part 21 of Title 2 NYCRR is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Esq., NYS Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.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

1. Statutory authority: Pursuant to Article V, section 1 of the State Constitution and section 111 of the State Finance Law, the Comptroller is charged with auditing all vouchers before payment. Section 109 of the State Finance Law describes the proofs that must be provided in connection with the submission of claims to the Comptroller for audit. Section 109-a of the State Finance Law gives the Comptroller authority to prescribe, by regulation, for a system whereby State agencies, vendors and providers of services provide proofs required for payment upon audit without the submission of vouchers or invoices, including paperless or electronic vouchers. State Finance Law section 8 authorizes the Comptroller to operate and maintain and, at his discretion, revise and modify a state accounting and financial reporting system.

2. Legislative objectives: The proposed rules, which incorporate a number of provisions in the regulations being repealed, describe generally the process for the submission of claims to the Comptroller for audit. The proposed rules reflect the Comptroller's determination that, in the interests of efficiency and environmental sustainability, documents, approvals and certifications necessary to audit State payments should, to the maximum extent possible, be submitted to the Comptroller in the form of electronic transactions within the State Financial Services Online System ("SFS") (as has been the case previously under the Comptroller's "QuickPay Voucher Payment System"). As required by section 109-a, the Comptroller has determined that this alternative format "offers the same degree of accountability and control as provided for in the paper format established by the provisions of sections 109 and 110 of the State Finance Law" and, indeed, it is believed that the new format will offer an improved degree of accountability and control.

3. Needs and benefits: These amendments to the NYCRR are necessary to implement the State's new central accounting system, the SFS, currently scheduled to "go live" in October 2011, which will require that all State agencies submit claims through the SFS. Specifically, the proposed regulations will prescribe the method by which claims are submitted and certified by vendors, employees, other claimants and State agencies. While vendors, employees and other claimants may submit claims by hard copy or electronically, agencies will be required, upon receipt of a claim, to certify and forward the claim to the Comptroller's Office for audit electronically.

In connection with the adoption of these procedures, "Part 21 'Quick Pay' Voucher Payment System" is repealed, however; many concepts of Part 21 are incorporated into the new "Part 6, Payments of Vendor Claims and Statutory Expenditures". This is because under the SFS, the entire State payment system will function in a way similar to the current Quick Pay system.

4. Costs:

a. Cost to regulated parties: It is anticipated that the proposed regulations will not impose significant increased administrative costs on State agencies because agencies are already submitting most claims electronically. However, to the extent there will be increased costs on State agencies for interface with the SFS, there is an appropriation available to State departments, State agencies and public benefit corporations for the development and implementation of SFS. Claimants, who are not State departments, State agencies or public benefit corporations, have the option of submitting documentation electronically or in paper format. There should be no new costs for such claimants, since their costs should be the existing, normal business costs for billing, except where claimants choose to submit claims electronically, in which case, it may reasonably be expected that the costs will be less (since otherwise the claimant, presumably, will elect to continue to submit claims in paper format).

b. Cost to the agency: The Office of the State Comptroller will utilize the same appropriation as discussed above.

c. Source/methodology: The appropriation was made by section 1 of chapter 50 of the laws of 2008 to the Division of the Budget, and transferred and re-appropriated to the SFS pursuant to the provisions of chapter 50 of the laws of 2010.

5. Local government mandates: To the extent that local governments submit claims to the State, they will be required to comply with the proposed regulations; however, since they will be claimants, the rules do not require that local governments submit claims to agencies electronically.

6. Paperwork: As noted, these proposed rules are intended to minimize the paperwork submitted to the Office of the State Comptroller by allowing vendors, employees, and other claimants to submit all claims electronically, and by requiring State agencies to process claims through the SFS.

7. Duplication: Section 305 of the State Technology Law prohibits State agencies from requiring any person to submit or file any record electronically, except as otherwise provided by law. The proposed rules permit, but do not require, any claimant to submit their claim electronically. However, the proposed rule does require State agencies to process claims, after receipt and approval by the agency, electronically through the SFS. The Office of the State Comptroller believes that this requirement is permitted under section 305 based upon the provisions of section 109-a of the State Finance Law that authorize the Comptroller, by regulation, to establish a system whereby proofs required for audit of State payments are submitted electronically.

8. Alternatives: No significant alternatives were considered.

9. Federal standards: There are no federal standards relating to the submission of claims to the State Comptroller's Office for audit.

10. Compliance schedule: All vendors, employees, other claimants and State agencies are expected to comply with the proposed rules upon the implementation of SFS.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rules, which incorporate a number of provisions in the regulations being repealed, describe generally the process for the submission of claims to the Comptroller for audit, and will aid in the implementation of the State's new central accounting system, the Statewide Financial System (SFS). The regulations provide that claims by vendors, employees and other claimants, including small businesses and local governments, may be submitted by hard copy or electronically, and that agencies will be required, upon receipt of the claim, to certify and forward the claim to the Comptroller for audit electronically. The rules will affect all businesses, small and large, and all local governments throughout New York State who do business with, or submit claims to, the State of New York. An estimated 80,000 businesses/vendors will be affected. Although we are unable to easily estimate the number of small business and local governments that will be affected, it is reasonable to assume that most local governments submit claims to the State of New York.

2. Compliance requirements: The proposed rules include a description of the procedures whereby claimants, including small businesses and local governments, submit claims to the State. The proposed regulations provide that claims by vendors, employees and other claimants may be submitted by hard copy or electronically, and that agencies will be required, upon receipt of the claim, to certify and forward the claim to the Comptroller for audit electronically.

3. Professional services: No professional services will be necessary to comply with these proposed rules; however, it will be necessary to have internet access if small businesses or local governments choose to provide claims electronically.

4. Compliance costs: There is no fee imposed by these proposed rules. The only costs to claimants, including claimants who are small businesses or local governments, would be the normal, existing, costs associated with submission of bills or invoices. If claimants, who are small businesses or local governments, elect to submit claims electronically they will need internet access. However, any claimant may submit either electronic format or a hard copy.

5. Economic and technological feasibility: Small businesses and local governments who opt to send claims electronically will need internet access.

6. Minimizing adverse impact: We do not anticipate any adverse impact. Virtually all small businesses and local governments have online access and, in any event, as noted previously, they will not be required to submit claims electronically.

7. Small business and local government participation: A press release will be issued on the Comptroller's website in order to provide notice of the proposed rules and will provide contact information so that interested parties might comment on the proposed rules.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These proposed rules will affect all claimants who enter into contracts with the State or otherwise are receiving funds from the State, including any claimants, vendors and employees and local governments in rural areas. The Office of the State Comptroller cannot easily calculate an accurate estimate of how many of these claimants are located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed rules include a description of the procedures whereby claimants, including rural claimants, submit claims to the State. The proposed regulations provide that claimants may submit claims by hard copy or electronically, and that agencies will be required, upon receipt of the claim, to certify the claim to the Comptroller for audit

and payment electronically. Therefore, claimants, including rural claimants, will, if they elect to utilize electronic methods, need to have internet access. It is noted, however, that claimants are not required to transmit information electronically; hard copies may be submitted instead of electronic documents. No professional services are likely to be needed in rural areas to comply with the proposed rules.

3. Costs: There is no fee imposed by these proposed rules. The only costs to claimants, including claimants in rural areas, would be the normal costs associated with submission of bills or invoices. If claimants, including claimants in rural areas, elect to submit claims electronically they will need internet access. However, if any claimant chooses not to use an electronic format they may submit a hard copy.

4. Minimizing adverse impact: We do not anticipate any adverse impact. The process for claimants to submit claims to the State remains essentially the same except that the proposed rules create the option of electronic submissions. Virtually all claimants, including claimants in rural areas, have online access. In any event, the rules allow for hard copy documents to be submitted instead of electronic records. This will mitigate any hardship imposed upon entities without internet access.

5. Rural area participation: A press release will be issued on the Comptroller's website providing notice of the proposed rules and will provide contact information so that interested parties, including parties in rural areas, may comment on the proposed rules.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-31-11-00008-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Program Manager.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-31-11-00009-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Indigent Legal Services," by adding thereto the positions of Confidential Assistant, Manager of Information Services and Special Assistant.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-31-11-00011-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To add a heading and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, by adding thereto the heading "Department of Corrections and Community Supervision," and the positions of Assistant Commissioner (2) and Deputy Commissioner.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-31-11-00012-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by adding thereto the positions of Assistant Chief Investigations (OPWDD) (5); and,

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by adding thereto the positions of Internal Investigator 1 (OPWDD) (66) and Internal Investigator 2 (OPWDD) (13).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-31-11-00013-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Economic Development, by adding thereto the position of Executive Deputy Director and by increasing the number of positions of Deputy Director from 2 to 5, Secretary from 2 to 3 and Special Assistant from 2 to 4; and,

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by adding thereto the positions of Associate Policy Analyst NYSTAR (1) and Supervising Program Representative NYSTAR (1).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

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Education Department

**EMERGENCY
RULE MAKING**

Teaching Certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field

I.D. No. EDU-09-11-00005-E

Filing No. 635

Filing Date: 2011-07-15

Effective Date: 2011-07-15

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

Action taken: Amendment of Part 80 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305(1), (2), 3001(2), 3004(1), (6) and 3006(1)

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

Specific reasons underlying the finding of necessity: Supply and demand data has shown that in many regions of New York there is a shortage of certified teachers in the areas of science and mathematics. To address this issue, the proposed regulations have been developed to create an expedited pathway for individuals with advanced degrees in STEM and related teaching experience at the postsecondary level to become certified teachers in mathematics or one of the sciences or a closely related field.

At its February 2011 meeting, the Board of Regents adopted the proposed amendment which provides eligible candidates with advanced degrees in the STEM areas and teaching experience at the postsecondary level with two certification options. The candidate could obtain a Transitional G certificate to teach math or one of the sciences at the secondary level without completing additional pedagogical study for two years. The district would commit to providing mentoring and appropriate professional development in the areas of pedagogy during the period that the teacher is employed on a Transitional G certificate. After two years of successful teaching experience with the district on a Transitional G certificate the teacher would be eligible for the initial certificate in that subject area.

The other option is for individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

Following publication of the proposed amendment in the State Register on March 2, 2011, the Department received two comments. An assessment of public comment is attached. In response to these comments, the proposed amendment has been amended in three ways:

1. To address the commenter's concerns about teachers using this expedited pathway to immediately teach in the middle school grades, the proposed amendment has been revised to apply only to Grades 7-12 level certificates.

2. The deadline for individual evaluation has been extended beyond February 1, 2012 for candidates pursuing this expedited pathway.

3. The Department has also added language to the regulation to require the school district that will employ the candidate seeking a Transitional G certificate, to create and maintain a plan for mentoring and instructional support. This is in addition to the required 70 or more hours of professional development targeted toward pedagogical skills.

A Notice of Revised Rule Making was published in the State Register on June 1, 2011. It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its July 2011 meeting, which is the first scheduled meeting after the expiration of the 30-day public comment period mandated by the State Administrative Procedures Act for revised rule makings. Emergency action is needed to ensure that the revised rule remains continuously in effect until it can be adopted as a permanent rule on August 10, 2011.

Subject: Teaching certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field.

Purpose: To allow individuals with advanced degrees in the STEM areas and related teaching experience to teach certain subjects in 7-12.

Text of emergency rule: 1. Paragraphs (45) through (47) of subdivision (b) of Section 80-1.1 of the Regulations of the Commissioner of Education should be renumbered (46) through (48) of Section 80-1.1 of the Regulations of the Commissioner of Education, effective July 15, 2011.

2. A new paragraph (45) of subdivision (b) is added to Section 80-1.1 of the Regulations of the Commissioner of Education, effective July 15, 2011, to read as follows:

(45) *Transitional G certificate means the first teaching certificate obtained by a candidate who holds an appropriate graduate degree in science, technology, engineering or mathematics and has two years of acceptable experience teaching in a post-secondary institution, that qualifies that individual to teach in the public schools of New York State, subject to the requirements and limitations of this Part, and excluding the provisional certificate, initial certificate, internship certificate, conditional initial certificate, transitional A certificate, transitional B certificate and transitional C certificate.*

3. Subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, to read as follows:

(i) [The] (a) *Except as otherwise provided in subdivision (b) of this section, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and*

Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test.

(b) *Examination requirement for candidates with a graduate degree in science, technology, engineering or mathematics and two years of post-secondary teaching experience in the area of the certificate sought. Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in (grades 7-12) and who is seeking an initial certificate through individual evaluation under section 80-3.7(a)(3)(ii)(c) shall not be required to achieve a satisfactory level of performance on the written assessment of teaching skills examination or the content specialty test.*

4. Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective July 15, 2011, to read as follows:

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. [This] *Except as otherwise provided in this section, this option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for any other certificate in the classroom teaching service by February 1, 2012, and who upon application qualify for such certificate. Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under 80-3.7 (a)(3)(ii)(3) may continue to meet the education requirements for classroom teaching certificates through individual evaluation after February 1, 2012.* The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

(a) Satisfaction of education requirements through individual evaluation for initial certificates in all titles in classroom teaching service, except in specific career and technical subjects within the field of agriculture, business and marketing and consumer services, health, a technical area, or a trade (grades 7 through 12).

(1) . . .

(2) . . .

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(3) Additional requirements. A candidate seeking to fulfill the education requirement for the initial certificate through individual evaluation of education requirements shall meet the additional requirements in this paragraph or their substantial equivalent as determined by the commissioner, if so prescribed for that certificate title, in addition to the general requirements prescribed in paragraph (2) of this subdivision.

(i) . . .

(ii) Specialist in middle childhood education (5-9) and adolescence education (7-12).

(a) . . .

(b) . . .

(c) *For candidates with a graduate degree in science, technology, engineering or mathematics and two years of postsecondary teaching experience in the certificate area to be taught or in a closely related subject area acceptable to the Department, who apply for a certificate or license in (grades 7-12) on or after February 2, 2011 in earth science, biology, chemistry, physics, mathematics or a closely related field, the candidate shall not be required to meet the general requirements in paragraph (2) (iii), (iv) or (v) of subdivision (a) of this section. However, the candidate shall meet the following requirements:*

(1) *Degree completion. The candidate shall possess a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees and whose programs are registered by the Department. The candidate shall have completed a graduate major in the subject of the certificate sought, or in a related field approved by the department for this purpose.*

(2) *Post-secondary teaching experience. The candidate must show evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.*

(3) *Pedagogical study or two years of satisfactory teaching experience in a school district under a Transitional G certificate. The candidate shall complete one of the following:*

(i) *at least six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study for the initial certificate in the area of the candidate's certificate, as prescribed for the certificate title in this paragraph, which shall include study in the methods of teaching in the certificate area, teaching students with disabilities; curriculum and lesson planning aligned with the New York State Learning Standards; and classroom management and teaching at the developmental level of students to be taught; or*

(ii) *at least two years of satisfactory teaching experience in a school district while the candidate holds a Transitional G certificate under this Part.*

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

(viii) . . .

(ix) . . .

(x) . . .

(xi) . . .

(xii) . . .

(b) . . .

(c) . . .

5. Section 80-5.22 of the Regulations of the Commissioner is added, effective July 15, 2011 as follows:

§ 80-5.22 *Transitional G certificate for career changers and others holding a graduate or higher degree in science, technology, engineering or mathematics and with at least two years of acceptable post-secondary teaching experience.*

(a) *General requirements.*

(1) *Time validity. The transitional G certificate shall be valid for two years.*

(2) *Limitations. The transitional G certificate shall authorize a candidate to teach only in a school district for which a commitment for employment has been made. The candidate shall meet the requirements in each of the following paragraphs:*

(i) *Education. A candidate shall hold a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the Department pursuant to Subpart 57-2 of this Title.*

(ii) *Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test.*

(iii) *Post-secondary teaching experience. The candidate shall submit evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.*

(iv) *Employment and support commitment. The candidate shall submit satisfactory evidence of having a commitment from a school district of at least two years of employment as a teacher with the school district in the area of the certificate sought, which shall include a plan from the school district for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills, over the two years of employment.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-09-11-00005-EP, Issue of March 2, 2011. The emergency rule will expire September 12, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

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.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Subdivision (6) of section 3004 of the Education Law requires the Regents and the Commissioner to develop programs to assist in the expansion of alternative teacher preparation programs.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above referenced statutes by establishing an alternative certification pathway for candidates with an advanced degree in either science, technology, engineering or mathematics and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it.

3. NEEDS AND BENEFITS:

The proposed amendment establishes a transitional G certificate to create a mechanism for schools to employ applicants with a graduate degree or higher in science, technology, engineering or mathematics, and two years of experience teaching at the college level in the same area as the certificate requested, or in a closely related field as determined by the Commissioner, to address demonstrated shortage areas in these subjects. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder for two years of employment, which shall include a plan for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The proposed amendment is needed to facilitate the State's ability to address persistent shortages of certified teachers who are qualified to teach in one of the sciences or mathematics at the 7-12 grade level. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for science and mathematics teachers in the State's schools.

The transitional G certificate will be valid for two years from its effective date and will not be renewable. It will be limited to employment with an employing entity.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including school districts and BOCES.

(c) Cost to private regulated parties. A candidate seeking a transitional G certificate will be required to pay a \$100 application fee.

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

5. LOCAL GOVERNMENT MANDATES:

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES has a plan for mentoring, appropriate instructional support services and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping

requirements beyond existing requirements. The employing school district or BOCES will be required to certify that the district wants to employ the candidate in a position for which the candidate would need the transitional G certificate to qualify, and that it will provide a plan for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that address alternative certification requirements in the areas of science and mathematics.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The amendment does not impose any reporting, record-keeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire a teacher for employment that holds a transitional G certificate.

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, with a plan for mentoring and appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

2. Compliance requirements:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, with a plan for mentoring and appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply.

4. Compliance costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

6. Minimizing adverse impact:

The amendment establishes requirements for the issuance of a transitional G certificate. The State Education Department does not believe that establishing different standards for local governments is warranted. A uniform standard ensures the quality of the State's teaching workforce.

7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates, New York State school districts and BOCES in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The proposed amendment also establishes requirements regarding the application for and issuance of the transitional G certification. This certification will authorize a qualified applicant, with an advanced degree in either science, technology, engineering, mathematics or a closely related field as determined by the Commissioner, and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it, for the period of two years, at which time the candidate may apply for an initial certificate in that subject area. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study. Certificate areas identified for the transitional G include: Biology, Chemistry, Earth Science, Physics, Mathematics, or a closely related field as determined by the Commissioner, at the 7-12 grade level.

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, which shall include a plan for appropriate mentoring and instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

4. Minimizing adverse impact:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

Job Impact Statement

The purpose of the proposed amendment is to establish requirements for an expedited certification pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science and mathematics in grades 5-9 and 7-12.

The proposed amendment is needed to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to address shortage areas in the State's public schools and BOCES. This proposal is intended to increase the supply of teachers who are certified in the sciences and mathematics in grades 5-9 and 7-12, all of which are shortage areas.

Because it is evident from the nature of the rule that it could only have a

positive impact or no impact on jobs and employment opportunities, no 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.

Assessment of Public Comment

The agency received no public comment

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

Duties of the Executive Deputy Commissioner

I.D. No. EDU-31-11-00007-EP

Filing No. 640

Filing Date: 2011-07-19

Effective Date: 2011-07-19

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

Proposed Action: Amendment of section 3.8 of Title 8 NYCRR.

Statutory authority: Education Law, section 101(not subdivided)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department. The proposed amendment designates the Executive Deputy Commissioner as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendments could be adopted by regular (non-emergency) action, pursuant to the requirements of the State Administrative Procedure Act - including publication in the State Register and expiration of a 45-day public comment period, is the October 17-18, 2011 Regents meeting, and the earliest an adoption at such meeting could be made effective would be November 9, 2011.

The recommended action is being proposed as an emergency measure because such action is necessary for the preservation of the general welfare in order to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization, so as to ensure that the Executive Deputy Commissioner is able to immediately carry out her duties and responsibilities relating to the Executive Deputy Commissioner's designation as the deputy commissioner of education under Education Law section 101, including the ability to exercise and perform the functions, powers and duties of the Commissioner in his absence or disability, or if a vacancy exists in the office of the Commissioner.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their October 17-18, 2011 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Duties of the Executive Deputy Commissioner.

Purpose: To designate the Executive Deputy Commissioner as Deputy Commissioner of Education pursuant to Education Law section 101.

Text of emergency/proposed rule: Subdivision (b) of section 3.8 of the Rules of the Board of Regents is amended, effective July 19, 2011, as follows:

(b) The [senior deputy commissioner for p-12 education] *executive deputy commissioner* shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, *the executive deputy commissioner* [such senior deputy commissioner] shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 16, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Richard J. Trautwein, Counsel, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 101 of the Education Law designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

LEGISLATIVE OBJECTIVES:

Consistent with the authority granted to the Board of Regents pursuant to Education Law section 101, the proposed amendment designates the State Education Department's Executive Deputy Commissioner as the deputy commissioner of education as specified in Education Law section 101: "... who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by this chapter."

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, relating to the designation of the Executive Deputy Commissioner as the deputy commissioner of education specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner.

COSTS:

- (a) Costs to State: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementing and continued administration of the rule: None.

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

The proposed amendment does not impose any reporting or other paperwork requirements.

LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

DUPLICATION:

The proposed amendment relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, relating to the designation of the Executive Deputy Commissioner as the deputy commissioner of education specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed amendment, which relates solely to the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic

impact, reporting, recordkeeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment 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.

Rural Area Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on public and private sector interests in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect such interests, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates solely to the internal organization of the State Education Department and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that no substantial impact will occur, no further 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Flexibility in Teacher Certification

I.D. No. EDU-31-11-00002-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 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 3001 and 3004(1)

Subject: Flexibility in teacher certification.

Purpose: Provide teacher certification flexibility if it would provide for a more efficient operation of the school district or BOCES.

Text of proposed rule: 1. Subdivisions (k) and (m) of section 80-4.3 of the Regulations of the Commissioner of Education are amended, effective October 6, 2011, as follows:

(k) Requirements for the issuance of a limited extension to teach a subject in grades 7-8 [during a period of immediate fiscal crisis] to provide an employing entity with flexibility in the assignment of teachers which will result in a more efficient operation of the employing entity and a 7-8 grade level extension.

(1) Purpose. The purpose of extensions issued under this subdivision[, subject to their period of applicability as set forth in paragraph (2) of this subdivision,] is to authorize a teacher who is currently employed and certified in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in childhood education (grades 1-6) to be reassigned by the employing entity to teach that subject in grades 7-8 [during a demonstrated fiscal crisis to avoid or mitigate a reduction in force consistent with the requirements of law.] in order to provide an employing entity with sufficient flexibility in the assignment of teachers which will result in a more efficient operation of the employing entity.

(2) [Applicability. The provisions of this subdivision shall apply commencing October 6, 2011 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph [(4)] (3) of this section. A limited extension shall authorize a candidate to teach a subject in grades 7-8 with that employing entity only. Thereafter, a 7-8 grade level extension may be issued to such teacher upon completion of the requirements in paragraph [(5)] (4) of this subdivision and shall authorize the teacher to teach a subject in grades 7 and 8 in any employing entity.

[(4)] (3) Requirements for limited extension. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a specific subject area for grades 7 and 8 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in the classroom teaching service in childhood

education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in grades 1 through 6; and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying that:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 7-8 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) [the employing entity is in an immediate fiscal crisis and the issuance of an extension in grades 7-8 to such candidate will avoid or mitigate a reduction in force] *the issuance of an extension in grades 7-8 to such candidate will result in a more efficient operation of the employing entity.*

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students;

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph [(5)] (4) of this subdivision; and

(f) the employing entity will not assign the employed teacher to teach courses for high school credit;

[(5)] (4) Requirements for 7-8 grade level extension in a subject. Notwithstanding the provisions of this section, an extension to teach a subject in grades 7-8 shall be issued to a candidate in a specific subject area for grades 7 and 8 provided that the candidate successfully completes the New York State Teacher Certification Examination content specialty test in the subject for which a certificate extension is being sought and six semester hours of coursework in middle childhood education.

(m) Requirements for the issuance of a limited extension to teach a subject in grades 5-6 [during a period of immediate fiscal crisis] *to provide an employing entity with flexibility in the assignment of teachers which will result in a more efficient operation of the employing entity* and a 5-6 grade level extension in a subject.

(1) Purpose. The purpose of extensions issued under this subdivision[, subject to their period of applicability as set forth in paragraph (2) of this subdivision,] is to authorize a teacher who is currently employed and certified in the classroom teaching service in a certain subject in grades 7-12 and who has demonstrated an appropriate academic background to teach in the subject area of his/her grade 7-12 certificate, to be reassigned by the employing entity to teach that subject in grades 5-6 [during a demonstrated immediate fiscal crisis to avoid or mitigate a reduction in force, consistent with the requirements of law] *in order to provide an employing entity with flexibility in the assignment of teachers which will result in a more efficient operation of the employing entity.*

(2) [Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph [(4)] (3) of this section. A limited extension shall authorize a candidate to teach a subject in grades 5-6 with that employing entity only. Thereafter, a 5-6 grade level extension may be issued to such teacher upon completion of the requirements in paragraph [(5)] (4) of this subdivision and shall authorize the teacher to teach a subject in grades 5-6 in any employing entity.

[(4)] (3) Requirements for a limited extension to teach a subject in grades 5-6. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a subject for grades 5-6 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) the candidate shall hold a valid provisional, initial, permanent, or professional certificate in English language arts (7-12), language other than English (7-12), mathematics (7-12), biology (7-12), chemistry (7-12), earth science (7-12), physics (7-12), or social studies (7-12); and

(ii) the candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 5-6 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) [the employing entity is in an immediate fiscal crisis and the issuance of a limited extension to such candidate to teach grades 5-6 will avoid or mitigate a reduction in force] *the issuance of an extension in grades 7-8 to such candidate will result in a more efficient operation of the employing entity.*

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students; and

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph [(5)] (4) of this subdivision.

[(5)] (4) Requirements for a 5-6 grade level extension in a subject area. A 5-6 grade level extension may be issued to a candidate in a specific subject area provided that the candidate meets the requirements of subdivision (b) of this section.

Text of proposed rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 408-1189, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 3001 of the Education Law provides that no teacher shall be authorized to teach in the public schools of the State if they are not in possession of a teacher's certificate issued by the Department.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner to prescribe, subject to the approval by the Regents, regulations governing the examination and certification of teachers employed in the public schools of the State.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by providing flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels if it would provide for a more efficient operation of the school district or BOCES.

3. NEEDS AND BENEFITS:

In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's regulations to provide school districts and BOCES with flexibility in certification when there was a demonstrated immediate fiscal crisis and the certification flexibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The 2010 amendment allows a district or BOCES to reassign a teacher who is employed by a school district and BOCES and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Grades 7 and 8

The 2010 amendment also authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

The Limited extensions certificates for teacher certification flexibility would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

Currently, school districts and BOCES may only use this certification

flexibility if they can demonstrate an immediate fiscal crisis and that such certification flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The proposed amendment would create additional flexibility in the assignment of teachers to these grade levels. The proposed amendment eliminates the requirement that districts or BOCES demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation of the school district or BOCES. The proposed amendment also eliminates the sunset provision.

The proposed amendment addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassignments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments, including school districts and BOCES.

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. However, in order to obtain an extension under the proposed amendment, the cost of the certificate will be \$100 per candidate, which is the amount currently required for candidates seeking a certificate.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to both school districts and boards of cooperative educational services. Therefore, the mandates in Section 3 apply to school districts and BOCES.

6. PAPERWORK:

The proposed amendment requires the candidate to submit a written certification from the Chancellor, the superintendent or by the chief school officer containing certain information, when applying for an extension under the proposed amendment.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish certification requirements for teachers, except the No Child Left Behind Act. The proposed amendment is consistent with federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No additional time is needed to comply.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment is to provide teacher certification flexibility to provide for a more efficient operation of a school district or BOCES by allowing school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels to avoid reductions in force. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed amendment relates to flexibility in teacher certification requirements for teachers across the State.

1. EFFECT OF RULE:

The purpose of the proposed amendment is to provide teacher certification flexibility to provide for a more efficient operation of a school district or BOCES by allowing school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels to avoid reductions in force.

2. COMPLIANCE REQUIREMENTS:

In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's regulations to provide school districts and BOCES with flexibility in certification when there was a demonstrated immediate

fiscal crisis and the certification flexibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The 2010 amendment allows a district or BOCES to reassign a teacher who is employed by a school district and BOCES and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Grades 7 and 8

The 2010 amendment also authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

The Limited extensions certificates for teacher certification flexibility would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

Currently, school districts and BOCES may only use this certification flexibility if they can demonstrate an immediate fiscal crisis and that such certification flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The proposed amendment would create additional flexibility in the assignment of teachers to these grade levels. The proposed amendment eliminates the requirement that districts or BOCES demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation of the school district or BOCES. The proposed amendment also eliminates the sunset provision.

The proposed amendment addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassignments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

3. PROFESSIONAL SERVICES:

The proposed amendment does not mandate that school districts or BOCES contract for additional professional services to comply.

4. COMPLIANCE COSTS:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension, the cost of the extension will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to school districts and BOCES across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels if it would provide for a more efficient operation of the school district or BOCES.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES across the State.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:

The proposed amendment will affect teachers in school districts and boards of cooperative services in all areas of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's regulations to provide school districts and BOCES with flexibility in certification when there was a demonstrated immediate fiscal crisis and the certification flexibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The 2010 amendment allows a district or BOCES to reassign a teacher who is employed by a school district and BOCES and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Grades 7 and 8

The 2010 amendment also authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

The Limited extensions certificates for teacher certification flexibility would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

Currently, school districts and BOCES may only use this certification flexibility if they can demonstrate an immediate fiscal crisis and that such certification flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The proposed amendment would create additional flexibility in the assignment of teachers to these grade levels. The proposed amendment eliminates the requirement that districts or BOCES demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation of the school district or BOCES. The proposed amendment also eliminates the sunset provision.

The proposed amendment addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassignments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

3. COSTS:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension under the proposed amendment, the cost of the certificate will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to school districts and BOCES located across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to teach students at different grade levels to provide for a more efficient operation of the school district or BOCES.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State.

Job Impact Statement

The purpose of the proposed amendment is to provide teacher certification flexibility to provide for a more efficient operation of a school district or BOCES. The proposed amendment will have no impact on the number of

jobs or employment opportunities in New York State. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appeals Process for Local Diploma

I.D. No. EDU-31-11-00010-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 100.5(b)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and 309(not subdivided)

Subject: Appeals process for local diploma.

Purpose: Technical amendment to clarify award of local diploma pursuant to appeals process.

Text of proposed rule: Subparagraph (i) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective November 9, 2011, as follows:

(i) Except as provided in subparagraphs (vi), (vii) and (viii) of this paragraph, *and paragraph (7) of subdivision (d) of this section*, for students first entering grade nine in the 2001-2002 school year and thereafter, there shall be no diplomas or certificates other than the following:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: John B. King, Jr., Commissioner of Education, State Education Department, State Education Building, Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative office, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 210 authorizes the Regents to register domestic and foreign institutions in terms of New York standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and the professions in New York State.

Education Law section 215 provides the Commissioner with the authority to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statute and is necessary to implement policy enacted by the Board of Regents relating to the award of Regents and local diplomas pursuant to an appeals process.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary in order to resolve an inconsistency in the Commissioner's Regulations relating to Regents and local diplomas.

In July 2005, the Board of Regents amended Commissioner's Regulations section 100.5(b)(7) to eliminate the local diploma for general education students, beginning with students who entered grade 9 in 2008. However, at the same time, the Board of Regents also added a new section 100.5(d)(7) to permit general education students, who meet certain criteria and who enter 9th grade in September 2005 or thereafter, to receive a local diploma through an appeals process. This provision contains no sunset date.

Specifically, section 100.5(d)(7) allows a general education student who fails to attain a score of 65 or above on a required Regents examination for graduation to appeal his or her score if the student:

- has scored within three points of 65 on a required Regents exam for graduation and has a course average of at least 65 in the subject area of the examination;
- has received academic intervention services by the school in the subject area of the examination;
- has an attendance rate of at least 95 percent for the school year during which the student last took the examination;
- has attained a course average in the subject area of the examination that meets or exceeds the required passing grade by the school; and
- is recommended for an exemption to the passing score by his or her teacher or department chairperson in the subject area of the examination.

Students who successfully appeal one Regents Exam receive a Regents diploma, and students who successfully appeal two Regents Exams receive a local diploma.

At present, section 100.5(b)(7) and 100.5(d)(7) are inconsistent in that 100.5(b)(7) does not allow for local diplomas, beginning with students who enter grade 9 in 2008, but 100.5(d)(7) permits students who first enter grade nine in September 2005 or thereafter to earn a local diploma through an appeals process as specified in the regulation.

The proposed amendment would resolve this inconsistency by amending 100.5(b)(7)(i) to clarify that the local diploma option under 100.5(d)(5) continues to be available under the appeals process for general education students. Continuation of the local diploma option is appropriate for the following reasons:

- Under local scoring procedures that were in effect until this school year, students were from two to six times more likely to earn a score of 65 than to earn a score between 62 and 64 on those Regents examinations most typically used to meet graduation requirements. Starting with the exams administered in June 2011, the Department revised its rescoring policies in light of this research. The Department anticipates having larger numbers of students scoring from 62-64 on Regents Exams in the future. Consequently, SED recommends having a formal appeals process to address this situation.
- Maintaining the option of a local diploma for general education students would allow SED to continue to define the local diploma as a "standard diploma" for computing graduation rates for No Child Left Behind (NCLB) accountability purposes since it can be earned by both general education students and students with disabilities.

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties: none.
- (d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance requirements or costs.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, or local government.

6. PAPERWORK:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance requirements or costs.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance requirements or costs.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment relates to the award of Regents and local diplomas to students pursuant to an appeals process, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to each school district within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance requirements on school districts.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance costs on school districts.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any technological requirements or costs on school districts or registered nonpublic schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance requirements or costs on school districts.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance requirements or professional service requirements on school districts.

3. COMPLIANCE COSTS:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance costs on school districts.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely clarifies an inconsistency in the Commissioner's Regulations and does not impose any new compliance requirements or costs on school districts.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's

Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to the award of Regents and local diplomas pursuant to an appeals process, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Massage Therapy Continuing Education

I.D. No. EDU-26-11-00014-RP

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

Proposed Action: Addition of section 78.5 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 7807(2); and L. 2010, ch. 463, section 2

Subject: Massage therapy continuing education.

Purpose: To implement recently enacted statutory authority requiring continuing education for licensed massage therapists.

Substance of revised rule: The Commissioner of Education proposes to promulgate regulations, relating to continuing education requirements for the practice of licensed massage therapy. The following is a summary of the substance of the regulations.

Continuing education for the practice of licensed massage therapy

A new section 78.5 is added to the Regulations of the Commissioner of Education to implement continuing education requirements to practice licensed massage therapy, as prescribed pursuant to Education Law § 7807, which was recently enacted pursuant to Chapter 463 of the Laws of 2010 and which will take effect on January 1, 2012. Under new section 78.5 of the Commissioner's regulations, a licensee would be required to complete 36 hours of continuing education per each triennial registration period, excluding the initial registration period, 12 hours of which may be completed through self-instruction. The proposed rule would also provide that a maximum of six hours of 12 hours of self-instruction would be permitted to be completed online if approved by another jurisdiction for formal education in massage therapy.

The proposed rule would describe acceptable formal continuing education and would identify types of learning activities that would be acceptable as continuing education. The proposed rule would also set forth requirements for approval as a sponsor of such continuing education. The proposed rule would also provide limited grounds for a licensee's exemption to these requirements and would provide for a conditional registration, not to exceed a one-year period, in which a licensee may complete the requirements. Additionally, the rule would provide for the pro-ration of the continuing education requirements for individuals whose next registration date will occur after January 1, 2012 but less than three years from such date.

New section 78.5 of the Commissioner's regulations would also provide that massage therapists must maintain adequate documentation verifying that they have met these continuing education requirements. This proposed rule would also require a licensed massage therapist to pay an additional continuing education fee of \$45.00. A fee would also be established for entities seeking approval as a sponsor of such continuing education.

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2011, the proposed rule has been substantially revised as follows:

The proposed rule was revised to clarify that, in accordance with Education Law § 7807(4), all organizations seeking approval by the Department to offer continuing education to licensed massage therapists would be required to pay an application fee as part of their application to become an approved sponsor of such continuing education. Specifically, section 78.5(j)(3), as added by this rule, would be revised to omit the provision "subject to a Department review, pursuant to paragraph (i)(3) of this section" in order to conform the rule to Education Law § 7807(4) and provide that all organizations applying for a permit to sponsor such continuing education would pay a fee of \$900. The aforementioned change does not require any revisions to the Regulatory Impact Statement previously published.

Revised rule compared with proposed rule: Substantial revisions were made in section 78.5(j)(3).

Text of revised proposed rule and any required statements and analyses may be obtained from Chris Moore, State Education Department, Office of Counsel, State Education Bldg., Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 474-3862, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Seth Rockmuller, Esq., State Education Department, Office of Professions, State Education Building, 2M, 89 Washington Ave., Albany, New York 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2011, the proposed rule has been substantially revised as follows:

The proposed rule was revised to clarify that, in accordance with Education Law § 7807(4), all organizations seeking approval by the Department to offer continuing education to licensed massage therapists would be required to pay an application fee as part of their application to become an approved sponsor of such continuing education. Specifically, section 78.5(j)(3), as added by this rule, would be revised to omit the provision "subject to a Department review, pursuant to paragraph (i)(3) of this section" in order to conform the rule to Education Law § 7807(4) and provide that all organizations applying for a permit to sponsor such continuing education would pay a fee of \$900. The aforementioned change does not require any revisions to the Regulatory Impact Statement previously published.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2011, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement as submitted herewith.

The proposed rule, as revised, does not regulate small businesses or local governments. Rather, it establishes requirements applicable to individuals who are licensed professionals. Accordingly, a regulatory flexibility statement was not required, and was not previously prepared. The aforementioned change does not require any revision to the Statement in Lieu of a Regulatory Flexibility Analysis previously published.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2011, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement as submitted herewith. The aforementioned change does not require any revisions to the Rural Area Flexibility Analysis previously published.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2011, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement as submitted herewith.

The proposed rule, as revised, sets forth the mandatory continuing education requirements applicable to individuals engaged in the practice of massage therapy. It establishes continuing education standards in accordance with statutory directives, specifying acceptable continuing education that would meet the statutorily prescribed mandatory continuing education requirements.

The proposed revision will have no effect on the number of jobs and employment opportunities in massage therapy or any other field. Because it is evident from the nature of the proposed rule, as revised, that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain that fact and none were taken. The aforementioned change does not require any revision to the Statement in Lieu of the Job Impact Statement previously published.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY RULE MAKING

New Source Review Requirements for Proposed New Major Facilities and Major Modifications to Existing Facilities

I.D. No. ENV-12-11-00004-E

Filing No. 642

Filing Date: 2011-07-19

Effective Date: 2011-07-19

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

Action taken: Amendment of Parts 200, 201 and 231 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105; and Federal Clean Air Act, sections 160-169 and 171-193 (42 USC sections 7470-7479; 7501-7515)

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

Specific reasons underlying the finding of necessity: The Department's Division of Air Resources ("DAR") is amending 6 NYCRR Parts 200, 201 and 231. The revisions include two primary components, which are intended to incorporate: (1) key provisions of Environmental Protection Agency's ("EPA's") May 16, 2008 and October 20, 2010 NSR final rules for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micro-meters ("PM-2.5"), 73 FR 28321 ("2008 NSR PM-2.5 final rule") and 75 FR 64864 ("2010 NSR PM-2.5 final rule"), respectively; and (2) key provisions of EPA's June 3, 2010 Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 FR 31514 ("GHG Tailoring Rule"). As set forth further below, failure to implement the 2008 and 2010 NSR PM-2.5 final rules would have adverse impacts on public health and general welfare in the State and necessitates the adoption of an emergency rule by the Department. Similarly, failure to adopt conforming provisions of the GHG Tailoring Rule as a matter of State law by January 2, 2011 would have adverse impacts on the State's general welfare, and necessitates the adoption of an emergency rule by the Department.

With regard to the first component of the instant action, NSR is a critical tool in meeting the Legislature's air quality objectives and ensuring that healthful air quality is preserved in areas of the State that meet the National Ambient Air Quality Standards ("NAAQS") for PM-2.5 and does not further degrade but actually improves in areas of the State which currently are not in attainment of the PM-2.5 NAAQS. Since the State of New York currently has areas that are designated nonattainment for PM-2.5, the Department must have a nonattainment NSR ("NNSR") program that meets the requirements of Part D of Title I of the Clean Air Act ("CAA") in order to adopt and implement permit programs for the construction, modification and operation of major stationary sources in nonattainment areas of the State.

Subsequent to the promulgation of NAAQS for PM-2.5, EPA designated the New York City metropolitan area as nonattainment for the PM-2.5 standard, 70 FR 944, January 5, 2005. NNSR is now required for new major facilities and major modifications to existing facilities that emit PM-2.5 in significant amounts in the PM-2.5 nonattainment area. NNSR requires that every new major facility and major modification at existing facilities in the PM-2.5 nonattainment area control emissions of direct PM-2.5 through the requirement that such sources achieve Lowest Achievable Emission Rate ("LAER") and obtain emission offsets. On May 16, 2008 and October 20, 2010, EPA published its final rules governing the implementation of the NSR program for PM-2.5. EPA's final rule requires, among other things, that permits address directly emitted PM-2.5 as well as pollutants responsible for secondary formation of PM-2.5, referred to as precursors.

With regard to the second component of the instant action, EPA has recently taken multiple actions regarding the regulation of greenhouse gases ("GHGs") under the CAA: (1) the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 FR 66496 (December 15, 2009) ("Endangerment Finding"); (2) the Light-Duty Vehicle Greenhouse Gas Emission Standards

and Corporate Average Fuel Economy Standards, 75 FR 25324 (May 7, 2010) ("Tailpipe Rule"); and (3) the Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs, 75 FR 17004 (April 2, 2010) ("Trigger Rule"). Taken together, these three EPA actions and interpretations will result in GHGs being "subject to regulation" under the CAA as of January 2, 2011. On that date, because of EPA's actions, GHGs will need to be addressed as part of the CAA's Prevention of Significant Deterioration ("PSD") and Title V permitting programs.

