

# RULE MAKING ACTIVITIES

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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; or C for first Continuation.)

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

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## Banking Department

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### REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

#### Budget Planners/Delegation of Certain Activities

I.D. No. BNK-01-04-00005-E

*This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement* pertain(s) to a notice of emergency rule making, I.D. No. BNK-01-04-00005-E, printed in the *State Register* on January 7, 2004.

#### Regulatory Impact Statement

##### 1. Statutory Authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the Superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget

planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

##### 2. Legislative Objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in such consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of persons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature addressed, among other things, the inherent risks associated with the payment of Debtor funds to creditors when Debtors choose to have such payments made via the services of a licensed budget planner instead of paying their creditors directly. Specifically, as one way of increasing consumer protections for the Debtors who contract with licensed budget planners in order to pay the debts they owe to creditors, Article 12-C was amended to require licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not properly been paid to their creditors.

In addition to the amendments to Article 12-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents

who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed New Part 404 sets forth a framework for the regulation of entities licensed under Article 12-C of the New York Banking to conduct the business of budget planning, when such licensees use third party entities in distributing the monies of Debtors to creditors. New Part 404 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law, in particular, Section 580(4), by providing protection when third party entities are used in distributing Debtor monies to creditors.

### 3. Needs and Benefits:

Proposed New Part 404 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. Specifically, when Banking Law Section 580(4) was recently enacted, it placed the requirement upon licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by Debtors that have not been properly paid to their creditors. Since the enactment of the legislation, members of the Banking Department staff have received numerous applications from prospective licensees. Extensive discussions were had at meetings and in telephone conversations with a number of the prospective licensees, as well as with current licensees, regarding the operations of their budget planning businesses. This was done in order to assess whether the business practices of the budget planning industry conformed to the consumer protections standards set forth in the new laws. The Department learned from many of the prospective and current licensees that with respect to the Debtors that they are in contract with for budget planning services, it is their practice to use third party entities in distributing the Debtors' monies to creditors. The third party entities that they contract with for such services are generally for-profit entities that are not, themselves, licensed to conduct the business of budget planning. However, one current licensee indicated that it uses the services of another New York State licensed budget planner in order to distribute Debtors' monies to creditors. The current and prospective licensees explained that it is necessary for them to use the services of third party entities in this way primarily because they do not have the computerized technology, staffing, and budgetary resources to provide the critical services performed by the third party entities.

Nevertheless, this type of "outsourcing" to a third party entity, in which an entity other than the licensee which has a contract for budget planning services with a Debtor, holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's Debtors, or distribute, or is in the chain of distribution of such monies, to the creditors of such Debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature when it put into law the bond/asset deposit requirement as set forth in Section 580(4) of New York's Banking Law.

The rule is proposed in order to accommodate the budget planning industry's operational need to use the third party entities in distributing Debtor funds to creditors. At the same time, the rule provides the consumer protections afforded by the recently enacted budget planning legislation as set forth in Banking Law Section 580(4). In particular, if the licensee uses a third party entity in distributing Debtor funds to creditors, and the licensee elects to place assets on deposit, which assets constitute a trust fund to reimburse payments made by Debtors if not properly paid to their creditors, the rule allows for the use of such a third party entity and places no additional bond/asset deposit requirements on the third party entity. If, on the other hand, the licensee elects to obtain a surety bond rather than place assets on deposit, the licensee may only use a third party entity in distributing Debtor funds if the third party entity places assets on deposit or obtains a surety bond, as the case may be.

Budget Planning is a regulated financial service in New York State. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services. It is the Banking Department's belief that the rule as proposed is necessary. It provides the mechanism by which the budget planning entities that are currently licensed, as well as those seeking to obtain such a license, can continue to operate using the services of third party entities in distributing Debtor funds to creditors. At the same time, the rule satisfies the legislative requirement as set forth in Banking Law Section 580(4) to provide certain protection to Debtors in contract

with licensees, in cases where third party entities are used by the licensees in distributing Debtor funds to creditors.

### 4. Costs:

(a) Costs to State Government: None.

Any and all additional examination costs that may be incurred by the Banking Department, as a result of the requirements of the rule imposed on the licensees that use third party entities in the distributing Debtor funds to creditors, will be borne by the licensees.

(b) Costs to Local Government: None.

(c) Costs to Regulated Entities:

The proposed rule allows licensees to use third party entities in distributing Debtor funds to creditors. In summary, Part 404 provides the following. If a licensee elects to maintain assets on deposit and utilizes the services of a third party entity in distributing Debtor funds to creditors, (whether or not the third party entity is, or is not, another budget planner licensed in New York) there is no requirement that the third party entity obtain a surety bond or place assets on deposit with respect to the business of the licensee that it is servicing. If a licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is also a licensed budget planner in New York, the third party entity must either obtain a surety bond or maintain assets on deposit with respect to the business of the licensee that it is servicing. If the licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is not a New York licensed budget planner, the third party entity must maintain assets on deposit with respect to the business of the licensee that it is servicing.

A licensee is likely to incur no costs if it uses a third party entity in distributing Debtor funds and elects to maintain assets on deposit, rather than a surety bond. The reason being, that a licensee has to purchase a surety bond, whereas, by placing assets on deposit, the licensee does not have to make such a purchase. Moreover, when assets are placed on deposit, the licensee has the ability to earn interest on the deposited funds.

It is possible, however, that in circumstances where a licensee may not have all, or part of, the necessary funds to place on deposit, that it could incur some costs in connection with borrowing funds for its required deposit. The Banking Department is unable to determine what the costs to the licensees would be under those circumstances since the cost of borrowing funds is typically dependent upon factors such as, the amount of the borrowing and the financial condition of the entity doing the borrowing. Therefore, it is not possible to estimate, even in a general way, such borrowing costs. However, should costs be incurred to make the asset deposit, those costs will not outweigh the benefits derived by maintaining the assets on deposit should Debtor funds not be properly paid to creditors.

(d) Costs to the Banking Department for Implementation and Continued Administration of the Rule: The rule requires Banking Department staff to review contracts or agreements that licensees have entered into, or plan to enter into, regarding the licensees use of third party entities in distributing Debtor funds to creditors. This review is done in order to assess compliance with rule to ensure, that where third party entities are involved, the Debtors in contract with the licensees are afforded the consumer protections provided by the bond/asset deposit requirements of Section 580(4) of the New York Banking Law. The Banking Department expects that its costs to implement and administer the rule will be minimal.

### 5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

### 6. Paperwork:

The reporting requirements as set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees, in furtherance of the legislative objective to provide more consumer protections for debtors in contract with licensees for budget planning services.

Under the proposed rule, licensed budget planners will have to provide the Banking Department with the following information: a) the name and address of the third party entity used in distributing debtor funds to creditors, b) a description of the services being provided by the third party entity, c) a copy of the agreement or contract entered into with the third party entity, d) information regarding the highest daily amount of Debtor funds that the third party entity will be providing services for under the contract or agreement, and e) information with respect to the termination of any such agreement or contract. All of this information is of the type that licensees using third party entities in distributing Debtor funds will have readily available to provide to the Banking Department.

### 7. Duplication:

None.

### 8. Alternatives:

(a) Proposal – As is previously discussed in the Legislative Objective Section contained herein, the recent amendments to Article 12-C, Section 580(4) of New York’s Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse payments made by Debtors that have not been properly distributed to creditors.

Since the enactment of the legislation, Banking Department staff met with current and prospective licensees and learned that these businesses require the use of the services provided by third party entities in distributing Debtor funds. The rule was proposed keeping in mind both the legislative intent in enacting the bond/asset deposit requirements to provide increased consumer protection to New York residents in contract with licensees should their payments not be properly distributed to creditors, and the need that current and prospective licensees have in using the services of third party entities in distributing such payments. The rule allows licensees to use the services of third party entities in this way, and also provides the Debtors in contract with the licensee the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature.

(b) Do not propose the rule.

If this alternative were considered, the Banking Department would have to require that licensees not use the services of third party entities in distributing Debtor funds to creditors, in order to provide Debtors the consumer protections afforded under Section 580(4) of the Banking Law. This alternative is not feasible because, as many current and prospective licensees explained to the Banking Department, they need to use the services of the third party providers in distributing Debtor funds. The need results primarily because they do not have the computerized technology, staffing and budgetary resources to provide the critical services that they perform.

Under these circumstances, the Banking Department believes that if the rule was not proposed, licensed budget planners would have to be prohibited from using third party entities in distributing Debtor funds. This could be severely harmful to the budget planning industry, particularly since, the inability to use the third party entities may prevent the licensees from continuing to operate their businesses. Moreover, the inability to use the third party entities may prevent many prospective licensees from seeking a budget planning license in New York because they may not be able to operate without the services of the third party entities. Accordingly, the proposed rule is needed not only to provide consumer protection to Debtors as mandated by Section 580(4) of the Banking Law, but also to prevent putting certain current licensees out of business, and to enable certain prospective licensees the opportunity to conduct the business of budget planning in New York.

9. Federal Standards:

None.

10. Compliance Schedule:

Compliance with the rule is required on or before March 18, 2004.

#### **Regulatory Flexibility Analysis**

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under New York’s Not-For-Profit Corporation Law. Under New York’s Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York.

No local governments are licensed to conduct the business of budget planning, and all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

When the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law, it established a more rigorous regulatory environment within which entities licensed under New York Law were to engage in the business of budget planning. This was done in order to provide increased consumer protection to New York residents that contract for budget planning services with licensees.

The recent amendments to Article 12-C of the New York Banking Law include the bonding/asset deposit requirements set forth under Section 580(4) of Article 12-C. In particular, Section 580(4) requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

In response to the legislation, members of the Banking Department staff met with and/or had conversations with current and prospective

licensees. As is more fully described in the Regulatory Impact Statement, the Banking Department learned that many of the current and prospective licensees require the services of certain third party entities in distributing debtor funds to creditors. Accordingly, the rule was proposed in response to the industry need to use third party entities in this way. The rule is flexible in that it allows licensees to use the services of third party entities, who may be small business, in distributing debtor funds to creditors. At the same time, it provides the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature, to the debtors in contract with the licensees for budget planning services. The rule ensures that debtors’ funds will be protected, as mandated by the statute, irrespective of which entity has control over and/or access to the funds.

Specifically, due to the servicing relationship between the licensee and the third party entities, when a licensee elects to use a third party entity in distributing debtors funds to creditors, under the proposed rule, the licensee can choose to either place assets on deposit, or obtain a surety bond. If the licensee places assets on deposit, there are no bond/asset deposit requirements placed on the third party entity. If the licensee elects to obtain a bond, the third party entity can either place assets on deposit or obtain a surety bond, as the case may be, with respect to the budget planning business of the licensee that it services.

Based on the dialogue that the Banking Department had with current and prospective licensees regarding their need to use third party entities in distributing debtor funds to creditors, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse impact on entities licensed under New York Law to conduct the business of budget planning.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. The legislature mandated under Section 580(4) of the New York Banking Law, that licensees obtain a surety bond or place certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly paid to creditors. In order to provide debtors with the consumer protections afforded under Section 580(4), the proposed rule allows licensees that use third party entities in distributing debtor funds to creditors to either place assets on deposit or obtain a surety bond. If the licensee elects to obtain the surety bond, it must only use the services of a third party entity that also places assets on deposit or obtains a surety bond, as the case may be, in connection with the licensees business that it is servicing. If the licensee elects to place assets on deposit, no bond/asset deposit requirements are placed on the third party entity.

There is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from complying with the rule based on a particular office location. Accordingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to debtors residing in rural areas who enter into contracts with licensees for budget planning services, when such licensees use the services of third party entities in distributing debtors funds to creditors.

#### **Job Impact Statement**

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York Banking Law and Article 28-B of New York’s General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 580(4) of Article 12-C of the New York Banking Law was recently amended in connection with budget planning in New York State. It requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, to maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

As is explained in the Regulatory Impact Statement, it has come to the attention of the Banking Department that both current and prospective licensees require the services of third party entities in distributing debtors to creditors. The rule has been proposed in order to allow the licensees to continue using such third party entities in the operations of their businesses. At the same time, the rule provides the consumer protections

afforded under Section 580(4) to debtors that contract with licensees for budget planning services when the licensees use third party entities in distributing the funds of the debtors to creditors.

Under the rule, if a licensee elects to use a third party entity in distributing debtor funds to creditors, a licensee can choose to either place certain assets on deposit or obtain a surety bond, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly paid to creditors. If a licensee places assets on deposit, there is no bond/asset deposit requirement placed on the third party entity. If a licensee, instead, chooses to obtain a surety bond, the rule requires that the third party entity place certain assets on deposit, or obtain a surety bond, as the case may be, with respect to licensees business that it services.

Accordingly, based on the rule's requirements, it will have no impact on jobs in New York State.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-43-03-00006-A

**Filing No.** 32

**Filing date:** Jan. 13, 2004

**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 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 in the Department of Health.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00006-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-43-03-00007-A

**Filing No.** 39

**Filing date:** Jan. 13, 2004

**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 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 in the Department of Mental Hygiene.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00007-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-43-03-00008-A

**Filing No.** 43

**Filing date:** Jan. 13, 2004

**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 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 in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00008-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-43-03-00009-A

**Filing No.** 37

**Filing date:** Jan. 13, 2004

**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the exempt class in the Department of Labor.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00009-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-43-03-00010-A

**Filing No.** 36

**Filing date:** Jan. 13, 2004

**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the exempt class in the Department of Labor.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00010-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00011-A  
**Filing No.** 49  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from and classify positions in the exempt class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00011-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00013-A  
**Filing No.** 29  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00013-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00014-A  
**Filing No.** 31  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Department of Health.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00014-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00015-A  
**Filing No.** 33  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Department of Health.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00015-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00016-A  
**Filing No.** 40  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00016-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00017-A  
**Filing No.** 46  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Department of Transportation.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00017-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00018-A  
**Filing No.** 51  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from the non-competitive class in the Department of Family Assistance.

**Text was published in the notice of proposed rule making, I.D. No.** CVS-43-03-00018-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00019-A  
**Filing No.** 34  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Department of Health.

**Text was published in the notice of proposed rule making, I.D. No.** CVS-43-03-00019-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00020-A  
**Filing No.** 35  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Insurance Department.

**Text was published in the notice of proposed rule making, I.D. No.** CVS-43-03-00020-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00021-A  
**Filing No.** 44  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Department of Taxation and Finance.

**Text was published in the notice of proposed rule making, I.D. No.** CVS-43-03-00021-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00022-A  
**Filing No.** 47  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from the non-competitive class in the State Department Service.

**Text was published in the notice of proposed rule making, I.D. No.** CVS-43-03-00022-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00023-A  
**Filing No.** 52  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from the non-competitive class in the Department of Economic Development.

**Text was published in the notice of proposed rule making, I.D. No.** CVS-43-03-00023-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00024-A  
**Filing No.** 53  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from the non-competitive class in the Department of Family Assistance.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00024-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00025-A  
**Filing No.** 30  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00025-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00026-A  
**Filing No.** 41  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00026-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00027-A  
**Filing No.** 48  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class in the Department of Family Assistance.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00027-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00028-A  
**Filing No.** 42  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00028-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-43-03-00029-A  
**Filing No.** 45  
**Filing date:** Jan. 13, 2004  
**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class in the New York State Thruway Authority.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00029-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-43-03-00030-A

Filing No. 38

Filing date: Jan. 13, 2004

Effective date: Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class and to delete a position from the non-competitive class in the Department of Mental Hygiene.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00030-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-43-03-00031-A

Filing No. 50

Filing date: Jan. 13, 2004

Effective date: Jan. 28, 2004

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

**Action taken:** Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from the exempt and non-competitive classes in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-43-03-00031-P, Issue of Oct. 29, 2003.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Correctional Services

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

## Marriages During Confinement

I.D. No. COR-04-04-00006-P

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

**Proposed action:** This is a consensus rule making to amend section 711.3(i) of Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

**Subject:** Marriages during confinement.

**Purpose:** To change the title of the central office official to be notified.

**Text of proposed rule:** Subdivision (i) of section 711.3 is amended as follows:

(i) Notification of marriage to central office. The *Director of Ministerial and Family Services* [Commissioner of Correctional Services] shall be advised in writing, by the superintendent, of the various facts concerning the marriage ceremony (i.e., names and addresses of partners, date of ceremony, name and address of church, witnesses and officiating chaplain, clergyperson or civil official).

