

# 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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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Tolerances and Regulations for Commercial Weighing and Measuring Devices

**I.D. No.** AAM-29-05-00002-A  
**Filing No.** 1297  
**Filing date:** Nov. 1, 2005  
**Effective date:** Nov. 16, 2005

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of section 220.2 of Title 1 NYCRR.  
**Statutory authority:** Agriculture and Markets Law, sections 16, 18, and 179

**Subject:** Tolerances and regulations for commercial weighing and measuring devices.

**Purpose:** To incorporate by reference the 2005 edition of NIST Handbook 44.

**Text or summary was published** in the notice of proposed rule making, I.D. No. AAM-29-05-00002-P, Issue of July 20, 2005.

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

**Text of rule and any required statements and analyses may be obtained from:** Ross Andersen, Department of Agriculture and Markets,

10B Airline Dr., Albany, NY 12235, (518) 457-3146, e-mail: ross.anderson@agmkt.state.ny.us

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

The agency received no public comment.

### NOTICE OF ADOPTION

#### Test Procedures to Determine the Accuracy of Net Weight Declarations

**I.D. No.** AAM-29-05-00003-A  
**Filing No.** 1298  
**Filing date:** Nov. 1, 2005  
**Effective date:** Nov. 16, 2005

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

**Action taken:** Amendment of section 221.11 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18, and 179

**Subject:** Test procedures to determine the accuracy of net weight declarations.

**Purpose:** To incorporate by reference the 2005 edition of NIST Handbook 133.

**Text or summary was published** in the notice of proposed rule making, I.D. No. AAM-29-05-00003-P, Issue of July 20, 2005.

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

**Text of rule and any required statements and analyses may be obtained from:** Ross Andersen, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3146, e-mail: ross.andersen@agmkt.state.ny.us

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

The agency received no public comment.

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

#### Compost

**I.D. No.** AAM-46-05-00009-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 153.1 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 18(6) and 146-d

**Subject:** Compost.

**Purpose:** To exempt certain compost from the definition of commercial fertilizer for certain purposes, establish a label format for setting forth compost characteristics; provide for the filing of analytical test results for such compost with license applications and prior to the distribution of products; and provide for analytical testing of such compost using the Test Methods for the Examination of Composting and Compost published by the United States Department of Agriculture and the United States Composting Council, Aug. 12, 2001 or equivalent methods.

**Text of proposed rule:** 1 NYCRR section 153.1 is amended by adding new subdivisions (c), (d) and (e) to read as follows:

(c) Compost consisting entirely of animal (other than human) manure, vegetative matter and animal bedding, for which plant nutrient claims are made, shall be exempt from the definition of commercial fertilizer for purposes of the fee requirements of Agriculture and Markets Law sections 146 and 146-c and the guaranteed analysis requirements of sections 144 and 145(4) of said Law and Part 153 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Any such compost, for which plant nutrient claims are made, which is distributed in this State in containers shall have placed on or affixed to the containers a clearly legible label setting forth total nitrogen (N), total phosphorous (P) and total potassium (K). Other compost characteristics may also be set forth. Any other compost characteristics stated for such compost shall appear in the format set forth in subdivision (d) of this section. If distributed in bulk, a statement, in such format, setting forth any compost characteristics stated for such compost shall accompany the compost and be supplied to the purchaser at the time of delivery.

(d) The format for setting forth compost characteristics stated for composted animal manure, composted vegetable manure and composted animal bedding, for which plant nutrient claims are made, shall be as follows:

(1) General Characteristics

- (i) Feedstock
- (ii) Maturity
- (iii) Organic matter
- (iv) Weed Seeds/Liter
- (v) Density
- (vi) Solids
- (vii) CN Ratio
- (viii) pH
- (ix) Conductivity

(2) Nutrients

- (i) Total nitrogen (N)
- (ii) Total phosphorous (P)
- (iii) Total potassium (K)
- (iv) Total Calcium (Ca)
- (v) Total magnesium (Mg)

(3) Metals

- (i) Copper
- (ii) Iron
- (iii) Zinc
- (iv) Arsenic
- (v) Cadmium

(e) Analytical test results supporting compost characteristics stated for composted animal manure, composted vegetable manure and composted animal bedding, for which plant nutrient claims are made, shall be filed with the Department with any license application and prior to the distribution of such products. The values of such compost characteristics may be stated as average values based upon such analytical test results. Analytical tests shall be conducted using the methods in Test Methods for the Examination of Composting and Compost published by the United States Department of Agriculture and the United States Composting Council on August 12, 2001, or equivalent methods.

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert Mungari, Director of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

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

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

**Consensus Rule Making Determination**

This rule is proposed as a consensus rule, within the definition of that term in State Administration Procedure Act section 102(11) pursuant to the expectation that no person is likely to object to its adoption because it is non-controversial.

Presently, unmanipulated animal and vegetable manures, agricultural liming materials, wood ashes and gypsum are exempt from the definition of "commercial fertilizers" in Agriculture and Markets Law 3143(a). Composting, however, is considered to be manipulation, resulting in composted animal and vegetable manures not qualifying for this exemption. AML § 143(a) authorizes the Commissioner to exempt, by regulation, products in addition to those named in the statute. This rule would provide a limited exemption for compost consisting entirely of animal (other than human) manure, vegetative matter and animal bedding, such as wood shavings.

The production and sale of compost by farmers is a sound means of removing excess nutrients from farms, providing a valuable product for

use in promoting plant growth and generating income. Currently, compost produced and sold by farmers for its plant nutrient value must meet all of the requirements applicable to commercial fertilizer, including those requiring the payment of license and tonnage fees. This makes it less cost effective for farmers to produce and sell compost and discourages them from doing so. In addition, variations in the nutrient content of the materials composted and in the conditions under which composting takes place, make it difficult for farmers to meet the guaranteed analysis requirements applicable to traditional commercial fertilizers, which are produced using carefully measured ingredients with known nutrient content, under carefully controlled manufacturing conditions.

The exemption made by this rule would be limited to the license fee, tonnage fee and guaranteed analysis provisions of the commercial fertilizer law. In place of the guaranteed analysis requirement applicable to traditional commercial fertilizers, producers would be required to declare total nitrogen, phosphorous and potassium on the label of this compost. Any other compost characteristics declared on the label would have to be set forth in the format established by the rule. Analytical test results supporting the compost characteristics declared on the label would be required to be filed with the Department with the application for a commercial fertilizer license and prior to any distribution of the product. The values of such compost characteristics could be stated as average values, based upon the results of the analytical test, which would be required to be conducted using the methods in Test Methods for the Examination of Composting and Compost published in 2001 by the United States Department of Agriculture and the United States Composting Council, or equivalent methods. All other requirements relating to commercial fertilizers, such as the prohibitions against adulteration and misbranding would continue to apply to this compost, which would be limited to compost consisting entirely of animal (other than human) manure, vegetative matter and animal bedding.

**Job Impact Statement**

The proposed amendment of 1 NYCRR section 153.1 would exempt certain compost from the definition of commercial fertilizer for certain purposes; establish a label format for setting forth compost characteristics; provide for the filing of analytical test results for such compost with license applications and prior to the distribution of products and provide for analytical testing of such compost using the test methods for the examination of composting and compost published by the United States Department of Agriculture and the United States Composting Council, August 12, 2001 or equivalent methods. The rule would not have a substantial adverse impact on jobs and employment opportunities. The rule would lessen the regulatory burden on those producing compost made entirely from animal manure, vegetative matter and animal bedding by exempting it from the fee and guaranteed analysis requirements applicable to commercial fertilizers. This will benefit agricultural producers by facilitating the distribution of compost from farms, remove excess nutrients from such farms in an environmentally sound manner and provide a valuable source of nutrients for use in promoting plant growth.

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## Education Department

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

**Examination and Residency Program Requirements for Dental Licensure**

**I.D. No.** EDU-09-05-00013-RP

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

**Revised action:** Amendment of sections 61.2 and 61.18 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 6506(1); 6507(2)(a); 6601 (not subdivided); and 6604(3) and (4); and L. 2004, ch. 76, section (3)

**Subject:** Examination and residency program requirements for dental licensure.

**Purpose:** To implement the requirements of Education Law section 6604(3) and (4) by requiring applicants for dental licensure to complete an

accredited dental residency program and eliminating the option of their completing a clinical examination in dentistry instead of a residency program, effective Jan. 1, 2007; establish a definition of an acceptable national accrediting body for dental residency programs; and add two additional specialties to the list of specialty residency programs that may be used to fulfill the residency program requirement for dental licensure.

**Text of revised rule:** 1. Section 61.2 of the Regulations of the Commissioner of Education is amended, effective February 1, 2006, as follows:

61.2 Licensure examination.

(a) *Individuals, who on or before December 31, 2006 have completed all the education requirements for licensure and by that date have submitted an application for licensure and the required application fee, shall meet the examination requirements of this subdivision. Individuals who do not meet these conditions shall meet the examination requirements of subdivision (b) of this section.*

[(a)] (1) Content. The examination shall consist of three parts:

[(1)] (i) . . .

[(2)] (ii) . . .

[(b)] (2) . . .

[(c)] (3) . . .

[(d)] (4) Special examination conditions.

[(1)] (i) . . .

[(2)] (ii) . . .

[(e)] (5) . . .

[(f)] (6) . . .

[(g)] (7) . . .

[(h)] (8) . . .

[(i)] (9) In accordance with section 6604(4) of the Education Law, [applicants who are issued by the department a license to practice dentistry between May 22, 2003 and December 31, 2005,] *individuals, who on or before December 31, 2006 have completed all the education requirements for licensure and by that date have submitted an application for licensure and the required application fee,* may substitute successful completion of a residency program that meets the requirements of section 61.18 of this Part in lieu of successful completion of Part III, the examination in clinical dentistry.