Also, since EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule make GHGs subject to regulation under the CAA, and because current State law uses the same relevant language as federal law, GHGs will automatically become subject to regulation as a matter of State law on January 2, 2011. Therefore, it is necessary to clarify that GHGs are required to be addressed as a matter of federal law and as a result of EPA's actions, rather than as a result of this instant action. However, this action is necessary in order to clarify and conform State law to federal law as it relates to EPA's actions to address GHG regulation under its GHG Tailoring Rule, and therein revise the relevant State applicability thresholds for GHGs under the Department's PSD and Title V programs.

On June 3, 2010, EPA published its GHG Tailoring Rule in order to address impacts of GHGs becoming subject to regulation under the CAA as of January 2, 2011. According to EPA, the current statutory mass-based applicability thresholds in the CAA, of 100 or 250 tons per year (tpy), could subject a vast number of small GHG emission sources to PSD and Title V permitting program requirements. This would create a significant burden for smaller sources, many of which would be newly subject to PSD and Title V permitting requirements, as well as cause state and local permitting authorities to be inundated with permitting review. This impact is the result of the fact that the current applicability thresholds for those programs, while appropriate for traditional pollutants such as SO₂ and NO_x, are not necessarily feasible for GHGs since GHGs are emitted in much higher volumes than traditional pollutants. Because of this, EPA promulgated the GHG Tailoring Rule which 'tailors' the applicability thresholds for GHGs in order to exempt small sources from being newly subject to PSD or Title V permitting program requirements. As stated in the foregoing, since existing State regulations largely track the statutory text of the CAA in terms of the relevant applicability thresholds, smaller sources in New York will be similarly impacted. Thus, irrespective of whether GHG thresholds are tailored under the federal GHG Tailoring Rule, a vast number of small GHG emission sources in New York may likewise become subject to State PSD and Title V requirements as a matter of State law on January 2, 2011.

While the Department intends to follow EPA's approach under the federal GHG Tailoring Rule, the Department needs to immediately incorporate EPA's tailored applicability thresholds into State regulations before January 2, 2011. This is necessary in order to conform State regulations to federal law as it relates to EPA's GHG Tailoring Rule, and to make clear that small sources in the State with GHG emissions below the tailored thresholds of the GHG Tailoring Rule will not be newly subject to the PSD or Title V permitting programs. Without the GHG Tailoring Rule and this action, the State's PSD and Title V permitting program requirements may apply to all stationary sources that emit or have the potential to emit GHGs at or above the CAA statutory thresholds of 100 or 250 tpy on or after January 2, 2011. Absent a State GHG tailoring rule, numerous smaller sources in New York such as schools, restaurants, and small commercial facilities may be negatively impacted by EPA's actions to regulate GHGs.

ADVERSE IMPACTS ON PUBLIC HEALTH

Particulate matter is a generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. EPA first established a NAAQS for PM in 1971 and has since conducted several periodic reviews and revisions to establish both health-based (primary) and welfare-based (secondary) standards.

The health effects associated with exposure to PM-2.5 are significant. Epidemiological studies have shown a significant correlation between elevated PM-2.5 levels and premature mortality. Particulate matter, especially fine particles, contains microscopic solids or liquid droplets that can lodge deep into the lungs and cause serious health problems. Numerous scientific studies have linked particle pollution exposure to a variety of respiratory and cardiovascular problems including: increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing, for example; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; nonfatal heart attacks; and premature death in people with heart or lung disease. People with heart or lung diseases, children and older adults are the most likely to be affected by particle pollution exposure. However, even healthy people may experience temporary symptoms from exposure to elevated levels of particle pollution.

Based on the foregoing, the failure to incorporate key provisions of EPA's 2008 and 2010 NSR PM-2.5 final rules may have far-reaching consequences that will adversely impact public health. Therefore, an emergency rulemaking to incorporate key provisions of EPA's 2008 and 2010 NSR PM-2.5 final rules is necessary in order to preserve public health in New York State.

ADVERSE IMPACTS ON THE GENERAL WELFARE

In addition to the adverse public health impacts referenced above due to the State's failure to adopt and implement EPA's 2008 and 2010 NSR final rules incorporating health-based air quality standards for PM-2.5, there may also be significant impacts on the public welfare. New York currently has a PM-2.5 nonattainment area requiring the submittal of a State Implementation Plan ("SIP") revision in accordance with CAA requirements. As a result, the Department is required to submit to EPA a revised SIP incorporating the 2008 federal PM-2.5 NSR requirements prior to May 16, 2011. Since the CAA authorizes the EPA to impose significant sanctions for failure to submit a SIP or failure to implement a federal plan, including the withdrawal of federal highway funds and the imposition of two to one ("2:1") emission offset ratios to applicable new and modified sources in the State [CAA Section 179, 42 USC Section 7509], failure to submit a revised SIP by the May 16, 2011 deadline could have far reaching consequences which may negatively impact the public welfare. For example, the stricter emissions offset ratios will impose higher costs on State emission sources or, in some cases, possibly deter sources from commencing any new construction or essential modifications. These sanctions, along with the State's lack of authorization to issue permits for new and modified sources, could have a paralyzing effect on State commerce, significantly raising the cost of doing business and effectuating a virtual ban on construction in the State. In addition, the CAA authorizes EPA to withhold funding for certain state air pollution and planning control programs and take control of a state's air permitting programs under a Federal Implementation Plan (FIP).

Based on the foregoing, the failure to submit a revised SIP in accordance with the federal NSR rule for PM-2.5 may have far-reaching consequences that will adversely impact the general welfare. Therefore, an emergency rulemaking to incorporate key provisions of EPA's 2008 and 2010 NSR PM-2.5 final rules, and by May 16, 2011 for purposes of the 2008 NSR final rule, is necessary in order to preserve the general welfare in New York State.

Similarly, the State's failure to implement, by January 2, 2011, revised applicability thresholds which conform to EPA's GHG Tailoring Rule would have significant adverse impacts on the general welfare. As stated in the foregoing, regardless of this action, as of January 2, 2011, the Department will be required to address GHG emissions in its PSD and Title V permitting programs as a result of EPA's actions to regulate GHGs. EPA's GHG Tailoring Rule, which tailors the applicability thresholds under the Title V and PSD programs, is aimed at reducing the anticipated impact on smaller sources and on state and local permitting authorities as a matter of federal law. This action is necessary to clarify and conform State regulations to federal law along with the relevant applicability thresholds as a matter of State law.

Without this action, the State's PSD and Title V permitting program requirements may apply to all stationary sources that emit more than 100 or 250 tpy of GHGs beginning on January 2, 2011. As stated in the foregoing, this is because the State's existing regulations largely track the statutory text in terms of the relevant applicability thresholds. This would result in significant adverse impacts on the general welfare for two primary reasons: (1) a vast number of small stationary sources of GHG emissions in the State would be newly required to comply with significant PSD and Title V operating permit requirements, imposing additional costs on such sources, and resulting in adverse economic impacts; and (2) the Department's PSD and Title V permitting programs would be overwhelmed by the anticipated administrative burden, severely impairing the administrative functioning of these programs, creating significant permitting delays, and resulting in significant adverse economic impact on all sources in the State that require operating permits.

If, as of January 2, 2011, the State's PSD and Title V permitting programs applied to GHGs at the current CAA statutory applicability thresholds, a significant burden would be placed on smaller sources of GHG emissions in the State to comply with PSD or Title V operating permit requirements which would have a significant adverse impact on the general welfare of the State. The statutory applicability thresholds would newly subject a vast number of small GHG emission sources, not traditionally regulated under the CAA, to these permitting program requirements. For purposes of PSD sources that fall within the 250 tpy source categories, the Department has determined that the following source types may be impacted by EPA's regulation of GHGs: gas-fired boilers over 485,000 Btu/hr; oil-fired boilers over 350,000 Btu/hr; and wood-fired boilers over 220,000 Btu/hr. For Title V sources and PSD sources that fall within the existing 100 tpy source categories, GHG regulation would impact: gas-

fired boilers over 194,000 Btu/hr; oil-fired boilers over 143,000 Btu/hr; and wood-fired boilers over 89,000 Btu/hr. Based on these projections, most single family residences would not be affected. However, a significant number of facilities that emit GHGs in quantities greater than the existing thresholds, but have never before been subject to either PSD or Title V permitting requirements, would now have to address GHGs under the state's PSD or Title V permitting programs, including many schools, auto-body garages, churches, multi-family residential buildings or dwellings, warehouses, and shopping centers. These smaller sources may be unduly burdened by the cost of new regulatory requirements, particularly individualized technology control requirements under the PSD program and complex permitting review requirements under Title V. This substantial cost on a vast number of new smaller sources would have a significant adverse impact on the State's economy.

Also, if, as of January 2, 2011, the State's PSD and Title V permitting programs applied to GHGs at the current CAA statutory applicability thresholds, the administrative burden on the Department would be overwhelming. EPA estimates that under the current 100 and 250 tpy threshold levels, nearly 82,000 projects per year would become subject to PSD. 75 FR 31514 at 31538. This would result in an estimated \$1.5 billion per year in PSD permitting cost, a 130 times increase in current annual burden hours for permitting authorities nationwide, and an increase in permit processing time from one to three years. Id. at 31539. For Title V purposes, EPA estimates that six million sources, under the current 100 tpy threshold level, would need Title V operating permits nationwide, representing for permitting authorities an additional 1.4 billion in work hours, an annual cost increase of \$21 billion, and an increase in permit processing time from six months to 10 years. Id. at 31539-31540. In addition, EPA notes that many permitting authorities will need up to two years to hire the necessary staff to handle a 10-fold increase in PSD permits, a 40-fold increase in Title V permits, and that 90 percent of staff would need additional training related to the permitting of GHG sources.

The federal requirement to review and issue a vast number of new CAA operating permits would represent a substantial administrative burden for the Department. This substantial increase would inevitably overwhelm the resources of the Department's permitting program. As a result, it would create a significant permitting backlog, resulting in extensive delays in permit issuance. Under such a scenario, new sources in the State would not be able to begin construction, nor would existing sources be able to make needed modifications, without the necessary PSD review and issuance of a Title V operating permit from the Department. Similarly, a source would not be able to operate in the State without a Title V permit from the Department. If the Department is unable to timely issue the necessary permits, many new projects may be halted for a significant period of time. Thus, particularly given the vast number of smaller sources that would be newly subject to these requirements, a substantial delay in permitting issuance would result in an adverse economic impact to the State.

Based on the foregoing, the failure to implement tailored applicability thresholds for GHGs under the State's PSD and Title V permitting programs as a matter of State law by January 2, 2011 would have significant adverse impacts on the State's permitting programs, numerous smaller sources, and the general economy. Therefore, an emergency rulemaking to incorporate key provisions of EPA's GHG Tailoring Rule prior to January 2, 2011 is necessary in order to preserve the general welfare in New York State.

CONCLUSIONS

The normal rulemaking process consists of several rulemaking requirements under SAPA. While the Department prefers to submit a rule through the normal State rulemaking process, compliance with the normal rulemaking requirements would be contrary to public interest since, as explained in the foregoing, the failure to implement the 2008 and 2010 federal NSR PM-2.5 final rules may unnecessarily increase the risk to public health in this State. Also, the failure to submit a revised SIP for purposes of the 2008 federal NSR PM-2.5 final rule prior to the federal deadline of May 16, 2011, and the failure to implement the GHG Tailoring Rule as a matter of State law by January 2, 2011 may have significant adverse impacts on the State's general welfare.

Subject: New Source Review requirements for proposed new major facilities and major modifications to existing facilities.

Purpose: To comply with 2008 and 2010 Federal NSR rules, correct typographical errors, and clarify existing rule language.

Substance of emergency rule: The Department of Environmental Conservation (Department) is proposing to amend Parts 200, 201, and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "General Provisions," "Permits and Registrations" and "New Source Review for New and Modified Facilities" respectively.

The Part 200 amendments will revise the definitions of potential to emit

and PM-2.5 and add definitions for greenhouse gases and CO₂ equivalent. The definition of potential to emit will now state that secondary emissions are not to be included when calculating an emissions source's potential to emit. The definition of PM-2.5 will no longer refer to Appendix L of Part 50 of the Code of Federal Regulations and will now state that PM-2.5 is the sum of filterable PM-2.5 and material that condenses after exiting the stack forming solid or liquid particulates. Greenhouse gases are defined as the aggregate group of carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The definition of CO₂ equivalent states that each of the six greenhouse gases are multiplied by their global warming potential and summed to obtain emissions in terms of CO₂ equivalents.

The Part 201 amendments revise the definition of major stationary source or major source or major facility to add a CO₂ equivalent based greenhouse gas emission threshold. In addition to the current mass based thresholds applicable to greenhouse gases, the proposed revisions establish a CO₂ equivalent threshold of 100,000 tons per year for the purposes of determining if a stationary source, source, or facility is major. The definition is also revised to state that 201-2.1(b)(21)(iii) is a "Source Category List" and removes municipal waste landfills from the list.

Existing Subpart 231-2 will be revised to insert "February 19, 2009" in place of "the effective date of Subparts 231-3 through 231-13" in the title of 231-2.

Existing Subpart 231-3 will be revised by changing the title of 231-3.2 and stating in sections 231-3.2 and 3.6 that "complete application" is referring to its definition under section 621.2. Section 231-3.3 will be removed and subsequent sections renumbered.

Existing Subpart 231-4 will be revised by adding the definition of calendar year and renumbering subsequent paragraphs, alphabetically. The definition of contemporaneous will be revised to state that it means different periods of time depending on attainment status of the location. The definitions of baseline area, major facility baseline date, and minor facility baseline date will be revised to include PM-2.5. The definition of nonattainment contaminant will be revised to include PM-2.5 precursors in the PM-2.5 nonattainment area.

Existing Subparts 231-5 and 231-6 will be revised to add regulation of PM-2.5 precursors. As a result, SO₂ will be regulated as a nonattainment contaminant in the PM-2.5 nonattainment area. Interpollutant trading ratios will also be added for PM-2.5 precursors so that direct emissions of PM-2.5 can be offset by reductions in PM-2.5 precursor emissions and PM-2.5 precursors can be offset by reductions in direct PM-2.5 emissions.

Existing Subpart 231-7 will be revised to reference Table 8 of 231-13 in 231-7.4(f)(6) for SO₂ variances.

Existing Subpart 231-8 will be revised to provide an example that shows only the same class of regulated NSR contaminant can be used for netting and reference Table 8 of 231-13 in 231-8.5(f)(6) for SO₂ variances.

Existing Subpart 231-9 will be revised to clarify language and allow CEMS to use performance specifications in 40 CFR 75.

Existing Subpart 231-10 will be revised to state that emission reduction credits (ERCs) must be the same type of regulated NSR contaminant for the purposes of netting. Subdivisions are added to allow interpollutant trading and to state that if a contaminant is regulated as a precursor under multiple programs only one set of offsets is required. The section titled mobile source and demand side management ERCs will be renamed to ERCs for emission sources not subject to Part 201.

Existing Subpart 231-11 will be revised to clarify sections in the 231-11.2 reasonable possibility provisions.

Existing Subpart 231-12 will be revised to include PSD increments for PM-2.5, significant impact levels for PM-2.5, significant monitoring concentration for PM-2.5, and reordering paragraphs 231-12.2(c)(2) and (3).

Existing Subpart 231-13, table 4, will be revised to include significant project thresholds, significant net emission increase thresholds, and offset ratios for PM-2.5 precursors. Table 5 of Subpart 231-13 will be revised to add greenhouse gases to the major facility thresholds for attainment and unclassified areas, and table 6 will be revised to add significant project thresholds and significant net emission increase thresholds for attainment and unclassified areas. The source category list will be removed and in its place will be a table listing global warming potential values.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ENV-12-11-00004-P, Issue of March 23, 2011. The emergency rule will expire September 16, 2011.

Text of rule and any required statements and analyses may be obtained from: Robert Stanton, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: 231nsr@gw.dec.state.ny.us

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing to revise 6 NYCRR Parts 200, General Provi-

sions, 201, Permits and Registrations and 231, New Source Review (NSR) for New and Modified Facilities. First, this proposed rule will incorporate the Environmental Protection Agency's (EPA's) May 16, 2008 NSR final rule for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5). The Department incorporated some of EPA's final PM-2.5 requirements in its February 19, 2009 revisions to its PSD and nonattainment NSR programs (6 NYCRR Part 231). This proposed rulemaking will incorporate the remaining provisions of the federal PM-2.5 final rule which were not previously included in the 2009 revision to Part 231. Second, this proposed rule will incorporate conforming provisions to EPA's June 3, 2010 NSR final rule for the regulation of Greenhouse Gases (GHGs) under its PSD and Title V programs, referred to as the Greenhouse Gas Tailoring Rule (GHG Tailoring Rule). The proposed rule will clarify the regulation of GHGs by establishing major source applicability threshold levels for GHG emissions and other conforming changes under the State's PSD and Title V programs. Third, this proposed rule will incorporate EPA's October 20, 2010 final rule which establishes the PM-2.5 increments, significant impact levels, and significant monitoring concentration. This proposed rulemaking is not a mandate on local governments. It applies to any entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of this regulation.

1. STATUTORY AUTHORITY

The statutory authority for these regulations is found in the Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105, and in Sections 160-169 and 171-193 of the Federal Clean Air Act (42 USC Sections 7470-7479; 7501-7515) (Act or CAA).

2. LEGISLATIVE OBJECTIVES

The Act requires states to have a preconstruction program for new and modified major stationary sources, and an operating permit program for all major sources. This rulemaking is being undertaken to satisfy New York's obligations under the Act and also to meet the environmental quality objectives of the State. This Section discusses the legislative objectives of the rulemaking, including overview of relevant federal and State statutes and regulations.

Articles 1 and 3, of the ECL, set out the overall State policy goal of reducing air pollution and providing clean air for the citizens of New York and provide general authority to adopt and enforce measures to do so. In addition to the general powers and duties of the Department and Commissioner to prevent and control air pollution found in Articles 1 and 3, Article 19 of the ECL was specifically adopted for the purpose of safeguarding the air 'quality' of New York from pollution.

In 1970, Congress amended the Act "to provide for a more effective program to improve the quality of the Nation's air." The statute directed EPA to adopt National Ambient Air Quality Standards (NAAQS) and required states to develop implementation plans known as State Implementation Plans (SIPs) which prescribed the measures needed to attain the NAAQS.

On May 16, 2008, EPA published a final rule regarding the regulation of PM-2.5 in attainment and nonattainment areas ('see' 73 Fed Reg 28321 [2008 federal NSR rule]). The May 16, 2008 federal NSR rule included the following key provisions: PM-2.5 precursors, offset trading ratios, and a SIP submission requirement.

On October 20, 2010, EPA published a final rule regarding PM-2.5 increments, significant impact levels, and significant monitoring concentration ('see' 75 Fed Reg 64864 [October 20, 2010 federal NSR rule]). The October 20, 2010 federal NSR rule included the following key provisions: PM-2.5 increments, PM-2.5 significant impact levels, PM-2.5 significant monitoring concentration, and a SIP submission requirement.

On June 3, 2010, EPA published a final NSR rule tailoring the applicability criteria that determines which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD and Title V operating permit (Title V) programs of the CAA ('see' 75 Fed Reg 31514 [GHG Tailoring Rule]). The GHG Tailoring Rule included key provisions regarding the list of GHGs regulated, the permitting metric used, and the permitting applicability thresholds. In response to the U.S. Supreme Court's decision in Massachusetts v. EPA, 549 U.S. 497 (2007), EPA has taken several actions that, taken together, will result in GHGs being "subject to regulation" under the Act as of January 2, 2011. This will occur regardless of the GHG Tailoring Rule or this rulemaking. The GHG component of this rulemaking is necessary because of a number of actions taken by EPA regarding the regulation of GHGs under the CAA. This rulemaking will clarify the applicability thresholds for GHGs under the State's PSD and Title V permitting programs, in order to conform such thresholds to those set forth in the federal GHG Tailoring Rule.

3. NEEDS AND BENEFITS

The Department is undertaking this rulemaking to comply with the May 16, 2008, the June 3, 2010, and the October 20, 2010 federal NSR rules

promulgated by EPA, for the regulation of PM-2.5 and GHGs. The May 16, 2008 federal NSR rule modified both the nonattainment NSR and PSD regulations with respect to PM-2.5 at 40 CFR 51.165 and 52.21, respectively, and requires states with SIP approved NSR programs to revise their regulations in accordance with the May 16, 2008 federal NSR rule and submit the revisions to EPA for approval into the SIP. The GHG Tailoring Rule modified the PSD regulations with respect to GHGs at 51.166 and 52.21; the Title V regulations at 70.2, 70.12, 71.2 and 71.13; and requires states with SIP approved NSR programs to revise their regulations in accordance with the GHG Tailoring Rule and submit the revisions to EPA for approval into the SIP. The October 20, 2010 federal NSR rule modified both the nonattainment NSR and PSD regulations with respect to PM-2.5 at 40 CFR 51.165 and 52.21, respectively, and requires states with SIP approved NSR programs to revise their regulations in accordance with the October 20, 2010 federal NSR rule and submit the revisions to EPA for approval into the SIP.