**Text of proposed rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

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

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

**Consensus Rule Making Determination**

The Department of Correctional Services has determined that no person is likely to object to the proposed rule as written because it merely changes the title of the central office official to be notified of the marriage of an inmate.

**Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely changes the title of the central office official to be notified of the marriage of an inmate.

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## Department of Environmental Conservation

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

## Asian Carp and Snakehead Fish

I.D. No. ENV-04-04-00007-EP

Filing No. 21

Filing date: Jan. 7, 2004

Effective date: Jan. 7, 2004

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

**Action taken:** Addition of section 180.8 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301 and 11-0511

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

**Specific reasons underlying the finding of necessity:** This rule making is necessary to protect New York's freshwater fish populations and fisheries from the damage that would occur if certain non-native nuisance fish species were introduced into New York waters. Asian Carp (bighead, silver and black carp), which are native to Asia, have been imported into North America for use in the aquaculture industry in the lower Mississippi River region. Bighead and silver carp are plankton feeders and are proliferating throughout the Mississippi basin following escape from aquaculture facilities. They grow to large sizes (60+ lb.) and compete with native fishes for food. Black carp feed on mollusks, but have not yet been reported as reproducing populations in natural waters, although this is considered likely in the near future. Black carp pose a serious threat to native mollusk species if they escape from aquaculture facilities.

Asian carp are poised to enter Lake Michigan through the Chicago Sanitary Canal system, which would lead to rapid spread throughout the Great Lakes and connecting waterways, including the Hudson River. Efforts are underway to block entrance into Lake Michigan with an electric barrier. Asian carp are also sold live as food fish. A live Bighead carp recovered from a fountain in Toronto last year was probably imported into Canada for this purpose. Snakeheads pose a similar threat. They include 28 non-native fish species that are voracious predators and have the potential to colonize New York waters, adversely affecting native fishes. If Asian carp or snakeheads become established in New York waters, they could

cause significant damage to native aquatic life. For this reason, emergency regulatory action is needed to prohibit traffic in live Asian carp and snakeheads within the state.

New York and other Great Lakes States have been suffering the consequences of the introduction of non-indigenous nuisance species for decades. For example, the zebra mussel, which was introduced in the 1990s, has created significant ecological problems for many states, including New York. Every Great Lakes state, except New York, now prohibits the possession and transportation of live Asian carp within their jurisdictions. In addition, snakeheads were recently listed as an injurious wildlife species by the Federal government under the Lacey Act, which prohibits importation and interstate commerce. The state regulations adopted herein, in conjunction with existing Federal regulations, will offer much needed protection for New York's aquatic resources.

A large, important market for live Bighead carp has been identified in the New York City area. In recognition of this market, along with the need for a transportation corridor to markets in the Boston area, New York City (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Towns of Rye, Harrison, and Mamaronek in Westchester County are exempted from the prohibitions contained herein concerning live Bighead carp. No other species were identified as important in this primarily Asian market, and no other New York communities are known to have these markets present. It is unlikely that Bighead carp could survive if accidentally liberated to the wild in the exempted areas because these areas drain into salt water within a short distance.

**Subject:** An immediate prohibition of the sale, possession, transport, import, or export of live individuals or viable eggs of Asian carp or snakeheads in New York State except for the five boroughs of New York City and the Towns of Rye, Harrison, and Mamaronek in Westchester County.

**Purpose:** To prevent the introduction of Asian carp and snakehead fish into the waters of New York State, and the damage that could be caused if introduction were to occur.

**Text of emergency/proposed rule:** Part 180 of Title 6 of NYCRR is amended by adding a new section 180.9, entitled "Fish dangerous to indigenous fish populations," to read as follows:

§ 180.9 Fish dangerous to indigenous fish populations.

(a) Purpose. The purpose of this section is to list species of native or non-native fish that present a danger to the health or welfare of indigenous fish populations, and to the health or welfare of people of the state.

(b) Prohibitions.

(1) Except as provided in subdivisions c and d of this section, no person shall buy, sell or offer for sale, possess, transport, import or export, or cause to be transported, imported or exported live individuals or viable eggs of the following species of fish, which the Department of Environmental Conservation (department) has determined present a danger to indigenous fish populations:

- (i) Silver carp (*Hypophthalmichthys molitrix*)
- (ii) Bighead carp (*Hypophthalmichthys nobilis*)
- (iii) Black carp (*Mylopharyngodon piceus*)
- (iv) Snakehead fish of the genera *Channa* and *Parachanna* (or the generic synonyms of *Bostrychoides*, *Opicephalus*, *Ophiocephalus*, and *Parophiocephalus*) of the Family *Channidae*, including but not limited to:
  - (a) *Channa amphibeus* (Chel or Borna snakehead)
  - (b) *Channa argus* (Northern or Amur snakehead)
  - (c) *Channa asiatica* (Chinese or Northern Green snakehead)
  - (d) *Channa aurantimaculata*
  - (e) *Channa bankanensis* (Bangka snakehead)
  - (f) *Channa baramensis* (Baram snakehead)
  - (g) *Channa barca* (barca or tiger snakehead)
  - (h) *Channa bleheri* (rainbow or jewel snakehead)
  - (i) *Channa cyanospilos* (bluespotted snakehead)
  - (j) *Channa gachua* (dwarf, gaucha, or frog snakehead)
  - (k) *Channa harcourtbutleri* (Inle snakehead)
  - (l) *Channa lucius* (shiny or splendid snakehead)
  - (m) *Channa maculata* (blotched snakehead)
  - (n) *Channa marulius* (bullseye, murrel, Indian, great, or cobra snakehead)
  - (o) *Channa maruloides* (emperor snakehead)
  - (p) *Channa melanoptera*
  - (q) *Channa melasoma* (black snakehead)
  - (r) *Channa micropeltes* (giant, red or redline snakehead)
  - (s) *Channa nox*
  - (t) *Channa orientalis* (Ceylon of Ceylonese Green snakehead)
  - (u) *Channa panaw*

(v) *Channa pleurophthalmus* (ocellated, spotted, or eyespot snakehead)

(w) *Channa punctata* (dotted or spotted snakehead)

(x) *Channa stewartii* (golden snakehead)

(y) *Channa striata* (chevron or striped snakehead)

(z) *Parachanna africana* (Niger or African snakehead)

(aa) *Parachanna insignis* (Congo, square-spotted African, or light African snakehead)

(bb) *Parachanna obscura* (dark African, dusky or square-spotted snakehead)

(2) No person shall liberate to the wild any species listed in this section, cause such species to be liberated to the wild or allow such species to exist in a state or condition where it is likely to escape into the wild.

(c) Exceptions. Notwithstanding the prohibitions contained in this section, Bighead carp may be sold, possessed, transported, imported and exported in the five boroughs of the City of New York (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Westchester County Towns of Rye, Harrison, and Mamaronek and all the incorporated cities or villages located therein. Bighead carp offered for sale in any retail establishment shall be killed by the seller before the purchaser takes possession of said fish.

(d) Permits. The department may issue permits, the term of which shall not exceed one year, to possess, transport, import or export species of live fish listed in this section only for educational, exhibition or scientific purposes, as defined in section 175.2 of this chapter. Permits issued pursuant to this section may contain terms, conditions and standards designed to prevent escapement while fish species listed in the permit are held in captivity, and to ensure safe disposition of those species following expiration of the permit or cessation of the permitted activity. The permit fee shall be \$500, except that the fee may be waived for bona fide employees, representatives or affiliates of accredited colleges or universities, research institutions, government agencies, or public museums or aquariums.

(e) Seizure. Environmental conservation officers, forest rangers and members of the state police may seize species of fish listed in this section that are possessed without a permit. No action for damages shall lie for such seizure, and disposition of seized animals shall be at the discretion of the department.

**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 April 5, 2004.

**Text of rule and any required statements and analyses may be obtained from:** William J. Culligan, Department of Environmental Conservation, Lake Erie Fisheries Research Unit, 178 Point Dr. N, Dunkirk, NY 14048, (716) 366-0228, e-mail: wjcullig@gw.dec.state.ny.us

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

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

**Regulatory Impact Statement**

Statutory authority:

The Commissioner of Environmental Conservation, pursuant to Environmental Conservation Law (ECL), Section 3-0301, has authority to protect the wildlife resources of New York State.

Environmental Conservation Law Section 11-0511 provides the Department of Environmental Conservation (Department) with authority to regulate the possession of live native or non-native wildlife or fish where the Department finds the possession, transportation, importation or exportation of such species would present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife.

Legislative objectives:

The legislative objective of ECL Section 3-0301 is to grant the Commissioner the powers necessary for the Department to protect New York's natural resources, including fish and wildlife, in accordance with the environmental policy of the state.

The legislative objective of ECL Section 11-0511 is to provide the Department with broad authority to prohibit the possession of live specimens of fish or wildlife that are deemed to present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife.

Needs and benefits:

This rulemaking is necessary to protect New York's freshwater fish populations and fisheries from the damage that would occur if certain non-native nuisance fish species were introduced into New York waters. Asian Carp (bighead, silver and black carp), which are native to Asia, have been imported into North America for use in the aquaculture industry in the

lower Mississippi River region. Bighead and silver carp are plankton feeders and are proliferating throughout the Mississippi basin following escape from aquaculture facilities. They grow to large sizes (60+ lb.) and compete with native fishes for food. Black carp feed on mollusks, but have not yet been reported as reproducing populations in natural waters, although this is considered likely in the near future. Black carp pose a serious threat to native mollusk species if they escape from aquaculture facilities.

Asian carp are poised to enter Lake Michigan through the Chicago Sanitary Canal system, which would lead to rapid spread throughout the Great Lakes and connecting waterways, including the Hudson River. Efforts are underway to block entrance into Lake Michigan with an electric barrier. Asian carp are also sold live as food fish. A live Bighead carp recovered from a fountain in Toronto last year was probably imported into Canada for this purpose.

Snakeheads pose a similar threat. They include 28 non-native fish species that are voracious predators and have the potential to colonize New York waters, adversely affecting native fishes. If Asian carp or snakeheads become established in New York waters, they could cause significant damage to native aquatic life. For this reason, emergency regulatory action is needed to prohibit traffic in live Asian carp and snakeheads within the state.

New York and other Great Lakes States have been suffering the consequences of the introduction of non-indigenous nuisance species for decades. For example, the zebra mussel, which was introduced in the 1990s, has created significant ecological problems for many states, including New York. Every Great Lakes state, except New York, now prohibits the possession and transportation of live Asian carp within their jurisdictions. In addition, snakeheads were recently listed as an injurious wildlife species by the federal government under the Lacey Act, which prohibits importation and interstate commerce. The state regulations adopted herein, in conjunction with existing federal regulations, will offer much needed protection for New York's aquatic resources.

A large, important market for live Bighead carp has been identified in the New York City area. In recognition of this market, along with the need for a transportation corridor to markets in the Boston area, New York City (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Towns of Rye, Harrison, and Mamaronek in Westchester County are exempted from the prohibitions contained herein concerning live Bighead carp. No other species were identified as important in this primarily Asian market, and no other New York communities are known to have these markets present. It is unlikely that Bighead carp could survive if accidentally liberated to the wild in the exempted areas because these areas drain into salt water within a short distance.

#### Costs:

There will be no costs to state or local governments from this rulemaking, except the minor cost of issuing permits by the Department for educational, exhibition, or educational purposes.

Due to the proposed exemptions, there will be little or no cost to small businesses. There is no effect in other areas of the state because there is no interest in these markets in those locations, and there is no interest in purchasing live species other than Bighead carp.

#### Local government mandates:

The proposed rule does not impose any mandates on local government.

#### Paperwork:

No new paperwork is required.

#### Duplication:

The proposed regulation would compliment and strengthen existing federal regulations that prohibit the interstate transportation and importation of snakeheads.

#### Alternatives:

**No Action:** The Department has rejected this option. Failing to address the threat posed to New York's freshwater fish populations would be contrary to the Department's responsibility to protect New York's natural resources, in accordance with the environmental policy of the state.

**Complete ban on possession of live fish:** The Department has rejected this option because after consultation with potentially affected small businesses, it was determined that a complete statewide ban would have a significant affect on a number of ethnic, live fish markets in the New York City area for Bighead carp. It was also determined that a transportation corridor was needed to transport live Bighead carp to markets in the Boston area. Therefore, it was decided to exempt New York City and part of Westchester County to protect these small businesses and allow a transportation corridor along Interstate 95 through New York State. Because this exempted area is surrounded by salt water, there should be limited risk of these fish successfully becoming established in the wild.

#### Federal standards:

The proposed New York State regulations will compliment and strengthen federal regulations which prohibit the interstate transfer and importation of snakeheads. There are no federal standards for the other species.

#### Compliance schedule:

This rule becomes effective upon filing with the Department of State. Immediate compliance with the rule is required to protect the fish and wildlife resources of the state by preventing the importation of live Asian carp and snakeheads into New York State and their possible introduction to the wild.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of rule:

No local governments will be affected by this rule. The small businesses affected by this rule are small pet shops that may sell snakeheads. However, now that the federal government has listed snakeheads as an injurious species under the Lacey Act, they can no longer be legally transported across state lines. Because of the proposed exceptions for New York City and parts of Westchester County, all known fish markets that sell Bighead carp will be unaffected. There may be a small number of fish markets that currently sell a few live snakeheads for food, but this was not identified as a major item. Due to the federal Lacey Act, live snakeheads are no longer able to be transported across state lines. A transportation route for live Bighead carp to markets in the Boston area will be available along Interstate 95.

##### 2. Compliance requirements:

There are no reporting or recordkeeping requirements that local governments or small businesses will be required to take to comply with the rule.

##### 3. Professional services:

The rule will not require local governments or small businesses to engage professional services in order to comply with this rule.

##### 4. Compliance costs:

There will be no compliance costs associated with this rule.

##### 5. Economic and technological feasibility:

There is no economic or technological affect on local governments. Small businesses will not be affected because of the exemption for Bighead carp in the New York City area.

##### 6. Minimizing adverse impact:

The proposed exemption for the New York City area and parts of Westchester County will significantly reduce any adverse impacts of the regulation. This exemption is possible without creating significant risk to the freshwater resource of the State because all surrounding waters in the exempted areas quickly drain into salt water, where Bighead carp will not survive.

##### 7. Small business and local government participation:

After consultation with small businesses, it was learned that there was a significant market for live Bighead carp in the New York City area and an important need for wholesale sellers of live Bighead carp to maintain a route through New York to markets in the Boston area. Other species of Asian Carp and snakeheads were not important to these markets, and all known retail establishments were in the New York City area. An exception for live Bighead carp is proposed for New York City and three towns in southern Westchester County.

#### **Rural Area Flexibility Analysis**

##### 1. Types and estimated numbers of rural areas:

The proposed rule will not directly affect any of the rural areas of the state. All known users of the listed species are in the ethnic Asian communities of New York City.

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

The proposed rule imposes no reporting, recordkeeping, or other compliance requirements. No professional services are required to comply with the proposed rule.

##### 3. Costs:

There will be no initial capital costs incurred by public or private entities in rural areas in order to comply with this rule.

##### 4. Minimizing adverse impact:

No attempts have been made to minimize impacts because none of the state's rural areas will be affected.

##### 5. Rural area participation:

No rural area participation has been solicited because none of the state's rural areas will be affected.

#### **Job Impact Statement**

##### 1. Nature of impact:

Because of the proposed exception for Bighead carp in the New York City area, the job impact of this rulemaking will be minimal. A small business survey of Asian fish markets indicated that they do not sell other species of Asian carp, and snakeheads are now banned from importation and interstate transport by the Federal Lacey Act.

2. Categories and numbers affected:

Fewer than 100 small businesses may be slightly impacted. Businesses that may be impacted are all Asian live fish markets.