(b) *Individuals who do not meet the conditions prescribed in the opening paragraph of subdivision (a) of this section shall meet the examination requirements of this subdivision.*

(1) *Content. The examination shall consist of two parts designed to sample the knowledge from all areas related to dentistry.*

(2) *The department may accept grades acceptable to the State Board for Dentistry on an examination of the National Board Dental Examinations as meeting the requirements of Parts I and II of the licensing examination.*

(3) *Special examination conditions.*

(i) *An applicant who has completed not less than two academic years in a program of dental education registered by the department, or accredited by an accrediting organization acceptable to the department may be admitted to Part I of the examination. Such applicant shall meet all requirements for admission to the licensing examination, except for the completion of professional education.*

(ii) *An applicant attending a program of dental education registered by the department, or accredited by an accrediting organization acceptable to the department, may be admitted to Part II during the last year of study.*

(4) *Passing score. The passing score in each subject of each part shall be 75.0, as determined by the State Board for Dentistry.*

2. Section 61.18 of the Regulations of the Commissioner of Education is amended, effective February 1, 2006, as follows:

61.18 Residency [option pathway] *program requirement* for dental licensure.

(a) Definitions. As used in this section:

[(1) . . .]

(1) *Acceptable national accrediting body means until December 31, 2006 the Commission on Dental Accreditation of the American Dental Association, and thereafter it means an organization accepted by the department as a reliable authority for the purpose of accreditation of dental residency programs, applying its criteria for granting accreditation in a fair, consistent, and nondiscriminatory manner, such as the Commission on Dental Accreditation of the American Dental Association, its successors, or an equivalent organization as determined by the department.*

(2) . . .

(3) . . .

(b) Residency program. [In accordance with section 6604(4) of the Education Law, applicants who are issued by the department a license to practice dentistry between May 22, 2003 and December 31, 2005 may substitute successful completion of a residency program that meets the requirements of this section in lieu of successful completion of the examination in clinical dentistry (Part III of the dental licensing examination), prescribed in section 61.2 of this Part. In addition to meeting other requirements of this section, such residency program shall meet the following requirements:] *To be acceptable to the department for purposes of licensure under section 6604 of the Education Law, a residency program shall meet the requirements of this section.*

(1) The residency program shall be a postdoctoral clinical dental residency program in either general dentistry, or a specialty of dentistry as defined in paragraph (2) of this subdivision, of at least one year's duration in a hospital or dental facility accredited for teaching purposes by [the CDA] *an acceptable national accrediting body,* which is completed successfully by the applicant prior to the submission to the department of the application for licensure.

(2) The *accredited* residency program in a specialty of dentistry shall be in the specialty of endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, *oral and maxillofacial pathology, oral and maxillofacial radiology,* or another specialty of dentistry, as determined by the department, for which at least 50 percent of the [CDA] accredited residency program consists of clinical training in one or more of the following areas: general dentistry, endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, [and] prosthodontics, *oral and maxillofacial pathology, and oral and maxillofacial radiology.*

(3) The *accredited* residency program shall include a formal written outcome assessment which is acceptable to the department.

(i) For [a CDA] *an accredited* residency program in general dentistry, the formal written outcome assessment used by the residency program shall be acceptable to the department if it includes:

(a) an acceptable notarized written statement by the residency program director attesting that the applicant has completed successfully the [CDA] accredited residency program and is in the director's judgment competent to practice dentistry; and

(b) acceptable notarized written statement(s) by the residency program director who supervised the dental procedures performed by the applicant, and/or the attending dentist(s) who supervised the dental procedures performed by the applicant if different from the residency program director, attesting that the applicant completed independently, and to generally accepted professional standards for dentistry, two full crowns, two endodontically treated teeth, four restorations (two anterior, two posterior) and one periodontal case during the *accredited* residency program.

(ii) For [a CDA] *an accredited* residency program in a specialty of dentistry, as defined on paragraph (2) of this subdivision, the formal written outcome assessment used by the residency program shall be acceptable to the department if it includes an acceptable notarized written statement by the residency program director attesting that the applicant has successfully completed the [CDA] accredited residency program in a specialty of dentistry, as defined in paragraph (2) of this subdivision, and is in the director's judgment competent to practice dentistry.

(c) . . .

**Revised rule compared with proposed rule:** Substantial revisions were made in section 61.18(b)(2).

**Text of revised proposed rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@mail.nysed.gov

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

**Revised Regulatory Impact Statement**

Since publication in the *State Register* of the Notice of Proposed Rule Making on March 2, 2005 and the Notice of Continuation on August 17, 2005, the proposed rule has been revised as follows:

Paragraph (2) of subdivision (b) of section 61.18 of the Regulations of the Commissioner of Education is substantially revised to add two additional specialties to the list of specialty residency programs that may be used to fulfill the residency program requirement for dental licensure. The

additional specialties are oral and maxillofacial pathology and oral and maxillofacial radiology. These specialties were added to provide additional clinical training opportunities to applicants for dental licensure.

The afore-mentioned revisions to the proposed rule require the following changes to the Regulatory Impact Statement:

### 3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to implement the requirements of Education Law section 6604(3) and (4) by requiring applicants for dental licensure to complete an accredited dental residency program and eliminating the option of their completing a clinical examination in dentistry instead of the residency program, effective January 1, 2007, to establish a definition for an acceptable national accrediting body for dental residency programs, and to add two additional specialties to the list of specialty residency programs that may be used to fulfill the residency program requirement for dental licensure.

At present, the examination for dental licensure consists of three parts, two parts are written examinations, and the third part is an examination in clinical dentistry. As directed in current Education Law, the existing regulation permits the applicant for dental licensure to complete an acceptable dental residency program in lieu of the examination in clinical dentistry. A change in the Education Law, effective January 1, 2007, eliminates the clinical examination in dentistry and requires the applicant to complete an accredited dental residency program acceptable to the State Education Department. The amendment is needed to implement this new requirement.

The amendment establishes in regulation a definition for an "acceptable national accrediting body" for dental residency programs. The amendment does not change the existing requirements that accredited dental residency programs must meet in order for them to be acceptable for purposes of dental licensure.

The amendment adds the specialties of oral and maxillofacial pathology and oral and maxillofacial radiology to the list of specialty residency programs that may be used to fulfill the residency program requirement for dental licensure. These specialties were added to provide additional clinical training opportunities to applicants for dental licensure. The Department has determined that these specialty residency programs provide appropriate clinical training for dental licensure. The New York State Dental Association has written in support of adding these specialty residency programs to the list.

#### **Regulatory Flexibility Analysis**

Since publication in the *State Register* of the Notice of Proposed Rule Making on March 2, 2005 and the Notice of Continuation on August 17, 2005, revisions were made to the proposed rule as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed amendment, as revised, concerns requirements that individuals must meet in order to be licensed as a dentist in New York State. The amendment will not affect small businesses or local governments in New York State. The measure, as revised, will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule, as revised, that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

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

Since publication in the *State Register* of the Notice of Proposed Rule Making on March 2, 2005 and the Notice of Continuation on August 17, 2005, revisions were made to the proposed rule as set forth in the Revised Regulatory Impact Statement filed herewith. The revisions to the proposed rule require the following changes to the Rural Area Flexibility Analysis:

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

In accordance with requirements in the Education Law, the amendment requires applicants for dental licensure to complete an accredited dental residency program and eliminates the clinical examination in dentistry, effective January 1, 2007. At present, the examination for dental licensure consists of three parts, two parts are written examinations, and the third part is an examination in clinical dentistry. As authorized by Education Law, the existing regulation permits the applicant for dental licensure to complete an acceptable dental residency program in lieu of the examination in clinical dentistry. The change in the Education Law, effective January 1, 2007, eliminates the clinical examination in dentistry and requires the applicant to complete an accredited residency program accept-

able to the State Education Department. The amendment implements this new requirement.

The amendment establishes in regulation a definition for an "acceptable national accrediting body" for dental residency programs. The amendment does not change the existing requirements that accredited dental residency programs must meet in order for them to be acceptable for purposes of dental licensure. In addition, the amendment adds the specialties of oral and maxillofacial pathology and oral and maxillofacial radiology to the list of specialty residency programs that may be used to fulfill the residency program requirement for dental licensure.

The amendment does not impose any additional reporting or record-keeping requirements on applicants for licensure in dentistry or accredited dental residency programs. In addition, the amendment does not require regulated parties to hire professional services in order to comply.

#### **Job Impact Statement**

Since publication in the *State Register* of the Notice of Proposed Rule Making on March 2, 2005 and the Notice of Continuation on August 17, 2005, revisions were made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed amendment, as revised, implements the requirements of Education Law section 6604(3) and (4) by requiring applicants for dental licensure to complete an accredited dental residency program and eliminating the option of passing a clinical examination instead of the residency program, effective January 1, 2007. Because the amendment's purpose is to implement statutory requirements, the amendment itself will have no impact on jobs or employment opportunities. Any impact on jobs or employment opportunities would result from the statute not the regulation.

In any event, the amendment, as revised, concerns changes in requirements for dental licensure. Such changes will have no impact on labor market demand for dentists. They will not affect the number of jobs or employment opportunities in the field of dentistry.

Because it is evident from the nature of the proposed amendment, as revised, that the proposed amendment will have no impact on jobs or employment opportunities in the field of dentistry or any other field, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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

A Notice of Proposed Rule Making concerning the proposed amendment was published in the *State Register* on March 2, 2005 and a Notice of Continuation was published on August 17, 2005. Below is a summary of written comments received by the State Education Department concerning the proposed rule making and the State Education Department's assessment of the issues raised by the comments.

COMMENT: The replacement of the clinical licensing examination with the requirement to complete a clinically-based postdoctoral general practice or specialty dentistry residency program will not only reduce the burden on new dentists, but improve access to care for many New Yorkers. It also acknowledges the rigorous and well-documented educational process now in place nationally in dental education.

RESPONSE: No response is necessary to this comment.

COMMENT: Without question, successful completion of a dental residency is an extremely effective method of evaluating an applicant's abilities and performance. Not only does it provide a far better assessment, but it is also more "fair" to the applicant than the NERB examination. It has the added benefit of enhancing professional development. There are two considerations I ask you to consider. Continue the one-year minimum and require that the entire year be at a single program.

RESPONSE: The existing regulation (Section 61.18[b][1]) requires the applicant to successfully complete a residency program of at least one year's duration. This means that the applicant must complete the entire residency program, not portions of such a program. No change in the regulation is necessary to respond to this comment.

COMMENT: I question why the regulation changes the definition of accrediting body from the American Dental Association Commission on Dental Accreditation to a definition that includes an equivalent organization as determined by the State Education Department.