On December 15, 2009, EPA published its Endangerment Finding stating that GHGs contribute to climate change and are a threat to public health and the welfare of current and future generations. 'See', 74 Fed. Reg. 66,496. According to EPA, the combination of six well-mixed GHGs found in the Earth's atmosphere - carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); hydrofluorocarbons (HFCs); perfluorocarbons (PFCs); and sulfur hexafluoride (SF₆) - form the "air pollutant" that may be subject to regulation under the CAA. 'Id'.

Following the Endangerment Finding, EPA finalized a rule establishing emission standards for GHGs from passenger cars and light-duty trucks, starting with model year 2012 vehicles. 'See' 75 Fed. Reg. 25,324 (May 7, 2010) ("Tailpipe Rule"). EPA also issued an interpretation that a pollutant is "subject to regulation" if it is subject to a CAA requirement establishing "actual control of emissions." 75 Fed. Reg. 17,004, 17,006 (April 2, 2010) ("Trigger Rule"). Taken together, the Endangerment Finding, Tailpipe Rule, and Trigger Rule will result in GHGs being "subject to regulation" under the CAA as of January 2, 2011. On that date, because of EPA's actions, GHGs will need to be addressed as part of the CAA's PSD and Title V permitting programs, regardless of this rulemaking.

Since many states, including New York, have incorporated identical or federally-conforming provisions into their state PSD and Title V programs, GHGs will also need to be addressed as a matter of State law. However, without this rulemaking, the literal application of the current thresholds under the State's PSD and Title V provisions will have the same adverse impact on State stationary sources and the State's permitting programs as described in the federal GHG Tailoring Rule. This means that, without this rulemaking to clarify and tailor the existing applicability thresholds in a similar manner as the federal GHG Tailoring Rule, a vast number of newly regulated facilities within the State would be required to comply with the State's existing PSD and Title V program requirements as of January 2, 2011.

Once GHGs become subject to regulation under the CAA, necessitating the review and processing of possibly thousands of new permits under the State's PSD or Title V permitting programs, the Department's ability to maintain these programs under the existing thresholds applicable to GHGs will be significantly impaired. This proposed rule incorporates and otherwise conforms to the key provisions of the federal GHG Tailoring Rule, including provisions to "tailor" the existing applicability thresholds under the PSD and Title V permitting programs, in order to reduce the anticipated burdens on newly regulated facilities in the state and to alleviate the projected impairment of the state's PSD and Title V programs.

The Part 200 amendments will revise the definitions of potential to emit and PM-2.5 as well as add definitions for GHG and CO₂ equivalent (CO₂e). The definition of potential to emit will be changed to specify that secondary emissions are not included in a facility's potential to emit. The definitions of PM-10 and PM-2.5 will now state that condensable emissions are included.

The definition of major stationary source or major source or major facility in Part 201 will be modified for GHGs to clearly establish its threshold at 100,000 tpy CO₂e in addition to maintaining the current mass based emission thresholds.

The Part 231 amendments will include the remaining provisions from EPA's May 16, 2008 PM-2.5 rule and include provisions for regulating GHGs under PSD. Precursors of PM-2.5, SO₂ and NO_x, have been added as nonattainment contaminants in the PM-2.5 nonattainment area. New York State has determined that emissions of VOCs and ammonia should not be included as PM-2.5 precursors. Interpollutant trading ratios have been added for PM-2.5 precursors by which direct emissions of PM-2.5 can be offset by reductions of SO₂ and/or NO_x. For GHGs the major facility threshold and significant project/significant net emission increase threshold have been clearly established as 100,000 tpy CO₂e and 75,000 tpy CO₂e, respectively, while maintaining the current mass based thresholds. A table has been added to 231-13 that lists the global warming

potential (GWP) of the six individual gases that comprise GHGs and references the table in the federal GHG Mandatory Reporting Rule. For PSD and Title V applicability, a source's GHG emissions must equal or exceed both the mass based and CO₂e based emission thresholds. In accordance with the October 20, 2010 federal NSR rule PM-2.5 increments, SILs, and SMC have been added to their respective tables in Part 231.

These amendments will also correct existing typographical errors identified after the previous rulemaking (February 19, 2009) was completed and clarify sections of existing Parts 200, 201, and 231.

4. COSTS

NSR reviews are conducted for new NSR major facilities or when an existing facility proposes a modification which by itself is major for NSR. NSR reviews are done on a case-by-case basis so the cost of compliance is facility specific. For existing facilities already regulated under Part 231, no new permits, records, or reports will be required by the Department for continued compliance with the proposed revisions. Newly subject facilities will be required to conduct the same case-by-case analysis required in the existing Part 231 as they will be required to conduct in the proposed revisions to Part 231. Therefore, the proposed revisions to Part 231 will cause no additional costs to existing facilities that are already subject to the requirements of NSR and only minimal additional costs to new facilities subject to Part 231.

The proposed amendments to Part 231 related to PM-2.5 will result in some new requirements and costs for newly subject facilities. Additional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER. There are no new costs for emission offsets of direct emissions of PM-2.5. Any additional costs from the regulation of NO_x as a precursor will be minimal. NO_x is already subject to nonattainment review, as an ozone precursor, for the entire PM-2.5 nonattainment area in New York State and requires an offset ratio of at least 1.15 to 1 while the ratio is 1 to 1 from the PM-2.5 rule. In the situation where a pollutant is required to obtain offsets for multiple programs (e.g. NO_x for ozone and PM-2.5) offsets are only required for the program with the higher ratio which is ozone in all of New York's PM-2.5 nonattainment area. Additional costs for NO_x would include the application of LAER at 40 tpy instead of 100 tpy for facilities located in upper Orange County. Other costs include those associated with interpollutant offset trading. The current availability of PM-2.5 offsets may require facilities to use reductions of SO₂ or NO_x to offset increases in PM-2.5 emissions. The offset trading ratios developed by EPA and included in the proposed revisions to Part 231 may increase costs to facilities versus obtaining direct PM-2.5 offsets.

As a result of EPA's actions making GHG's "subject to regulation" as of January 2, 2011 there may be some new requirements and costs for newly subject facilities. However, these new costs, if any, are not directly attributable to this proposed rule, but are a result of EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule, which will result in GHGs becoming subject to regulation under the CAA on January 2, 2011. One of the primary purposes of the GHG component of this rulemaking is to alleviate any such new costs by conforming State regulations to the federal GHG Tailoring Rule.

As with NSR program requirements in general, the costs associated with the regulation of GHGs are project specific and are determined on a case-by-case basis. With multiple gases being regulated as GHGs, the costs will vary by facility depending on which GHGs are being emitted and which gas or gases is of concern. Based on information collected by EPA, the average permitting costs for an industrial facility due to the regulation of GHGs will be \$46,400 for Title V and \$84,500 for PSD. The Department believes that the cost for State sources to comply with PSD and Title V requirements under the existing applicability thresholds would be consistent with EPA estimates. However, the applicability thresholds at which GHGs will be regulated under the proposed tailoring approach is high enough so that it is not anticipated that many facilities will be newly affected by Title V or PSD program requirements. The proposed amendments to Part 231 will provide regulatory and cost relief for numerous smaller facilities which would otherwise be subject to Title V or PSD under the current thresholds. Nationwide, EPA estimates that approximately 6 million facilities will avoid Title V permitting and over 80,000 facilities will avoid PSD permitting using the proposed tailored thresholds. For larger facilities that will be subject to PSD and Title V permitting program requirements on or after January 2, 2011, meaning that they will have emission of GHGs in quantities greater than the tailored thresholds, any additional costs imposed on those facilities as a result of EPA's actions to regulate GHGs under the Act, if any, is anticipated to be minimal. As stated previously, the costs associated with complying with PSD and Title V permitting requirements for GHGs are not directly attributable to these proposed amendments. Instead, any such costs are attributable to EPA's actions to regulate GHGs under the CAA.

5. PAPERWORK

The proposed amendments to Part 231 are not expected to entail any significant additional paperwork for the Department, industry, or State and local governments beyond that which is already required to comply with the Department's existing permitting program under Part 201-6 and existing NSR regulations under Part 231.

6. STATE AND LOCAL GOVERNMENT MANDATES

The adoption of the proposed amendments to Part 231 are not expected to result in any additional burdens on industry, State, or local governments beyond those currently incurred to comply with the requirements of the existing NSR process under Part 201-6, and Part 231. The proposed amendments do not constitute a mandate on state and local governments. NSR requirements apply equally to every entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of Part 231.

7. DUPLICATION

This proposal is not intended to duplicate any other federal or State regulations or statutes. The proposed amendments to Part 231 will ultimately conform the regulation to the CAA.

8. ALTERNATIVES

1. Take No Action.

The State would be in violation of federal law if no action is undertaken. New York State is required to have a SIP approved permitting program for PM-2.5 for NNSR by May 16, 2011. As for GHGs, absent the relief provided for GHG emission sources and state permitting authorities under the federal GHG Tailoring Rule, the permitting thresholds for GHGs would be set at 100 tpy and 250 tpy under the PSD program and 100 tpy under the Title V program. Under these thresholds, it is anticipated that a massive number of smaller sources, including farms, schools, and apartment buildings, would be required to comply with state PSD and Title V program requirements. Many of these sources have never had to address these types of requirements since most of these sources are too small to meet the applicability thresholds for the traditional pollutants, such as SO_x and NO_x, or have been considered exempted activities under current law. Also, as EPA recognized in its GHG Tailoring Rule, these newly subject sources of GHG emissions would undoubtedly inundate and overwhelm state permitting authorities and likely result in significant processing delays, as well as a substantial burden on the state's permitting system in general. While the existing Part 231 provisions allow for the regulation of GHGs consistent with the federal GHG Tailoring Rule, the proposed rulemaking will clarify the new Part 231 GHG requirements for the regulated community and conform Part 231 to the federal GHG Tailoring Rule in order to reduce the anticipated burden on newly subjected sources and the State's PSD and Title V permitting programs.

9. FEDERAL STANDARDS

The proposed amendments to Part 231 are consistent with federal NSR standards.

10. COMPLIANCE SCHEDULE

The proposed amendments do not involve the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the State Register, anticipated to be in May 2011. Current permit renewal schedules for regulated industries will continue and provisions of this regulation will be incorporated at the time of permit renewal. Permits for new facilities and permit modifications for existing facilities will continue to be addressed upon submittal of a permit application by the facility, and subsequent review of such application by the Department.

¹ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule, 75 Fed Reg 31514-31608

Regulatory Flexibility Analysis

EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS:

Small businesses are those that are independently owned, located within New York State, and that employ 100 or fewer persons.

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rulemaking will apply statewide. The proposed Part 231 greenhouse gas (GHG) applicability thresholds for facilities in New York State are high enough so that it is unlikely that any small business or local government that owns or operates a facility would be newly subject to the requirements of Part 231. The Department is undertaking this rulemaking to comply with 2008 and 2010 federal New Source Review (NSR) and Title V rule revisions. The May 16, 2008 federal NSR rule modified both the Nonattainment New Source Review and Prevention of Significant Deterioration (PSD) regulations at 40 CFR 51.165 and 52.21, respectively. The June 3, 2010 federal NSR rule (75 Fed Reg 31514 [GHG Tailoring Rule]) modified the PSD regulation at 40 CFR 52.21 and Title V at 40 CFR 70. The October 20, 2010 federal NSR rule modified both the Nonattainment New Source Review and PSD regulations at 40 CFR 51.165 and 52.21, respectively. All of these federal NSR rules require states with a

State Implementation Plan (SIP) approved NSR program to revise their regulations and submit the revisions to EPA for approval into their SIP. The Department's existing NSR program at Part 231 is subject to this requirement.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. As a result of this rulemaking, particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) precursors (SO₂ and NO_x) will be regulated as nonattainment contaminants in the PM-2.5 nonattainment area, PM-2.5 significant impact levels will be added, and greenhouse gases will be regulated statewide under Title V and PSD. GHG permitting thresholds will be added at increased levels from the current limits resulting in only a small number of facilities newly subject to Title V and/or PSD. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed, and clarify specific sections of existing Parts 200, 201 and 231.

COMPLIANCE REQUIREMENTS:

There are no specific requirements in this rulemaking which apply exclusively to small businesses or local governments. As described above, the revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State and under 40 CFR 51.165, 40 CFR 52.21, and 40 CFR 70. Accordingly, these requirements are not anticipated to place any undue burden of compliance on small businesses and local governments. This proposed rulemaking is not a mandate on local governments. It applies to any entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of this regulation.

PROFESSIONAL SERVICES:

The professional services for any small business or local government that is subject to Part 231 are not anticipated to significantly change from the type of services which are currently required to comply with NSR requirements. The need for consulting engineers to address NSR applicability and permitting requirements for any new major facility or major modification proposed by a small business or local government will continue to exist.

COMPLIANCE COSTS:

NSR reviews are conducted for new NSR major facilities or when an existing facility proposes a modification which by itself is major for NSR. NSR reviews are done on a case-by-case basis so the cost of compliance is facility specific. For existing facilities already regulated under Part 231, no new permits, records, or reports will be required by the Department for continued compliance with the proposed revisions. Newly subject facilities will be required to conduct the same case-by-case analysis required in the existing Part 231 as they will be required to conduct in the proposed revisions to Part 231. Therefore, the proposed revisions to Part 231 will cause no additional costs to existing facilities that are already subject to the requirements of NSR and only minimal additional costs to new facilities subject to Part 231.

The proposed amendments to Part 231 relating to PM-2.5 will result in some new requirements and costs for newly subject facilities. Additional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER. There are no new costs for emission offsets of direct emissions of PM-2.5. Any additional costs from the regulation of NO_x as a precursor will be minimal. NO_x is already subject to nonattainment review, as an ozone precursor, for the entire PM-2.5 nonattainment area in New York State and requires an offset ratio of at least 1.15 to one while the ratio is one to one from the PM-2.5 rule. In the situation where a pollutant is required to obtain offsets for multiple programs (e.g. NO_x for ozone and PM-2.5) offsets are only required for the program with the higher ratio which is ozone in all of New York's PM-2.5 nonattainment area. Additional costs for NO_x would include the application of LAER at 40 tons per year (tpy) instead of 100 tpy for facilities located in upper Orange County. Other costs include those associated with interpollutant offset trading. The current availability of PM-2.5 offsets may require facilities to use reductions of SO₂ or NO_x to offset increases in PM-2.5 emissions. The offset trading ratios developed by EPA and included in the proposed revisions to Part 231 may increase costs to facilities versus obtaining direct PM-2.5 offsets.

As a result of EPA's actions making GHGs "subject to regulation" under the Clean Air Act as of January 2, 2011 there may be some new

requirements and costs for newly subject facilities. However, these new costs, if any, are not directly attributable to this proposed rule, but are a result of EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule ('See', Regulatory Impact Statement). One of the primary purposes of the proposed revisions to Part 231 regarding GHGs is to reduce the anticipated costs that would otherwise have been borne by facilities in New York when GHG emissions become regulated under federal law. This is accomplished by conforming State regulations to the federal GHG Tailoring Rule, and raising the applicability thresholds for GHGs under the federal PSD and Title V permitting programs. By tailoring the applicability thresholds for GHGs, and conforming such thresholds to those set forth in EPA's GHG Tailoring Rule, the proposed rule will ensure that only the largest sources of GHG emissions will be required to comply with new PSD and Title V permitting requirements.

As with NSR program requirements in general, the costs associated with the regulation of GHGs are project specific and are determined on a case-by-case basis. With multiple gases being regulated as GHGs, the costs will vary by facility depending on which GHGs are being emitted and which gas or gases is of concern. Based on information collected by EPA¹, the average permitting costs for an industrial facility due to the regulation of GHGs will be \$46,400 for Title V and \$84,500 for PSD. The Department believes that the cost for State sources to comply with PSD and Title V requirements under the existing applicability thresholds would be consistent with EPA estimates. However, the applicability thresholds at which GHGs will be regulated under the proposed tailoring approach is high enough so that it is not anticipated that many facilities will be newly affected by Title V or PSD program requirements. The proposed amendments to Part 231 will provide regulatory and cost relief for numerous smaller facilities which would otherwise be subject to Title V or PSD under the current thresholds. Nationwide, EPA estimates that approximately 6 million facilities will avoid Title V permitting and over 80,000 facilities will avoid PSD permitting using the proposed tailored thresholds. For larger facilities that will be subject to PSD and Title V permitting program requirements on or after January 2, 2011, meaning that they will have emission of GHGs in quantities greater than the tailored thresholds, any additional costs imposed on those facilities as a result of EPA's actions to regulate GHGs under the Act, if any, is anticipated to be minimal.

NSR requirements flow from the State's obligations under the CAA. Therefore, the proposed revisions to the NSR requirements of Part 231 do not constitute a mandate on state and local governments. NSR requirements apply equally to every entity that owns or operates an emission source that proposes a project with emissions greater than the applicability thresholds of this regulation. No specific additional costs will be incurred by state and local governments.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on any small business or local government. The proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors and GHGs. The proposed revisions to Parts 200, 201, and 231 will provide regulatory relief for smaller facilities with respect to GHGs as a result of the increased permitting thresholds and it is not anticipated that many facilities will be newly subject to Title V and PSD as a result of the regulation of GHGs.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department plans on holding a stakeholder meeting in December 2010 to present the proposed changes to the public and regulated community. The Department will also hold public hearings during the public comment period at several locations throughout the State. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed revisions do not substantially alter the requirements for subject facilities as compared to those requirements that currently exist. The revisions leave intact the major NSR requirements for application of LAER or BACT as appropriate, modeling, and emission offsets. Therefore, the Department believes there are no additional economic or technological feasibility issues to be addressed by any small business or local government that may be subject to the proposed rulemaking.

¹ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule, 75 Fed Reg 31514-31608

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED:

Rural areas are defined as rural counties in New York State that have populations less than 200,000 people, towns in non-rural counties where

the population densities are less than 150 people per square mile and villages within those towns.

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rulemaking will apply statewide and all rural areas of New York State will be affected.

The Department is undertaking this rulemaking to comply with 2008 and 2010 federal New Source Review (NSR) and Title V rule revisions. The May 16, 2008 federal NSR rule modified both the Nonattainment New Source Review and Prevention of Significant Deterioration (PSD) regulations at 40 CFR 51.165 and 52.21, respectively. The June 3, 2010 federal NSR rule modified the PSD regulation at 40 CFR 52.21 and Title V at 40 CFR 70. The October 20, 2010 federal NSR rule modified both the Nonattainment New Source Review and PSD regulations at 40 CFR 51.165 and 52.21, respectively. All of these federal NSR rules require states with a State Implementation Plan (SIP) approved NSR program to revise their regulations and submit the revisions to EPA for approval into their SIP. The Department's existing NSR program at Part 231 is subject to this requirement.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. As a result of this rulemaking, particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) precursors (SO₂ and NO_x) will be regulated as nonattainment contaminants in the PM-2.5 nonattainment area, PM-2.5 significant impact levels will be added, and greenhouse gases (GHGs) will be regulated statewide under Title V and PSD. GHG permitting thresholds will be added at increased levels from the current limits resulting in only a small number of facilities newly subject to Title V and/or PSD. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed, and clarify specific sections of existing Parts 200, 201 and 231.

COMPLIANCE REQUIREMENTS:

There are no specific requirements in this rulemaking which apply exclusively to rural areas of the State. As described above, the revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State and under 40 CFR 51.165, 40 CFR 52.21, and 40 CFR 70. As such, the professional services that will be needed by any facility located in a rural area are not anticipated to significantly change from the type of services which are currently required to comply with NSR requirements.

COSTS:

NSR reviews are conducted for new NSR major facilities or when an existing facility proposes a modification which by itself is major for NSR. NSR reviews are done on a case-by-case basis so the cost of compliance is facility specific. For existing facilities already regulated under Part 231, no new permits, records, or reports will be required by the Department for continued compliance with the proposed revisions. Newly subject facilities will be required to conduct the same case-by-case analysis required in the existing Part 231 as they will be required to conduct in the proposed revisions to Part 231. Therefore, the proposed revisions to Part 231 will cause no additional costs to existing facilities that are already subject to the requirements of NSR and only minimal additional costs to new facilities subject to Part 231.

The proposed amendments to Part 231 relating to PM-2.5 will result in some new requirements and costs for newly subject facilities. Additional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER. There are no new costs for emission offsets of direct emissions of PM-2.5. Any additional costs from the regulation of NO_x as a precursor will be minimal. NO_x is already subject to nonattainment review, as an ozone precursor, for the entire PM-2.5 nonattainment area in New York State and requires an offset ratio of at least 1.15 to one while the ratio is one to one from the PM-2.5 rule. In the situation where a pollutant is required to obtain offsets for multiple programs (e.g. NO_x for ozone and PM-2.5) offsets are only required for the program with the higher ratio which is ozone in all of New York's PM-2.5 nonattainment area. Additional costs for NO_x would include the application of LAER at 40 tons per year (tpy) instead of 100 tpy for facilities located in upper Orange County. Other costs include those associated with interpollutant offset trading. The current availability of PM-2.5 offsets may require facilities to use reductions of SO₂ or NO_x

to offset increases in PM-2.5 emissions. The offset trading ratios developed by EPA and included in the proposed revisions to Part 231 may increase costs to facilities versus obtaining direct PM-2.5 offsets.