3. Regions of adverse impact:

The proposed rule would have an effect throughout the New York City area only.

4. Minimizing adverse impact:

The proposed exception for live Bighead carp in the New York City area will significantly reduce the potential job impact of this rule. Small businesses indicated that Bighead carp were the only regulated species that they sold in significant numbers. All known Asian fish markets that sell these fish are in the New York City area. The proposed exception for parts of Westchester County will allow transport of live Bighead carp to identified markets in the Boston area.

5. Self-employment opportunities:

The proposed rule would not prevent a person from starting a new fish market that sells live Bighead carp in the New York City area. However, it will prohibit the live sale of other species of Asian carp and snakeheads, although no known markets exist for these species. Markets are not known to exist in other parts of New York for live sale of these species.

## NOTICE OF ADOPTION

### Stationary Combustion Installation

**I.D. No.** ENV-28-03-00024-A

**Filing No.** 28

**Filing date:** Jan. 12, 2004

**Effective date:** 30 days after filing

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

**Action taken:** Amendment of Parts 201 and 227 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311

**Subject:** Stationary combustion installations.

**Purpose:** To reduce emissions of oxides of nitrogen from stationary internal combustion engines.

**Revised summary of final rule:** 6 NYCRR Part 201, Permits and Registrations

Subpart 201-3, Exemptions and Trivial Activities

6 NYCRR Part 227, Stationary Combustion Installations

Subpart 227-2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO<sub>x</sub>)

The proposed changes to 6 NYCRR Subpart 227 and 6 NYCRR Part 201 mark the latest in a sustained series of actions undertaken by New York State, in concert with the U.S. Environmental Protection Agency (EPA) and other states, to control emissions of ozone precursors, nitrogen oxides (NO<sub>x</sub>), and volatile organic compounds (VOCs), so that New York State may attain the one-hour national ambient air quality standard (NAAQS) for ozone.

On December 16, 1999, EPA issued a proposed rule in which it proposed to conditionally approve the November 1998 One-Hour Ozone Attainment Demonstration for the New York City Metropolitan Area/Lower Orange County Metropolitan Area (64 Fed. Reg. 70364). This conditional approval required the State to adopt sufficient measures to achieve the level of reductions of VOCs and NO<sub>x</sub> that were identified by EPA as necessary for the State to reach attainment of the national ambient air quality standard for ozone by the attainment date in 2007. On April 18, 2000, the Department submitted a proposed State Implementation Plan (SIP) revision to EPA which described the State's strategy aimed at achieving the necessary additional NO<sub>x</sub> emissions reductions. On February 4, 2002, this enforceable commitment was approved by EPA as part of the State's SIP (67 Fed. Reg. 5170).

Promulgation of these revisions to Subpart 227-2 is intended to reduce NO<sub>x</sub> emissions from stationary combustion installations in order to address the emission shortfalls associated with the one-hour ozone NAAQS and make progress towards reducing eight-hour ozone levels. New York State and other states in the New York - Northern New Jersey - Long Island - New Jersey - Connecticut Ozone Non-Attainment Area must reduce the

EPA-identified shortfall for both NO<sub>x</sub> and VOCs by the year 2007; for NO<sub>x</sub>, that shortfall is seven tons-per-day.

The proposed amendments to Subpart 227-2 reduce NO<sub>x</sub> emission rate limits for only one of the source categories - stationary internal combustion engines, and will require between 25 and 75 percent NO<sub>x</sub> emissions control beyond existing RACT requirements. The proposed revised emission rate limits for these sources are to become effective on April 1, 2005 and will help the New York City metropolitan area achieve attainment with the one-hour ozone NAAQS, as well as reduce eight-hour ozone levels throughout New York State. The applicability threshold in the severe ozone non-attainment area is proposed to be lowered from 225 bhp to 200 bhp. Engine test cells at engine manufacturing facilities that are utilized for research and development, reliability performance testing, quality assurance performance testing are exempted from the proposed requirements. The rule has defined the terms 'actual 1990 baseline emissions' and 'commence commercial operation.' The rule making will allow increased flexibility for sources which utilize CEMS. Sources that utilize CEMS will be allowed to use the monitoring requirements of either 40 CFR 60 or 40 CFR 75.

Industrial boilers, stationary combustion turbines, and cement kilns (all source categories) will not be affected by the proposed revisions to Subpart 227. Emission sources that received alternative emission limits pursuant to existing section 227-2.5(c) will need to reevaluate their alternative emission limit.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 201-3.2(c)(6).

**Text of rule and any required statements and analyses may be obtained from:** Michael Jennings, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8403, e-mail: mxjennin@gw.dec.state.ny.us

**Additional matter required by statute:** The department completed a coastal assessment form, short environmental assessment form and a negative declaration.

### Revised Summary of Regulatory Impact Statement

The promulgation of revised Subpart 227-2 is authorized by Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311 of the Environmental Conservation Law (ECL). The proposed changes to 6 NYCRR Subpart 227-2 mark the latest in a sustained series of actions undertaken by New York State to control emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs), which are precursors to the formation of ozone, so that New York State may attain the national ambient air quality standard (NAAQS) for ozone, an air pollutant. Implementation of the program proposed by the revisions to Subpart 227-2 will, in concert with counterpart programs established by other states and federal implementation plans imposed by the U.S. Environmental Protection Agency (EPA), lower levels of ozone in New York State and decrease the adverse public health and welfare effects described above.

Ozone in the stratosphere is naturally occurring and desirable because it shields the earth from harmful ultraviolet rays from the sun which may cause skin cancer. Ozone at ground level, however, causes throat irritation, congestion, chest pains, nausea and labored breathing. It aggravates respiratory conditions such as chronic lung and heart diseases, allergies, and asthma. Ozone also damages the lungs and may contribute to lung disease. Unlike other pollutants, ozone is a secondary pollutant not emitted directly, but formed in the atmosphere by a variety of photochemical reactions involving VOCs and NO<sub>x</sub> in the presence of sunlight. NO<sub>x</sub> is a by-product of fossil fuel combustion and is emitted primarily by utilities, motor vehicles and major industrial facilities.

On December 16, 1999, the EPA issued a proposed rule conditionally approving the November 1998 one-hour ozone attainment demonstration for the NYMA/LOCMA (64 Fed. Reg. 70364). Among other things, this conditional approval required the State to adopt sufficient measures to address the required level of reductions identified by EPA as necessary for the State to reach attainment by 2007. On April 18, 2000, the Department submitted a proposed state implementation plan (SIP) revision to EPA which described the State's strategy aimed at achieving the necessary additional VOC and NO<sub>x</sub> emissions reductions. On February 4, 2002, this enforceable commitment was approved by EPA as part of the State's SIP (67 Fed. Reg. 5170). The revisions to Subpart 227-2 will enable the State to meet the NO<sub>x</sub> reduction target identified by EPA.

The changes proposed for Subpart 227-2 are one component of several changes proposed for adoption by the member states of the Ozone Transport Commission, which includes New York State. The new requirements are proposed to become effective on April 1, 2005 to help the New York City metropolitan area achieve attainment with the one-hour ozone

NAAQS. The changes proposed for Subpart 227-2 would reduce the emission limits for stationary internal combustion engines. The owner or operator of a subject facility must undertake an evaluation of control technologies and/or strategies like fuel switching, selective catalytic reduction, or system-wide averaging as compliance options. Alternative control or emission limits will be granted to those sources which demonstrate that the applicable emission limits are not economically or technically feasible. This alternative RACT emission limit must be approved by the Department and by EPA as a revision to the SIP.

The cost of NO<sub>x</sub> abatement associated with the proposed controls is reasonable and cost effective. The annualized costs for the proposed changes to Subpart 227-2 are expected to be below \$3,000 per ton of NO<sub>x</sub> removed, with some outlier facilities approaching \$5,000 to \$6,000 per ton of NO<sub>x</sub> removed. Capital costs will vary with engine size, but an average cost of \$25 to \$40 per unit of horsepower appears to be a reasonable estimate of those costs, with the per horsepower cost increasing inversely with engine size. A report on alternative control techniques issued by the Emission Standards Division, Office of Air Quality Planning and Standards of the EPA contains cost algorithms for the pollution prevention techniques and control technology applied to internal reciprocating engines. Those algorithms yields costs; which run from \$250 to \$1,700 per ton for engines larger than 1,000 horsepower for the elimination of NO<sub>x</sub>. For smaller engines, the cost spans \$400 to \$3,500 per ton. The upper limit for cost effectiveness for the current version of Subpart 227-2 was \$3,000 per ton of NO<sub>x</sub> removed in 1994 dollars. Adjusting for inflation, using the Consumer Price Index for the metropolitan area, the cost is \$3,730 per ton. Therefore, the costs for NO<sub>x</sub> control associated with the proposed revisions to Subpart 227-2 are reasonable.

The proposed changes to Subpart 227-2 do not duplicate any existing state or federal law, rule or regulation.

No additional recordkeeping or reporting will be required by the proposed revisions to Subpart 227-2.

The Department evaluated both the "no-action" alternative and an alternative which would have implemented the full OTC model rule. Both alternatives were rejected as not meeting the needs, constraints and objectives of the EPA, the regulated community, and the Department.

#### **Regulatory Flexibility Analysis**

There were no changes to the previously published Regulatory Flexibility Analysis for Small Business and Local Governments. The effect of the regulations on small businesses and local governments remains the same.

#### **Revised Rural Area Flexibility Analysis**

The Department of Environmental Conservation (the Department) proposes to revise 6 NYCRR Part 227, Stationary Combustion Installations, by revising the NO<sub>x</sub> emission limits for stationary internal combustion engines in Subpart 227-2, Reasonable Available Control Technology (RACT) for Oxides of Nitrogen (NO<sub>x</sub>).

Types and estimated numbers of rural areas:

The Department has estimated that nineteen facilities are in counties with less than 200,000 people and up to four facilities are in towns with average population densities less than 150 persons per square mile. This is based upon a query of conditions in Title V permits which would be affected by the changes. No local governments in rural areas will be affected by the proposed changes.

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

Facilities subject to the proposed Subpart 227-2 revisions will be required to resubmit their original NO<sub>x</sub> RACT compliance plans with all necessary changes and updates for approval by the Department. These facilities will also be required to submit a permit application to modify their Title V permit. However, these changes can be made at the time of the facility's renewal application for the Title V permit (which is done every five years). If there are no changes caused by the proposed Subpart 227-2 revisions, no permit action is required. Finally, the affected facilities will be required to perform a compliance stack test to determine compliance with the new NO<sub>x</sub> emission limits. Test protocols and test reports will need to be submitted to the Department for approval. However, all of the affected facilities are regulated under the Title V program. These facilities are already required to perform a compliance stack test once during the term of their permit (every five years). The compliance test required for the Subpart 227-2 revisions would also meet the existing Title V requirement. If the facility does not have environmental staff that can complete the requirements of the revisions, they will need to utilize consulting services to prepare compliance plans and design any necessary changes to meet the revised emission limits. Compliance stack testing services will also need to be procured in order to write stack test protocols and conduct testing.

Costs:

NO<sub>x</sub> control costs for this sector have been changing rapidly with dramatic reductions in recent years. The control costs vary by control technique, fuel type, grade of fuel, size of engine, type of engine, as well as other factors, and have been documented in recent technical reports.<sup>1</sup> The technical reports support the conclusion that the proposed emission limitations are both technically feasible and cost effective. A report on alternative control techniques issued by the Emission Standards Division, Office of Air Quality Planning and Standards of the U.S. Environmental Protection Agency contains cost algorithms for the pollution prevention techniques and control technology applied to internal reciprocating engines. Costs for NO<sub>x</sub> reduction range from \$250 to \$1,700 per ton for engines larger than 1,000 horsepower. For smaller engines, the costs run from \$400 to over \$3,500 per ton.

Minimizing adverse impact:

The proposed changes have been developed to minimize the cost burden to rural areas. First, the changes in emission limits affect only the internal combustion engine sector. Boilers and turbines are not impacted with the proposed changes. Second, various control technologies exist for stationary internal combustion engines. These control technologies include low emission combustion, selective catalytic reduction, and non-selective catalytic reduction. Third, sources also have the option of complying by reducing NO<sub>x</sub> emissions by 90 percent from their 1990 baseline emissions. If the source can show that they meet the 90 percent control (which is less stringent than the proposed limits) then the source will be required to only meet the 90 percent control option. Fourth, options such as fuel switching and system wide averaging may also be used to comply with the new RACT limits. Fifth, a facility which can show that the proposed limits are not technically or economically feasible can receive a less stringent case-by-case RACT determination from the Department. Sixth, engine manufacturers in rural areas will receive an exemption from the requirements of Subpart 227-2 for engine test cells.

Rural area participation:

Initially, the Department sent a copy of the proposed revisions to every permittee affected by the proposed changes. The original comments received were mostly requests for clarification. Also, the Department held a public outreach session on January 9, 2003. The attendees received a working copy of the revised rule and a draft copy of the Regulatory Impact Statement (RIS). The outreach session included a presentation explaining the proposed changes. The Department solicited comments. The Department evaluated and responded to the comments that were received. Small businesses and local governments will be given other opportunities to participate in the rule making. The proposed revisions will undergo a publication of general notice in both the *Environmental Notice Bulletin* and *State Register*. Finally, public hearings will be held to allow those facilities affected by the rule another chance to comment.

<sup>1</sup> EC/R 2000: Stationary Reciprocating Internal Combustion Engines - Updated Information on NO<sub>x</sub> Emissions and Control Techniques - Final Report, prepared for the US Environmental Protection Agency, Ozone Policy and Strategies Group, Air Quality Strategies and Standards Division, MD-15, Office of Air Quality Standards, Research Triangle Park, NC August 29, 2000.

E.H. Pechan & Associates: NO<sub>x</sub> Emissions Control Costs for Stationary Reciprocating Internal Combustion Engines in the NO<sub>x</sub> SIP Call States, prepared for the US Environmental Protection Agency, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park NC, August 11, 2000.

E.H. Pechan & Associates: Ozone Transport Rulemaking Non-Electricity Generating Unit Cost Analysis, prepared for the US Environmental Protection Agency. Unknown date.

EPA, 1993: Alternative Control Techniques Document - NO<sub>x</sub> Emissions from Stationary Reciprocating Internal Combustion Engines, US Environmental Protection Agency, Research Triangle Park, NC, July, 1993.

EPA, 1999: Technical Bulletin: Nitrogen Oxides (NO<sub>x</sub>) - How and Why They Are Controlled, Office of Air Quality Planning and Standards, Research Triangle Park, NC, November, 1999.

#### **Job Impact Statement**

There were no changes to the previously published Job Impact Statement. The effect of the regulations remains the same.

#### **Summary of Assessment of Public Comment**

The Department of Environmental Conservation (Department) held public hearings on the proposed revisions to 6 NYCRR Subpart 227-2, NO<sub>x</sub> RACT, and 6 NYCRR Subpart 201-3, Exemptions and Trivial Activi-

ties, on August 19, 21, and 22, 2003 in Long Island City, Buffalo, and Albany respectively. The Department accepted written comments until close of business September 12, 2003. A summary of the significant comments received and the Department's responses are provided below.

One comment expressed by several of the interested parties was that there would be insufficient time to comply with the regulation based on the proposed compliance dates. The commenters also stated their concern for the Department's ability to permit their facilities in a timely manner. The Department has explained that these dates cannot be "pushed" back because of the required 2007 compliance demonstration to EPA (which will prove that the proposed rule changes meet the required NO<sub>x</sub> reductions). The Department is committed to performing this demonstration on time by permitting all affected facilities in a timely manner.

Several of the commenters expressed concerns regarding the financial commitments required by the implementation of the proposed limits. The Department stated that RACT has a limit of 3,750 dollars per ton of NO<sub>x</sub> reduced. Also there are several compliance options as well as an alternative RACT option that allows a facility to be permitted above the prescribed RACT limit if it is proven that RACT is infeasible.

Two of the commenters requested that the Department define the term "1990 actual baseline emissions." The Department has added a definition for "actual 1990 baseline emissions."