RESPONSE: The regulation implements the requirements of section 6604(3) of the Education Law, as amended by Chapter 726 of the Laws of 2004. This statutory change requires the residency program to be in a hospital or dental facility accredited for teaching purposes by a national accrediting body approved by the State Education Department. The regulation establishes a reasonable standard for approving such accrediting bodies.

**COMMENT:** At the present time there are not nearly as many advanced dental residency and specialty programs as dental graduates and therefore the number of new dentists will be reduced for New York.

**RESPONSE:** At the present time, nationwide, there are approximately 2,700 residency positions while an average of 625 dentists were licensed in New York State per year in the previous five years. There are adequate numbers of residency positions to accommodate applicants for New York State dental licensure.

**COMMENT:** I have concerns regarding the competence of graduates of dental schools and the amount of responsibility placed on residency program directors. It should not be the responsibility of the residency program director to certify the clinical and didactic aptitude of the student in the residency program.

**RESPONSE:** This comments does not pertain to the changes proposed by this rule making but to existing regulatory requirements. In any event, Education Law section 6604(3) requires the dental residency program to include a formal outcome assessment evaluation of the resident's competence to practice dentistry acceptable to the State Education Department. The regulation establishes standards for this outcome assessment that reasonably require the residency director to attest that the applicant has successfully completed the residency program and is in the director's judgment competent to practice dentistry, among other requirements.

**COMMENT:** I congratulate the Board and the State Education Department on their progressiveness in this matter. New York is showing the lead to the rest of the states. I do have one criticism. The regulation's exclusion of certain specialty residency programs is in conflict with the scope of accepted dental specialties, all of which are Council on Dental Accreditation accredited. The dental specialties of dental public health, oral and maxillofacial radiology, oral and maxillofacial pathology should be acceptable.

**COMMENT:** Residency programs in the specialties of oral and maxillofacial radiology and oral and maxillofacial pathology should be in the list of acceptable types of specialty dental residency programs that may be completed for New York licensure in dentistry.

**RESPONSE:** Education Law section 6604(3) requires the applicant for licensure in dentistry to have experience satisfactory to the State Board for Dentistry and the State Education Department, including successfully completing an experience in a clinically-based postdoctoral general practice or specialty dental residency program, which includes an outcome assessment evaluation of the resident's competency to practice dentistry acceptable to the State Education Department. The State Education Department, after consultation with the State Board for Dentistry, determined that the two specialties of oral and maxillofacial radiology and oral and maxillofacial pathology have appropriate clinical training for dental licensure. Accordingly, the regulation has been revised to include residency programs in these two additional specialties. The Department does not agree that specialty residency programs in dental public health should be included because these programs are not clinically oriented. The regulation provides that such a program would be acceptable only if the Department determined that at least 50 percent of the residency program consisted of clinical training in one or more specified clinical program areas.

**Subject:** Environmental remediation programs.

**Purpose:** To revise, reorganize and restructure existing Part 375 to cover the requirements provided by, and provide for the implementation of, the 2003 and 2004 Superfund/Brownfield Acts.

**Public hearing(s) will be held at:** 1:00 p.m., on March 6, 2006 at CUNY Graduate Center, Recital Hall, 365 5th Ave., New York, NY; 1:00 p.m., on March 9, 2006 at Monroe County Community College, R. Thomas Flynn Campus Center, Bldg., Monroe Room A&B (use parking lots M and M1 only), 1000 W. Henrietta Rd., Rochester, NY; and 1:00 p.m., on March 15, 2006 at Department of Environmental Conservation, Public Assembly Rm. 129A, 625 Broadway, Albany, NY.

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

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

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.state.ny.us/website/der/>):** This rulemaking is proposed by the New York State Department of Environmental Conservation (Department) to amend 6 NYCRR 375, the statewide regulations that implement the State Superfund Program, Article 27, Title 13 of the Environmental Conservation Law (ECL), and the Environmental Restoration Program, Article 56, Title 5 of the ECL. The revisions are aimed at incorporating recent statutory changes, clarifying and streamlining the current regulations and addressing issues raised by state and local agencies, the public, and project sponsors since the last regulatory update of Part 375 in 1996.

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of brownfield sites. This rulemaking ensures the continued protection of public health and the environment. It will also assure the most efficient utilization of public and private funding sources for the investigation and remediation of sites under such remedial programs and will ensure remediation efforts are completed as quickly as possible.

Specific to this rulemaking, the State administers the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996.

Chapter 1 of the Laws of 2003 added a new ECL Article 27 Title 14 (the BCP); made extensive amendments to existing ECL Article 27 Title 13 (the SSF) and to existing ECL Article 56 Title 5 (the ERP); and made other related amendments. As a result of these statutory changes, it is necessary and desirable to revise the Department's regulations to conform to Chapter 1. Additionally, it is also necessary and desirable to revise the Department's regulations, both to conform to previous legislation and to make adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Accordingly, the Department is:

1. Incorporating requirements of New York State's Chapter 1, Laws of 2003;
2. Revising/enhancing the Inactive Hazardous Waste Disposal Site Remedial Program and Environmental Restoration Program regulations to address necessary legal, technical, and policy developments, as well as to reflect our extensive experience in remediating sites, that have occurred since the last major revisions to Part 375 in 1992 and 1996, respectively;
3. Establishing regulations for the Brownfield Cleanup Program.

The Department's current regulations governing the SSF and ERP are contained in 6 NYCRR Part 375. Revising, reorganizing, and restructuring existing Part 375, including the provision of regulations for the BCP is necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 statutory changes. These laws were enacted subsequent to the previous Part 375 rulemaking. Further, they will incorporate statutory changes that occurred after the current Part 375 was finalized and will improve the readability of the regulations and decrease confusion.

This action is not intended to mandate any specific remedial technology or approach. However, it will define the remedial process; and for the BCP, it will define the use-based soil cleanup objectives. The following outline highlights the reorganization of this Part.

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## Department of Environmental Conservation

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Environmental Remediation Programs

**I.D. No.** ENV-46-05-00010-P

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

**Proposed action:** Repeal of Part 375 and addition of new Part 375 to Title 6 NYCRR.

**Statutory authority:** L. 2003, ch. 1, as amd. by L. 2004, ch. 577; and Environmental Conservation Law, art. 27, titles 13 and 14, art. 56, title 5 and art. 71, title 36

**Subpart 375-1: GENERAL REMEDIAL PROGRAM REQUIREMENTS**

This rule identifies those requirements that are common to each of the remedial programs. Further, it incorporates the statutory changes since the previous Part 375 rulemaking, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

**Subpart 375-2: INACTIVE HAZARDOUS WASTE DISPOSAL SITE REMEDIAL PROGRAM**

This rule maintains, but reorganizes and restructures, much of the existing Part 375. These rule changes primarily conform to the recent statutory changes and provide for greater consistency with the other remedial programs.

**Subpart 375-3: BROWNFIELD CLEANUP PROGRAM (BCP)**

This rule is new and implements recent changes to the law, which create the BCP. There are no substantive requirements that are not required by statute.

**Subpart 375-4: ENVIRONMENTAL RESTORATION PROGRAM (ERP)**

This rule conforms the existing subpart 375-4 to recent changes in the law and provides for some modest changes to increase consistency between the remedial programs. This rule maintains, but reorganizes and restructures, much of the existing subpart 375-4.

In summary, this rulemaking is proposed to incorporate the statutory changes since the previous Part 375 rulemaking, and make adjustments to conform to experience acquired. The revisions are intended to clarify and streamline the current regulations and to address issues raised by program stakeholders. This proposed rulemaking will facilitate the clean up and reuse of contaminated sites, thus stimulate economic revitalization, while ensuring the continued protection of public health and the environment.

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert W. Schick, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7014, (518) 402-9662, e-mail: rxschick@gw.dec.state.ny.us

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

**Public comment will be received until:** March 27, 2006.

**Additional matter required by statute:** SEQRA per ECL Title 8; Env. Review Board per ECL Title 5.

**Regulatory Impact Statement****1. Statutory Authority**

Chapter 1 of the Laws of 2003, as amended by Chapter 577 of the Laws of 2004, added a new ECL Article 27 Title 14 (the Brownfield Cleanup Program); a new ECL Article 71 Title 36 (Environmental Easements); made extensive amendments to existing ECL Article 27 Title 13 (the State Superfund Program) and to existing ECL Article 56 Title 5 (the Environmental Restoration Program); and made other related amendments.

The Department's general authority to adopt any necessary, convenient or desirable rules to carry out the environmental policy of the State is provided by ECL Article 3 Title 3 Section 1(2), (a), (m); additionally, the Department's specific authority to adopt rules of procedure for adjudicatory proceedings is provided by SAPA § 301(3).

**2. Legislative Objective**

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of brownfield sites. This rulemaking ensures the continued protection of public health and the environment. It will also assure the most efficient utilization of public and private funding sources for the investigation and remediation of sites under such remedial programs and will ensure remediation efforts are completed as quickly as possible.

Specific to this rulemaking, the State administers the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996.

The SSF, created in response to the Love Canal environmental disaster, identifies and characterizes suspected inactive hazardous waste disposal sites. Once identified, the program provides for the investigation and remediation of those inactive hazardous waste disposal sites that have consequential amounts of hazardous waste, which pose a significant threat to public health or the environment. Current Department regulations, Part 375-1, 375-2 and 375-3 govern cleanups under this program.

The BCP, successor to the Voluntary Cleanup Program, enhances private-sector remediation of brownfields and reduces development pres-

sure on "greenfields." This program encourages a cooperative approach among the Department, current property owners, lenders, developers and prospective purchasers to investigate and/or remediate contaminated sites and return these sites to productive use. The BCP addresses the environmental, legal liability and financial barriers that often hinder the redevelopment and reuse of contaminated properties. This program provides brownfield investment incentives, including business and personal tax credits for remediation and development, real property taxes and environmental insurance tax credit.