As a result of EPA's actions making GHGs "subject to regulation" under the Clean Air Act as of January 2, 2011 there may be some new requirements and costs for newly subject facilities. However, these new costs, if any, are not directly attributable to this proposed rule, but are a result of EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule ('See', Regulatory Impact Statement). One of the primary purposes of the proposed revisions to Part 231 regarding GHGs is to reduce the anticipated costs that would otherwise have been borne by facilities in New York when GHG emissions become regulated under federal law. This is accomplished by conforming State regulations to the federal GHG Tailoring Rule, and raising the applicability thresholds for GHGs under the federal PSD and Title V permitting programs. By tailoring the applicability thresholds for GHGs, and conforming such thresholds to those set forth in EPA's GHG Tailoring Rule, the proposed rule will ensure that only the largest sources of GHG emissions will be required to comply with new PSD and Title V permitting requirements.

As with NSR program requirements in general, the costs associated with the regulation of GHGs are project specific and are determined on a case-by-case basis. With multiple gases being regulated as GHGs, the costs will vary by facility depending on which GHGs are being emitted and which gas or gases is of concern. Based on information collected by EPA¹, the average permitting costs for an industrial facility due to the regulation of GHGs will be \$46,400 for Title V and \$84,500 for PSD. The Department believes that the cost for State sources to comply with PSD and Title V requirements under the existing applicability thresholds would be consistent with EPA estimates. However, the applicability thresholds at which GHGs will be regulated under the proposed tailoring approach is high enough so that it is not anticipated that many facilities will be newly affected by Title V or PSD program requirements. The proposed amendments to Part 231 will provide regulatory and cost relief for numerous smaller facilities which would otherwise be subject to Title V or PSD under the current thresholds. Nationwide, EPA estimates that approximately six million facilities will avoid Title V permitting and over 80,000 facilities will avoid PSD permitting using the proposed tailored thresholds. For larger facilities that will be subject to PSD and Title V permitting program requirements on or after January 2, 2011, meaning that they will have emission of GHGs in quantities greater than the tailored thresholds, any additional costs imposed on those facilities as a result of EPA's actions to regulate GHGs under the Act, if any, is anticipated to be minimal.

NSR requirements flow from the State's obligations under the CAA. Therefore, the proposed revisions to the NSR requirements of Part 231 do not constitute a mandate on state and local governments. NSR requirements apply equally to every entity that owns or operates an emission source that proposes a project with emissions greater than the applicability thresholds of this regulation. No specific additional costs will be incurred by rural areas of the State.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on rural areas. The proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors and GHGs. The proposed revisions to Parts 200, 201, and 231 will provide regulatory relief for smaller facilities with respect to GHGs as a result of the increased permitting thresholds. It is not anticipated that many facilities will be newly subject to Title V or PSD as a result of the regulation of GHGs.

RURAL AREA PARTICIPATION:

The Department plans on holding a stakeholder meeting in December 2010 to present the proposed changes to the public and regulated community. The Department will also hold public hearings during the public comment period at several locations throughout the State. Residents of rural areas of the State will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

¹ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule, 75 Fed Reg 31514-31608

Job Impact Statement

NATURE OF IMPACT:

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rulemaking revisions will apply statewide. The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State.

The Department is undertaking this rulemaking to comply with 2008 and 2010 federal New Source Review (NSR) and Title V rule revisions. The May 16, 2008 federal NSR rule modified both the Nonattainment

New Source Review and Prevention of Significant Deterioration (PSD) regulations at 40 CFR 51.165 and 52.21, respectively. The June 3, 2010 federal NSR rule modified the PSD regulation at 40 CFR 52.21 and Title V at 40 CFR 70. The October 20, 2010 federal NSR rule modified both the Nonattainment New Source Review and PSD regulations at 40 CFR 51.165 and 52.21, respectively. Both of these federal NSR rules require states with a State Implementation Plan (SIP) approved NSR program to revise their regulations and submit the revisions to EPA for approval into their SIP. The Department's existing NSR program at Part 231 is subject to this requirement.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. As a result of this rulemaking, particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) precursors (SO₂ and NO_x) will be regulated as nonattainment contaminants in the PM-2.5 nonattainment area, PM-2.5 significant impact levels will be added, and greenhouse gases (GHGs) will be regulated statewide under Title V and PSD. GHG permitting thresholds will be added at increased levels from the current limits resulting in only a small number of facilities newly subject to Title V and/or PSD. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed, and clarify specific sections of existing Parts 200, 201 and 231. The Department does not anticipate that any of the proposed rule revisions would adversely affect jobs or employment opportunities in the State.

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED:

Due to the nature of the proposed amendments to Part 231, as discussed above, no measurable negative effect on the number of jobs or employment opportunities in any specific job category is anticipated. There may be some job opportunities for persons providing consulting services and/or manufacturers of pollution control technology in relation to the new requirements.

REGIONS OF ADVERSE IMPACT:

There are no regions of the State where the proposed revisions would have a disproportionate adverse impact on jobs or employment opportunities. The existing NSR requirements are not being substantially changed from those that currently exist.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on existing jobs or promote the development of any significant new employment opportunities. The proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors, increments, significant impact levels, significant monitoring concentration, and GHGs. The proposed revisions to Parts 200, 201, and 231 will provide regulatory relief for smaller sources with respect to GHGs. The current statutory emission thresholds (mass based) for Title V applicability of 100 tons per year (tpy), and PSD applicability of 100 tpy and 250 tpy are "tailored" for GHG emissions under this rulemaking. For purposes of Title V applicability, in addition to the current mass based threshold, this rulemaking establishes a GHG carbon dioxide equivalent (CO₂e) threshold of 100,000 tpy. For purposes of PSD applicability, in addition to the current mass based thresholds, this rulemaking establishes a GHG CO₂e major facility threshold of 100,000 tpy and a CO₂e major modification threshold for existing major facilities of 75,000 tpy. As a result of the increased thresholds proposed in this rulemaking, it is not anticipated that many facilities will be newly subject to Title V and PSD program requirements as a result of EPA's actions to regulate GHGs under the Clean Air Act.

SELF-EMPLOYMENT OPPORTUNITIES:

The types of facilities affected by these regulatory changes are larger operations than what would typically be found in a self-employment situation. There may be an opportunity for self-employed consultants to advise facilities on how best to comply with the revised requirements. The proposed revisions are not expected to have any measurable negative impact on opportunities for self-employment.

Assessment of Public Comment

1) Comment: Paragraph 231-5.5(b)(3) and Paragraph 231-6.6(b)(3) list interpollutant offset ratios for PM-2.5, NO_x, and SO₂ which were developed from the EPA's final rule on Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM-2.5) dated May 16, 2008. Although at the time of the PM-2.5 final rule EPA recommended "that States use these hierarchies and trading

ratios in their interpollutant trading programs to provide consistency and streamline the trading process” [see 73 FR 28339 (May 16, 2008)], EPA is reconsidering these interpollutant trading ratios and they may no longer be presumptively approvable. Please note that in order for EPA to approve these proposed interpollutant trading ratios in Part 231 or any other ones for a specific permit application, NYSDEC must develop a technical demonstration of trading ratios on a case-by-case basis with public input into that process. (Commenter 1)

Response: The New York State Department of Environmental Conservation (Department) elected to use EPA’s recommended interpollutant trading ratios and rely on EPA’s technical work and presumption that such ratios will be approvable by EPA absent a credible showing that EPA’s trading ratios are not appropriate [73 Fed. Reg. 28321 (May 16, 2008)]. EPA states in the preamble to its May 16, 2008 final Rule that “to be approved, the trading program must either adopt EPA’s recommended trading ratios or be backed up by regional-scale modeling...” To date, EPA has not formally revised its recommended interpollutant trading ratios, therefore, the Department will not revise the proposed interpollutant trading ratios in Part 231 at this time. If EPA promulgates revisions to its recommended interpollutant trading ratios in the future, the Department will evaluate the revised ratios and make any necessary revisions to Part 231.

2) Comment: Please note that EPA intends to finalize the proposed rule entitled “Deferral for CO₂ emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs” [see 76 FR 15249 (March 21, 2011)] on or around July 1, 2011. This date will be after the close of the public comment period for this proposed Part 231 revision but most likely before this Part 231 revision becomes final. NYSDEC may wish to look into the feasibility of including the biomass deferral provisions into the final Part 231 rule. (Commenter 1)

Response: Thank you for your comment. The Department will evaluate any future revisions to the PSD or Title V programs when the applicable federal rules are final.

3) Comment: The Regulatory Impact Statement (RIS) Summary notes that precursors of PM-2.5, sulfur dioxide (SO₂), and nitrogen oxides (NO_x) have been added as nonattainment contaminants in the PM-2.5 nonattainment area. The draft regulation also would allow direct emissions of PM-2.5 to be offset by reductions of SO₂ and/or NO_x. However, IPPNY observes that no PM-2.5 emission reduction credits (ERCs) are in place for use with this program. Also, IPPNY is concerned about the ERC offset ratio of 200 tons NO_x for 1 ton of PM-2.5. We believe that this ratio is out of balance with the reality of a useful emission control program. If this ratio is used, the licensing of a new facility in an area that is not in compliance with the PM-2.5 requirements could be impeded. (Commenter 2)

4) Comment: The development and use of a viable New York State PM-2.5 ERC program, in conjunction with this rulemaking, should be considered and created in a timely manner. Use of inter- and intra- state NO_x and SO₂ ERC programs to offset PM-2.5 emissions should be considered as an alternative, rather than the primary, method of control. The absence of readily available PM-2.5 ERCs for any development in nonattainment regions for PM-2.5 is counter to the goals of both the EPA and the DEC. A lack of these ERCs does not foster an environment for either placement of newer lower-emitting technology, or modifications via major changes to facilities, which would result in lower regional emissions. (Commenter 2)

Response to comments 3 and 4: EPA’s May 16, 2008 final Rule requires PM-2.5 offsets in state areas designated as PM-2.5 nonattainment. Since New York has a designated PM-2.5 nonattainment area, the Department was required to include the PM-2.5 offset requirement as part of its Part 231 regulation. The use of interpollutant (NO_x or SO₂) offsets to meet the PM-2.5 offset requirement is an option. It is not a mandate. As a result, it provides some flexibility in complying with the PM-2.5 offset requirement. EPA stated in its May 16, 2008 final Rule that it completed a technical assessment to develop preferred interpollutant trading ratios and recommended that States use these ratios in their interpollutant trading programs to provide consistency and streamline the trading process. The Department is aware that the current ERC registry does not contain direct PM-2.5 ERCs. The Department, however, is in the process of reviewing ERC applications which will likely create PM-2.5 ERCs. As with all ERCs, it is up to industry to create the needed credits. Also, please see response to comment 1.

5) Comment: NSR reviews are done on a case-by-case basis, so the cost of compliance is facility-specific. According to the DEC, the draft regulation will cause no additional costs to existing facilities that already are subject to the requirements of NSR and will have only minimal additional costs for new facilities; however, IPPNY disagrees with this assessment and believes that the proposed changes related to PM-2.5 will result in significant new requirements and costs for newly subject facilities. In particular, IPPNY is concerned that, with the recent cost of NO_x ERC offsets

reaching as much as \$15,000 per ton, the DEC’s proposed 200 to 1 offset ratio will be cost prohibitive. (Commenter 2)

Response: The commenter appears to be referencing statements in the first paragraph of section 4 of the Regulatory Impact Statement (RIS). That paragraph, however, is intended to convey that no additional costs would be incurred by existing facilities as it relates to new permit, records, or reporting requirements. As stated elsewhere in the RIS, however, the Department acknowledges that additional costs will be incurred as a result of this rule. In particular, the Department stated in the second paragraph of section 4 of the RIS that, “[a]dditional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER.” Additional cost considerations are referenced in the RIS as well as in the other supporting documents accompanying this rulemaking.

6) Comment: We are pleased that these proposed New York amendments are consistent with the Federal Tailoring Rule requirements and that, beyond the requirement to obtain a permit; the proposed amendments do not include any emission standards or control requirements for greenhouse gases. (Commenter 3)

Response: Thank you for your comment. You are correct that there are no specific emission standards or control requirements to meet Best Available Control Technology requirements.

APPENDIX
LIST OF COMMENTERS

Commenter number	Name and Affiliation
1	Environmental Protection Agency
2	Independent Power Producers of New York, Inc.
3	Dominion Transmission, Inc.

NOTICE OF ADOPTION

Hunting Seasons for Black Bear

I.D. No. ENV-20-11-00002-A

Filing No. 639

Filing Date: 2011-07-19

Effective Date: 2011-08-03

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

Action taken: Amendment of section 1.31 of Title 6 NYCRR.

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

Subject: Hunting seasons for black bear.

Purpose: To expand the areas open for bear hunting and establish a uniform bear hunting season in New York’s Southern Zone.

Text of final rule: Existing subdivisions 6 NYCRR 1.31(b) is repealed and a new subdivision 6 NYCRR 1.31(b) is adopted as follows:

(b) “Bear hunting seasons.” Bears may be taken only during the open seasons and areas listed below:

(1) Regular bear seasons:

Bear range	Open season
Northern	WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: Next to last Saturday in October through the first Sunday in December.
Southern	WMUs 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 4C, 4F, 4G, 4H, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5S, 5T, 7M, 7P, 7R, 7S, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y: The twenty-three day period beginning on the third Saturday in November. WMU 3S: The Saturday following the second Monday in October (Columbus Day) and continuing through December 31st.
Rest of State	Closed

(i) Legal implements for regular bear season are the same as for regular deer season. Black bear may only be taken by longbow in Westchester County (WMU 3S).

(2) Early bear season:

Bear range	Open season
Northern	WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: First Saturday after the second Monday in September through the Friday immediately preceding the Northern muzzleloading bear season.
Rest of State	Closed

(3) Bowhunting bear seasons:

Bear range	Open season
Northern	WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: September 27th through the Friday immediately preceding the Northern regular bear season.
Southern	WMUs 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 4C, 4F, 4G, 4H, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5S, 5T, 7M, 7P, 7R, 7S, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y: The Saturday following the second Monday in October (Columbus Day) through the Friday immediately preceding the Southern regular bear season and the nine-day period immediately following the Southern regular bear season.
Rest of State	Closed

(i) Any person participating in the bowhunting bear hunting season may not have in his or her possession, or be accompanied by a person who has in his or her possession, any hunting implement other than a legal longbow.

(4) Muzzleloading bear seasons:

Bear range	Open season
Northern	WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: The seven day period immediately preceding the Northern Zone regular bear season.
Southern	WMUs 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 4C, 4F, 4G, 4H, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5S, 5T, 7M, 7P, 7R, 7S, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y: The nine day period immediately following the Southern regular bear season.
Rest of State	Closed

(i) Any person participating in the muzzleloading bear hunting season may not have in his or her possession, or be accompanied by a person who has in his or her possession, a firearm other than a muzzleloading firearm which is lawful for taking big game.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 1.31(b)(1).

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

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

Revised Regulatory Impact Statement

A technical correction was made to the text of the rule to fully align the proposed bear hunting season with the regular deer hunting season in Westchester County (Wildlife Management Unit 3S), as was our intent, and to clarify the legal implements for hunting bear during the regular bear seasons. The original Regulatory Impact Statement as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

Revised Regulatory Flexibility Analysis

A technical correction was made to the text of the rule to fully align the proposed bear hunting season with the regular deer hunting season in Westchester County (Wildlife Management Unit 3S), as was our intent, and to clarify the legal implements for hunting bear during the regular bear seasons. The original Regulatory Flexibility Analysis for Small Businesses and Local Governments as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

Revised Rural Area Flexibility Analysis

A technical correction was made to the text of the rule to fully align the proposed bear hunting season with the regular deer hunting season in Westchester County (Wildlife Management Unit 3S), as was our intent, and to clarify the legal implements for hunting bear during the regular bear seasons. The original Rural Area Flexibility Analysis as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

Revised Job Impact Statement

A technical correction was made to the text of the rule to fully align the proposed bear hunting season with the regular deer hunting season in Westchester County (Wildlife Management Unit 3S), as was our intent, and to clarify the legal implements for hunting bear during the regular bear seasons. The original Job Impact Statement as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

Assessment of Public Comment

The Department of Environmental Conservation (DEC or department) received a total of 47 public comments, the majority of which expressed support for the proposed rulemaking. Several comments simply stated support without explanation. Two comments were ambiguous or unrelated to the proposal. A summary of the substantive comments and the department’s response follows:

Comment:

The proposed regulation is a good step to managing black bears in areas where bear populations have been growing, will provide additional opportunity for hunters, and will help decrease the human-bear conflicts in those areas.

Response:

The department agrees.

Comment:

Providing uniform bear hunting season dates across the Southern Zone will reduce confusion among hunters about legal hunting dates and will simplify enforcement.

Response:

The department agrees.

Comment:

An earlier start date for regular bear season in the central-western portion of New York may increase bear harvest opportunities for hunters and may help decrease human-bear conflicts.

Response:

The department agrees.

Comment:

Current bear populations do not warrant the proposed expansion of the area open to bear hunting. These changes may result in decimation of the bear population.

Response:

The department considers the proposed rulemaking to be a reasonable approach to address a growing bear population in eastern New York. In the absence of population control through hunting, bear populations will continue to increase, resulting in greater levels of human-bear conflicts, property and agricultural damage. The department will continue to monitor black bear populations to achieve harvest rates that are consistent with sustainable bear populations. Furthermore, existing laws and regulations prohibit the taking of cubs, any bear in a group of bears, or any bear in a den in the Southern Zone. These additional measures help ensure that hunting is compatible with maintaining viable bear populations in the area.

Comment:

Occasional black bear sightings do not constitute a bear problem. We haven’t seen problems between bears and humans in the area proposed for the bear hunting expansion. The proposed expansion of bear hunting is not justified at this time and the department should continue its education efforts to promote understanding and tolerance of bears as an alternative to hunting.

Response:

The department has routinely documented >100 complaints and observations of black bears annually in the proposal area. Complaints range from relatively minor damage involving bird feeders and garbage to

property damage from bears entering greenhouses, chicken houses, and vehicles and unacceptable threats from bears entering or attempting to enter enclosed porches or homes. Bears have injured livestock and pets, and bears repeatedly cause problems for corn growers in Washington County and bee keepers throughout the region. Additionally, several bears annually are found in highly urban areas in the lower Hudson Valley, potentially creating a public hazard and frequently requiring the department to immobilize and relocate those bears to more rural areas. Situations involving bear damage to livestock, pets, or entry into homes necessitate that offending bear be killed, and bears causing repeated agriculture or apiary damage may also be killed.

It is impossible to predict exactly where the next bear conflicts may occur, and it is not prudent to wait for certain levels of damage or injury to occur before opening specific locales for bear hunting. Therefore, the proposed rulemaking is intended to slow bear population growth in the region and thereby reduce the potential for human-bear conflicts. Regulated hunting of bears will permit acceptable use of bear meat and hides by hunters and will likely reduce need for bears to be destroyed for damage related offenses.

The department will continue educational efforts to promote public understanding and tolerance of bears, but these measures will be insufficient to curb bear population growth in eastern New York. The department considers the proposed rulemaking to be a reasonable approach to address a growing bear population in eastern New York and reduce negative human-bear conflicts.

Comment:

Current bear populations do not warrant the proposed modification of season dates in central-western New York. The department should close the season for several years to allow the population to expand.

Response:

The department does not believe that additional bear population growth in central and western New York is prudent. The proposed rule is a continuation of efforts to curb bear population growth and range expansion in central and western New York and prevent bear dispersal northward into areas of higher potential human-bear conflicts.

Comment:

Opening regular bear season at the same time as deer season will result in more sows and more cubs shot.

Response:

Existing laws and regulations prohibit the taking of cubs, any bear in a group of bears, or any bear in a den in the Southern Zone. These prohibitions will be unchanged by this rulemaking and will continue to protect cubs and sows with cubs from being killed by hunters.

Comment:

The department should not open portions of eastern New York with the same long season as occurs in other areas but should consider a lottery for a limited number of bears or a shorter season.

Response:

The department considered allowing bear hunting only during bowhunting season in the proposed expansion area. This would likely reduce the potential bear harvest by >50%. Given the patterns of bear population growth experienced in other portions of New York, such limited harvest is expected to be insufficient to stem bear population growth in eastern New York.

The department believes a lottery system for limited bear tags is currently unnecessary for bear population management and would needlessly complicate hunting license sales and law enforcement.

Comment:

There are many wildlife management approaches and techniques available to manage undesirable wildlife population growth other than hunting and the department is encouraged to utilize one of these techniques in the proposed area.

Response:

The department acknowledges the following alternative methods could theoretically be used for reducing bear population growth: (1) trap and transfer, (2) trap and kill, and (3) fertility control. The first two options are logistically, financially, and/or socially unacceptable. Trapping bears is difficult and expensive and can be dangerous for both the bears and the handlers. Additionally, relocating a large portion of the bear population from one region to another within New York is counter to management goals of reducing or stabilizing populations throughout the state. At the present time, fertility control is not a viable option to manage free ranging black bear populations. No chemical fertility control has been approved by federal regulatory agencies for experimental use on any wild population of bears. Furthermore, given the inherent expense in capturing bears, low population densities, and expansive movements of bears, fertility control is unlikely to be a feasible means to manage bear populations.

The department currently employs a number of methods to address human-bear conflicts, but these measures do not affect bear population growth.

Comment:

Bear hunting in Westchester County should be allowed with all legal implements.

Response:

Environmental Conservation Law (ECL) 11-0931 prohibits use of a rifle for hunting in Westchester County. Additionally ECL 11-0907 specifies that the legal implements for bear hunting are the same as those for deer hunting, which for Westchester County is limited to archery equipment only.