Several of the commenters stated that the Department has not provided enough flexibility to meet the proposed limits for stationary internal combustion engines. The commenters also state that some of the compliance measures are infeasible for their situation. The Department has added a new compliance option in the proposed rule changes and has maintained all of the existing options.

Two of the commenters expressed the concern that the Department did not look at environmental, economical, or reliability impacts that might be incurred due to the proposed rulemaking. The Department is required by the SAPA regulations to address these concerns as part of a rule analysis. This information was included in the rule's supporting documentation.

One commenter stated that the Department failed to properly follow the procedures outlined in both SAPA and the ECL for alternative analysis in the RIS. The Department reviewed this section of the RIS and determined that it had adequately addressed the requirements of the alternative analysis.

One commenter requested that the Department add language for each case-by-case analysis which states that the appropriate emission limit reflects RACT for that specific case. The Department has added this language.

One commenter stated that the proposed revisions exceed the Federal requirements for NO<sub>x</sub>. EPA does not have a Federal RACT standard, therefore, the states are required to set RACT. The Department was required to address an EPA cited shortfall in NO<sub>x</sub> reductions. These revisions address that shortfall.

One commenter stated that the revisions cannot result in a real or significant reduction in NO<sub>x</sub> reductions from gas pipeline compressor engines due to low ozone season utilization. The Department agrees that these reductions from this specific type of engine will not address the entire shortfall. However, these reductions will aid in achieving the Department's NO<sub>x</sub> reduction goal.

One commenter requests a clarification be made to the applicability section which states that the regulation only applies to combustion engines greater than or equal to 200 horsepower. The applicability section is written to define what facilities are subject to this rule. The control requirements section lists the affected equipment and the applicable RACT requirements. This change was not made.

One commenter requested that the Department expand the operating limitation of emergency engines from the current limit of 500 hours per year to unlimited. The Department cannot make this change as it would be a "backslide" from our current SIP requirements.

One commenter requested the Department to add a definition for "commerce commercial operation". The Department has added this definition.

One commenter requested the Department to add the following language to the end of the weighted average allowable emission rate definition: "most stringent applicable NO<sub>x</sub> emission limit." The department has added this language.

One commenter suggested that the Department should consider the OTC model rule language for emergency generators. The Department decided not to use the OTC model rule language for emergency generators.

One commenter requested language clarifications in the subdivision 227-2.4(c) for 'mid-size boilers.' The Department has declined to make these changes.

One commenter requested clarification of subdivision 227-2.4(g) for 'other combustion sources.' The Department reviewed this paragraph and determined that it was sufficient. Therefore, no changes were made.

One commenter has stated that the Department improperly relied upon faulty and outdated analyses in determining the new emission limits for stationary internal combustion engines. The Department used all available resources to develop these new emission limits. These resources included (but were not limited to) EPA studies and reports, the OTC model rule, and actual stack test data from New York facilities.

One commenter stated that the proposed revisions to section 227-2.6 for CEMs is a relaxation of the current regulation. The Department disagrees. The proposed revisions allow flexibility to use monitoring that was not available when the original version of the rule was promulgated. The Department will not be removing the proposed language.

One commenter asked if the provisions of 227-2 would apply if it accepted a cap below 100 tons per year. Once a facility takes enforceable permit conditions to cap below the applicability threshold of the rule, it is no longer subject to the rule.

One commenter asked if a stack test would be required to determine compliance with the new emission limits and when it would need to be conducted. The rule requires an initial stack test be completed to show compliance with these new limits by April 1, 2005.

One commenter states that the regulation could be interpreted as applicable to incinerators and suggests that language be added to clarify that incinerators are not applicable to this regulation. To be subject to this regulation a source must be a stationary combustion installation not an incinerator. The Department will not be adding any new applicability language.

One commenter suggested that the new limits apply only during the ozone season and be incorporated into 6 NYCRR Part 204, NO<sub>x</sub> Budget Program. The NO<sub>x</sub> Budget Program is a "beyond RACT" requirement implemented to reduce both local ozone and ozone transport, therefore, it has been limited to the ozone season. This regulation will implement RACT which is a year round requirement. The Department has chosen not to add stationary internal combustion engines into the scope of Part 204.

One commenter has stated that the proposed limits are not achievable. The Department has based these proposed emission limits on several sources of data including actual data from the commenter's sources. This data shows compliance with the proposed regulations.

One commenter requested a special exemption which would allow a facility to use alternative type of cap. The Department declined to make the requested revision.

One commenter requested that the Department include an explanation of the proposed CEM monitoring flexibility in the Summary of Express Terms. The Department has added this explanation.

One commenter requested the Department retain the original applicability date of May 31, 1995. The Department declined to make the requested revisions.

One commenter objected to the Department's proposed applicability section. They request that the Department retain the original applicability language. The Department declined to make the requested revisions.

One commenter requested that the Department clarify how the proposed changes require facilities with alternative RACT limits be reevaluated. The Department has added language that clarifies these new requirements in subdivision 227-2.3(d).

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## Department of Health

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### EMERGENCY RULE MAKING

#### Communicable Disease—Arboviral Infection Reporting

**I.D. No.** HLT-04-04-00010-E

**Filing No.** 25

**Filing date:** Jan. 12, 2004

**Effective date:** Jan. 12, 2004

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

**Action taken:** Amendment of section 2.1 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 225(4), (5)(a), (h), (i) and 206(1)(d) and (e)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** Immediate adoption of this rule is necessary to monitor the magnitude and scope of illness caused by arthropod-borne viruses, and enable timely case reporting and investigation, as well as the implementation of control interventions, as needed.

Arboviral infections are usually transmitted to people by arthropod vectors (primarily mosquitoes and ticks), and include viruses capable of causing symptoms ranging from asymptomatic or mildly symptomatic infection, to encephalitis, coma and death. Current communicable disease reporting requirements specify the reporting of encephalitis and meningitis, and with the exception of yellow fever, do not include other arboviral infections specifically by virus or disease name. Arboviral infections are of increasing importance to public health officials as evidenced by the ongoing West Nile virus outbreak.

West Nile virus was introduced to the metropolitan New York City area in 1999. The virus has rapidly dispersed across the United States and now only four states currently remain free of evidence of West Nile virus in various surveillance systems. This untreatable, potentially fatal mosquito-borne virus has affected every county in New York State. Late August through November is the time of year when the virus is most likely to be transmitted from mosquitoes to humans. A significant and further alarming discovery was made in 2002 when public health investigations determined that West Nile virus can be transmitted from person to person through blood transfusion. During the 2002 West Nile virus outbreak in the United States, a total of 23 persons were reported to have acquired West Nile virus infection after receiving blood components.

Because of the possibility of recurrent West Nile virus epidemics, blood collection agencies across the country now screen for the presence of West Nile virus and may identify individuals with asymptomatic or mild West Nile viral infection. Through the end of August 2003, the CDC is aware of over 150 presumptive West Nile virus-viremic blood donors reported from 11 states. Reporting of these viremic donors to State and local health departments will provide critical information about the presence and spread of West Nile virus in the State, and will allow timely implementation of prevention efforts.

In addition to West Nile virus, several arboviruses, such as Eastern equine encephalitis virus, Jamestown Canyon encephalitis virus, LaCrosse encephalitis virus, and Powassan encephalitis virus, have been found in various locations across New York State. Other mosquito-borne arboviruses, such as St. Louis encephalitis virus, have been introduced into New York State as a result of significant dispersal of native United States strains through major geographic expansion of infected mosquito populations that started along the Mississippi River valley. These viruses are currently known to be transmitted to people only through the bite of an infected mosquito and usually cause severe neurological symptoms in symptomatic individuals. Health care providers who suspect arboviral infection in these symptomatic patients can submit serum or cerebrospinal fluid specimens for arboviral laboratory diagnostic tests.

The rule change will enable the New York State Department of Health to identify potential mosquito- and tick-borne virus-associated infections in blood donors and other individuals who may not have encephalitis or meningitis symptoms. Requiring the reporting of these individuals will prevent further serious human infection through the earliest possible recognition of a problem, assist in defining the incidence and clinical spectrum of illness, and instituting recommendations for disease prevention on a timely basis.

**Subject:** Communicable disease — arboviral infection reporting.

**Purpose:** To add arboviral infection to the communicable disease list.

**Text of emergency rule:** Subdivision (a) of Section 2.1 is amended to read as follows:

2.1 Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

Amebiasis

Anthrax  
 Arboviral infection (as defined in Section 2.2 of this Part)  
 Babesiosis  
 Botulism  
 Brucellosis  
 Campylobacteriosis  
 Chancroid  
 Chlamydia trachomatis infection  
 Cholera  
 Cryptosporidiosis  
 Cyclosporiasis  
 Diphtheria  
 E. coli O157:H7 infections  
 Ehrlichiosis  
 Encephalitis  
 Giardiasis  
 Glanders  
 Gonococcal infection  
 Group A Streptococcal invasive disease  
 Group B Streptococcal invasive disease  
 Hantavirus disease  
 Hemolytic uremic syndrome  
 Hemophilus influenzae (invasive disease)  
 Hepatitis (A; B; C)  
 Hospital-associated infections (as defined in section 2.2 of this Part)  
 Legionellosis  
 Listeriosis  
 Lyme disease  
 Lymphogranuloma venereum  
 Malaria  
 Measles  
 Melioidosis  
 Meningitis  
     Aseptic  
     Hemophilus  
     Meningococcal  
     Other (specify type)  
 Meningococcemia  
 Mumps  
 Pertussis (whooping cough)  
 Plague  
 Poliomyelitis  
 Psittacosis  
 Q Fever  
 Rabies  
 Rocky Mountain spotted fever  
 Rubella  
 Congenital rubella syndrome  
 Salmonellosis  
 Severe Acute Respiratory Syndrome (SARS)  
 Shigellosis  
 Smallpox  
 Staphylococcal enterotoxin B poisoning  
 Streptococcus pneumoniae invasive disease  
 Syphilis, specify stage  
 Tetanus  
 Toxic Shock Syndrome  
 Trichinosis  
 Tuberculosis, current disease (specify site)  
 Tularemia  
 Typhoid  
 Vaccinia disease (as defined in section 2.2 of this Part)  
 Viral hemorrhagic fever  
 Yellow Fever  
 Yersiniosis

\* \* \*

A new subdivision (h) is hereby added to Section 2.2 to read as follows:  
 (h) As used in this part, the term arboviral infection shall mean:

(1) persons with arthropod-borne viral infection including but not limited to the following viruses: Eastern equine encephalitis virus, Western equine encephalitis virus, West Nile virus, St. Louis encephalitis virus, dengue, Powassan virus, Jamestown Canyon virus, La Crosse virus, yellow fever virus.

**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 April 10, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqa@health.state.ny.us

#### Regulatory Impact Statement

##### Statutory Authority:

Sections 225(4) and 225(5)(a), (h), and (i) of the Public Health Law ("PHL") authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to "investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health." PHL Section 206(1)(e) permits the commissioner to "obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state." PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection and control of persons and things infected with or exposed to such diseases.

##### Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding arboviral infections to the list of reportable disease. This change will permit enhanced disease monitoring and vector population intervention measures, if necessary, to prevent further transmission.

##### Needs and Benefits:

Arthropod-borne viruses (arboviruses) are transmitted to people primarily by the bite of an infected arthropod, typically by a mosquito or tick. Arboviruses can cause asymptomatic infections or a clinical illness that ranges in severity from a self-limited febrile illness to a severe neurologic illness with high fever, malaise, photophobia, encephalitis, meningitis, coma or death.

Arboviruses have been present in New York State for decades and include Eastern equine encephalitis virus, California encephalitis viruses and Powassan encephalitis virus. Over the past thirty years, other mosquito-borne viruses normally found in other areas of the country or the world, were introduced into New York State and resulted in epidemic illness. Examples are St. Louis encephalitis virus in 1975 and West Nile virus in 1999. Since its introduction in New York State, there have been over 175 human West Nile virus cases with 15 fatalities.

Existing communicable disease reporting requirements only include the reporting of encephalitis and meningitis, and with the exception of yellow fever, do not include the specific arboviral infections by name. Although encephalitis and meningitis are reportable conditions, infection with arboviruses may result in mild symptoms or no symptoms and go unreported.

In 2002, public health investigations documented that West Nile virus can be transmitted from person to person via infected blood donations and organ transplants. In response to this new mode of West Nile virus transmission, blood collection agencies in 2003 implemented a West Nile virus-screening program of blood donors. Due to the widespread testing of donors, it is anticipated that individuals with asymptomatic or mild West Nile viral infection will be detected but the number of cases is expected to be low.

This rule change will enable the New York State Department of Health (NYSDOH) and local health departments to detect and document diagnosed cases of mosquito and tick-borne viral infections, even those cases that do not progress to encephalitis or meningitis. The NYSDOH and local health departments will receive identifying information on blood donors who screen positive for West Nile virus, in the absence of encephalitis or meningitis symptoms. Local health department staff will follow-up with the West Nile virus positive donors to counsel them, determine their travel history and evaluate geographic areas of risk.

In summary, adding arboviral infections to the reportable disease list will permit the NYSDOH to more comprehensively monitor for the full range of symptoms associated with these diseases, and permit case reporting, investigation, and intervention to be made on a timely basis.

##### Costs:

Arthropod-borne diseases primarily cause encephalitis and/or meningitis symptoms in patients. Encephalitis and meningitis are already included

on the communicable disease list in 10 NYCRR Section 2.1. This change will require all arboviral infections to be reported and will clarify the NYSDOH's authority to investigate these cases, including mild or asymptomatic cases. The number of additional cases of arboviral infections that will be reported is expected to be low. It is expected that there will be increased costs related to investigating cases and, potentially, implementing control strategies.

##### Costs to Regulated Parties:

It is imperative to the public health that cases of arboviral infection be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality and to protect the public health.

The costs associated with implementing the reporting of this disease are expected to be minimal as reporting processes and forms already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting communicable disease to public health authorities.

##### Costs to Local and State Governments:

Costs associated with the reporting of arboviral infections are expected to be mitigated because the staff who are involved in reporting this disease at the local and State health departments are the same as those currently involved with reporting of other communicable diseases listed in 10 NYCRR Section 2.1. Arbovirus enhanced surveillance activities are long-standing and ongoing in most local health departments partially as a result of the importation of West Nile virus into the Western hemisphere in 1999. Local health department staffs have been aggressively monitoring and investigating reports of arboviral infection in their jurisdiction.

Additional costs to local or state governments are associated with investigating and implementing control strategies to curtail the spread of arthropod-borne disease. It is expected that the number of additional cases reported as a result of this change will be low. It is not known how this information will influence county control measures. Control efforts include enhanced vector surveillance, vector population reduction measures and implementation of comprehensive educational campaigns. These intensive efforts are critical to minimize spread.

By potentially decreasing the spread of arthropod-borne virus infections, savings may include reducing costs associated with public health control activities, hospitalization, morbidity, treatment and premature death.

##### Costs to the Department of Health:

The New York State Department of Health already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of arboviral infections to the list of communicable diseases should not lead to substantial additional costs for data entry, particularly as the Department adopts systems for electronic submission of case reports.

There are additional costs associated with ongoing arbovirus enhanced surveillance; these activities are long-standing and ongoing. New York State Department of Health has been aggressively monitoring and investigating reports of arboviral infection in New York State.

##### Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised to include arboviral infections. This form is familiar to and already used by regulated parties.

##### Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports from physicians in attendance on persons with or suspected of being infected with arboviral infection, will be required to immediately forward such reports to the State Health Commissioner and to investigate and monitor the cases reported.

##### Duplication:

There is no duplication of this initiative in existing State or federal law.

##### Alternatives:

No other alternatives are available.

Reporting of cases of specified arboviral infections is of critical importance to public health. There is an urgent need to conduct surveillance, identify human cases in a timely manner, and reduce the potential for further exposure to contacts.

##### Federal Standards:

This proposed action is consistent with current CDC standards for reporting of vector-borne diseases.

##### Compliance Schedule:

This regulation will be effective upon filing of a Notice of Emergency Adoption with the Secretary of State and made permanent by publication of a Notice of Adoption in the *New York State Register*.