The ERP was created as one (1) of seventeen (17) programs under the 1996 Clean Water/Clear Air Bond Act. It was amended to provide increased financial assistance and incentives to municipalities for investigation and cleanup at eligible brownfield sites as well as more favorable terms of participation. Under the ERP, New York State provides grants to municipalities for reimbursement of a portion (up to 90 percent on-site and 100 percent off-site) of eligible costs for site investigation and remediation. A municipal cost share is required. Remediation may include cleanup of contamination in environmental media, such as soil and groundwater, and may also include building demolition and asbestos removal for which reimbursement up to 50 percent of eligible costs is available. In addition, the ERP provides liability protection, including an indemnification for any claims and defense by New York State for claims made against the funding recipient. Current Part 375-4 governs the investigation and cleanup of projects under this program.

In 2003, the Legislature passed and the Governor signed into law historic legislation, which created the BCP, enhanced the ERP and refinanced and reformed the SSF. Again, in 2004, the Legislature passed, and the Governor enacted, laws affecting these three remedial programs. The goal of the 2003 and 2004 statutory changes was to refinance the State Superfund Program, and to create new and enhance existing programs to encourage private sector cleanups of contaminated properties known as brownfields and to reduce development pressure on greenfields. By cleaning up abandoned, idled or underutilized brownfield sites and restoring these properties to productive use in the community, local economies across the State can be revitalized.

**3. Needs and Benefits**

The Department's current regulations governing the SSF and ERP are contained in 6 NYCRR Part 375. Revising, reorganizing, and restructuring existing Part 375, including the provision of regulations for the BCP, is necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 Superfund/Brownfield Acts. These laws were enacted subsequent to the previous Part 375 rulemaking. Further, they will improve the readability of the regulations and decrease confusion. These regulations are needed to provide for the orderly and efficient administration of the SSF, BCP and ERP, including the oversight and implementation of remedial programs; provision of grants; granting of liability protections; and the certificates of completion.

Additionally, the regulations will facilitate disbursement of monies to municipalities and the providing of tax credits to private parties; all of which will enhance the environment and public health by ridding the environment of undesirable contaminants and promoting the use of previously contaminated properties.

The major needs and benefits result from the following:

a. Subpart 375-1 is the compilation of common information for subsequent subparts of 375 including a description of the general purpose, applicability, construction and abbreviations, and definitions, permit exemptions, institutional controls, environmental easements, annual certifications and citizen participation, to ensure orderly and efficient administration of ECL 27-13 (State Superfund Program), ECL 27-14 (Brownfield Cleanup Program), ECL 52-3 (Hazardous Waste Site Remediation Projects), ECL 56-5 (Environmental Restoration Program), and ECL 71-36 (Environmental Easements).

b. Subpart 375-2 is a reorganization and restructuring of the existing Part 375 in order to enhance understanding and readability. Additionally, some provisions from other remedial programs (e.g., certificate of completion, liability protections, etc.) have been added for consistency and to facilitate the reuse and redevelopment of remediated superfund sites.

c. Subpart 375-3 is a new regulation. This subpart implements the codified BCP. Some of the new provisions are specifically required to be included in this rulemaking (e.g., soil cleanup objectives and cleanup tracks).

d. Subpart 375-4 reorganizes, restructures and revises the existing 375-4 to eliminate conflicts with the 2003 and 2004 laws (e.g., the reimbursement amounts have been increased to 90 percent on-site and 100 percent

off-site of eligible costs) as well as to increase consistency with the other remedial programs. This will enhance the understandability of the rule.

#### 4. Costs

This rulemaking implements the statutorily created remedial programs without substantive changes, and as such should not result in substantial additional costs to the regulated community or other branches of local or State government. Further, for purposes of the BCP and ERP, the programs are not regulatory programs, *i.e.*, participation in ECL Article 27 Title 14 and ECL Article 56 Title 5 is voluntary.

Costs to state government, local government, private regulated parties and the Department are discussed below.

##### a. Costs to regulated community:

Promulgation of these regulations will have no fiscal effect on private regulated parties beyond what they already experience under existing law. Additionally, to the extent these parties elect to participate in the BCP, costs associated with the program are subject to various tax credits. These tax credits offset costs that the parties may otherwise be liable to incur to address the sites' contamination.

##### b. Costs to the Department, State, and Local Government

The costs to the Department for implementing these proposed regulations should not be substantial. The proposed rulemaking requires no additional statutory authority, does not create new regulatory programs other than ones created by statute, does not expand existing regulatory programs and does not increase the universe of the regulated community beyond that which is already required by State statutes.

Further, promulgation of these regulations is required by statute and the proposal will allow the State to implement the program in a more efficient, more uniform manner. Also, there are no new costs for other State agencies.

Promulgation of these regulations will have no fiscal effect on local government beyond what they already experience under existing law. For example, if they are the owner of contaminated property or are otherwise responsible for the contamination at the site; or costs that may be related to the environmental easement provisions in the statute. Moreover, the cost to remediate municipally owned contaminated properties could be substantial. Under the ERP, the fiscal burden to municipalities associated with contaminated property investigation and remediation will be reduced by State assistance grants of up to 90 percent of the eligible on-site and 100 percent of the eligible off-site costs. The remaining portion can be covered through additional federal, State or non-responsible party private party monies.

#### 5. Local Government Mandates

No substantive recordkeeping, reporting, or other requirements will be imposed on local governments by this rulemaking, which are not otherwise created by statute. Also, participation in the BCP and ERP is voluntary, therefore, any obligations under the BCP or ERP are either required by statute or imposed as a result of a party's voluntary and considered action to apply for and participate in those programs.

#### 6. Paperwork

No substantive paperwork is proposed other than that which is either required by statute, or provided for consistency across the various remedial programs. Further, any additional paper requirements are minimal in the scope of the overall remedial programs covered by the rulemaking. For instance, application forms are required for the BCP and ERP, as required by statute. If a person wishes to apply for a brownfield cleanup project, an application must be completed and submitted with requested information/documentation. The regulations discuss the minimal amount of information needed to consider such an application. Reporting obligations are also included in the rulemaking, consistent with the BCP statutory requirements, as well as present practice in the SSF and the ERP (*e.g.*, final engineering reports, feasibility studies or alternatives analyses, etc.). These reporting obligations are consistent with the legislative intent for the Department to oversee remedial programs being implemented in New York State and do not cause any undue costs or burdens.

#### 7. Duplication

The proposed new regulations and amendments to existing regulations will not result in a duplication of State regulations.

#### 8. Alternatives

In order to implement the recent statutory changes, there are no other viable alternatives available other than to revise the existing Part 375.

Certain revisions included in this rulemaking action are mandatory. Specifically, i) ECL 27-1407(9)(f), as enacted by Laws of 2003 Chapter 1, Part A, Section 1, as amended by Laws of 2004 Chapter 577, Part A, Section 3 mandates a regulation defining the term "substantial interest" for purposes of the Department's discretionary authority to reject a request for

participation in the Brownfield Cleanup Program if the person submitting is an individual or other person who had a "substantial interest" in an entity which engaged in conduct justifying denial of a permit; ii) ECL 27-1415, (4), (6), as enacted by Laws of 2003 Chapter 1, Part A, Section 1, as amended by Laws of 2004 Chapter 577, Part A, Section 7, mandate a regulation, with input from the Department of Health, creating a multi-track approach to remediation, including tables of remedial action objectives for soil based on use; and iii) ECL 27-1323(4)(c)(2), as enacted by Laws of 2003 Chapter 1, Part E, Section 9, as amended by Laws of 2004 Chapter 577, Part E, Section 3, mandates a regulation establishing standards and practices for satisfying the inquiry requirement for purposes of the third-party affirmative defense.

Moreover, various regulatory provisions under Part 375 addressing the SSF or ERP are in conflict with current law, and need to be revised to reflect the 2003 and 2004 Acts.

Additionally, the centerpiece of Chapter 1 of the Laws of 2003 is the Brownfield Cleanup Program; the legislative purpose of the new ECL 27-1403 is to encourage voluntary remediation and redevelopment. It is to be anticipated that uncertainties inevitably associated with implementation of the statute alone would tend to be a disincentive to participation in the programs.

If the State were to follow the "no action" alternative, we would be disregarding a statutory mandate to develop regulations, would have outdated and inaccurate regulations, and would jeopardize the consistency and predictability that all stakeholders sought in advocating for the recent reforms; especially as it relates to soil cleanup numbers and cleanup tracks.

#### 9. Federal Standards

The proposed changes will make the State Superfund Program's remedy selection criteria consistent with federal standards, namely through the inclusion of land use as a remedy selection criterion. Other than that aspect of this proposed rulemaking, there are no federal standards applicable to this rulemaking.

#### 10. Compliance Schedule

There is no need for a compliance schedule. The remedial programs covered by this rulemaking are currently being administered per existing regulations (SSF and ERP) or the statutory framework.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of Rule:

The proposed rulemaking does not place any additional burdens on small business or local governments, create new regulatory programs, expand existing regulatory programs or increase the universe of regulatory requirements applicable to the regulated community beyond that which is required by State statutes.

Accordingly, the number of small businesses and local governments affected by the rulemaking will not be more than those already affected by State statute or existing regulations.

Further, the BCP and ERP are voluntary programs, which means only those eligible entities that elect to participate will be affected. Under the ERP, grants are not available to any businesses or individuals. Therefore, the amended regulations to subpart 375-4, by definition, will have no direct impact on small businesses.

##### 2. Compliance Requirements:

There are no new substantive reporting or recordkeeping requirements for small businesses or local governments as a result of the proposed rulemaking. The proposed rulemaking either restructures existing regulations or implements recent statutory changes of the Environmental Conservation Law. The reporting obligations contained in the regulations are derived either from the Environmental Conservation Law, existing regulations or were included to provide consistency among the three remedial programs. These obligations are consistent with the legislative intent for the Department to oversee the implementation of remedial programs in New York State and will allow the Department to timely issue Certificates of Completion after the successful implementation of the remedial programs.

##### 3. Professional Services:

The quantity and types of service needed will remain close to the present level. The proposed rulemaking does not involve any major program changes, with regard to the scope of the program, which are not already mandated by State statute or existing regulation. The Department has, and will continue to, conduct a variety of education and outreach activities directed at a diverse audience, including small businesses. One such activity is making information available on the agency's web page to explain the recent changes in the law and to answer questions about the law, our remedial programs and the proposed regulations.

##### 4. Compliance Costs:

Small businesses and local governments should not incur any additional costs, neither initial capital costs nor annual compliance costs, to comply with the proposed rulemaking other than those incurred as a result of the statutory provisions. This is particularly true since the BCP and ERP are voluntary programs.