Comment:

We are worried about the negative impacts associated with these new rules. We already have problems with unregulated hunters who behave badly.

Response:

Hunting activity is closely regulated, and the department believes the vast majority of hunters are law abiding. This rule is not expected to increase illegal activity.

In addition to comments submitted by the public, the department recognized that the proposed rule needed a technical correction to fully align bear hunting season dates with the regular deer hunting season in Westchester County, Wildlife Management Unit 3S, as was our intent when we proposed this rulemaking.

Department of Health

EMERGENCY RULE MAKING

Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

I.D. No. HLT-31-11-00003-E

Filing No. 634

Filing Date: 2011-07-15

Effective Date: 2011-07-15

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

Action taken: Amendment of Part 59 of Title 10 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 1194(4)(c) and 1198(6); and Environmental Conservation Law, section 11-1205(6)

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

Specific reasons underlying the finding of necessity: This amendment to Part 59 is being filed as an emergency action because immediate adoption is necessary to avoid a conflict between Part 59 as it currently exists and an emergency action filed by the Division of Probation and Correctional Alternatives (DPCA) to implement Chapter 496 of the Laws of 2009 (Leandra's Law). This law mandates use of ignition interlock devices for all individuals sentenced for Driving While Intoxicated (DWI) misdemeanor or felony offenses, and is expected to result in more widespread use of ignition interlock devices. Since the Department of Health will continue to set standards for and certify devices to make them eligible for use in NYS, the Department has a vested interest in ensuring success of this initiative. Leandra's Law also greatly expanded DPCA's role in ignition interlock oversight, and DPCA has incorporated certain regulatory provisions that are in existing Part 59 in its new Title 9 NYCCR Part 358, consistent with DPCA's mandate for oversight of the installation, use and servicing of ignition interlock devices. If this amendment to Part 59 does not become effective contemporaneously with DPCA's Part 358, a seamless transfer of responsibility would not take place, and regulated parties would be exposed to contradictory requirements, leading to confusion and non-compliance. It is also noteworthy that the timely transfer of responsibility between agencies ensures that statutory deadlines for implementing an important statewide public safety initiative are met.

In addition, this amendment would enable law enforcement agencies to use breath alcohol testing devices identified in the recently published March 11, 2010 list of devices approved by the federal National Highway Traffic Safety Administration. Existing Part 59 references a 2007 list and must be updated now that a new list is available. The federal and State lists of approved breath testing devices need be identical to avoid legal challenges and preclude inadmissibility of evidence, and to ensure effective enforcement of the law against driving while intoxicated.

Subject: Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content.

Purpose: Update technical standards for blood and breath alcohol testing conducted by law enforcement.

Substance of emergency rule: This proposed amendment to Part 59 updates standards, reflects changes in nomenclature and technology, and provides clarification of provisions pertinent to alcohol determinations of breath, blood and other body fluids, and certification of ignition interlock devices used for enforcement of Vehicle and Traffic Law.

The Section 59.1 definition for the term techniques and methods is amended to include saliva, which itself is defined in a new subdivision (k). The definition of testing laboratory is revised to clarify the Department's requirements. A definition for calibration is added. Section 59.2 is modified to introduce current terminology, specifically blood alcohol concentration (BAC). The rule clarifies that urine may be used as a specimen, and its analysis requires controls and blanks similar to those used for analyses of blood. This amendment removes the list of persons authorized to draw blood and eliminates technical specifications not required for analytical accuracy. Section 59.2 is further modified to revise the acceptable range for the alcohol reference standard used for calibration verification of instruments for both breath and blood analysis. This section and others now provide for a 0.08 grams/100 ml (w/v) reference standard. This proposal also requires that units for alcohol determinations of blood and urine be expressed as blood alcohol concentration (BAC), meaning percent weight per volume, rather than the outdated terminology of grams percent.

Section 59.3 is modified in several places to address saliva as a potential specimen. The proficiency testing performance criteria for renewal of a permit for the chemical analysis of blood, urine and saliva are clarified. "Competence" is replaced with "proficiency" throughout the section. In Section 59.4, outdated NYS-specific criteria for breath testing instruments are replaced with documentation that the model has been accepted by the U.S. Department of Transportation/National Highway Traffic Safety Administration (NHTSA) as an evidential breath alcohol measurement device. The proposed amendment includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety, Inc., are fully approved by the Department of Health. The training agencies' responsibilities for instrument maintenance, including the establishment of a calibration cycle, and records retention are clarified.

The Section 59.5 two-hour time frame for specimen collection is eliminated, and the requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put to use by the analyst is clarified. The requirement for observation of a subject prior to collection of a breath sample has been clarified. Minor technical changes have been made to Section 59.6.

This proposal would reduce the hours spent in initial training for a breath analyst permit as specified in Section 59.7, from 32 hours required to 24 hours, and require training agencies to develop learning objectives. The minimum time for hands-on training with breath analysis instruments is reduced from ten to six hours. Revised Section 59.7 establishes an application window of 120 calendar days preceding the permit's expiration date. The Section also clarifies that a permit expires and is void when not renewed, but that the Commissioner of Health may extend the permit expiration date for 30 calendar days, during which period the permit remains valid. The amendment makes clear that failure to renew in accordance with time frames established in the regulation results in the permit becoming void, which then requires the analyst to participate in the 24-hour initial/comprehensive training course. Section 59.7, as revised, requires training agencies to submit information on training sessions and participant lists to the Department of Health in a format designated by the Commissioner.

Section 59.9, as amended, provides for an effective period of four years for technical supervisor certification, an increase of two years. The responsibilities of a technical supervisor have been modified to reflect current practice. Notably, the duty to conduct field inspections has been eliminated, as has the responsibility to provide expert testimony, since the recognition of expertise is a role of the court. Revised Section 59.9 clarifies that a technical supervisor may delegate certain tasks, including instrument maintenance and preparation of chemicals used in testing, to a person not qualified as a supervisor, provided the work product is reviewed and found acceptable. A new sentence at the end of the section codifies long-standing Department policy that suspension or revocation of an operator's permit held by a supervisor triggers suspension or revocation of the person's certification as a technical supervisor.

Existing Sections 59.10 and 59.11 are repealed, and replaced with two new sections that provide criteria, respectively, for certification for ignition interlock devices and for testing of such devices by independent laboratories. The existing reference to a seven-county pilot study of ignition interlock devices is removed, and outdated performance standards for devices are replaced with NHTSA standards. Existing provisions for the application process, manufacturer interaction with testing laboratories,

and discontinuance of certification remain in effect. New Section 59.10 requires the manufacturer to provide contact information, including identification of a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite liability coverage will notify the Department at least 30 days prior to cancellation of the policy before the expiration date. Section 59.10 also makes clear the Department's requirement that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification.

New Section 59.11 specifies the minimal elements of a testing laboratory report and requires such report to be submitted directly to the Department. In both new sections, a reference to "circumvention" has been added with each occurrence of the word "tampering," to recognize that these are both prohibited in Vehicle and Traffic Law Section 1198.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain express approval for its continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved from Section 59.10 to Section 59.12. A new requirement is added that the manufacturer notify the Department of each renewal of insurance coverage, each change of issuing company, and each change in liability limits. The section requires manufacturers to supply to installation/service providers a sufficient number of labels with text that conforms to the text mandated by statute. The vast majority of the section's other requirements, including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) contemporaneously with this regulation in response to the anticipated August 2010 implementation of the ignition interlock provisions of Leandra's Law (L. 2009, ch. 496). New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form has been removed from the regulation, as it will be available electronically.

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 October 12, 2011.

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

Summary of Regulatory Impact Statement

Statutory Authority:

The New York State (NYS) Vehicle and Traffic Law, Section 1194(4)(c), and Department of Environmental Conservation Law, Section 11-1205(6), authorize the Commissioner of Health to adopt regulations concerning methods of testing breath and body fluids for alcohol content. NYS Vehicle and Traffic Law, Section 1198(6) authorizes the Commissioner of Health to promulgate regulations setting standards for use of ignition interlock devices.

Legislative Objectives:

This amendment is consistent with the legislative objective of ensuring effective enforcement of laws against driving while intoxicated (DWI). This proposal is consistent with Chapter 669 of the Laws of 2007, which authorized statewide use of ignition interlock devices, and Chapter 496 of the Laws of 2009 (Leandra's Law), which mandates that every person sentenced for any DWI offense, must have an ignition interlock device installed as a requirement for conditional discharge or probation.

Needs and Benefits:

Part 59 establishes standards for chemical tests on blood, breath, and urine for the presence of alcohol, for purposes of detecting unacceptable levels of alcohol in persons. Courts rely on Part 59 provisions daily in adjudicating alcohol-related offenses; the State's correctional alternatives program relies on effective operation of ignition interlock devices to prevent repeat offenders from driving while impaired by alcohol. The existing regulation must be updated, as it is inconsistent with existing DWI statutes, as well as current and anticipated usage of ignition interlock devices.

The specificity of Section 59.2 standards for collecting, handling and analyzing a specimen for blood alcohol analysis has prevented convictions even though the defendant was driving while intoxicated. This amendment would delete the list of persons authorized to draw blood, as the listing could present a legal conflict with similar provisions in Vehicle and

Traffic Law Section 1194(4)(a) and Public Health Law Section 3703. This amendment would eliminate technical specifications for the collection of blood within a two-hour timeframe, and use of a clean and sterile syringe and anticoagulant, and require that alcohol units be expressed as blood alcohol concentration, rather than the outdated terminology of grams percent. The reference standard for calibration verification of breath and blood analysis instruments has been changed to a standard greater than or equal to 0.08 grams/100 ml, consistent with the Vehicle and Traffic Law provision that sets 0.08% weight per volume (w/v) alcohol in blood as the threshold for certain DWI sanctions. The amendment describes criteria for revocation or nonrenewal of a blood alcohol analysis permit based on unsuccessful proficiency testing (PT) performance or failure to participate in PT challenges.

Section 59.4 affords training agencies the flexibility of establishing retention times for records, as these may vary by record type and potential use in a legal proceeding; delegation of recordkeeping activities is authorized. Section 59.4, as revised, stipulates the commissioner's approval of breath measurement devices for use in NYS provided the device has been accepted by the National Highway Traffic Safety Administration (NHTSA). The revised section includes the list of NHTSA-approved breath measurement instruments published in the Federal Register on March 11, 2010 to remove any possible ambiguity about the fact that devices listed therein, including the Alcotest 9510 manufactured by Draeger Safety Inc., are fully approved by the Department of Health. The requirement in Section 59.5 for conducting breath analysis within two hours of arrest or a positive breath alcohol screening test has been removed. The requisite for test subject observation prior to testing has been clarified, as the existing provision for continuous observation carries the risk of unintended and unnecessarily specific interpretation, thus jeopardizing successful DWI prosecution. The reference to operational checklists, which are no longer used, has been eliminated. The requirement for certain techniques and methods to be a component of each training agency's curriculum and to be put into use by analysts is clarified.

This proposal would reduce from 32 to 24 hours the time trainees must spend in initial training. The reduction from 10 to six hours in hands-on use of instruments is reasonable given the decreasing complexity of instrumentation overall, and the trend towards use of one device model within a jurisdiction. Training agencies would be required to identify learning objectives and design examinations in keeping with objectives. The outdated term equilibrators has been deleted, as breath analyzers no longer need to counter a matrix effect from use of simulator solutions. As modified, the rule requires retraining to renew a BTO permit take place via a course designed to refresh applicants' recall of formal training material, such as including mechanisms to assess proficiency and measure retained knowledge. The proposal stipulates that retraining must occur within the 120 days prior to permit expiration, to eliminate overlap within the two-year BTO cycle. This amendment would afford, at the Commissioner's discretion, a 30-day extension in permit expiration date, in an effort to avoid the potential legal dilemma of administrative permit lapses due to paperwork processing delays. Operators whose permits are voided are required to participate successfully in another initial certification course before a new BTO permit may be issued, to demonstrate that recall and competency have been maintained.

The effective period for a technical supervisor's certification has been increased from two to four years. Supervisor responsibilities have been detailed; and supervisors are permitted to delegate certain tasks, provided they review the work product to ensure the designee's performance meets expectations. A reference to field inspection of instruments by supervisors has been modified to reflect the current practice of remote calibration checks. Provision of expert testimony has also been deleted from the list of supervisor's responsibilities, since the process of qualifying subject matter experts rests with the court.

Existing Section 59.10 is repealed. New Section 59.10 retains many existing ignition interlock certification criteria, rearranged for ease of comprehension. The reference to a seven-county pilot study for ignition interlock devices has been eliminated, as Chapter 669 of the Laws of 2007 amended the Vehicle and Traffic Law to expand the study into a statewide program. New Section 59.10 requires the manufacturer to identify a person to respond to Department inquiries, and requires the manufacturer to furnish a certificate stating that the company issuing the requisite liability coverage will notify the Department at least 30 days prior to cancelling a policy before the expiration date. New Section 59.10 also makes clear that the manufacturer must demonstrate, through arrangements with a testing laboratory, that the device meets the NHTSA model specifications when calibrated to a set point of 0.025% BAC; and stipulates that only devices that employ fuel cell technology or another technology with demonstrated comparable accuracy and specificity are eligible for certification, thus ensuring deployment of state-of-the-art equipment.

Existing Section 59.11 is repealed. New Section 59.11 replaces New York State-specific criteria for certification of interlock devices with

NHTSA standards, as the NYS standards, codified in 1990, are less encompassing than federal standards. Submission of testing agency credentials with each application for device approval is no longer required. New Section 59.11 details requirements for certification of the testing laboratory, the laboratory's responsibilities in the device approval process, and the minimum components of a testing laboratory report. In both new Section 59.10 and 59.11 a reference to "circumvention" has been added with each occurrence of the word "tampering," to recognize that these are distinct Vehicle and Traffic Law violations.

Existing Section 59.12 is repealed. New Section 59.12 establishes requirements for continued ignition interlock certification. New Section 59.12 requires a manufacturer to notify the Department of any operational modification to a certified device, and to obtain approval for continued use, as modified, under the existing certification. The definition of operational modification and the process for reporting modifications has been moved to Section 59.12. The amendment codifies a currently implicit requirement that manufacturers notify the Department of changes to insurance coverage. The text required for the warning label is revised to conform to the text mandated by statute. The section requires the manufacturers to supply a sufficient number of labels to installation/service providers. The vast majority of the section's other requirements, including reporting and labeling requirements and manufacturer-service provider interactions, have been eliminated from Section 59.12; most have been incorporated into a new 9 NYCRR Part 358 being promulgated by the Division of Probation and Correctional Alternatives (DPCA) to implement the ignition interlock provisions of Leandra's Law. New Section 59.12 establishes a process for periodic renewal to ensure that information on file with the Department is current. The application form for device certification has been removed from the regulation, and will be available electronically.

COSTS:

Costs to Private Regulated Parties:

The requirements of this regulation applicable to ignition interlock manufacturers and installation/service providers impose no new costs on these private regulated parties. The newly codified requirement that manufacturers notify the Department of changes to insurance coverage may be accomplished electronically at no cost to the manufacturer. The renewal of certification form/attestation may be electronically submitted.

Costs to State Government:

Affected State agencies other than the Department of Health, i.e., the State Police, the Division of Criminal Justice Services (DCJS), and DPCA, would incur minimal additional costs as a result of adoption of this amendment, as the amendment relaxes, clarifies or codifies practices already implemented. The State Police and DCJS, as training agencies, may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours.

Costs to Local Government:

The Nassau County, Suffolk County and New York City Police Departments, which are local-government training agencies, would incur either no to minimal additional costs as a result of this amendment's adoption, as the amendment relaxes, clarifies or codifies processes already in place. These training agencies may realize cost savings from the proposed reduced duration of the breath analyst certification course, from 32 to 24 hours, which represents one full day that officers need not be absent from the work pool.

Prosecutorial units of local government may experience cost savings resulting from this amendment's deletion of specific requirements for specimen collection that, historically, have been challenged successfully by defense attorneys.

Costs to the Department of Health:

Adoption of this regulation would impose minimal additional costs on the Department. Implementation of a renewal process for the six manufacturers that currently hold ignition interlock certifications will use existing resources and result in minimal additional work load. Regulated parties will be provided with the text of the final adopted rule by electronic mail.

Local Government Mandates:

This regulation does not impose any new mandate on any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposal to extend, from two to four years, the effective period of breath analyzer supervisor permits will reduce paperwork, as will deletion of the requirement for quarterly reporting to multiple agencies of ignition interlock use data. This amendment's emphasis on learning goals rather than course structure would allow for paperwork reduction, as recertification courses would be adaptable to online distance learning modules. Manufacturers are encouraged to utilize electronic means of communication for required notifications and certificate renewals.

Duplication:

Part 59 as amended would be consistent with, but not duplicate, federal standards for approval of breath alcohol evidentiary devices as promulgated by the NHTSA.

Alternative Approaches:

At the present time, there are no acceptable alternatives to pursuing adoption of the amendment as written. The major stakeholders have reached agreement that inability to move forward with the changes as proposed would likely impede DWI enforcement and prosecutorial activities in NYS. The clarifications and updates in this amendment are required to keep the regulation current with law enforcement practices and changes to laws governing ignition interlock programs and evidence-gathering protocols related to DWI prosecutions, as well as technological advances in the devices themselves.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government; it references sources for information on federally approved devices, and is consistent with federal standards for ignition interlock and breathalyzer device approval.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to Section 202-b(3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Per-Patient Spending Limits for Certified Home Health Agencies (CHHA)

I.D. No. HLT-31-11-00001-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 86-1.13 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3614(12)

Subject: Per-Patient Spending Limits for Certified Home Health Agencies (CHHA).

Purpose: To control over-utilization of CHHA services. The change would apply an average annual per-patient spending limit.

Text of proposed rule: Subpart 86-1 of title 10 of NYCRR is amended and a new section 86-1.13-a is added, to read as follows:

86-1.13-a. Certified home health care agency ceilings

(a) *Effective for services provided on and after April 1, 2011 through March 31, 2012, Medicaid payments for certified home health care agencies (agencies), except for such services provided to children under eighteen years of age, shall reflect ceiling limitations determined in accordance with this section. Ceilings for each agency shall be based on a blend of:*

(1) the agency's 2009 average per patient Medicaid claim, weighted at 51 percent, and

(2) the 2009 statewide average per patient Medicaid claim for all agencies, as adjusted by the regional wage index factor and by each agency's patient case mix index, and weighted at 49 percent.

(b) Effective for rate periods on and after April 1, 2011, the Department shall determine, based on 2009 claims data, each agency's projected average per patient Medicaid claim for the period April 1, 2011 through March 31, 2012, as compared to the applicable ceiling computed pursuant to subdivision (a) of this section. To the extent that each agency's projected average claim is in excess of such ceiling, the Department shall reduce such agency's payments for periods on and after April 1, 2011 by an amount reflecting the degree that such agency's projected average claim is in excess of such ceiling.

(c) The regional wage index factor (WIF) will be computed in accordance with the following and applied to the portion of the statewide average per patient Medicaid claim attributable to labor costs:

(1) Average wages will be determined for agency service occupations for each of the 10 labor market regions as defined by the New York State Department of Labor.

(2) The average wages in each region will be assigned relative weights in proportion to the Medicaid utilization for each of the agency service categories as reported in the most recently available agency cost report submissions.

(3) Based on the average wages as determined pursuant to paragraph (1) of this subdivision, as weighted pursuant to paragraph (2) of this subdivision, an index will be determined for each region, based on a comparison of the weighted average regional wages to the statewide average wages.

(4) The Department may adjust the regional WIFs proportionately, if necessary, to assure that the application of the WIFs is revenue-neutral on a statewide basis.

(d) Agency specific case mix indexes (CMIs) will be calculated for each agency and applied to the statewide average CMI. Computation of such CMIs shall utilize the episodic payment system grouper and shall reflect:

(1) 2009 adjusted agency Medicaid claims as grouped into 60 day episodes of patient care;

(2) data for each agency patient as derived from the federal Outcome Assessment Information Set (OASIS) and as reflecting the assignment of such patients to OASIS resource groups;

(3) the assignment of a relative weight to each OASIS resource group;

(4) the assignment of each agency's CMI index based on the sum of the weights for all of its grouped episodes of care divided by the number of episodes.

(e) Ceiling limitations determined pursuant to this section shall be subject to retroactive adjustment and reconciliation. In determining payment adjustments based on such reconciliation, adjusted agency ceilings shall be established. Such adjusted ceilings shall be based on a blend of: (i) an agency's 2009 average per patient Medicaid claim adjusted by the percentage of increase or decrease in such agency's patient case mix from the 2009 calendar year to the annual period April 1, 2011 through March 31, 2012, weighted at 51 percent, and; (ii), the 2009 statewide average per patient Medicaid claim adjusted by a regional wage index factor and the agency's patient case mix index for the annual period April 1, 2011 through March 31, 2012, weighted at 49 percent. Such adjusted agency ceiling shall be compared to actual Medicaid paid claims for the period April 1, 2011 through March 31, 2012. In those instances when an agency's actual average per patient Medicaid claim is determined to exceed the agency's adjusted ceiling, the amount of such excess shall be due from each such agency to the state and may be recouped by the Department in a lump sum amount or through reductions in the Medicaid payments due to the agency. In those instances where an interim payment or rate of payment adjustment was applied to an agency in accordance with paragraph (a) and such agency's actual average per patient Medicaid claim is determined to be less than the agency's adjusted ceiling, the amount by which such Medicaid claims are less than the agency's adjusted ceiling shall be remitted to each such agency by the Department in a lump sum amount or through an increase in the Medicaid payments due to the agency.