**Regulatory Flexibility Analysis****Effect on Small Business and Local Government:**

There are approximately 6 hospitals, 15 nursing homes and 1,000 clinical laboratories that employ less than 100 people in New York State. There are 397 licensed clinics; information about how many operate as small businesses is not available. There are approximately 70,000 physicians in New York State but it is not known how many can be categorized as small businesses. This regulation will apply to all local health departments.

It is expected that the proposed rule will have minimal impact on small business (hospitals, clinics, nursing homes, physicians, and clinical laboratories) and local government since encephalitis and meningitis symptoms are already reportable. The number of additional cases of arboviral infections that will be reported is estimated to be low. Existing report forms and systems will be used.

**Compliance Requirements:**

Hospitals, clinics, physicians, nursing homes, and clinical laboratories that are small businesses and local governments will utilize revised Department of Health reporting forms which are familiar to them.

**Professional Services:**

No additional professional services will be required since providers are expected to be able to utilize existing staff to report occurrences of arboviral infections.

**Compliance Costs:**

No initial capital costs of compliance are anticipated. Annual compliance costs will depend upon the number of cases of arboviral infections which is expected to be low because existing reporting forms and mechanisms will be used. The reporting of arboviral infections should have a minimal effect on the estimated cost of disease reporting by hospitals. The cost would be less for physicians and other small businesses.

**Minimizing Adverse Impact:**

Adverse impacts have been minimized since familiar forms and existing reporting staff can be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

**Feasibility Assessment:**

Small businesses and local governments will likely find it easy to report conditions due to the availability to them of electronic reporting and tabulation.

**Small Business and Local Government Participation:**

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

**Rural Area Flexibility Analysis****Effect on Rural Areas:**

The proposed rule will apply statewide. A rural area is a county of under 200,000 population or an area with a population density of 175 persons or less per square mile. There are 42 rural counties in New York State and all are in Upstate New York. The number of cases that will be reported from rural areas is estimated to be low and have minimal impact on local health units, physicians, hospitals and laboratories that are located in rural areas.

**Compliance Requirements:**

Local health units, hospitals, clinics, physicians and clinical laboratories in rural areas will continue to utilize Department of Health reporting forms that will be revised to include arboviral infections.

**Professional Services:**

No additional professional services will be required. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

**Compliance Costs:**

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

**Minimizing Adverse Impact:**

Adverse impacts have been minimized since familiar forms and existing reporting staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-bb(2) were rejected inconsistent with the purpose of the regulation.

**Rural Area Input:**

The New York State Association of County Health Officers, including representatives of rural counties, has been informed about this change and supports the need for it.

**Job Impact Statement**

This regulation will not have a substantial adverse impact on jobs and employment opportunities. It adds arboviral infection to the list of diseases that health care providers must report to public health authorities. The staff who will be involved in reporting arboviral infections at the local and State health departments are the same as those currently involved with reporting, monitoring and investigating other communicable diseases. Although it is not possible to predict the extent of arboviral infection outbreaks, the number of additional cases that will be detected, or the degree of additional demands it will place on existing staff, all are expected to be low and the impact on jobs to be minimal if there is any impact at all.

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## Department of Motor Vehicles

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

**Emissions Inspection Sticker Fees****I.D. No.** MTV-04-04-00009-EP**Filing No.** 24**Filing date:** Jan. 9, 2004**Effective date:** Jan. 9, 2004

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

**Action taken:** Amendment of sections 79.6(c), 79.7(c)(1), and 79.24(h) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 301, 304 and 305

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

**Specific reasons underlying the finding of necessity:** The Department of Motor Vehicles is adopting this rule as an Emergency Rule Making in order to maintain sufficient funding and oversight to adequately support the State's efforts to ensure the proper testing of motor vehicle emissions systems and the reduction of air pollutants. The State is required to have a dedicated funding mechanism that supports the level of program oversight required by Federal statute and rule. Without such oversight, it has been demonstrated that an increased level of improper testing of motor vehicle emission systems occurs. As motor vehicles are a major source of air pollutants, this would detract from the State's efforts to maximize cleaner air and the benefit to the public health that results from cleaner air. Ground level ozone has been associated with increased respiratory problems in children and older adults. Unless sufficient funding and oversight are provided, the State will also be subject to federal sanctions that can range between \$1 and \$2 billion dollars in highway safety funds, potentially disrupting a number of highway safety improvement initiatives by the Department of Transportation. Thus, immediate adoption of this rule is necessary to preserve the public health, safety and general welfare of the citizens of New York.

**Subject:** Emissions inspection sticker fees.

**Purpose:** To increase the fees for emission inspection stickers.

**Text of emergency/proposed rule:** Subdivision (c) of section 79.6 is amended to read as follows:

(c) The fee for a certificate representing that a vehicle has passed a combined safety and enhanced emissions inspection (high or low) is [\$4] \$6.

Paragraph (1) of subdivision (c) of section 79.7 is amended to read as follows:

(c) Inspection Fees. (1) Except as modified by paragraph (2) below, an inspection station may charge a fee which may not exceed, but may be less than, the fee set by the following schedule.

Vehicle Groups	Inspection Fees
MGW (maximum gross weight) for inspection purposes is the weight indicated on the vehicle registration certificate.	
Group 1	

(a)(1) Safety inspection of all passenger vehicles, including suburbans, with seating capacities of fifteen persons or less, plus drivers, and trucks of 10,000 pounds MGW and under.	\$10.00
(2) Trucks over 10,000 up to 18,000 pounds MGW, except when the registrant requests a Group 2 (heavy vehicle) inspection.	\$15.00
(b) Safety inspection of trailers of 18,000 pounds MGW and under except those trailers over 10,000 pounds MGW for which the registrants have requested heavy vehicle inspection.	\$ 6.00
Group 2	
(a)(1) Safety inspection of all tractors, trucks over 18,000 pounds MGW, trucks 10,000 pounds to 18,000 pounds MGW when requested by the registrant, passenger vehicles with seating capacities greater than fifteen persons, plus drivers.	\$20.00
(2) All trailers over 18,000 pounds MGW and those trailers over 10,000 pounds MGW for which the registrants request heavy vehicle inspection.	\$12.00
(b) All semi-trailers	\$12.00
Group 3	
Motorcycles	\$ 6.00
Emissions Inspection Fees (includes Low Enhanced, Diesel, and High Enhanced)	
High Enhanced Emissions Inspection (required for all non-exempt vehicles registered in NYMA)	\$[25.00] 27.00
Low Enhanced Emissions Inspection (required for all non-exempt vehicles registered outside the NYMA)	\$[4.00] 6.00
Diesel Emissions Inspection (required for all non-exempt vehicles registered in the NYMA)	\$25.00

Paragraph (h) of section 79.24 is amended to read as follows:

(h) High enhanced emission reinspection procedure and fees. If a vehicle fails a safety, emissions and/or gas cap portion of the inspection, and is not removed from the station for repair, there shall be no charge for reinspection of such vehicle. If a vehicle fails a safety or emissions or gas cap portion of the inspection and is removed from the inspection station for repairs, that inspection station or any other station must conduct a full inspection on the failed portion during the reinspection of the vehicle and must charge according to the following chart:

Fails	Passes	Must Reinspect	Reinspect Charge
Safety	emissions, gas cap	Safety	\$10
emissions	safety, gas cap	Emissions	\$[25] 27
gas cap	safety, emissions	gas cap	\$ [4] 6
Safety, emissions	Gas cap	Safety, emissions	\$[35] 37
Safety, emissions, gas cap	-----	Safety, emissions, gas cap	\$[35] 37
Safety, gas cap	Emissions	Safety, gas cap	\$[14] 16
Emissions, gas cap	Safety	Emissions, gas cap	\$[25] 27

**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 March 8, 2004.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Deborah V. Dugan, Assistant Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

**Regulatory Impact Statement**

1. Statutory authority: As part of the State Budget, Vehicle and Traffic Law § 305(a)(2) was amended by Chapter 62 of the Laws of 2003, Part U1,

§ 4 to provide that the fee for a certificate representing that an emissions inspection has been successfully completed shall be set by the Commissioner through regulation, at an amount not to exceed four dollars, or eight dollars if performed on a biennial basis. This legislative amendment represents a maximum two-dollar increase that may be charged for emissions inspection stickers for inspections that are performed on an annual basis.

2. Legislative objectives: In amending Vehicle and Traffic Law § 305(a)(2), the Legislature sought to address the current State revenue shortfall. The proposed rule is in accord with the public policy objectives that the Legislature sought to advance by amending Vehicle and Traffic Law § 305(a)(2).

3. Needs and benefits: The proposed revisions are necessary to effectuate the provisions of Vehicle and Traffic Law § 305(a)(2) and the economic objectives of the State Legislature. The revisions would also help to maintain sufficient funding and oversight to adequately support the State's efforts to ensure the proper testing of motor vehicle emissions systems and the reduction of air pollutants.

4. Costs: a. There will be no costs to regulated businesses, since the proposed rule would allow affected businesses to pass on the fee increase to customers. Motorists would be required to pay an additional \$2 for emissions inspections.

b. The Department, the State and local governments (for the implementation of and continuing compliance with the rule). The total estimated cost to the Department to revise forms and send out memoranda and notifications is approximately \$6,500.

Other State and local agencies are not affected by this rule, and, therefore, this rule will not impose any costs on those agencies.

5. Local government mandates: This rule does not affect local governments, and, therefore, imposes no mandates on local governments. Approximately 800 political subdivisions in NYS perform their own inspections, but are specifically exempt from having to pay the fee for an inspection certificate by Vehicle and Traffic Law § 305(b).

6. Paperwork: There are no additional reporting requirements associated with this rule.

7. Duplication: This rule does not duplicate, overlap, or conflict with any other State or federal statute or regulation.

8. Alternatives: The Department of Motor Vehicles did not identify or consider any other significant alternatives.

9. Federal standards: The proposed rule does not exceed any federal minimum standards.

10. Compliance schedule: The Department of Motor Vehicles anticipates that affected inspection stations will be able to comply with the proposed rule immediately.

**Regulatory Flexibility Analysis**

1. Effect of rule: The requirements of the rule will affect inspection stations that perform emission inspections on motor vehicles. There are approximately 13,400 inspection stations statewide, about 8,800 of which are active licensed inspection stations in the Upstate Region of the State, and 4,600 in the New York Metropolitan Area (NYMA) that may be affected by the proposed rule making. The Department estimates that approximately 95% of the inspection stations in New York State are considered small businesses.

Approximately 800 political subdivisions in NYS perform their own inspections, but are specifically exempt from having to pay the fee for an inspection certificate by Vehicle and Traffic Law § 305(b). The rule will, therefore, have no impact on local governments.

2. Compliance requirements: All inspection stations that perform emission inspections will have to pay the increased fee for the emission inspection stickers and the combined safety and enhanced inspection emission sticker. However, as a means to minimize economic impacts to inspection stations, the proposed rule allows affected businesses to pass on the fee increase to customers. There are no additional record keeping or reporting requirements associated with this proposal. The rule will have no impact on local governments.

3. Professional services: Inspection stations will not require additional professional services in order to comply with the rule. The rule will have no impact on local governments.

4. Compliance costs: Inspection stations will be required to pay an increased fee for emission inspection stickers. However, as a means to minimize economic impacts to inspection stations, the proposed rule allows affected businesses to pass on the fee increase to customers. The rule will have no impact on local governments.

5. Economic and technological feasibility: The inspection stations affected by the regulation have the economic and technological ability to comply with the regulation. This rule does not impose any costs on small

businesses and does not require the use of technology for compliance. Accordingly, compliance with the rule is economically and technologically feasible for small businesses. The rule will have no impact on local governments.

6. Minimizing adverse impact: This rule is the direct result of a legislative budgetary increase aimed at addressing the New York State revenue shortfall. As a means to minimize economic impacts to small businesses, however, the proposed rule allows affected businesses to pass on the fee increase to customers. The rule will have no impact on local governments.

7. Small business and local government participation: A draft of the proposed rule has been circulated to motor vehicle inspection station and repair shop associations to solicit input from those small business entities that may be affected by the rule. Other State and local agencies are not affected by this rule, and, therefore, this rule will not impose any costs on those agencies.

#### **Rural Area Flexibility Analysis**

No rural area flexibility analysis is submitted, because the proposed rule will not impose an adverse impact, nor reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

No job impact statement is submitted, because the Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

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

#### **Washington County Motor Vehicle Use Tax**

**I.D. No.** MTV-04-04-00001-P

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

**Proposed action:** This is a consensus rule making to add section 29.12(e) to Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Washington County motor vehicle use tax.

**Purpose:** To impose the tax.

**Text of proposed rule:** Part 29.12 is amended by adding a new subdivision (e) to read as follows:

(e) *Washington County. The Washington County Legislature adopted Local Law No. 7 on December 19, 2003, to establish a Washington County Motor Vehicle Use Tax. The Washington County Treasurer entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after April 1, 2004 and upon the renewal of registrations expiring on and after June 1, 2004. The Treasurer of Washington County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Washington County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Washington County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

#### **Consensus Rule Making Determination**

This proposed regulation would create a new 15 NYCRR Part 29.12(e) to provide for the collection of a Washington County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained

in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On December 19, 2003 the Washington County Legislature enacted a resolution requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Washington County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this regulation because the collection of the Washington County Use Tax by DMV shall have no impact on job opportunities in New York State.

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

#### **Schuyler County Motor Vehicle Use Tax**

**I.D. No.** MTV-04-04-00002-P

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

**Proposed action:** This is a consensus rule making to add section 29.12(f) to Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Schuyler County motor vehicle use tax.

**Purpose:** To impose the tax.

**Text of proposed rule:** Part 29.12 is amended by adding a new subdivision (f) to read as follows:

(f) *Schuyler County. The Schuyler County Legislature adopted Resolution No. 616-03 on December 16, 2003, to establish a Schuyler County Motor Vehicle Use Tax. The County Treasurer of Schuyler County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after April 1, 2004 and upon the renewal of registrations expiring on and after June 1, 2004. The County Treasurer of Schuyler County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Schuyler County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Schuyler County, except for vehicles with agricultural plates or when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

#### **Consensus Rule Making Determination**

This proposed regulation would create a new 15 NYCRR Part 29.12(f) to provide for the collection of a Schuyler County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On December 16, 2003 the Schuyler County Legislature enacted a resolution requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm and vehicles bearing agricultural plates.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Schuyler County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this regulation because the collection of the Schuyler County Use Tax by DMV shall have no impact on job opportunities in New York State.

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

#### **Chautauqua County Motor Vehicle Use Tax**

**I.D. No.** MTV-04-04-00003-P

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

**Proposed action:** This is a consensus rule making to add section 29.12(y) to Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Chautauqua County motor vehicle use tax.

**Purpose:** To impose the tax.

**Text of proposed rule:** Part 29.12 is amended by adding a new subdivision (y) to read as follows:

(y) *Chautauqua County. The Chautauqua County Legislature adopted Local Law No. 11 on November 26, 2003, to establish a Chautauqua County Motor Vehicle Use Tax. The County Executive of Chautauqua County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after April 1, 2004 and upon the renewal of registrations expiring on and after June 1, 2004. The Director of Finance of Chautauqua County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Chautauqua County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Chautauqua County, except for vehicles with agricultural plates or when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

#### **Consensus Rule Making Determination**

This proposed regulation would create a new 15 NYCRR Part 29.12(y) to provide for the collection of a Chautauqua County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On November 26, 2003 the Chautauqua County Legislature enacted a local law requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm and vehicles bearing agricultural plates.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Chautauqua County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this regulation because the collection of the Chautauqua County Use Tax by DMV shall have no impact on job opportunities in New York State.

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

#### **Madison County Motor Vehicle Use Tax**

**I.D. No.** MTV-04-04-00004-P

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

**Proposed action:** This is a consensus rule making to add section 29.12(z) to Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Madison County motor vehicle use tax.