#### 5. Economic and Technological Feasibility:

The proposed rulemaking, for the most part, clarifies existing requirements, makes revisions to existing regulations for programmatic consistency, or implements into regulation recent State statutory enactments and amendments. The proposed rulemaking causes no added economic burdens or requires any additional sophisticated environmental control technology, other than that which may be required by statute. Accordingly, implementation of these rules will be economically and technologically feasible for small businesses and local governments.

#### 6. Minimizing Adverse Impact:

It is the Department's belief that the proposed regulations will not cause a significant economic burden to the small business community or local governments. To the contrary, there is a positive impact in that the cleaned up areas will result in alternative uses. Further, there are financial incentives and liability protections that afford all parties, including small businesses and local governments, incentives to participate in the programs covered by the proposed rulemaking.

The proposed rulemaking is also intended to be less complex and easier to understand than existing regulations.

#### 7. Small Business and Local Government Participation:

The Department has an ongoing statewide outreach program to regulated communities and interested parties including small businesses and local governments. This includes a Teleconference broadcast to 17 locations across the State, held in November and December 2003, public workshops which were held in different parts of the State in May and June 2004; over 25 seminars around the State; and opportunities through the Department's website to ask questions and/or obtain answers about the new regulations. These outreach efforts have included mailings to environmental groups, citizen advisory committees, environmental management councils, statewide organizations, regulated community and other interested parties, including small businesses and local governments.

### **Rural Area Flexibility Analysis**

#### 1. Types and Estimated Number of Rural Areas:

This rule will apply Statewide, to all 44 rural counties and 71 additional rural towns. All entities subject to the regulations, including those in rural areas, will be affected.

#### 2. Reporting, Recordkeeping, Other Compliance Requirements, and Need for Professional Services:

No substantive reporting, recordkeeping, compliance requirements, or professional services, other than those imposed by State statute or existing regulations and programs, will be imposed on local governments by this rulemaking. Each program requires various reports, work plans and citizen participation activities to be conducted and documented. As noted, these requirements are derived from current requirements (statutory, regulatory or programmatic).

#### 3. Costs:

No local mandates will be created by this rule, and no different or additional costs will be imposed because the businesses are in a rural area. All mandates and costs are a result of statutory provisions and not this rulemaking. Additionally, costs associated with two of the remedial programs covered by this rulemaking, the BCP and ERP, are offset through tax credits (BCP) or substantial reimbursement through grants (ERP).

#### 4. Minimizing Adverse Impact:

It is the Department's belief that the proposed regulations will not cause a significant economic burden to the rural areas. The proposed rulemaking does not place any additional burdens on rural areas, create new regulatory programs, expand existing regulatory programs or increase the universe of regulatory requirements applicable to rural areas beyond that, which is required by State statutes. The Department has determined that there is a positive impact in that the cleaned up areas will result from these remedial programs.

#### 5. Rural Area Participation:

The Department has an ongoing statewide outreach program to regulated communities and interested parties including public and private interests in rural areas. This includes a Teleconference broadcast to 17 locations across the State, held in November and December 2003; public workshops which were held in different parts of the State in May and June 2004; over 25 seminars around the State; and opportunities to ask questions and/or obtain answers about the new regulations. These outreach efforts have included mailings to environmental groups, citizen advisory committees,

environmental management councils, statewide organizations, regulated community and other interested parties, including those located in rural areas.

### **Job Impact Statement**

In accordance with Section 201-a(2)(a) of the State Administrative Procedure Act (SAPA), a Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York. To the contrary, it is expected to create, as set forth below, a positive impact on employment opportunities.

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of sites. Specific to this rulemaking, the State has the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996. This rulemaking consists of Part 375, which is subdivided into 4 parts. The four subparts of Part 375 are: subpart 375-1, containing general provisions relating to the implementation of the foregoing programs; subpart 375-2, addressing the SSF; subpart 375-3, addressing the BCP; and subpart 375-4, addressing the ERP.

The New York State Department of Environmental Conservation (Department) has determined that the nature and purpose of the proposed regulations will have a positive impact on jobs and employment opportunities throughout the State. Projects are in their initial stages, therefore exact data regarding job creation and industry growth are unavailable. However, presently over 200 applications have been submitted for the BCP and ERP, and new sites have been recognized as potential sites under the SSF.

Subpart 375-1 contains a description of the general purpose, applicability, construction, abbreviations and definitions discussed throughout 375. The purpose of this section is to ensure the orderly and efficient administration of ECL 27-1301 *et seq.* (SSF), ECL 27-1401 *et seq.* (BCP), ECL 52-0301 *et seq.* (Hazardous Waste Site Remediation Projects), ECL 56-0501 (ERP), and ECL 71-3601 *et seq.* (Environmental Easements). These general provisions have been determined to have no direct negative effect on the generation of employment opportunities.

Subpart 375-2 applies to the development and implementation of remedial programs aimed at the cleanup of inactive hazardous waste disposal sites and related matters through the SSF. The expansion of the statutory definition of hazardous waste to include hazardous substances has increased the number of eligible cleanup sites. This increase of recognized eligible sites translates to an increase of long term temporary employment due to remediation. Further, the increase in the universe of sites provides for additional business opportunities and redevelopment opportunities.

Moreover, this proposed regulation includes an explanation of the provisions for Technical Assistance Grants (TAGs), as provided in statute, which are available for eligible community based not-for-profit organizations. TAGs provide community based not-for-profit organizations, otherwise unable to participate in the remediation projects due to cost and lack of technical expertise in the investigation phase, funding to cover the technical aspects required during the investigation phase.

These increased employment, business, redevelopment and TAG opportunities have been determined to have a positive impact on job creation.

Subpart 375-3 applies to a "person" who voluntarily participates in the BCP. Currently, the Department has received almost 200 applications for the BCP. This voluntary program encourages private entity involvement in the investigation and remediation of contaminated properties, resulting in jobs and a subsequent positive impact on the availability of local employment opportunities.

The statute provides for tax credits for parties who perform remedial activities under the BCP. While this rulemaking does not deal with the tax provisions themselves (the Department of Taxation and Finance will address these issues), this rulemaking does provide for the programmatic requirements in order to obtain the certificate of completion, which is needed to avail oneself of tax credits. The tax credits will offset costs associated with real property taxes, site preparation, property improvements, on-site groundwater cleanup costs, and environmental insurance premiums. The tax credits will start to accrue upon signing of the Brownfield Cleanup Agreement and become effective in the tax year beginning April 1, 2005. The real property tax credit is based upon a jobs formula and requires a minimum of 25 full time employees. Tax credits for businesses

not only attract new business but also retain existing business. Subpart 375-3 will positively impact jobs and employment opportunities.

Subpart 375-4 applies to municipalities that voluntarily participate in the ERP. Through this program, the State provides grants to municipalities to assist in investigating and remediating contaminated properties, which will result in increased employment. Potential redevelopment will also create additional employment. The ERP will have a positive impact on job creation, much like the BCP.

Part 375 generally will result in the creation of temporary, possible long term, employment during the property's investigation, site remediation and redevelopment. Depending on the redevelopment plans of particular sites, an increase of permanent jobs and secondary business activities will occur.

Therefore, the Department concludes that adoption of these regulatory proposals should not have a substantial adverse impact on jobs within New York State.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Harvest and Possession of Marine Finfish in New York Waters

**I.D. No.** ENV-46-05-00008-P

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

**Proposed action:** Amendment of Part 40 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-1303, 13-0105, 13-0335, 13-0338, 13-0339-a, 13-0340, 13-0340-b, 13-0340-c, 13-0340-e, 13-0340-f, 13-0342 and 13-0347

**Subject:** Harvest and possession of marine finfish in New York waters.

**Purpose:** To manage the harvest and possession of marine finfish to conform with fishery management plans and Federal regulations.

**Substance of proposed rule (Full text is posted at the following State website: [www.dec.state.ny.us](http://www.dec.state.ny.us)):** The text of this proposed rulemaking, which amends 6 NYCRR Part 40, "Marine Fish," includes the following regulatory changes: revision of the existing commercial trip limit definition; a requirement that Marine District Party and Charter Boat License holders complete and file logbooks reporting their catch and effort; a requirement that all Commercial Foodfish license holders display a decal while fishing; a decrease in the recreational minimum size limits for haddock and for Atlantic cod; an increase in the minimum size limit, a decrease in possession limit, and a shortened fishing season for the recreational winter flounder fishery; an increase in the recreational black sea bass fishing season; new recreational and commercial minimum size and possession limits and fishing season for oyster toadfish; a revised Federal Register citation for shark regulations incorporated by reference; revisions to existing summer flounder, bluefish, black sea bass and spiny dogfish commercial regulations to eliminate duplicate text, to reflect changes to quota periods, and to correct internal text references and allow flexibility for quota management; elimination of the commercial winter flounder fyke fishery registry and reporting requirements; an increase in the minimum mesh size requirement for winter flounder and scup trawls; and a change in the commercial striped bass limit for trawl gear.

**Text of proposed rule and any required statements and analyses may be obtained from:** Alice Weber, Department of Environmental Conservation, 205 N. Bellemead Rd., East Setauket, NY 11733, (631) 444-0435, e-mail: [amweber@gw.dec.state.ny.us](mailto:amweber@gw.dec.state.ny.us)

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

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

**Additional matter required by statute:** Pursuant to art. 8 of the Environmental Conservation Law, a negative declaration has been prepared and is on file with the Department of Environmental Conservation.

#### Summary of Regulatory Impact Statement

##### 1. Statutory authority:

Environmental Conservation Law (ECL) Sections 11-0303, 11-1303, 13-0338, 13-0339-a, 13-0340, 13-0340-b, 13-0340-c, 13-0340-e, 13-0340-f and 13-0347 authorize the Department of Environmental Conservation (DEC or Department) to establish by regulation, open season, size, catch limits, possession and sale restrictions and manner of taking relating to striped bass, haddock, oyster toadfish, sharks, Atlantic cod, bluefish, summer flounder, winter flounder, scup and black sea bass. Environmental Conservation Law (ECL) Section 13-0335 authorizes the Department to establish, by regulation, requirements relating to the display of foodfish

licenses. Environmental Conservation Law (ECL) Section 13-0342 authorizes the Department to adopt regulations requiring reporting of catch, effort, area fished gear used, bycatch, volume and value by holders of all categories of marine and coastal district party and charter boat licenses.