(f) Projected payment adjustments computed pursuant to subdivision (b) of this section shall be based on Medicaid paid claims, as determined by the Department, for services provided by agencies in the base year 2009. Amounts due or owed from reconciling projected payment adjustments pursuant to subdivision (e) of this section shall be based on Medicaid paid claims, as determined by the Department, for services provided by agencies in 2009 and Medicaid paid claims, as determined by the Department, for services provided by agencies in the reconciliation period April 1, 2011 through March 31, 2012.

(g) The Department may require agencies to collect and submit any data deemed by the Department to be required to implement the provisions of this section.

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:

The authorization for per-patient spending limits for Certified Home Health Agencies (CHHAs) pursuant to regulations is set forth in section 3614(12) of the Public Health Law.

Legislative Objectives:

The Legislature chose to address the issue of over-utilization of CHHA services as a result of the recommendations submitted by the Medicaid

Redesign Team and endorsed by the Governor. Pursuant to statute, provider-specific limits on average spending per patient, for a period of one year, were chosen as the vehicle to address this issue.

Needs and Benefits:

The proposed amendment appropriately implements the provisions of Public Health Law Section 3614(12), which establishes average per-patient spending limits for providers. According to data provided by the New York State Department of Health Datamart (Office of Health Insurance Programs), total paid Medicaid claims for CHHAs in New York State increased from \$760 million in 2003 to \$1.349 billion in 2009. At the same time, total CHHA recipients decreased from 92,553 to 86,641. The result was an increase of 89.5% in spending per recipient, from \$8,215 in 2003 to \$15,570 in 2009.

This amendment will discourage over-utilization of CHHA services by providers with average per-patient spending that is significantly above the state average and will serve as a transition to the implementation of the Episodic Pricing System on April 1, 2012. The episodic system is similar to Medicare's Prospective Payment System and bases reimbursement on 60-day episodes of care, adjusted for patient acuity.

Costs:

There are no additional administrative costs to the regulated parties for the implementation of and continuing compliance with this amendment.

There are no additional costs to the Department of Health, state government, or local governments for the implementation of and continuing compliance with this amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

No significant alternatives are available. The Department is required by the Public Health Law section 3614(12) to promulgate implementing regulations.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Section 86-1.13-a requires the Department of Health to adjust payments for CHHAs which had base year average per-patient claims in excess of the calculated limits for 2011-12. No action is required by the providers to achieve compliance with the rule.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will apply to 139 Certified Home Health Agencies (CHHAs). Of this total, 69 have fewer than 100 full-time equivalent employees. Public CHHAs (operated by county health departments) account for 42 of the 69 small providers.

Compliance Requirements:

There are no reporting, recordkeeping or other affirmative acts that small businesses or local governments will need to undertake to comply with the proposed rule. A small business regulation guide is not required.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendment.

Compliance Costs:

There are no initial capital costs required to comply with the proposed rule, and there are no annual costs for continuing compliance.

Economic and Technological Feasibility:

As the proposed rule affects only the amounts reimbursed for existing services, compliance by small businesses and local governments is not expected to have any economic or technological implications.

Minimizing Adverse Impact:

The proposed amendment reflects statutory intent and requirements.

Small Business and Local Government Participation:

The proposed rule resulted from the recommendations of the Governor's Medicaid Redesign Team. The recommendations process allowed for input from Medicaid industry stakeholders, including large and small providers, and the general public, through statewide hearings and website outreach.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to 139 Certified Home Health Agencies (CHHAs), of which 51 are located in counties with populations of less than 200,000. CHHAs are located in 40 of the 43 rural counties in the

state. There are no agencies in townships which have population densities of 150 persons or fewer per square mile and are within counties with population above 200,000.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal. No additional professional services will be required for compliance.

Costs:

There are no initial capital costs or additional annual costs which are required to comply with this proposal.

Minimizing Adverse Impact:

The proposed amendment reflects statutory intent and requirements.

Rural Area Participation:

The proposed rule resulted from the recommendations of the Governor's Medicaid Redesign Team. The recommendation process allowed for input from Medicaid stakeholders from all areas of the state, including rural areas, through regional hearings and website outreach.

Job Impact Statement

Nature of Impact:

The proposed rule is required to implement the recommendations of the Governor's Medicaid Redesign Team for controlling rapid increases in Certified Home Health Agency (CHHA) utilization. Between 2003 and 2009, average annual Medicaid claims per recipient increased from \$8,215 to \$15,570 (89.5%).

By limiting per-patient spending for each provider, the proposal will incentivize CHHAs to increase operational efficiency and control excess utilization. To the extent that total hours of service are reduced, the limits could result in some staffing reductions. However, providers will have the opportunity to reduce non-labor costs in order to minimize any impact on staffing levels. By focusing on average spending per patient, the proposal also will allow CHHAs to meet targeted spending levels by balancing resources devoted to high-needs patients with resources allocated to lower-acuity clients.

In addition, a related Medicaid Redesign Team project will require the movement of significant numbers of fee-for-service CHHA patients into the Managed Long Term Care (MLTC) program. Consequently, potential staffing reductions by CHHAs may be counterbalanced by increases in the MLTC patient population.

Categories and Numbers Affected:

There are five categories of direct care workers at CHHAs: home health aides, nurses, physical therapists, occupational therapists and speech pathologists. Statewide, 84% of CHHA claims dollars are for home health aide services. In New York City, where this proposal's greatest impact is expected (see below), home health aides account for 89% of all CHHA claims dollars.

Regions of Adverse Impact:

New York City providers are expected to account for approximately 96% of the total Medicaid cost savings achieved by this proposal.

Minimizing Adverse Impact:

As noted above, any staffing reductions which might occur at CHHAs may be offset by increases in MLTC or other types of providers. In addition, CHHAs will continue to receive funding through the Worker Recruitment and Retention program and the Recruitment, Training and Retention program, which allocated a combined total of approximately \$72 million to CHHAs in calendar year 2010.

Self-Employment Opportunities:

Not applicable.

Department of Motor Vehicles

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

Point System

I.D. No. MTV-31-11-00006-P

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

Proposed Action: Amendment of section 131.3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 510(3)(i)

Subject: Point system.

Purpose: To increase the point value for both texting and cell phone violations.

Text of proposed rule: Paragraph (6) of subdivision (a) of section 131.3 is amended by adding a new subparagraph (vii) to read as follows:

(vii) any violation involving the use of a mobile telephone or portable electronic device.

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

Data, views or arguments may be submitted to: Ida L. Traschen, same as above.

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). Section 510(3)(i) of the VTL provides that the Commissioner may suspend or revoke a driver's license for habitual or persistent violation of any provisions of such law and/or violations of any local rule or regulation in relation to traffic. Pursuant to this section of law, Part 131 establishes a point system which serves as the basis for the assessment of persistent violator status. The Department decides which violations are assigned points.

2. Legislative objectives: Section 510(3)(i) of the Vehicle and Traffic Law provides that the Department of Motor Vehicles may take license action against a motorist who persistently violates laws related to traffic. Part 131 establishes the point system, whereby specific point values are assigned for most traffic offenses. A person who accumulates 11 or more points within an 18 month period is deemed a persistent violator and is subject to a license suspension or revocation.

Part 131.3(a) provides that "all traffic violations shall be assigned a value of two points, except as otherwise prescribed in subdivision (b) of this section." Part 131.3(b) sets forth various exemptions to the general rule. For example, no points are assessed for violations involving registration, insurance, inspection, parking and equipment (§ 131.3(b)(7)), while other specific violations are assessed higher point totals (§ 131.3(b)(2) thru (6)). Violations for cell phone usage and use of a portable electronic device currently result in an assessment of 2 points on the convicted driver's record.

Determining and setting appropriate point values for different types of violations, relative to their severity and the risk they pose, aligns with the legislative objective of sanctioning drivers who commit persistent violations of the law. Since cell phone and texting violations have serious public safety consequences, it is appropriate that such violations carry a point value commensurate with those potential consequences.

3. Needs and benefits: This proposed rule is both necessary and beneficial for the enhancement of highway safety in New York State. In 2007, 312,445 tickets were issued for cell phone violations, resulting in 273,743 convictions. In 2008, 316,293 tickets were issued, resulting in 273,976 convictions. Numerous studies have confirmed that distracted driving, such as driving while talking on a cell phone, significantly contributes to accidents and fatalities on the State's highways. AAA reports that each day distracted driving is a contributing factor in 4,000 to 8,000 crashes on our nation's highways. The National Highway Traffic Safety Administration (NHTSA) reports that nationwide in 2008 5,870 people died (representing 16% of all highway fatalities) and an estimated 515,000 were injured due to distracted driving. The number of persons who reportedly are distracted at the time of the fatal crashes has increased from 8% in 2004 to 11% in 2008. NHTSA estimates that at any given time during daylight hours, approximately 11% of drivers are using some type of cell phone. The Institute for Highway Safety reports that drivers who use handheld cell phones are four times as likely to be involved in car crashes resulting in injury to themselves. A Carnegie Mellon Institute study concludes that driving while using a cell phone reduces the amount of brain activity associated with driving by 37%. Similar studies and statistics suggest that texting while driving poses an even greater highway safety danger.

With respect to the use of other portable electronic devices while driving in New York originally addressed the issue by making such use illegal in 2009 (Chapter 403 of the Laws of 2009, effective 11/1/09). However, until recently, only "secondary" enforcement of that law was possible (i.e., there had to be reasonable cause that some other violation of law was committed at the same time in order for a law enforcement officer to issue a summons). Only July 12, 2011, Governor Cuomo strengthened New York's law by signing legislation allowing for primary enforcement of this important highway safety measure, recognizing that we must continue to do everything possible to reduce the risks of distracted driving.

In light of the overwhelming evidence that distracted driving is a significant factor contributing to highway injuries and deaths, several states

have passed laws prohibiting cell phone usage and/or text messaging. Clearly, there is a nationwide trend to address this serious highway safety problem.

Increasing points for these two violations will have several benefits. First, it will reinforce the message that DMV considers these violations serious offenses.

Second, by assigning points, persons who violate this law will become part of the persistent violator equation (accumulates 11 points within an 18 month period). A person who is deemed a persistent violator is subject to the suspension or revocation of his or her license. This tool enables DMV to take appropriate license sanction action a driver who may pose a highway safety risk to others.

Assigning appropriate point values to distracted driving violations is an essential component of DMV's commitment to highway safety and our effort to deter distracted driving on our highways.

4. Costs:

a. Cost to regulated parties and customers: There is no cost to the citizens of the State.

b. Costs to the agency and local governments: There is no cost to local governments or to DMV.

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no new paperwork requirements associated with this proposed rule.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: DMV considered making no changes to the point system. However, after reviewing the continuing and serious highway safety risks associated with various forms of distracted driving, DMV determined that it was prudent to increase points for both texting and cell phone violations.

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

10. Compliance schedule: The proposed rule would apply to texting and cell phone violations committed on or after the day the rule is adopted.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not attached because this rule will not have a disproportionate impact on small businesses or local governments, nor will it impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

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

Niagara Frontier Transportation Authority

NOTICE OF ADOPTION

NFTA's Procurement Guidelines

I.D. No. NFT-20-11-00010-A

Filing No. 641

Filing Date: 2011-07-19

Effective Date: 2011-08-03

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

Action taken: Amendment of sections 1159.4 and 1159.5 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e (5) and 1299-t

Subject: NFTA's Procurement Guidelines.

Purpose: To amend the NFTA's Procurement Guidelines to make technical changes and conform to Federal and State law.

Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. NFT-20-11-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7398, email: Ruth_Keating@nfta.com

Revised Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule is to conform to changes in state law. Changes to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

Assessment of Public Comment

The agency received no public comment.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Consumption of Alcoholic Beverages at State Parks and Historic Sites

I.D. No. PKR-18-11-00011-A

Filing No. 636

Filing Date: 2011-07-15

Effective Date: 2011-08-03

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

Action taken: Repeal of sections 397.7, 398.6, 399.7, 400.5, 401.5, 402.5, 415.2, 416.6, 417.6, 418.2; amendment of sections 398.7, 398.8, 400.6, 415.3 through 415.7, 418.3, 418.4; and addition of Part 385 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(5) and (8)

Subject: Consumption of alcoholic beverages at state parks and historic sites.

Purpose: To update and standardize statewide the rule on consumption of alcoholic beverages at state parks and historic sites.

Text of final rule: Title 9 NYCRR Sections 397.7, 399.7, 401.5, 402.5, 416.6, 417.6 are repealed; Section 398.6 is repealed and Sections 398.7 and 398.8 are renumbered 398.6 and 398.7; Section 400.5 is repealed and Section 400.6 is renumbered 400.5; Section 415.2 is repealed and Sections 415.3 to 415.7 are renumbered 415.2 to 415.6; Section 418.2 is repealed and Sections 418.3 and 418.4 are renumbered 418.2 and 418.3; and a new Part 385 is added to Subchapter A as follows:

Subchapter A - Part 385. Alcoholic beverages.

(a) *Prohibition. It is prohibited for any person to consume, possess with intent to consume, transport in an open container or sell any alcoholic beverage on property under the jurisdiction of the office.*

(b) *Exceptions. The prohibition in subdivision (a) shall not apply to an alcoholic beverage:*

(1) *sold by or purchased from a concessionaire or a lessee under the terms and conditions of a concession license, lease, or permit issued by the office, provided that the alcoholic beverage is consumed in the area delineated in the agreement;*

(2) *consumed or possessed by an individual or member of a group pursuant to terms and conditions of a standard permit issued by the office after receipt of an application; or*

(3) *consumed or possessed within an area of a state park, historic site, or other property that the commissioner has designated as exempt from the requirement for a standard permit under paragraph 2 of this subdivision. The designations may be limited to specific temporary periods of time. The exception in this paragraph does not extend to an alcoholic beverage in a container that holds more than one gallon. The commissioner shall approve a statewide list of the designated ar-*

... eas and update it at least annually. The list shall be published on the office's public website. Notice of the designated areas shall be posted in the appropriate regional, park and historic site offices and entrances.

(4) *Upon recommendation of the director of law enforcement or a regional director and when necessary to protect public health, safety and welfare during any special event or incident on property under the office's jurisdiction, the commissioner may temporarily suspend any of the exceptions listed in this subdivision and shall provide public notice of the suspension by appropriate signage.*

(c) *Minimum age. It is prohibited for any person under the age of twenty one years to possess, possess with intent to consume, consume, or transport in an open container any alcoholic beverage on property under the jurisdiction of the office. No person shall provide, sell to, give, or otherwise transfer an alcoholic beverage to a person under the age of twenty one.*

(d) *Enforcement. (1) On property under the office's jurisdiction a police officer, or peace officer acting pursuant to his or her special duties, as defined in section 1.20 of the criminal procedure law, or park ranger delegated authority by the commissioner may confiscate an alcoholic beverage from any person if the alcoholic beverage is not authorized under this part to be possessed, possessed with intent to consume, consumed, transported in an open container or sold. Any alcoholic beverage confiscated shall be deemed a nuisance and shall be disposed of in accordance with the established procedures of the law enforcement agency that confiscates it.*

(2) *Failure to comply with this Part may result in revocation of any standard permit issued under paragraph 2 of subdivision b of this section.*

(3) *Failure to comply with this Part is also a violation under Section 27.11 of the parks, recreation and historic preservation law and Sections 10.00(3) and 80.05(4) of the penal law, and a petty offense under Section 1.20(39) of the criminal procedure law. The uniform ticket issued to a violator is adjudicated in the local court that has jurisdiction over the geographic area where the state park, historic site or other OPRHP property is located. Upon conviction the local court may impose a sentence of up to 15 days in jail or a fine of up to \$250 and payment of any additional local surcharge required by Section 27.12 of the parks, recreation and historic preservation law.*

(e) *Severability. If a court of competent jurisdiction determines that any provision of this Part or its application to any person or circumstance is contrary to law that determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.*

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 385(d)(1) and 410.1(n).

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, ESP, Agency 1 Building, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

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

The changes to the Text do not require changes to the previously published RIS, RFA, RAFA and JIS for the following reasons.

As a bi-state (NY-NJ) entity created by interstate compact, the Palisades Interstate Park Commission (PIPC) in the Palisades Region of the Office of Parks, Recreation and Historic Preservation (OPRHP) is not subject to the State Administrative Procedures Act (SAPA). The Text was changed to delete the proposed amendment to 9 NYCRR § 410.1(n) affecting the Palisades Region because PIPC has not yet taken the procedural step of voting on the amendment to 9 NYCRR § 410.1(n) to conform it to this new statewide rule at 9 NYCRR Part 385. After PIPC votes, the OPRHP Commissioner will submit the PIPC amendment to DOS for publication in the NYCRR together with a joint OPRHP/PIPC certification of adoption.

Also, new language was added to the Text at 9 NYCRR § 385(d) to clarify that in addition to police officers, peace officers authorized to work at OPRHP facilities and OPRHP's park rangers may enforce the rule.

The SAPA forms (RIS, RFA, RAFA, JIS) do not require revision

because they accurately describe the substantive application of the rule on consumption of alcoholic beverages to all OPRHP regions and generally discuss enforcement.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Petition Approving Eight Legal Issues

I.D. No. PSC-32-10-00015-A

Filing Date: 2011-07-19

Effective Date: 2011-07-19

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

Action taken: On 7/14/11, the PSC adopted an order addressing eight legal issues raised in the Tiffany Mews Tenant Committee's Petition regarding 63 Tiffany Place.

Statutory authority: Public Service Law, sections 2(1)-(4), (12), (13), 5(1), 22, 23(1), 30, 32(1)-(6), 35(1), (2), 36(1)-(3), 37(1), (2), 38(1)-(3), 39(1)-(3), 41(1)-(3), 42(1), (2), 43(1)-(3), 44(1), (3), (5), 46, 47(1), (2), 51, 53, 64, 65(1), (5), 66(1), (2), (27), 67(1), (3) and (4)

Subject: Petition approving eight legal issues.

Purpose: To approve the petition of Tiffany Mews Tenant Committee for eight legal issues.

Substance of final rule: The Commission, on July 14, 2011 adopted an order addressing eight legal issues raised in the Tiffany Mews Tenant Committee's Petition for Stay of Submetering, Investigation, Vacatur or Modification of Prior Order and Remediation of Unlawful Charges, Terms and Conditions Relating to Submetered Electric Service regarding 63 Tiffany Place, 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.

(91-E-0241SA2)

NOTICE OF ADOPTION

Adjustments to the Total Resource Cost Test for Energy Efficiency Portfolio Standard (EEPS) Programs

I.D. No. PSC-02-11-00012-A

Filing Date: 2011-07-18

Effective Date: 2011-07-18

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

Action taken: On 7/14/11, the PSC adopted an order approving adjustments to the Total Resource Cost test for Energy Efficiency Portfolio Standard (EEPS) programs.

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

Subject: Adjustments to the Total Resource Cost test for Energy Efficiency Portfolio Standard (EEPS) programs.

Purpose: To approve adjustments to the Total Resource Cost test for Energy Efficiency Portfolio Standard (EEPS) programs.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving criteria for identifying special circumstance replacements and a default value for performing dual baseline calculations on such measure and caps the incentive for special circumstance replacements at 80%

of measure costs. In addition, the Commission adopts a list of effective-useful-life values for various energy efficiency equipment types, as well as cost and savings guidelines for Total Resource Cost (TRC) tests involving refrigerator early replacement in multifamily programs, 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.

(07-M-0548SA30)

NOTICE OF ADOPTION

RG&E's Contact Satisfaction Survey Targets, to be Effective Retroactively to January 1, 2011

I.D. No. PSC-08-11-00002-A

Filing Date: 2011-07-15

Effective Date: 2011-07-15

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

Action taken: On 7/14/11, the PSC adopted an order approving Rochester Gas and Electric Corporation's (RG&E) proposed new Contact Satisfaction Survey targets, to be effective retroactively to January 1, 2011.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12)

Subject: RG&E's Contact Satisfaction Survey targets, to be effective retroactively to January 1, 2011.

Purpose: To approve RG&E's Contact Satisfaction Survey targets, to be effective retroactively to January 1, 2011.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving Rochester Gas and Electric Corporation's proposed new Contact Satisfaction Survey targets, to be effective retroactively to January 1, 2011.

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-0717SA3)

NOTICE OF ADOPTION

Lightened Regulation of Steam Operations

I.D. No. PSC-11-11-00005-A

Filing Date: 2011-07-14

Effective Date: 2011-07-14

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

Action taken: On 7/14/11, the PSC adopted an order granting Syracuse University incidental and lightened ratemaking regulation of its steam operations.

Statutory authority: Public Service Law, sections 2(22), 5(1)(b), 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened regulation of steam operations.

Purpose: To grant lightened regulation of steam operations.

Substance of final rule: The Commission, on July 14, 2011 adopted an

order granting Syracuse University incidental and lightened ratemaking regulation of its steam operations, 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.
(11-S-0069SA1)

NOTICE OF ADOPTION

Commodity Cost Recovery Mechanisms

I.D. No. PSC-13-11-00009-A

Filing Date: 2011-07-15

Effective Date: 2011-07-15

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

Action taken: On 7/14/11, the PSC adopted an order approving, with modification, Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 — Electricity and PSC No. 214 — Outdoor Lighting, effective January 1, 2012.