**Purpose:** To impose the tax.

**Text of proposed rule:** Part 29.12 is amended by adding a new subdivision (z) to read as follows:

(z) *Madison County. The Madison County Legislature adopted Local Law No. 382 on December 9, 2003, to establish a Madison County Motor Vehicle Use Tax. The Chairman of the Madison County Board of Supervisors entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after April 1, 2004 and upon the renewal of registrations expiring on and after June 1, 2004. The Treasurer of Madison County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Madison County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Madison County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan

St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

#### Consensus Rule Making Determination

This proposed regulation would create a new 15 NYCRR Part 29.12(z) to provide for the collection of a Madison County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On December 9, 2003 the Madison County Legislature enacted a local resolution requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Madison County local law. The merits of the tax may have been debated before the County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

#### Job Impact Statement

A Job Impact Statement is not submitted with this regulation because the collection of the Madison County Use Tax by DMV shall have no impact on job opportunities in New York State.

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

#### Appeal of Denial of Access to Records

**I.D. No.** MTV-04-04-00005-P

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

**Proposed action:** This is a consensus rule making to amend section 160.7(e) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, section 215(a); and Public Officers Law, section 89(4)(a)

**Subject:** Appeal of denial of access to records.

**Purpose:** To allow 10 business days in which to appeal a denial of access to records.

**Text of proposed rule:** Subdivision (e) of Part 160.7 is amended to read as follows:

(e) A decision on an appeal shall be rendered in writing within [seven] *ten* business days of the receipt of the appeal.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

#### Consensus Rule Making Determination

Public Officers Law section 89(4)(a) provides that a person denied access to a record may appeal such denial to the appropriate entity within an agency and that such entity "shall within ten business days of the receipt of such appeal" uphold the denial or grant access to the record(s) sought. Inexplicably, Part 160.7(e) of the Commissioner's Regulations provides that the appeal decision must be rendered within seven days. This proposed rule would conform the Department's regulation to the provisions in section 89(4)(a) of the POL.

#### Job Impact Statement

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

## Public Service Commission

### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-37-97-00012-W	September 17, 1997
PSC-51-97-00019-W	December 24, 1997
PSC-08-99-00018-W	February 24, 1999
PSC-11-99-00009-W	March 17, 1999
PSC-16-99-00009-W	April 21, 1999
PSC-34-99-00008-W	August 25, 1999
PSC-36-99-00010-W	September 8, 1999
PSC-42-99-00017-W	October 20, 1999
PSC-44-99-00004-W	November 3, 1999
PSC-45-99-00012-W	November 10, 1999
PSC-45-99-00013-W	November 10, 1999
PSC-51-99-00007-W	December 22, 1999
PSC-51-99-00010-W	December 22, 1999
PSC-51-99-00014-W	December 22, 1999
PSC-51-99-00020-W	December 22, 1999
PSC-52-99-00007-W	December 29, 1999
PSC-52-99-00009-W	December 29, 1999
PSC-01-00-00010-W	January 5, 2000
PSC-07-00-00002-W	February 9, 2000
PSC-12-00-00017-W	March 22, 2000
PSC-13-00-00011-W	March 29, 2000
PSC-22-00-00010-W	May 31, 2000
PSC-23-00-00017-W	June 7, 2000
PSC-24-00-00007-W	June 14, 2000
PSC-29-00-00008-W	July 19, 2000
PSC-45-00-00019-W	November 8, 2000
PSC-46-00-00018-W	November 15, 2000
PSC-49-00-00013-W	December 6, 2000
PSC-35-03-00013-W	September 3, 2003
PSC-39-03-00009-W	October 1, 2003

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

#### Complaint Performance Objective of the Verizon Incentive Plan

**I.D. No.** PSC-04-04-00013-P

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

**Proposed action:** The Public Service Commission is considering modification of the performance objective for complaints as defined in the Verizon Incentive Plan which was approved in Case 00-C-1945. The commission is also considering other service quality incentive alternatives to ensure that the consumer benefits provided by the Verizon Incentive Plan are maximized.

**Statutory authority:** Public Service Law, sections 91(1), 94(2), 97(1) and (2)

**Subject:** Public Service Commission complaint performance objective.

**Purpose:** To modify the existing PSC complaint performance objective, and related financial incentives.

**Substance of proposed rule:** By Notice dated June 20, 2003, the Commission issued for public comment a Department of Public Service Staff recommendation to modify the Verizon Incentive Plan (VIP) performance objective for complaints from a rate of less than 5.5 complaints per 10,000 lines per year to a rate of less than 0.90 complaints per 10,000 lines per year. The Commission is considering anew any issue pertaining to the establishment of a new complaint target, based on both the current Staff recommendation and additional written materials submitted by Verizon. In

addition, the Commission is considering proposals to modify the Year 2 provisions of the VIP service quality plan to ensure that the consumer benefits provided by the VIP are maximized.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-C-1945SA5)

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

**Bill Credits by Consolidated Edison Company of New York**

**I.D. No.** PSC-04-04-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Consolidated Edison Company of New York (Con Edison) seeking commission authorization to continue, consistent with phases 5 and 6 of its retail access program, bill credits for customers receiving commodity from an energy service company (ESCO). The commission will also consider Con Edison's request to recover contemporaneously unavowed costs associated with the bill credits.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** Bill credits.

**Purpose:** To continue bill credits for customers receiving commodity from an ESCO.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Consolidated Edison Company of New York (Con Edison) seeking Commission authorization to continue, consistent with Phases 5 and 6 of its retail access program, bill credits for customers receiving commodity from an energy service company (ESCO). The Commission will also consider Con Edison's request to recover contemporaneously unavowed costs associated with the bill credits.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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. (96-E-0897SA34)

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

**Refunded Overcharges by the City of Jamestown**

**I.D. No.** PSC-04-04-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the City of Jamestown to allocate an approximate \$2.4 million refund received from Niagara Mohawk Power Corporation and the New York Power Authority to imminent extraordinary capital projects.

**Statutory authority:** Public Service Law, sections 66(12) and 113(2)

**Subject:** Refunded over-charges.

**Purpose:** To allow the City of Jamestown to devote approximately \$2.4 million refund to imminent extraordinary capital projects.

**Substance of proposed rule:** The City of Jamestown has proposed using approximate \$2.4 million refunds received from Niagara Mohawk Power Corporation and the New York Power Authority for imminent extraordinary capital projects and to recover litigation expenses.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1785SA1)

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

**Net Metering for Residential Solar Generating Systems by Rochester Gas and Electric Corporation**

**I.D. No.** PSC-04-04-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to accept or to reject, in whole or in part, the December 26, 2003 petition filed by Rochester Gas and Electric Corporation seeking a waiver of certain of its tariff provisions governing net metering for residential solar generating systems.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Net metering for residential solar generating systems.

**Purpose:** To allow Rochester Gas and Electric Corporation to interconnect net-metered photovoltaic systems.

**Substance of proposed rule:** On December 26, 2003, Rochester Gas and Electric Corporation (RGE) filed a petition requesting a waiver of certain of its tariff provisions governing net metering for residential solar generating systems so that RGE may interconnect net metered photovoltaic systems for a discreet group of non-residential customers. RGE requests that it not be obligated to purchase the excess power generated by these facilities.

The New York State Public Service Commission is considering whether to grant, reject or modify, in whole or in part, the RGE petition.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1787SA1)

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

**Net Metering for Residential Solar Generating Systems by New York State Electric and Gas Corporation**

**I.D. No.** PSC-04-04-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the December 26, 2003 petition filed by New York State Electric and Gas Corporation seeking a waiver of certain of its tariff provisions governing net metering for residential solar generating systems.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Net metering for residential solar generating systems.

**Purpose:** To allow New York State Electric and Gas Corporation to interconnect net-metered photovoltaic systems.

**Substance of proposed rule:** On December 26, 2003, New York State Gas and Electric Corporation (NYSEG) filed a petition requesting a waiver of certain of its tariff provisions governing net metering for residential solar generating systems so that NYSEG may interconnect net metered photovoltaic systems for a discreet group of non-residential customers. NYSEG requests that it not be obligated to purchase the excess power generated by these facilities.

The New York State Public Service Commission is considering whether to grant, reject or modify, in whole or in part, the NYSEG petition.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-E-1788SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Load Aggregation Service by Niagara Mohawk Power Corporation

I.D. No. PSC-04-04-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 219.

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

**Subject:** Service Classification No. 11—load aggregation service.

**Purpose:** To revise the term of capacity release transactions.

**Substance of proposed rule:** Niagara Mohawk Power Corporation proposes to revise its S.C. No. 11 – Load Aggregation Service by revising the term of prearranged capacity release transactions from “one year and one day” to “will be determined by the Company” and to revise the provision pertaining to consolidated bills that are provided by the company for Load Aggregation Service, specifically the marketers pricing plans.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-G-1695SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Wireless Attachments by Niagara Mohawk Power Corporation

I.D. No. PSC-04-04-00019-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Niagara Mohawk Power Corporation (Niagara Mohawk) for approval of a process for review and approval of wireless attachments to Niagara Mohawk’s transmission facilities.

**Statutory authority:** Public Service Law, sections 66(1) and 70

**Subject:** Procedure for approval of wireless attachments to Niagara Mohawk’s transmission facilities.

**Purpose:** To consider Niagara Mohawk’s wireless attachment procedure.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, a petition filed by Niagara Mohawk Power Corporation (Niagara Mohawk) for approval of a process for review and approval of wireless attachments to Niagara Mohawk’s transmission facilities.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(02-M-1288SA2)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Electronic Tariff Schedule by Fishers Island Water Works Corporation

I.D. No. PSC-04-04-00020-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, Fishers Island Water Works Corporation’s new electronic tariff schedule, P.S.C. No. 2—Water, to become effective April 1, 2004 which would increase annual revenues by \$161,260 or 41.7 percent.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** New electronic tariff schedule and request for a rate increase.

**Purpose:** To approve Fishers Island Water Works Corporation’s new electronic tariff schedule.

**Substance of proposed rule:** On December 30, 2003, Fishers Island Water Works Corporation (the company) filed a request to convert its current Tariff Schedule P.S.C. No. 1 – Water to an Electronic Tariff Schedule P.S.C. No. 2 – Water, which sets forth the rates, charges, rules and regulations under which the company will operate. The proposed tariff contains rates that would increase the company’s annual revenues by \$161,260 or 41.7%, to become effective April 1, 2004. Subsequently, on January 9, 2004, the company filed a revised leaf setting forth a service charge of \$95.00 to winterize a seasonal customer’s meter. The company provides metered water service to 629 customers (508 customers are seasonal) in Fishers Island, Suffolk County, New York. The Commission may approve or reject, in whole or in part, or modify the company’s request.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-W-1810SA1)

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## Department of State

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### EMERGENCY RULE MAKING

**Cease and Desist Zone for Real Estate Brokers and Salespersons**

**I.D. No.** DOS-04-04-00008-E

**Filing No.** 22

**Filing date:** Jan. 7, 2004

**Effective date:** Jan. 7, 2004

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

**Action taken:** Amendment of section 175.17(c)(2) of Title 19 NYCRR.

**Statutory authority:** Real Property Law, section 442-h(3)(a) and (c)

**Finding of necessity for emergency rule:** Preservation of general welfare,

**Specific reasons underlying the finding of necessity:** Based on testimony received at a public hearing, the Secretary of State has determined that some owners of residential property in the Brooklyn community of Canarsie are subject to intense and repeated solicitation by real estate brokers and real estate salespersons and that such solicitations seek to have the owners place their home for sale with the real estate brokers and real estate salespersons. The Secretary of State has further determined that the homeowners have no practical means of stopping the unwanted and intrusive solicitations and that those homeowners need immediate relief. Therefore, compliance with section 201(1) of the State Administrative Procedure Act would be contrary to the public interest of providing for the general welfare of those homeowners who seek immediate relief from the continuation of the unwanted and unwelcome solicitations by real estate brokers and salespersons.

**Subject:** Cease and desist zone for real estate brokers and salespersons.

**Purpose:** To establish a cease and desist zone in the Brooklyn community of Canarsie.

**Text of emergency rule:** Paragraph (c)(2) of section 175.17 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to add the following designated cease and desist zone:

*Cease and Desist Zone  
(Canarsie)*

<i>Zone</i>	<i>Expiration Date</i>
<i>County of Kings (Brooklyn)</i>	<i>November 30, 2007</i>

*Within the County of Kings as follows:*

*All that area of land in the County of Kings, City of New York, bounded and described as follows:*

*Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection of Stanley Street and East 108 Street; thence southeasterly along East 108 Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Short (Belt) Parkway; thence southwesterly along*

*Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.*

**This notice is intended** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 5, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

**Regulatory Impact Statement**

1. Statutory authority:

Section 442-h(3) (a) of the Real Property Law (“RPL”) provides that the Secretary of State may adopt a rule establishing a cease-and-desist zone if the Secretary determines that some homeowners within a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to list their homes for sale. Upon the establishment of such a zone, a homeowner may file with the Secretary a statement of desire not to be solicited. Thereafter, the Secretary will publish a list of the names and addresses of the persons who have filed the statement, and brokers and salespersons are then prohibited from soliciting persons on that list. That list is commonly referred to as a “cease-and-desist list.”

Section 442-h(3)(a) of the RPL provides that no rule establishing a cease and desist zone shall be effective for more than five years; provided, however, that the Department of State may re-adopt the rule to continue a cease and desist zone for additional periods not to exceed five years.

Based testimony received at a public hearing on December 14, 2000, the Secretary of State has determined that some homeowners within the Brooklyn community of Canarsie are subject to intense and repeated solicitations from real estate brokers and salespersons. As a result, the Secretary has express statutory authority to propose and adopt a cease-and-desist zone for that community.

2. Legislative objectives:

According to the Statement of Legislative Findings for section 442-h of the Real Property Law, the Legislature has found that, from time to time, homeowners in some neighborhoods have been subject to intense and repeated solicitation by real estate brokers and salespersons to place their homes for sale, with the implication that property values would be decreasing because persons of different ethnic, social or religious backgrounds were moving into the neighborhood in greater numbers. The Statement of Legislative Findings also concluded that this type of solicitation technique constitutes a churning of the market and generated panic selling in the neighborhood. By enacting § 442-h, the Legislature sought to provide a means by homeowners could effectively express their wish not to be solicited by real estate brokers or salespersons. The Secretary has found that some homeowners in the Brooklyn community of Canarsie are subject to intense and repeated solicitations to list their homes for sale. Therefore, this rule accords with the public policy objectives which the Legislature sought to advance by enacting § 442-h of the Real Property Law.

3. Needs and benefits:

A public hearing was held in the Brooklyn Community of Canarsie on December 14, 2000. At the public hearing testimony was given by community leaders who spoke on behalf of their constituents. Speakers included two State Senators, a Member of the Assembly, the Deputy Borough President, members of Community Board 18, representatives of homeowners associations and representatives of civic associations. Each of the speakers spoke in support of the proposed cease-and-desist zone citing the need to curb the aggressive solicitation practices of real estate agents in the Canarsie community. The speakers cited frequent telephone calls, unwanted mail and flyers, as well as door-to-door solicitations, as intrusive and unwanted solicitation practices by real estate brokers and salespersons. Accordingly, the Secretary of State has determined that homeowners in the Brooklyn community of Canarsie have no practical means of stopping the unwanted and intrusive solicitations and that the homeowners need immediate relief. This rule will provide those homeowners who do not wish to be solicited with an effective and practical means of so notifying real estate brokers and salespersons. One thousand sixty-eight homeowner’s statements were filed for the previous cease-and-desist list, which expired on February 27, 2001.

On June 29, 2001, the United States District Court for the Eastern District of New York issued a decision and judgement in the matter of *Anderson, et al v. Treadwell, as Secretary of State of the State of New York* declaring the cease-and-desist rules of the Department of State to be invalid as an unconstitutional restriction of free speech. That decision was

appealed by the Department of State, and on June 25, 2002, the United State Court of Appeals for the Second Circuit issued a decision reversing the District Court’s decision and judgement, and ordering the District Court to enter judgement in favor of the Secretary of State. See *Anderson et al v. Treadwell*, 294 F. 3rd 453 (2d Circuit 2002). On October 8, 2002, the District Court entered judgement in favor of the Secretary of State. The entry of judgement by the District Court effectively reinstated the cease-and-desist rule, which had been invalidated by the District Court’s previous decision and judgement.