ECL Section 13-0105 requires that the Department be guided by the recommendations of the Marine Resources Advisory Council (MRAC) and endeavor to incorporate the Council's recommendations into the final rulemaking if they are found to be consistent with the state's marine fisheries conservation and management policies and with federal and interstate Fishery Management Plans (FMPs).

##### 2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

##### 3. Needs and benefits:

The proposed regulations address the need to:

a) manage the harvest of marine and anadromous finfish resources in New York to ensure consistency with Regional Council or Interstate Fishery Management Plans for each species;

b) ensure that management regulations are consistent with the status and needs of marine and anadromous finfish stocks to maintain healthy and sustainable fisheries;

c) restrict mortality on all stocks of marine and anadromous finfish, while allowing for appropriate use;

d) clarify compliance requirements and definitions to ensure effective enforcement of Department regulations.

Specific major changes to the regulations include the following items:

(1) Revise existing trip limit definition to allow for weekly or bi-weekly commercial trip limits for scup and summer flounder fisheries.

(2) Require all holders of a Marine District Party and Charter Boat License to complete and file logbooks reporting their catch and effort.

(3) Require Commercial Foodfish license holders to display a decal while fishing.

(4) Change the recreational minimum size limits for haddock from 21 inches total length to 19 inches total length, and for Atlantic cod from 23 inches total length to 22 inches total length.

(5) Increase the recreational winter flounder minimum size limit from 11 to 12 inches total length, reduce the recreational possession limit from 15 to 10 fish, and establish a new open season of April 1 to May 30.

(6) Re-open the recreational black sea bass fishing season year-round.

(7) Establish new recreational and commercial minimum size and possession limits and establish a closed fishing season for oyster toadfish.

(8) Update the Federal Register citation for shark regulations incorporated by reference.

(9) Revise the existing summer flounder commercial regulations to eliminate duplicate text, to reflect changes to quota periods and to be consistent with and allow flexibility for quota management.

(10) Revise the existing bluefish, black sea bass and spiny dogfish commercial regulations to be consistent with, and allow flexibility for quota management and to correct internal text references.

(11) Repeal the commercial winter flounder fyke fishery registry and reporting requirements.

(12) Change the minimum mesh size requirement for winter flounder and scup trawls.

(13) Change the commercial striped bass limit for trawl gear.

##### 4. Costs:

###### (a) Cost to State government:

The cost to state government is primarily that affecting the regulating agency, the Department of Environmental Conservation, and is described under section (d).

###### (b) Cost to Local government:

There will be no costs to local governments.

###### (c) Cost to private regulated parties:

Minor costs will be associated with complying with the regulations in that Marine and Coastal District Party and Charter boat license holders will be required to complete and file vessel trip reports. Since many of these license holders are already required to maintain federal logbooks, and since most vessel operators routinely maintain logbooks, additional costs in time or expenses are expected to be minimal.

Commercial food fish license holders will be required to display a decal while fishing. The decal will be provided at no cost by the Department upon renewal of their annual fishing license, therefore, there are no additional costs to license holders.

The changes in the minimum trawl mesh requirements will result in increased costs incurred by those fishermen who use trawl gear to target scup and winter flounder. These mesh changes are federally mandated for implementation by all states and in federal waters. Some proportion of New York trawl fishermen who currently fish for these species in federal waters are already required to fish the larger mesh sizes, and some proportion of trawl fishermen already use larger mesh nets to fish for other species. It is not known how many trawl fishermen will incur additional costs as a result of this revised mesh requirement.

The annual cost of continuing compliance may take the form of lost income if the catch of commercial or recreational fish harvesters declines. There is no way to eliminate the short term losses while trying to rebuild over harvested stocks of fish. The maintenance of long term sustainable fisheries will have a positive affect on employment for the fisheries in question including wholesale, and retail outlets and the support industries for both commercial and recreational fisheries. These regulations are designed to protect stocks from continued over harvest and to rebuild them for future utilization.

Failure to take these appropriate actions to protect our natural resources could cause the complete collapse of a stock and have a severe adverse effect on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries. Moreover, if the state fails to implement those actions needed to comply with the requirements of interstate FMPs, the ASMFC will find New York in non-compliance with such FMP. Under the Atlantic Coastal Fisheries Conservation and Management Act, such a non-compliance determination will lead to a complete federal closure of all fisheries for the species in question in the state, with severe economic consequences to the state.

In contrast, the proposed regulations relax some restrictions for black sea bass, haddock, and Atlantic cod recreational fisheries, and summer flounder, scup, winter flounder and striped bass commercial fisheries. The past restrictive management measures have aided in the rebuilding of these valuable stocks. Therefore, the current FMP's for these three species allow for some relaxation in harvest constraints. The proposed regulatory amendments offer those actions. It is anticipated that there should be some positive economic benefit as a result of the appropriate reduction in regulatory constraints.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules. The implementation costs will be associated with the public notification and final adoption of these regulations, and costs relating to the expense of updating informational materials and notifying commercial and recreational harvesters, party and charter boat operators and other recreational and commercial support industries of the new rules. There will also be some minimal additional cost associated with providing decals to commercial license holders. There will also be additional costs associated with enforcement of these new regulations.

5. Local government mandates:

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

6. Paperwork:

The additional paperwork is primarily that affecting the party and charter boat license holders. Commercial fyke fishermen who harvest winter flounder will no longer be required to separately register and report their harvest of winter flounder, which will result in an elimination of this paperwork for these fishermen.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The following significant alternatives, by issue, have been considered and rejected by the Department.

(1) Trip limit definition.

(a) No action.

(2) Marine and Coastal District Party and Charter boat logbook.

(a) No action.

(b) Alternate data collection programs.

(3) Commercial Foodfish license holders vessel decal.

(a) No action.

(b) Alternate vessel identification requirement.

(4) Changes in recreational minimum size limits for haddock and Atlantic cod.

(a) No action.

(5) Winter flounder recreational measures.

(a) No action.

(6) Black sea bass recreational season change.

(a) No action.

(7) Oyster toadfish management measures.

(a) No action.

(b) Alternate management measures for oyster toadfish.

(8) Update the Federal Register citation for shark regulations incorporated by reference.

(a) No action.

(9) Revise the existing summer flounder commercial regulations to eliminate duplicate text, to reflect changes to quota periods and to be consistent with and allow flexibility for quota management.

(a) No action.

(10) Revise the existing bluefish, black sea bass and spiny dogfish commercial regulations to be consistent with, and allow flexibility for quota management and to correct internal text references.

(a) No action.

(11) Repeal the commercial winter flounder fyke fishery registry and reporting requirements.

(a) No action.

(12) Change the minimum mesh size requirement for winter flounder and scup trawls.

(a) No action.

(13) Change the commercial striped bass limit for trawl gear.

(a) No action.

(b) Alternate trip limit measures for striped bass.

9. Federal standards:

These amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs for summer flounder, scup, black sea bass, winter flounder, bluefish, sharks, haddock and Atlantic cod.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via the Department's website of the changes to the regulations. The proposed regulations, if adopted after the public comment period, will take effect upon filing with the Department of State.

**Regulatory Flexibility Analysis**

1. Effect of the regulations:

Small businesses affected by the proposed regulations will include currently licensed commercial foodfish and marine bait harvesters, as well as marine and coastal district party and charter boat owners and operators, and bait and tackle shops. There were 1,131 licensed commercial foodfish harvesters, 58 marine bait harvesters, 492 licensed marine party and charter boat owners and operators, and an unknown number of bait and tackle shops in operation in New York's marine district during 2004. Most commercial harvesters holding foodfish, baitfish, and party and charter boat licenses, as well as bait and tackle shop owners, are self-employed. None, however, are expected to lose their jobs as a result of the proposed changes.

There are no local governments involved in the commercial or recreational fish harvesting business, nor do any participate in the purchase, sale, storage or transport of marine foodfish. Therefore, no local governments are affected under these proposed regulations.

2. Compliance requirements:

Under the proposed rule, all Marine and Coastal District Party and Charter boat license holders will be required to complete and file a Vessel trip Report (VTR) summarizing their catch and effort for each trip. Commercial food fish license holders will be required to display a decal while fishing. The proposed changes in the minimum trawl mesh requirements will require all commercial trawl fishermen who use trawl gear to target scup and winter flounder to use a larger mesh in the cod end of their fishing nets.

3. Professional services:

None.

4. Compliance costs:

Minor costs will be associated with complying with the regulations in that Marine and Coastal District Party and Charter boat license holders will be required to complete and file vessel trip reports. Since many of these license holders are already required to maintain federal logbooks, and since most vessel operators routinely maintain logbooks, additional costs in time or expenses are expected to be minimal.

Commercial food fish license holders will be required to display a decal while fishing. The decal will be provided at no cost by the Department upon renewal of their annual fishing license; therefore, there are no additional costs to license holders.

The changes in the minimum trawl mesh requirements will result in increased costs incurred by those fishermen who use trawl gear to target scup and winter flounder. These mesh changes are federally mandated for implementation by all states and in federal waters. Some proportion of New York trawl fishermen who currently fish for these species in federal waters are already required to fish the larger mesh sizes, and some proportion of trawl fishermen already use larger mesh nets to fish for other species. It is not known how many trawl fishermen will incur additional costs as a result of this revised mesh requirement.

The annual cost of continuing compliance may take the form of lost income if the catch of commercial or recreational fish harvesters declines.

#### 5. Minimizing adverse impact:

The maintenance of long term sustainable fisheries will have a positive effect on employment for the fisheries in question, including wholesale and retail outlets and the support industries for both commercial and recreational fisheries. There is no way to eliminate the short term losses while trying to rebuild over harvested stocks of fish. These regulations are designed to protect stocks from continued over harvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the complete collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. Regulations are proposed which provide the appropriate level of protection and allow for some additional effort on the resources in question consistent with the capacity of the resource to sustain such effort.

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

In developing this proposal, the Department drew upon input from the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon discussions and recommendations of other interested and affected parties, including commercial and recreational fishers and state law enforcement personnel. There was no special effort to contact local governments because the rule does not affect them.