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

Subject: Commodity Cost Recovery Mechanisms.

Purpose: To approve amendments to PSC No. 220 — Electricity and PSC No. 214 — Outdoor Lighting, effective January 1, 2012.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving, with modification, Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 — Electricity and PSC No. 214 — Outdoor Lighting, effective January 1, 2012 to modify its cost recovery mechanisms in Compliance with Commission Order issued January 24, 2011, 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.
(10-E-0050SA3)

NOTICE OF ADOPTION

Transfer of Ownership of a Generation Facility and Gas Pipeline from Standard to Alliance

I.D. No. PSC-16-11-00007-A

Filing Date: 2011-07-18

Effective Date: 2011-07-18

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

Action taken: On 7/14/11, the PSC adopted an order approving the petition of Standard Power LLC and Alliance Energy, New York for the transfer of ownership interests in a 50 MW electric generating facility and a gas pipeline used to fuel the facility located in Binghamton.

Statutory authority: Public Service Law, sections 2(11), 5(1)(b) and 70

Subject: Transfer of ownership of a generation facility and gas pipeline from Standard to Alliance.

Purpose: To approve the transfer of ownership of a generation facility and gas pipeline from Standard to Alliance.

Substance of final rule: The Commission, on July 14, 2011 adopted an

order approving the petition of Standard Power LLC and Alliance Energy, New York for the transfer of ownership interests in Standard Binghamton LLC from Standard Power LLC to Alliance Energy, New York. Standard Binghamton owns and operates a 50 MW electric generating facility and a gas pipeline used to fuel the facility located in Binghamton and will continue as the direct owner after consummation of the transaction, 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.
(11-M-0117SA1)

NOTICE OF ADOPTION

Plan for Providing Commercial Demand Response Participants with Access to Meter Data

I.D. No. PSC-17-11-00022-A

Filing Date: 2011-07-14

Effective Date: 2011-07-14

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

Action taken: On 7/14/11, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s Plan for providing commercial demand response participants with access to meter data in a manner that supports market requirements and customer needs.

Statutory authority: Public Service Law, sections 65(1), 66(1) and (12)

Subject: Plan for providing commercial demand response participants with access to meter data.

Purpose: To approve the Plan for providing commercial demand response participants with access to meter data.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving Consolidated Edison Company of New York, Inc.'s Plan for providing commercial demand response participants with access to meter data in a manner that supports market requirements and customer needs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-E-1463SA3)

NOTICE OF ADOPTION

Waiver of 16 NYCRR 88.4(a)(4), 86.3(a)(1)(iii), 86.3(b)(2) and 85.3(a)(1)

I.D. No. PSC-19-11-00004-A

Filing Date: 2011-07-15

Effective Date: 2011-07-15

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

Action taken: On 7/14/11 the PSC adopted an order granting Long Island Power Authority a waiver of four provisions of 16 NYCRR relating to Article VII applications.

Statutory authority: Public Service Law, article VII and related provisions of 16 NYCRR

Subject: Waiver of 16 NYCRR 88.4(a)(4), 86.3(a)(1)(iii), 86.3(b)(2) and 85.3(a)(1).

Purpose: To grant a waiver of four provisions of 16 NYCRR and Certificate of Environmental Compatibility and Public Need.

Substance of final rule: The Commission, on July 14, 2011 adopted an order granting Long Island Power Authority a waiver of four provisions of 16 NYCRR governing the content of Article VII applications, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(11-T-0116SA1)

NOTICE OF ADOPTION

Eliminate the Transition Surcharge

I.D. No. PSC-19-11-00005-A

Filing Date: 2011-07-14

Effective Date: 2011-07-14

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

Action taken: On 7/14/11, the PSC adopted an order approving Corning Natural Gas Corporation's amendments to PSC Nos. 4 and 5—Gas, eff. 7/16/11, to make a revision to its gas tariff schedules to remove reference to the Transition Surcharge.

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

Subject: Eliminate the Transition Surcharge.

Purpose: To approve amendments to PSC Nos. 4 and 5—Gas, eff. 7/16/11, to eliminate the Transition Surcharge.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving Corning Natural Gas Corporation's amendments to PSC Nos. 4 and 5—Gas, effective July 16, 2011, to make a revision to its gas tariff schedules to remove reference to the Transition Surcharge which is no longer applicable.

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.

(11-G-0177SA1)

NOTICE OF ADOPTION

Implement Certain Provisions of the Recharge New York Power Program Act

I.D. No. PSC-21-11-00007-A

Filing Date: 2011-07-14

Effective Date: 2011-07-14

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

Action taken: On 7/14/11, the PSC adopted an order approving Utility amendments to electric tariff schedules to implement certain provisions of the Recharge New York Power Program Act.

Statutory authority: Public Service Law, sections 4(1), 65 and 66; Public Authorities Law, section 1005; Economic Development Law, section 188-a

Subject: Implement certain provisions of the Recharge New York Power Program Act.

Purpose: To approve amendments to electric tariff schedules to implement certain provisions of the Recharge New York Power Program Act.

Substance of final rule: The Commission, on July 14, 2011 adopted an order approving National Grid d/b/a Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's (collectively the Companies) amendments to their electric tariff schedules to implement certain provisions of the Recharge New York Power Program Act in compliance with the Commission's Order Directing Certain Utilities to Submit Tariff Amendments issued May 23, 2011.

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.

(11-E-0176SA1)

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

Proposed Elimination of Requirement for NYSERDA to Conduct a Refrigerator Measurement and Verification Study

I.D. No. PSC-31-11-00014-P

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

Proposed Action: The Commission is considering NYSERDA's request to modify the December 23, 2009 Order in Case 07-M-0548 with respect to the requirement that NYSERDA file a refrigerator measurement and verification plan, including sampling size and methods.

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

Subject: Proposed elimination of requirement for NYSERDA to conduct a refrigerator measurement and verification study.

Purpose: To promote electric and gas energy conservation programs in New York.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a request by New York State Energy Research and Development Authority's (NYSERDA) to modify the December 23, 2009 Order on Rehearing Denying in Part and Granting in Part Petition for Rehearing in Case 07-M-0548. That Order directed NYSERDA to submit a measurement and verification plan for the refrigerator replacement portion of its Multifamily Performance Energy Efficiency Portfolio Standard (EEPS) program and to report the results of that plan one year from the issuance of the Order. NYSERDA now requests to be relieved of the requirement to perform the study based on already approved modifications to the Technical Manual and the level of market-rate customer participation.

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: Secretary@dps.state.ny.us

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

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

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

(07-M-0548SP42)

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

Electronic Tariff Schedule

I.D. No. PSC-31-11-00015-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 a proposed tariff filing by Consolidated Edison Company of New York, Inc. to convert its electric and retail access tariff schedules into electronic format.

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

Subject: Electronic Tariff Schedule.

Purpose: To convert its electric and retail access tariff schedules into electronic format.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. to convert its electric tariff schedule, P.S.C. No. 9—Electricity and P.S.C. No. 2—Retail Access to a new electricity rate schedule, P.S.C. No. 10—Electricity. The proposed filing is being made to convert its electric tariffs into electronic format in compliance with Commission Order issued April 24, 2009 in Case 08-E-0538. The proposed filing has an effective date of November 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@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-0539SP7)

State University of New York

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

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

I.D. No. SUN-31-11-00004-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 568.4-568.7 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

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

Purpose: Amend existing regulations to change the name of certain buildings and roads, and update the method and place of payment of fines.

Text of proposed rule: Sections 568.4-568.7 are amended to read as follows:

§ 568.4 Traffic regulations

(a) Traffic control devices.

(1) No person shall fail, neglect or refuse to comply with any instruction, direction or regulation displayed on any post, standard sign or marking on any roadway or parking area or other device installed or placed for the regulation of traffic on SUNY-owned property.

(2) No person shall deface, damage or remove any traffic control de-

vice without authorization. Such interference with a traffic control device shall be unlawful.

(b) Speed limits.

(1) No person shall drive a vehicle on university streets, roads or highways at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. But in no event shall a person drive a vehicle in excess of 30 miles per hour unless a different speed is authorized and indicated by the university or the Department of Transportation.

(2) Maximum speed in any of the campus parking lots is 15 miles per hour.

(3) Fifteen miles per hour is the maximum speed through the tunnel on Lincoln Avenue and for a distance of 500 feet south of the tunnel and 500 feet north of the tunnel on Lincoln Avenue. Speed in excess of 15 miles per hour shall be unlawful.

(4) Fifteen miles per hour is the maximum speed through the service area from Lincoln Avenue to Brigid Flanigan Drive. Speed in excess of 15 miles per hour shall be unlawful.

(5) Maximum speed in the PAC drive and underpass, service roadways, roadways around the original campus buildings and on Cottage Avenue between Brigid Flanigan Drive and Lincoln Avenue is 15 miles per hour. Speed in excess of 15 miles per hour shall be unlawful.

(6) No person shall operate a bicycle or other human powered vehicle anywhere on university property at a speed in excess of 15 miles per hour.

(c) One-way traffic. Upon a roadway restricted to one-way traffic, no vehicle shall proceed in the opposite direction. The following roadways are one-way traffic flows:

(1) [Traffic off Lincoln Avenue into the area of the original campus buildings is one-way in a westerly direction.

(2) [Traffic through parking lots when applicable will be one-way as indicated by signage.

(3) Traffic on Service Road (group area) is one-way westerly from Lincoln Avenue in the Town of Rye to Lincoln Avenue in the Town of Harrison.

(4)](2) Streets D and E around the cemetery are one-way in a counterclockwise direction.

(5)]3 Cottage Avenue between Brigid Flanigan Drive and Lincoln Avenue is one-way in an easterly direction.

(6)]4 Circumference Road of the [Phase II]W3 apartments is one way in a counter clockwise direction.

(d) Driving off pavement. No vehicle shall enter upon any unimproved area or drive off of the improved or paved roadway of any SUNY-owned property except when directed to do so by those persons with authority to regulate traffic. The provisions in this subdivision shall not apply to university and local police, maintenance or emergency vehicles.

(e) Parking.

(1) All vehicles must be parked in assigned areas.

(2) No parking is permitted on the following streets:

(i) Lincoln Avenue;

(ii) Brigid Flanigan Drive;

(iii) service roads;

(iv) East West Road;

(v) any of the service and pedestrian roadways between and around buildings, namely Streets A, B, C, D, E and F; and

(vi) any of the roadways around the original campus buildings, [Phase II]W3 apartments and access roadways to the Performing Arts Center.

(3) Vehicles may not be parked off the paved areas.

(4) No vehicle may be operated on other than the designated streets, roadways or parking lots on the campus.

(5) Vehicles, when parked in parking lots, must be parked between the pavement stripings.

(6) No person shall park a vehicle on the premises of the college in such a manner as to interfere with the use of a fire hydrant, fire lane or other emergency zone, create any other hazard or unreasonably interfere with the free and proper use of a roadway or pedestrian right-of-way.

(7) No vehicle may park in or upon any pedestrian right-of-way nor shall any vehicle be driven upon any pedestrian right-of-way.

(8) Vehicles parked in violation of the official campus traffic regulations may be towed away by an independent vendor operating under contract who must be paid for his services by the vehicle owner.

(9) Vehicles parked in violation of the official campus traffic regulations may be restrained in place by means of a vehicle restraining device locked to a wheel of the offending vehicle. A charge for the installation and removal of such device may be imposed by the university police department in addition to any fines incurred for the parking violation. Any damage incurred by attempts of the driver or owner of the vehicle to move said vehicle shall be the liability and responsibility of the person causing the damage.

(f) Disabled vehicles. Disabled vehicles shall be driven or moved off the paved portion of the roadway so as to prevent obstruction of traffic, but a disabled vehicle shall be permitted to remain on such unpaved portion only until temporary repairs are made or until power can be obtained to remove it, but any such disabled vehicle must be removed within at least 24 hours.

(g) Repairing vehicles. A vehicle shall not be parked or stopped on any roadway, parking area or any other place for the purpose of being serviced or repaired, including body work, except with the permission of the university police department.

(h) Abandoned vehicles. No person shall abandon or shall cause to be abandoned (as defined in the Vehicle and Traffic Law of the State of New York) a motor vehicle anywhere on the college campus. Vehicles abandoned anywhere on property owned or controlled by the college may be towed away and disposed of at the expense of the last registered owner.

(i) Impounding vehicles. Vehicles illegally parked or abandoned or disabled in such a place as to constitute a safety hazard or to interfere with public convenience on SUNY-owned property, may be towed away and impounded.

(j) Roads closed. Entrance roads to the SUNY College at Purchase campus, at the discretion of the campus president, may be closed to traffic between 9:00 p.m. and 5:00 a.m. daily. All vehicles entering the campus between those hours would do so through the main entrance to the campus at Anderson Hill Road. Before entering, all vehicles would stop and the driver and occupants identify themselves in the manner set forth in the directives of the President of the State University of New York at Purchase. Persons not properly identifying themselves or giving proper reason for entry to the campus may be denied entrance and turned away.

(k) Unregistered or uninsured vehicles. No vehicle may be operated upon the campus of the State University College at Purchase unless that vehicle is registered and insured as required by the Vehicle and Traffic Law and the regulations of the Commissioner of Motor Vehicles. It shall be a violation to park an unregistered vehicle on the SUNY College at Purchase campus. Vehicles found to be operating without a valid motor vehicle registration or without insurance may be impounded and towed away at the expense of the owner.

(l) Trucks. Trucks over 10,000 pounds are not permitted on any campus roadway, except for local delivery and pickup or for construction or other work on the Purchase College campus.

§ 568.5 Signs.

(a) Speed limit signs:

(1) 30 MPH placed at intervals along the following roadways:

- (i) East Brigid Flanigan Drive;
- (ii) West Brigid Flanigan Drive;
- (iii) Lincoln Avenue (except central campus); and
- (iv) East-West Road.

(2) 15 MPH placed at intervals along the following roadways and

lots:

- (i) all service roadways;
- (ii) Lincoln Avenue (central campus);
- (iii) all parking lots;
- (iv) [Phase II]W3 apartments roadway;
- (v) Performing Arts Center roadway;
- (vi) Cottage Avenue;
- (vii) service group roadways; and
- (viii) roadways to and around original campus buildings.

(b) Stop signs:

- (1) Lincoln Avenue at Brigid Flanigan Drive (north and south);
- (2) Lincoln Avenue at Brigid Flanigan Drive and [service group roadway]Salter Drive (four-way stop);
- (3) Lincoln Avenue at mall underpass (north and south);
- (4) Cottage Avenue at Lincoln Avenue and Brigid Flanigan Drive;
- (5) East-West Road at Lincoln Avenue and Brigid Flanigan Drive;
- (6) Street D at administration driveway;
- (7) exit roadways of all parking lots;
- (8) gym access roadway at Brigid Flanigan Drive and at service road to [upper gym]E8;
- (9) Brigid Flanigan Drive at campus entrance (south);
- (10) A-B-C Street service roadways at Lincoln Avenue and Cottage Avenue;
- (11) [Phase II]W3 apartments driveway exits; and
- (12) Brigid Flanigan Drive at campus entrance (south); and
- (13) Entrance road at gate control booth].

(c) Yield signs:

- (1) campus entrance (south) to Brigid Flanigan Drive;
- (2) campus entrance (south) left turn from Brigid Flanigan Drive;
- (3) W1 parking lot entrance (south) from Brigid Flanigan Drive; and
- (4) W2 parking lot exit (north) to Brigid Flanigan Drive.

(d) Do not enter signs (may be placed in conjunction with one-way signs where appropriate):

- (1) exit and enter [CCS]S2 parking lot (one-way control);
- (2) exit [CCN]N1/N2 parking lot;
- (3) at pedestrian rights-of-way where vehicle access is possible;
- (4) [Phase II]W3 apartments driveway from Cottage Avenue;
- (5) Cottage Avenue at Lincoln Avenue;
- (6) Cottage Avenue at Brigid Flanigan Drive (east side of intersection);
- (7) [service group driveway]Salter Drive at entrance to N3 parking lot;
- (8) [service group driveway]Salter Drive at Lincoln Avenue (west intersection);
- (9) [administration]A1 parking lot entrance roadway (north end of lot);
- (10) [administration]A1 parking lot exit at East-West Road;
- (11) pedestrian walkway at [gym]E6 parking lot (south);
- (12) [Phase II]W3 circumference road as needed to assist in one-way traffic control;
- (13) Street E intersection with Street D south of cemetery; and
- (14) Administrative Drive at intersection with Street D.

(e) One-way signs:

- (1) Cottage Avenue (west to east from Street C);
- (2) original campus buildings driveway (entrance);
- (3) [administration]A1 parking lot (exit and enter);
- (4) [service group driveway]Salter Drive (east end in, west end out);
- (5) [CCS]S1 parking lot (enter and exit);
- (6) [Phase II]W3 circumference road at appropriate intervals;
- (7) Streets D and E at appropriate intervals; and
- (8) Administrative Drive at intersection with Street D.

(f) Road closed signs (11:00 p.m. to 5:00 a.m.):

- (1) Lincoln Avenue at entrance to [service group]Salter Drive.
- (2) Cottage Avenue at west campus border.
- [(3) Lincoln Avenue at north campus border.]

(g) No trucks over 10,000 pounds on any road except local delivery:

- (1) at each entrance to campus.

§ 568.6 Enforcement.

(a) University police officers are authorized to issue uniform traffic tickets and campus summonses to any vehicle found in violation of traffic and parking regulations. Other designated enforcement officers may issue campus summonses.

(b) Enforcement procedures for parking violations are as follows:

(1) A complaint regarding any violation of a campus rule pursuant to parking shall be in writing, reciting the time and place of the violation and the title, number or substance of the applicable rule.

(2) The complaint must be subscribed by the officer witnessing the violation and attached to the vehicle involved.

(3) The complaint shall indicate the amount assessable for the violation and advise that if the person charged does not dispute the complaint, the fine may be paid at the university police administrative office within 14 days.

(4) The complaint shall state that a hearing may be requested within a period of 14 days after service of the charges by appearing in person at the office of the chief of police.

(5) The complaint shall recite that should the alleged violator fail to appear at the time fixed for the hearing or should no hearing be requested within a period of 14 days, the complaint is proved and shall warrant such action as may then be appropriate.

(c) The president of the college or his designee shall designate a hearing officer or board, not to exceed three persons, to hear complaints for violation of campus traffic and parking regulations enforceable on campus. Such hearing officer or board shall not be bound by the rules of evidence directly relevant and material to the issues presented.

(d) At the conclusion of the hearing or not later than five days thereafter, such hearing officer or board shall file a report. A notice of the decision shall be promptly transmitted to the violator. The report shall include:

- (1) the name and address of the alleged violator;
- (2) the name, time and place when the complaint was issued;
- (3) the campus rule violated;
- (4) a concise statement of the facts established at the hearing;
- (5) the time and place of the hearing;
- (6) the names of all witnesses;
- (7) each adjournment stating upon whose application and to what time and place it was made; and
- (8) the decision [(guilty or not guilty)]Valid, Reduced or Dismissed of the hearing board.

§ 568.7 Penalty.

(a) Each violation of the campus parking regulations will carry a fine as follows:

- (1) Parking on grass: \$50 for the first violation and \$75 for the subsequent violations.
- (2) Handicapped: \$150.

- (3) Fire lane: \$150.
- (4) No permit: \$25.
- (5) Parking in wrong lot with college permit: [\$25] \$35.
- (6) [CCN] N1/N2 no permit/wrong permit: \$35.
- (7) [Olde/Alumni Village] E4/E5 no permit/wrong permit: \$35.
- (8) W1/W2 parking lot any violation: \$25.

(b) Unpaid fines shall be deducted from the salary or wages of an offending officer or employee of the university. Before the end of each semester, all college employees having on their record unpaid traffic or parking fines accumulated during that semester or previous semesters will be notified by the business office of the total amount owed. They will be advised to pay the amount immediately or to appeal to the college traffic board if they feel the amount is unjustified. Within a two-week period after the traffic board has made its ruling (or within a four-week period after notification for those who do not appeal to the college traffic board), if the fine has not been paid the employee will be notified that the amount owed will be deducted from his or her salary. The business office will provide for the withholding of the amount owed from the employee's wage or salary.

(c) In the case of students, grade and transcripts shall be withheld until all fines are paid.

(d) All fines shall be paid *by mail, online or in person* at the *Parking & Transportation* office[of the chief of police].

(e) Motor vehicle registration and campus parking privileges may be revoked for the balance of the academic year upon the finding that 10 or more parking violations have been incurred during an academic year.

(f) Penalties for violations of the Vehicle and Traffic Law shall be set by the respective traffic court to which offenders shall be summoned (Town of Harrison or Town of Rye), according to the geographical location of the campus where the offense occurred.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, System Administration, State University Plaza, S325, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

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

2. Legislative objectives: The present measure makes technical amendments to the parking and traffic regulations applicable to the State University of New York College at Purchase.

3. Needs and benefits: The amendments are necessary to update existing regulations as a result of the renaming of certain buildings and roadways, to increase one parking fine, and to update and modify the method of and place for paying fines.

4. Costs: None.

5. Local government mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

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

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

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Purchase.

Rural Area Flexibility Analysis

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

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and

traffic regulations on the campus of the State University of New York College at Purchase.