4. Costs:

a. Costs to regulated parties:

Regulated parties include licensed real estate brokers and salespersons who do residential sales in the Brooklyn community of Canarsie. There are approximately 1,200 real estate brokers and approximately 1,800 real estate salespersons with offices in Brooklyn.

The Department of State will have the cease-and-desist list available, at no cost, on its web site, [www.dos.state.ny.us](http://www.dos.state.ny.us). The cease-and-desist list will also be sold to the public, including real estate brokers and salespersons, for \$10 per copy, in accordance with existing 19 NYCRR Section 175.17(c)(5). Copies will also be made available for inspection and copying at Department of State offices.

We expect that most licensees who do business in Canarsie will access the list, at no cost, on the Department’s web site. We expect that some licensees will purchase one or more copies. Some will share the expense by sharing a copy. Others will not access or purchase a copy because they do not solicit residential listings in Canarsie.

In addition, some real estate brokers may use commercial mailing lists to solicit. For those brokers, the cease-and-desist list may increase the cost of using a commercial mailing list. The list will have to be checked against the addresses in the cease-and-desist list, and the broker will have to delete the addresses that appear in the homeowner list. The Department of State is not able to estimate the cost to those brokers because the cost will depend on a number of factors, such as the number of names on the mailing list, the number of addresses in the cease-and-desist list, the technology to the licensee, and the licensee’s cost for technology and labor. On the other hand, there may be some reductions in the total cost of the mailing when the “unproductive addresses” are eliminated from the list.

Also, if a licensee uses the telephone, delivery services and personal contact to solicit residential listings, the licensee may have to spend time checking the cease-and-desist list to avoid contact with any person at an address listed. There is, of course, an expense associated with that expenditure of time. On the other hand, there may be savings associated with elimination of unproductive calls or deliveries. Whether there is a net cost or savings will depend on the circumstances and practices of each licensee. Therefore, the Department of State is not able to estimate those costs.

b. Costs to the Department of State:

The estimated costs for preparing the cease-and-desist list are as follows:

Printing owners statements	\$2,200	
Mailing owners statements	640	
Processing statements:		
Staff: SG-14 @ \$29,110		
10 weeks	5,600	
Data entry:		
Staff: SG-6 (NYC) @ \$23,385		
10 days	900	
Fringe benefits @ 36.5%	<u>2,372</u>	
Total:		\$11,712

The costs for printing and mailing are unknown. The Department anticipates that most licensees will access the list, at no cost, on the Department’s website. For those few who want to purchase a paper copy, the Department will likely print a copy, on an order-by-order basis, on existing equipment. The mailing costs will be dependent on the number of copies that are ordered. However, the Department expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

The Department of State expects that revenues from the sale of the list will be incidental to the costs of preparing, printing and mailing.

5. Local government mandates:

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

6. Paperwork:

Homeowners who do not want to be solicited will have to file an “owner’s statement” with the Department of State. The owner’s statement will indicate the owner’s desire not to be solicited and will set forth the

owner’s name and the address of the property within the cease-and-desist zone. The Department of State will provide homeowners with a standard form although use of the form is not mandatory. Owner’s statements will be provided to community leaders for distribution to their constituents. In addition, owner’s statements will be available from the Department of State on request, as well as available on the Department’s web site. The Department of State will prepare a cease-and-desist list containing the names and addresses of all of the homeowners who filed an owner’s statement. The list will be available, at no cost, on the Department’s website. The publication will also be sold to the public, including real estate brokers and salespersons. The price will be \$10 per copy. Except for orders submitted by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

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

8. Alternatives:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to § 442-h(2) of the Real Property Law. However, the Department concluded that a cease-and-desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, the Secretary of State decided to adopt the cease-and-desist order rather than a non-solicitation order.

The Department of State did not consider any other alternatives.

9. Federal standards:

There are no federal standards regulating the frequency or intensity of solicitations by real estate brokers or salespersons. Consequently, this rule does not exceed any existing federal standard.

10. Compliance schedule:

Real estate brokers and salespersons can comply with the cease-and-desist order immediately upon publication of the list.

**Regulatory Flexibility Analysis**

1. Effect of rule:

This cease-and-desist rule applies to an area generally known as Canarsie in the Borough of Brooklyn. There are approximately 1,170 real estate brokers and approximately 1,852 real estate salespersons in the Brooklyn. Most of those licensees are small businesses, or they work for a small business. This rule will apply to most of the licensees. The exceptions will be those who do not deal in residential properties, and those who do not deal in properties located within the cease-and-desist zone.

The cease-and-desist rule will also apply to licensed real estate brokers and salespersons who are located outside of the Brooklyn but who solicit residential properties within the designated area. The Department of State does not have a practical way of estimating how many brokers and salespersons fall within this category.

The rule does not apply to local governments.

2. Compliance requirements:

The rule does not impose any reporting or record keeping requirements on the licensees. The rule does prohibit each licensee from soliciting the sale, rental or listing from any homeowner whose name appears of a cease-and-desist list published by the Department of State.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

A licensee will not need professional services in order to comply with the rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The cost of compliance and the variations in the costs of compliance are detailed in section 4(c) of the Regulatory Impact Statement.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the names and addresses of the homeowners who do not want to be solicited will be published by the Department of State and since the cost of the publication is \$10 per copy or free if accessed on the Department’s website, it will be economically and technologically feasible for real estate brokers and salespersons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to § 442-h(2) of the Real Property Law. However, the Department concluded that a cease-and-desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, the Secretary of State decided to adopt the cease-and-desist order rather than a non-solicitation order.

To provide homeowners in the designated area with relief from intense and repeated solicitations from real estate brokers and salespersons, the rule must apply equally to all licensees regardless of the size of their business or the size of their employer's business. Consequently, the rule does not make special accommodations for different classes of licensees.

#### 7. Small business participation:

The Department of State conducted an open public hearing on December 14, 2000, at School 211, Avenue J, Brooklyn, New York. The time, date and place of the public hearing was well advertised within the Canarsie community. Testifying at the hearing on behalf of their constituents in Canarsie were two State Senators, a Member of the Assembly, the Deputy President of the Borough of Brooklyn, members of Community Board 18, representatives of homeowners associations and representatives of civic associations.

There were no real estate brokers or real estate salespersons who identified themselves at the public hearing, and no real estate broker or salesperson spoke at the hearing. In addition, no real estate broker or salesperson submitted any written testimony regarding the proposed re-adoption of the cease-and-desist zone.

#### Rural Area Flexibility Analysis

A rural area flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

This rule establishes a cease-and-desist zone in the Brooklyn community of Canarsie, and this rule only affects those real estate brokers and salespersons who do business in that community.

Canarsie is not a rural area and, therefore, a rural flexibility analysis is not required for this rule.

#### Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for real estate brokers or real estate salespersons.

The rule provides a means by which homeowners in the designated community can notify real estate brokers and real estate salespersons that the homeowners do not want to be solicited for the purchase, sale or rental of their homes.

Since the homeowners who file a homeowner's statement with the Department of State are not interested in receiving solicitations from real estate brokers or real estate salespersons, publication of names and addresses of those homeowners and the resulting notification to real estate brokers and salespersons will not have any substantial impact on jobs or employment opportunities for real estate brokers or salespersons.

## NOTICE OF ADOPTION

### Cease and Desist Zone for Real Estate Brokers and Salespersons

**I.D. No.** DOS-45-03-00002-A

**Filing No.** 26

**Filing date:** Jan. 12, 2004

**Effective date:** Jan. 28, 2004

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

**Action taken:** Amendment of section 175.17(c)(2) of Title 19 NYCRR.

**Statutory authority:** Real Property Law, section 442-h(3)(a) and (c)

**Subject:** Cease and desist zone for real estate brokers and salespersons.

**Purpose:** To establish a cease and desist zone in the Brooklyn communities of Mill Basin, Mill Island, Bergen Beach, Futurama and Marine Park.

**Text or summary was published** in the notice of proposed rule making, I.D. No. DOS-45-03-00002-P, Issue of November 12, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

#### Assessment of Public Comment

The agency received no public comment.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Identification of Buildings Utilizing Truss Type Construction

**I.D. No.** DOS-04-04-00011-P

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

**Proposed action:** This is a consensus rule making to add Part 1264 to 19 NYCRR.

**Statutory authority:** Executive Law, section 382-a

**Subject:** Identification of buildings utilizing truss type construction.

**Purpose:** To establish requirements for signs which identify the existence of truss construction in a building.

**Text of proposed rule:** Subchapter C of Chapter XXXIII of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new Part 1264 to read as follows:

#### Part 1264

### IDENTIFICATION OF BUILDINGS UTILIZING TRUSS TYPE CONSTRUCTION

**1264.1 Introduction.** Section 382-a of the Executive Law provides that commercial and industrial buildings and structures that utilize truss type construction shall be marked by a sign or symbol that informs persons conducting fire control and other emergency operations of the existence of truss construction. Section 382-a further directs the State Fire Prevention and Building Code Council to promulgate rules and regulations it deems necessary to carry into effect the provisions of the statute. This Part establishes certain requirements pertaining to the identification of buildings and structures that utilize truss type construction.

**1264.2 Enforcement.** (a) Subdivision 4 of section 382-a of the Executive Law directs local governments to provide for enforcement of the statute. Enforcement of section 382-a of the Executive Law shall include enforcement of the provisions of this Part. A fee of fifty dollars shall be paid by the owner of a building with truss type construction to the authority having jurisdiction for enforcement of section 382-a of the Executive Law prior to the issuance of a building permit.

(b) This Part shall not apply within a city with a population of one million or more persons.

**1264.3 Definition.** For the purposes of this Part, truss type construction shall mean a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own. Truss type construction shall not include:

- (1) individual wind or seismic bracing components which form triangles when diagonally connected to the main structural system; and
- (2) structural components that utilize solid plate web members.

**1264.4 Identification of truss type construction.** (a) Truss type construction shall be identified by a sign or signs in accordance with the provisions of this Part.

(b) Signs shall be affixed where a building or a portion thereof is classified as Group A, B, E, F, H, I, M, or S occupancy, and in hotels and motels classified as Group R-1 or R-2 occupancy, in accordance with the provisions for the classification of buildings set forth in chapter 3 of the Building Code of New York State (see 19 NYCRR Part 1221).

(c) Signs shall be provided in newly constructed buildings that utilize truss type construction and in existing buildings where an addition that extends or increases the floor area of the building utilizes truss type construction. Signs shall be affixed prior to the issuance of a certificate of occupancy or a certificate of compliance.

(d) Signs identifying the existence of truss construction shall consist of a circle 6 inches (152.4 mm) in diameter, with a stroke width of 1/2 inch (12.7 mm). The sign background shall be reflective white in color. The circle and contents shall be reflective red in color, conforming to Pantone matching system (PMS) #187. Where a sign is directly applied to a door or sidelight, it may be a permanent non-fading sticker or decal. Signs not directly applied to doors or sidelights shall be of sturdy, non-fading, weather resistant material.

(e) Signs identifying the existence of truss construction shall contain the roman alphanumeric designation of the construction type of the build-

ing, in accordance with the provisions for the classification of types of construction set forth in section 602 of the Building Code of New York State (see 19 NYCRR Part 1221), and an alphabetic designation for the structural components that are of truss construction, as follows:

“F” shall mean floor framing, including girders and beams

“R” shall mean roof framing

“FR” shall mean floor and roof framing

The construction type designation shall be placed at the twelve o'clock position over the structural component designation, which shall be placed at the six o'clock position.

(f) Signs identifying the existence of truss construction shall be affixed in the locations specified in Table I-1264.

TABLE I-1264

TRUSS IDENTIFICATION SIGN LOCATIONS

Sign location	Sign placement
Exterior building entrance doors, exterior discharge doors, and exterior roof access doors to a stairway	Attached to the door, or attached to a sidelight or the face of the building, not more than 12 inches (305 mm) horizontally from the latch side of the door jamb, and not less than 42 inches (1067 mm) nor more than 60 inches (1524 mm) above the adjoining walking surface
Multiple contiguous exterior building entrance or exit discharge doors	Attached at each end of the row of doors and at a maximum horizontal distance of 12 feet (3.65M) between signs, and not less than 42 inches (1067 mm) nor more than 60 inches (1524 mm) above the adjoining walking surface
Fire department hose connections	Attached to the face of the building, not more than 12 inches (305 mm) horizontally from the center line of the fire department hose connection, and not less than 42 inches (1067 mm) nor more than 60 inches (1524 mm) above the adjoining walking surface

**Text of proposed rule and any required statements and analyses may be obtained from:** Raymond Andrews, Department of State, Division of Code Enforcement and Administration, 41 State St., Albany, NY 12231, (518) 474-4073

**Data, views or arguments may be submitted to:** Richard DiGiovanna, Department of State, Office of Counsel, 41 State St., Albany, NY 12231, (518) 474-6740

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

**Consensus Rule Making Determination**

The State Fire Prevention and Building Code Council has concluded that this rule making would merely implement certain non-discretionary statutory provisions and therefore no person is likely to object to its adoption. The proposed rule would add a new Part to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York that would establish requirements pertaining to the identification of buildings and structures that utilize truss type construction. Executive Law § 382-a requires that commercial buildings and industrial structures that utilize truss type construction must be marked by a sign or a symbol that informs persons conducting fire control and other emergency operations of the existence of truss construction in the structure. Subdivision 2 of section 382-a prescribes specific requirements that must be included in rules and regulations promulgated by the Code Council to carry into effect the provisions of the statute, including the dimension and color of identifying signs, the locations where such signs should be posted, and the time within which buildings subject to the regulations shall be so marked.

In proposing this rule making, the Code Council has sought to fully satisfy the directive of the State Legislature, but not impose any requirements upon regulated parties beyond what is required by the statute. Accordingly, only structures that can be characterized as “commercial” or “industrial” and that utilize truss type construction are subject to the requirements of the rule. Other structures that fall outside of the specific scope of the statute would not be subject to the rule. The rule requires that the signs that identify the existence of truss construction must be placed at specific exterior locations to notify fire service and emergency operations personnel that structural components of truss construction exist in the building. Also, the signs must provide information about the type of structural components that utilize truss construction as well as information

about the building’s structural system. Finally, the rule specifies the dimensions and color of the sign and the text contained therein.

Therefore, it is appropriate to characterize this rule making as a consensus rule. The definition of that term set out as subdivision 11 of State Administrative Procedure Act § 102 provides: “Consensus rule” means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely . . . (b) implements or conforms to non-discretionary statutory provisions . . . As the proposed rule making implements a non-discretionary statutory requirement, no one is likely to object to its adoption.

**Job Impact Statement**

The State Fire Prevention and Building Code Council has concluded after reviewing the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities in New York. The proposed rule would add a new Part to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York that would establish requirements pertaining to the identification of buildings and structures that utilize truss type construction. Executive Law § 382-a requires commercial buildings and industrial structures that utilize truss type construction to be marked by a sign or a symbol that informs persons conducting fire control and other emergency operations of the existence of truss construction in the structure. The proposed rule would carry into effect the provisions of the statute. It directs that the signs must be placed at specific exterior locations to notify fire service and emergency operations personnel that structural components of truss construction exist in the building. In addition, the signs must provide information about the type of structural components that utilize truss construction as well as information about the building’s structural system.

For newly constructed buildings and existing buildings where a new addition utilizes truss type construction, signs shall be installed as part of the construction process. Compliance will be enforced by the cities, towns and villages of the State through permit and inspection procedures. These permit and inspection procedures are already established and used for administration and enforcement of the New York Uniform Fire Prevention and Building Code. Consequently, enforcement of the proposed rule will not place any additional burden on local governments. Furthermore, the required signs will utilize commonly available construction materials and installation procedures. Accordingly, the Code Council finds that it is evident from the subject matter of the proposed rule that it could only have a positive impact, or no impact on jobs and employment opportunities.