#### 7. Economic and technological feasibility:

The changes required by this action have been determined to be economically feasible for the majority of the affected parties. For those proposals which are required under federal and interstate fishery management plans, the Department does not have any discretion regarding this economic impact. New York must comply with the provisions of the FMPs or face federal sanctions.

There is no additional technology required for small businesses, and this action does not apply to local governments, so there are no economic or technological impacts for any such bodies.

#### Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The marine finfish fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of Part 40, a Rural Area Flexibility Analysis is not required.

#### Job Impact Statement

The Department has determined that the proposed regulations will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

There were 1,131 licensed resident commercial foodfish harvesters, 58 marine bait licence holders, 320 licensed foodfish and crustacea dealers, and 492 licensed party/charter boat vessel operators in New York during 2004. Many currently licensed commercial fishermen, dealers, party and charter boat owners and operators, as well as bait and tackle shops, will be affected by these regulations. Some of the proposed regulations will likely result in a short term reduction in allowable catch or availability of marine fisheries resources for the affected parties. Other proposed regulations will provide some increased potential for additional fish harvest, and income or employment opportunities, for example, by allowing weekly or biweekly commercial trip limits for some species, by lowering the recreational minimum size limits for haddock and cod, and by extending the length of recreational fishing season for black sea bass.

The maintenance of long term sustainable fisheries will have a positive effect on employment for the fisheries in question, including wholesale and retail outlets and the support industries for both commercial and recreational fisheries. Over the long term, these short term reductions in harvest or availability will be offset by the restoration of fishery stocks.

These regulations are designed to protect stocks from continued over harvest and to rebuild them for future utilization. Failing to take these appropriate actions to protect our natural resources could cause the complete collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. Moreover, failure to implement the required provisions of interstate Fishery Management Plans can result in complete federal closure of those fisheries in the state, an outcome with far more severe short-term consequences than those resulting from the proposed regulations.

Based on the above and the Department's experience in adopting regulations similar to those contained in this proposal, the Department has concluded that there will not be a substantial adverse impact on jobs or employment opportunities as a consequence of these amendments. In the short term, these proposals will prevent a federal closure of New York's fisheries; in the long term, these proposals, by conserving marine fisheries, will likely have a positive impact on employment opportunities in the commercial and recreational fishing industries.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Mechanically Propelled Vessels on Lows Lake

**I.D. No.** ENV-46-05-00011-P

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

**Proposed action:** Amendment of section 196.4(b) and (d) of Title 6 NYCRR.

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

**Subject:** Prohibition of mechanically propelled vessels by the public on Lows Lake.

**Purpose:** To prohibit the use of motorboats by the public on Lows Lake.

**Text of proposed rule:** 1. Paragraphs (1), (2) and (3) of subdivision (b) of 6 NYCRR Section 196.4 are amended to read as follows:

(b) Notwithstanding the prohibitions set forth in subdivision (a) of this section:

(1) the use of mechanically propelled vessels and aircraft is permitted on water bodies specified in [subdivision (a)] *subdivisions (a) and (d)* of this section by or under the supervision of appropriate officials, in cases of sudden, actual and ongoing emergencies involving the protection or preservation of human life or intrinsic resource values, such as search and rescue operations, forest fires, or oil spills or similar, large-scale contamination of water bodies;

(2) the use of aircraft by administrative personnel on the water bodies specified in [subdivision (a)] *subdivisions (a) and (d)* of this section is permitted upon the written approval of the Commissioner for a specific major administrative, maintenance, rehabilitation, or construction project if that project involves conforming structures or improvements, or the removal of non-conforming structures or improvements, provided that such use of aircraft will be confined to off-peak seasons for the area in question and normally will be undertaken at periodic intervals of three to five years, unless extraordinary conditions, such as fire, major blow-down or flood, mandate more frequent work or work during peak periods;

(3) the use of aircraft on the water bodies specified in [subdivision (a)] *subdivisions (a) and (d)* of this section is permitted for a specific major research project conducted by or under the supervision of a state agency if such project is for purposes essential to the preservation of wilderness values and resources, no feasible alternative exists for conducting such research on other state or private lands, such use is minimized, and the project has been specifically approved in writing by the Commissioner after consultation with the Adirondack Park Agency;

2. A new subdivision (d) of 6 NYCRR Section 196.4 is added to read as follows:

(d) It is unlawful for any person to possess or operate mechanically propelled vessels on Lows Lake, located in the Town of Long Lake, Hamilton County and the Town of Clifton, St. Lawrence County, including those expanses of water connected to the main body of Lows Lake, commonly known as Grass Pond, located in the Town of Clifton in St. Lawrence County, and Tomar Pond, located in the Town of Long Lake, Hamilton County. Nothing herein shall prohibit littoral landowners on Lows Lake, or guests of such littoral landowners, from possessing or operating a mechanically propelled vessel on such water bodies.

**Text of proposed rule and any required statements and analyses may be obtained from:** Peter J. Frank, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4254, (518) 473-9518, e-mail: pjfrank@gw.dec.state.ny.us

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

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

**Additional matter required by statute.** DEC complied with SEQR for the proposed rule making through the Bog River UMP/EIS and SEQR findings, wherein the Lows Lake regulatory change was approved.

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority

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

##### 2. Legislative objectives

The proposed rulemaking for the prohibition of public use of mechanically propelled vessels (motorboats) on Lows Lake will contribute to the fulfillment of the legislative objective of the ECL by "preserving the unique qualities of special resources such as the Adirondack and Catskill forest preserves" (ECL Section 1-0101(3)(d)). Further, the proposed rulemaking will contribute to the fulfillment of the Adirondack Park State Land Master Plan guidance that the Lows Lake and Hitchens Pond Primitive Areas be managed so as to preserve the wild character of the Lows Lake - Bog River - Oswegatchie wilderness canoe route "without motorboat or airplane usage." The Adirondack Park State Land Master Plan has been determined by the courts to have the force and effect of legislation.

##### 3. Needs and benefits

Since January 1, 1895, the New York State Constitution has directed that the forest preserve be "kept as wild forest lands." For more than 100 years, this constitutional protection has enabled the public to enjoy the quiet and solitude of a wild forest environment in the forest preserve. The intrusion of motorized vessels in areas where the public expects to find minimal human influence has a marked impact on the public's ability to experience a wild setting.

Pursuant to Executive Law Section 816, the Adirondack Park Agency ("the Agency") developed the Adirondack Park State Land Master Plan ("the Master Plan") for the management of State lands within the Adirondack Park. The Master Plan classifies such lands into nine basic categories: Wilderness, Primitive, Canoe, Wild Forest, Intensive Use, Historic, State Administrative, Wild, Scenic and Recreational Rivers, and Travel Corridors. The classifications are based upon the characteristics of the lands and their capacity to withstand use. The Master Plan sets forth general guidelines for public use and administrative activities in each unit.

The Master Plan includes general guidelines for public use of motorboats and aircraft in the forest preserve: it prohibits public use of motor vehicles, motorized equipment or aircraft in wilderness and canoe areas, and severely restricts it in primitive areas. Further, the Master Plan descriptions of the Hitchens Pond and Lows Lake Primitive areas include the following provision relevant to the management of the canoe route from Hitchens Pond to the Five Ponds Wilderness: "Preservation of the wild character of this canoe route without motorboat or airplane usage. . . is the primary management goal for this primitive area."

A large portion of Lows Lake is bounded by forest preserve lands classified primitive or wilderness. The entire lake is also fairly remote. This situation has led to a public expectation of a "wilderness experience" when paddling on Hitchens Pond and Lows Lake. Paddlers who encounter motorboats in this area are often frustrated and disappointed that their trip has not met their expectations.

The decision to promulgate regulations prohibiting motorboat use on Lows Lake was the result of the unit management planning process, which considered the range of alternatives and involved extensive public outreach, including multiple public meetings and an extended public comment period for the Draft Unit Management Plan/Draft Environmental Impact Statement. Pursuant to the Unit Management Plan, a separate rulemaking may be promulgated to address the use of floatplanes on Lows Lake.

##### 4. Costs

This rulemaking does not require any merchants or businesses to purchase or modify any equipment, or purchase any special permit or license.

##### (a) Costs to state government

There are no costs projected for state government.

##### (b) Costs to local governments

There are no costs projected for local government.

##### (c) Costs to private regulated parties

There are no costs projected for private regulated parties

##### (d) Costs to the regulating agency

There are no costs projected for the regulating agency.

##### 5. Local government mandates

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

##### 6. Paperwork

There will be no new reporting or monitoring requirements, including forms and other paperwork, as a result of the proposed changes.

##### 7. Duplication

The only relevant State rule is 6 NYCRR Section 196.4 which is proposed to be modified; there is no relevant federal rule which applies to the means of access to forest preserve lands; consequently, there is no duplication, overlap, nor conflict with State or Federal rules.

##### 8. Alternative approaches

During the public unit management planning process, the Department of Environmental Conservation (DEC) considered an alternative proposal to work with guides and riparian landowners to develop voluntary guidelines for the use of motorboats. Such guidelines could have included horsepower limits for boats. This approach would have allowed users to anticipate when and where others would be using motorized craft, and allow them to avoid those areas so as not to have to tolerate their impacts. During the public unit management planning process, DEC also considered an alternative proposal to zone the lake by promulgating regulations that would designate areas where motorboat use would be allowed/prohibited. This approach would have allowed users to avoid encounters with motorized craft, but would have resulted in the continued presence of motorboats in the area. While this approach would reduce user conflict, it would not satisfy the legislative intent to manage this waterway "without motorboat or airplane usage" as set forth in the Master Plan. Only by eliminating motorboat use on Lows Lake to the greatest extent possible will this legal mandate be met. Obviously then, the "No Action" alternative of allowing motorboat use to continue at present levels is also not appropriate. Therefore, through the unit management planning process, DEC decided that the proposed regulation to prohibit motorboats to be the preferred alternative.

##### 9. Federal standard

There is no relevant Federal standard governing means of access to forest preserve lands.

##### 10. Compliance schedule

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

#### **Regulatory Flexibility Analysis**

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

There are no motorboat launches or businesses that rent motorboats on Lows Lake so this ban on the public use of motorboats on Lows Lake should have no impact on motorboat rental businesses.