## Office of Temporary and Disability Assistance

### EMERGENCY RULE MAKING

**Temporary Shelter Supplements**

**I.D. No.** TDA-24-03-00001-E

**Filing No.** 27

**Filing date:** Jan. 12, 2004

**Effective date:** Jan. 12, 2004

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

**Action taken:** Addition of section 370.10 to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 158, 350(2) and art. 5, title 10; and L. 2001, 2002 and 2003, ch. 53

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

**Specific reasons underlying the finding of necessity:** To ensure that persons who are no longer eligible for family assistance because of the 60-month time limit on receipt of such assistance but who are receiving safety net assistance and meet other eligibility requirements can pay their rent and avoid eviction.

**Subject:** Temporary shelter supplements.

**Purpose:** To provide temporary shelter supplements to certain persons who are no longer eligible for family assistance because of the time limit on receipt of such assistance.

**Text of emergency rule:** Section 370.10 is added to read as follows:

370.10(a) Scope.

This section governs the provision of supplements known as Temporary Shelter Supplements (TSS). Such supplements may be provided to recipients of Safety Net Assistance (SNA) who would otherwise be eligible for Family Assistance (FA) but for the time limits on receipt of such assistance and who meet the conditions set forth below. Such supplements are provided pursuant to an authorization and appropriation in the State budget. This section shall be effective only for so long as a specific appropriation in the State budget is made therefor.

370.10(b) Application of other regulations.

TSS is provided only to recipients of non-federally participating SNA program. TSS recipients are subject to all the regulations of this Title governing SNA unless otherwise specified in this section.

370.10(c) District responsibilities.

All social services districts authorized to provide a TSS benefit must:

(1) Upon this office's eligibility determination for a TSS benefit or the local districts determination of eligibility for such a benefit, if directed by this office to make such determination, provide such benefits to eligible individuals.

(2) Ensure that all SNA recipients in receipt of a TSS benefit comply with all training requirements and case management services.

(3) Periodically report to this office on the recipients of TSS at such times and in such manner as this office may direct.

370.10(d) Eligibility requirements for applicants who are not receiving a supplemental shelter allowance when they apply for TSS.

(1) Applicants for TSS who were not receiving a supplemental shelter allowance must apply for TSS on a form prescribed by this office.

(2) To be eligible for TSS, there must be a court proceeding concerning the nonpayment of rent, maintenance or mortgage where the applicant resides. The application shall include documentation demonstrating that the case is on file with a court including the caption, index number and an official court stamp or signature.

(3) The applicant must reside in a social services district in which a lawsuit challenging the adequacy of the shelter allowance maxima in the FA program was commenced prior to December 1, 2001 and preliminary relief has been ordered.

(4) Receipt of TSS must enable the applicant to remain in his or her housing. The district may pay up to \$3,000 or six times the monthly rental obligation in full satisfaction of tenant liability for rent arrears, whichever is higher, in accordance with paragraph (4) of subdivision (f) of this section. This office may require the applicant to move to a similar priced apartment in lieu of paying arrears.

370.10(e) Eligibility requirements for all applicants for TSS, including persons receiving a supplemental shelter allowance when they apply for TSS.

(1) All individuals requesting a TSS benefit must be eligible for SNA, have exhausted their FA eligibility as a result of the 60 month time limitation and be eligible for FA except for the application of the time limits.

(2) The TSS benefit must not exceed the amounts established in subdivision (f) of this section.

(3) The public assistance recipient must be the tenant of record and have a lease for the housing or obtain an agreement in writing to stay for at least one year if the tenancy is not covered by rent regulation.

(4) In addition, the following case circumstances must be met in order to receive a TSS benefit:

(i) No one in the public assistance case can be sanctioned.

(ii) The public assistance household must contain a child under the age of 18 or under the age of 19 and a full-time student.

(iii) The household cannot have willfully lost section 8 assistance provided by the federal Department of Housing and Urban Development, without good cause, within the past two years.

(iv) The household must apply for section 8 assistance, if permitted to do so, and take the benefit, if offered.

(v) The household must verify household composition and rent must be paid by non public assistance (NPA) household members as described below.

(vi) Any changes that affect eligibility must be reported to this office, if acting on behalf of the local district, and the district within 10 days of the change. Failure to report any change may result in permanent discontinuance of TSS benefits.

(5) NPA household members, including persons not eligible for public assistance due to their immigration status and recipients of supplemental security income (SSI) or foster care, must agree to contribute either their pro rata share of the rent or 30 percent of their gross income to the rent, whichever is less. In addition:

(i) The NPA's income must be verified.

(ii) If the NPA claims to have no income, the person must apply for public assistance before the additional allowance can be authorized.

(iii) Persons reported as not eligible for public assistance due to their immigration status, who are without income will not be expected to contribute toward their rent or be included in the shelter number.

370.10(f) Needs and allowances.

(1) TSS allowance. The amount of the TSS benefit will be established by this office. The maximum benefit an SNA household may receive is equal to the amount which was or would have been previously authorized for that household size by a court ordered supplement under FA. SNA households that were not in receipt of a court ordered supplement prior to their receiving SNA assistance, may receive an allowance equal to the difference between the shelter allowance determined in accordance with section 352.3 of this Title and the actual rental obligation; provided however, that the TSS allowance must not exceed an amount equal to the shelter allowance maximum or an amount, when combined with the allowable shelter allowance, is equal to the following rent table, whichever is greater:

By family size

1	2	3	4	5	6	7	8+
\$450	\$550	\$650	\$700	\$725	\$750	\$775	\$800

(2) TSS benefit increase limitations. Once TSS benefits have been authorized for a household, the TSS benefit amount may increase for that household up to the maximum established in paragraph (1) of this subdivision, provided that the increase is documented in the recipient's lease or rental agreement.

(3) TSS rental amounts. The temporary assistance household's rental obligation may exceed the amount authorized under paragraphs (1) and (2) of this subdivision by up to one hundred dollars. The household is responsible for this excess amount and must agree to have this amount restricted from their regular public assistance benefit authorized under section 352.2 of this Title.

(4) Arrears payments. Rent arrears may be authorized as part of the TSS request. Arrears payments for rent cannot exceed the higher of \$3,000 or six times the monthly rental obligation. Under extenuating circumstances (e.g. need to keep current housing for medical reasons), and subject to approval by this office, an arrears amount can be authorized for a higher amount not to exceed 10 times the monthly rental obligation. Once arrears payments are made for the household under this section, no future rental arrears payments will be made for any month in which a TSS benefit was authorized for household or for any month in which the case was sanctioned.

370.10(g) Budgeting.

The following general provisions apply:

(1) A recipient is no longer eligible for a TSS benefit once he or she has lost eligibility for public assistance.

(2) The undue hardship reduction procedures found in section 352.31(d)(2) of this Title do not apply in relationship to TSS benefits.

(3) As a condition for receiving a TSS benefit, recipients must agree to have their entire rent paid directly to the landlord.

(4) TSS is not part of the standard of need for determining eligibility for public assistance. Eligibility shall be determined without regard to TSS.

370.10(h) Notice and procedural rights.

To the extent not inconsistent with this section, desk reviews of case discrepancies will forgo the procedures in Part 358 of this Title.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency/proposed rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. TDA-24-03-00001-EP, Issue of June 18, 2003. The emergency rule will expire March 11, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

**Regulatory Impact Statement**

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its

powers and duties. Section 122 of Part B of Chapter 436 of the laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). Chapter 436 transferred the functions of the former Department of Social Services concerning financial support services to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 158 of the SL contains the eligibility requirements for the Safety Net Assistance (SNA) program.

Title 10 of Article 5 of the SSL authorizes the Family Assistance program (FA) which provides allowances for the benefit of children who are financially needy for their support, maintenance and needs.

Section 350(2) of the SSL provides that FA shall not be granted to any family which includes an adult who has received FA or any other form of assistance funded under the Federal Temporary Assistance to Needy Families Block Grant program for a cumulative period of longer than 60 months.

Chapter 53 of the Laws of 2001, Chapter 53 of the Laws of 2002 and Chapter 53 of the Laws of 2003 (the State Operations and Aid to Localities Budget) appropriated funds to be used to reimburse one-half of the non-federal share of the cost of the rent supplement authorized by this regulatory amendment.

#### 2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that people who are unable to provide for themselves can, whenever possible, be restored to a condition of self-support.

#### 3. Needs and Benefits:

The proposed amendments authorize the payment of a rent supplement to cases that include a child in receipt of SNA when such supplement is necessary to prevent eviction and when such cases were in receipt of such supplement as FA recipients pursuant to a decision of the Commissioner of OTDA as determined necessary to address litigation or pursuant to a court order pending final adjudication of litigation and transferred to SNA or when such case would have met the eligibility criteria for such supplement except for FA ineligibility.

In *Jiggetts v. Grinker*, a case commenced in 1987, plaintiffs were recipients of Aid to Dependent Children (ADC) residing in New York City whose actual rent exceeded the agency shelter allowance maxima and who were facing eviction for non-payment of their rent. The plaintiffs alleged that the shelter allowance provided to ADC recipients was inadequate to maintain their housing and therefore violated section 350 of the Social Services Law. Similar cases were brought and are still pending in three other counties. In each of the cases, either by court order or by an informal intervention process, families receiving ADC who have alleged similar claims to the plaintiff have received rent supplements to prevent eviction while the court cases pended.

In 1997, the ADC program was abolished in New York and a successor program, the FA program, was established. The FA program contains a 60 month limitation on receipt of assistance (See section 350 of the Social Services Law). Beginning on December 1, 2001, the first cohort of families reached the 60 month limit. Such families can transition to the SNA program if they apply. However, section 350 of the Social Services Law, which is the linchpin of the *Jiggetts* case, does not apply to families receiving SNA. See *Deleo v. Kaladjan* 215 A.D.2d 520 (1995) and *Gautam v. Perales* 179 A. D. 2d 509 (1992). Therefore, such families would no longer be eligible for the preliminary relief being provided in the various cases.

To ease the transition from FA to SNA, the Legislature, in Chapter 53 of the Laws of 2001, appropriated funds to reimburse one-half of the cost of a rent supplement to be provided to families formerly receiving preliminary relief in the various shelter allowance cases or who might be eligible for such relief but for the time limits. In order to receive the shelter supplement, a person must be in receipt of SNA, have exhausted their FA eligibility as a result of the 60-month time limit or receipt of such assistance and be eligible for FA except for the application of the time limit. Because the allowance is a creature of the appropriation language and is not a special needs allowance in the SNA program, it does not increase the standard of need or standard of payment for that program. Funds also were appropriated in the recently passed 2003-04 State Operations and Aid to Localities Budget to continue the rent supplement program.

#### 4. Costs:

Assuming that 6,855 cases reach the 60-month limit in December 2001, with additional cases reaching the limit in each month thereafter, and factoring in a 10 percent caseload decrease due to restrictions on the payments and attrition, it is estimated that the cumulative costs to be as follows, based on a benefit level of \$280 per month in New York City and \$377 per month in the rest of the State:

Cumulative Cost (millions)	Gross	Federal	State	Local
State Fiscal Year 2001-02	\$8.337	\$0	\$4.168	\$4.168
State Fiscal Year 2002-03	\$32.270	\$0	\$16.135	\$16.135

It is important to note that any additional State and local expenditures would count toward meeting the State's federal maintenance of effort requirement.

#### 5. Local Government Mandates:

When requested by this Office, social services districts would be required to determine whether persons are eligible for a temporary shelter supplement.

#### 6. Paperwork:

A new form would be developed by this Office that would be used when a person applies for a temporary shelter supplement.

#### 7. Duplication:

The proposed regulatory amendments do not duplicate any existing State or federal requirements.

#### 8. Alternatives:

This Office is required to establish a rent supplement program as described in Chapter 53 of the Laws of 2001, Chapter 53 of the Laws of 2002 and Chapter 53 of the Laws of 2003. These regulations comply with the requirements of those chapter laws and reflect this Office's experience and the experience of social services districts in operating informal intervention programs.

#### 9. Federal Standards:

There are no Federal standards concerning temporary shelter supplements.

#### 10. Compliance Schedule:

Social services districts would be required to begin complying with the requirements of these regulatory amendments when they become effective.

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

The proposed regulations will not affect small business but will have an impact on the 58 social services districts in the State.

#### 2. Compliance Requirements:

Social services districts would be required to determine eligibility for temporary shelter supplement benefits when directed to do so by the Office of Temporary and Disability Assistance.

#### 3. Professional Services:

No new professional services will be required for social services districts to comply with the proposed regulations.

#### 4. Compliance Costs:

The proposed regulations will not require the social services districts to incur any initial capital costs. It is estimated that local costs of the regulations for State Fiscal Year 2001-02 will be \$4,168,000; for State Fiscal year 2002-03, the local costs will be \$16,135,000.

#### 5. Economic and Technological Feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed regulations.

#### 6. Minimizing Adverse Impact:

The proposed regulations will not have an adverse economic impact on social services districts.

#### 7. Small Business and Local Government Participation:

Staff of the Office of Temporary and Disability Assistance have informed social services districts in New York City, Nassau County, Suffolk County and Westchester County about the proposed amendments since those are the only districts that will be affected by the amendments. Those districts were invited to submit comments on the amendments.

### **Rural Area Flexibility Analysis**

A rural area flexibility analysis statement has not been prepared for the regulations establishing a temporary shelter supplement since only those social services districts in New York City, Nassau County, Suffolk County and Westchester County will be affected by the regulations.

### **Job Impact Statement**

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed

amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.

#### **Assessment of Public Comment**

During the public comment period for the proposed regulations concerning temporary shelter supplements (TSS), the Office of Temporary and Disability Assistance received comments from one social services district and a State agency. No changes have been made to the proposed amendments as a result of the comments.

#### **Comment:**

The social services district asked that 18 NYCRR 370.10(f)(4) be revised to allow for multiple shelter arrears payments when there are extenuating circumstances. The current regulation only allows arrears payments to be made once while the applicant/recipient is in receipt of a TSS.

#### **Response:**

This Office disagrees with this comment and no change is being made to the regulation. Under the TSS program, there is a requirement to have shelter payments vendor restricted, that is, have the rental payment paid directly to the landlord. Therefore, any arrears accumulated while on TSS would be the sole responsibility of the person receiving the TSS payment and would not warrant an additional arrears payment.

#### **Comment:**

The State agency asked that 18 NYCRR 370.10(g) be revised to include a statement that would make clients ineligible for TSS benefits if they are sanctioned for failing to comply with any public assistance program requirement.

#### **Response:**

This Office agrees with this comment. However, this is already a requirement for TSS benefits as set forth in 18 NYCRR 370.10(e)(4). Therefore, no change to the regulation is necessary.

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## Workers' Compensation Board

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### EMERGENCY RULE MAKING

#### **Written Reports of Independent Medical Examinations**

**I.D. No.** WCB-04-04-00012-E

**Filing No.** 54

**Filing date:** Jan. 13, 2004

**Effective date:** Jan. 13, 2004

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

**Action taken:** Amendment of section 300.2(d)(11) of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117 and 137

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

**Specific reasons underlying the finding of necessity:** Recent Decisions issued by Board Panels have interpreted the current regulation as requiring reports of independent medical examinations (IMEs) be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays, and that U.S. Post Offices are not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is precluded and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, workers' compensation insurance carrier/self-insured employer, claimant's treating provider and representative, and the claimant it is not possible to send the report by facsimile or electronic means. The recent Decisions have greatly, negatively impact the professionals who conduct IMEs, the IME entities, insurance carriers and self-insured employers. When untimely reports are precluded, the insurance carriers and self-insured employers are prevented from adequately defending their position. Accordingly, emergency adoption of this rule is necessary.

**Subject:** Written reports of independent medical examinations (IMEs).

**Purpose:** To amend the time for filing written reports of IMEs with the board and furnished to all others.

**Text of emergency rule:** Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 business days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 business days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

**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 April 11, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 473-8626, e-mail: office-of-generalcounsel@wcb.state.ny.us

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

##### 2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

##### 3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to

Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

#### 4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

#### 6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

#### 8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

#### 9. Federal standards:

There are no federal standards applicable to this proposed rule.

#### 10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

##### 2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

##### 3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

##### 4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

##### 5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

##### 6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

##### 7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

#### **Rural Area Flexibility Analysis**

##### 1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

##### 2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The

new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

**Job Impact Statement**

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.