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

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, recordkeeping or other compliance requirements on rural areas within the Adirondack Park.

#### **Job Impact Statement**

A job impact statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities.

**Department of Health**

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

**Statewide Perinatal Data System**

**I.D. No.** HLT-46-05-00001-P

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

**Proposed action:** Addition of section 400.22 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 206(1), 2803(2), (4) and 2803-j(3); and Social Services Law, section 366

**Subject:** Statewide Perinatal Data System (SPDS).

**Purpose:** To establish the SPDS to provide useful data on the births and maternal health for perinatal care providers and the Department of Health and promote expedited Medicaid eligibility determinations for newborns.

**Text of proposed rule:** The table of contents for Part 400 is amended to read as follows:

PART 400

ALL FACILITIES-GENERAL REQUIREMENTS

(Statutory authority: Public Health Law, Sections 2800, 2803)

Sec.

\* \* \*

400.22 Statewide perinatal data system

A new section 400.22 is added to Part 400 to read as follows:

Section 400.22 Statewide perinatal data system. (a) All hospitals and freestanding birthing centers which provide care and services to parturient women and/or neonates shall participate in the Statewide Perinatal Data System by providing required information in accordance with this section. Facilities contributing data to the system may only access data from the system in accordance with this section and other applicable laws and regulations.

(b) As used in this section the following terms shall have the following meanings:

(1) The statewide perinatal data system (SPDS) shall mean the electronic maternal and newborn data collection and analysis system established and maintained by the Department of Health which includes the data elements, organized in modules, which comprise the New York State Certificate of Live Birth for births occurring in New York State outside of New York City, or the New York City Certificate of Live Birth for births occurring in New York City, and other data elements which relate to maternal and newborn health and care in hospitals and free-standing birthing centers.

(2) The core module shall be the New York State Certificate of Live Birth, a data set consisting of elements specified by the Commissioner of Health and collected for all parturient women and newborns in New York State outside of New York City; and for births occurring in New York City, the core module shall be the New York City Certificate of Live Birth, a data set consisting of elements specified by the New York City Commissioner of Health and Mental Hygiene and collected for all parturient women and newborns in New York City.

(3) The supplemental module shall mean a set of data supplied by the patient consisting of data elements specified by the Commissioner of Health in consultation with the Commissioner of the New York City Department of Health and Mental Hygiene. Supplemental module data elements shall be related to quality of prenatal care and maternal factors that may be related to birth outcomes.

(4) The high risk obstetric module shall mean a data set consisting of data elements that provide clinically-relevant information on pregnant women who are referred to obstetricians for specialty care in the antepartum period or who are transported to a higher level facility for delivery or care in the antepartum, intrapartum or postpartum period. Elements will be as specified by the Commissioner of Health in consultation with the Commissioner of the New York City Department of Health and Mental Hygiene concerning all pregnant women identified as having high risk pregnancies, inclusive of maternal transports to higher levels of care. The data elements shall supplement core module data, providing additional data on clinical risk status and interventions for high risk births.

(5) The high risk neonatal module (NICU module) shall mean a data set consisting of data elements that provide clinically-relevant information

on the neonate at the time of entry to the neonatal intensive care unit. The elements will be as specified by the Commissioner of Health in consultation with the Commissioner of the New York City Department of Health and Mental Hygiene and data will be collected on all neonates entering all special care and intensive care nurseries for longer than four hours. The high risk neonatal module shall also include information on all newborns who die in the delivery room, in transit to the neonatal special or intensive care unit, and in the neonatal special or intensive care units. The data elements shall supplement core module data, providing additional data on clinical risk status and interventions for high risk newborns.

(6) The newborn Medicaid eligibility module shall consist of the Medicaid Client Identification Number (CIN) and other Medicaid-specific information as specified by the Commissioner of Health, and shall be available solely to authorized Office of Medicaid Management staff and departmental staff authorized to help maintain the SPDS files and the programming required thereby.

(7) De-identified patient data shall mean data from which individual patient names have been expunged and other identifiers have been modified so that there is no reasonable basis to believe that individual patients can be identified by using such data except by the facility which provided the patient care and services.

(8) Quality improvement shall mean any use or analysis of SPDS data that identifies for further investigation any poor outcomes potentially amenable to intervention (sentinel events), trends by hospital, hospital level or region, potential problem areas or any issues with quality of care; and further, may lead to improvement of the care provided by the regional perinatal center, its affiliate hospitals or regional perinatal system providers through development of initiatives designed to address the potential problems identified, or to improve the quality of the data collected via the SPDS.

(9) Target area for a community-based organization under contract to the New York State Department of Health shall mean the organization's specified area of operation and/or influence as noted in their current contract.

(c) Participation in the statewide perinatal data system (SPDS).

(1) All hospitals and freestanding birthing centers that provide perinatal health care services shall participate in the statewide perinatal data system. All live births shall be entered into the state perinatal data system. For births occurring in New York City, the core module shall be implemented on January 1, 2007.

(2) Each hospital and freestanding birthing center shall submit core module data to the agency responsible for collecting birth records. In addition, all hospitals shall submit data from the supplemental module, the high risk obstetric module, and the Medicaid eligibility module, and, if the hospital has a neonatal special or intensive care unit, from the high risk neonatal module as well, to the department in a form and manner prescribed by the department. The hospital shall be responsible for retaining signed consent forms, if any, for at least six years. The hospital will only transmit data as required under the regulations and any additional data for which it has consent, when consent is needed. Data elements in the system shall address the following:

(i) mother's Medicaid information to be used only to determine newborns' Medicaid eligibility;

(ii) public health surveillance of birth outcomes; and

(iii) improvement of prenatal, obstetric, and newborn care for mothers and infants.

(3) New York City Department of Health and Mental Hygiene will continue to exercise oversight of the use and release of the New York City Birth Certificate and the information contained therein. Nothing contained herein shall abridge the authority of the New York City Department of Health and Mental Hygiene to maintain the New York City Vital Records System. Nothing contained herein shall abridge the authority of the New York State Department of Health to maintain the New York Vital Records System outside of New York City.

(4) Access to SPDS data shall be limited to staff authorized by the Department of Health, and in the case of core module data for births occurring in hospitals and freestanding birthing centers located in New York City, staff authorized by the New York City Department of Health and Mental Hygiene, in the following settings for the purposes specified. Identifying SPDS information may be disclosed to authorized staff when and to the extent the disclosure is consistent with the Public Health Law, and for core module data from New York City consistent with applicable New York City law and regulations, and necessary to conform to an identified requirement of the Public Health Law or one of its implementing regulations

and when that disclosure is not otherwise prohibited or restricted by or inconsistent with the Public Health Law or its implementing regulations.

(i) Authorized staff of a facility shall have access to data submitted to the SPDS by that facility, with the exclusion of the Medicaid eligibility module; use of data shall conform with facility policies regarding use of confidential data.

(ii) A regional perinatal center shall have access to de-identified data submitted to the SPDS by its perinatal affiliates, with the exclusion of the Medicaid eligibility module, with a unique identifier that can be linked to identifying information only by the originating hospital for reference in evaluation of patient outcomes as specified in section 721.9 of this Title. De-identified data may also be used to monitor regional trends.

(iii) A comprehensive prenatal/perinatal services network or other community-based organization under contract to the Department of Health may be given access to available selected aggregate core and supplemental module data about births within its target area with all patient and provider identifiers eliminated. The level of aggregation and/or the geographic area targeted must ensure that no patients or providers are able to be identified from the data provided. Data shall be used only in furtherance of the organization's role in assessing and improving perinatal health in their target area, as specified in their contract with the Department.

(iv) Staff authorized by the Department of Health shall have access to individual-level perinatal data system data reported by hospitals and freestanding birthing centers except in the case of core module data for births occurring in hospitals and freestanding birthing centers located in New York City, where staff access to core module data will be authorized by the New York City Department of Health and Mental Hygiene. For births occurring in hospitals and freestanding birthing centers located in New York City, SPDS data, including core and supplemental modules, shall be available to the New York City Department of Health and Mental Hygiene.

(v) Regional perinatal centers, affiliate hospitals and freestanding birthing centers with access to the data in the statewide perinatal data system ("SPDS") shall not use the data for purposes other than quality improvement as defined in these regulations. SPDS data is confidential and must be appropriately secured by the regional perinatal centers, affiliate hospitals and freestanding birthing centers and shall not be redisclosed, except to the department or its authorized agents or contractors.

(d) The Commissioner shall waive for up to one year, upon request from the New York City Department of Health and Mental Hygiene on behalf of the facilities located within that vital records registration district, the data collection requirements of this section under the following circumstances:

(1) An application for a waiver must be submitted that:

(i) is received at least three months before the effective date of the SPDS in the registration district;

(ii) identifies the financial, administrative or other hardship which necessitates the request;

(iii) describes the measures to be taken to eliminate the hardship and the anticipated completion date of those measures; and

(iv) assures continued access by hospitals to data comparable to that required in this section prior to implementation of SPDS.

**Text of proposed 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: regsqna@health.state.ny.us

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

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

#### Regulatory Impact Statement

Statutory Authority:

The authority for promulgation of these regulations is contained in the following statutes within the Public Health Law (PHL):

Section 206(1)(e) authorizes the Commissioner of Health "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. . ."

Section 2500 authorizes the Commissioner to act in an advisory and supervisory capacity to safeguard motherhood and to protect maternal, perinatal, infant and child health.

Section 2803(2) authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations subject to the approval of the Commissioner to effectuate the provisions and purposes of Article

28, including the establishment of requirements for a uniform statewide system of reports relating to the quality of medical and physical care provided in hospitals and hospital utilization.

Section 2803(4) requires hospitals to furnish, at the request of the Commissioner, such reports and information as the department may require to effectuate provisions of Article 28.

Section 2803-j(3) makes the Commissioner responsible for compiling maternity-related statistics as enumerated in 2803-j(2).

Section 2805-j requires hospitals to establish a quality assurance committee to review the services rendered in the hospital, and to gather and review information for the purposes of revising hospital policies and procedures, and for the continuing education of staff in their areas of specialty, and provides protection for participants in the quality assurance committee who are acting in accordance with this section.

Section 2805-m provides confidentiality protections to information collected pursuant to 2805-j, and permits release only to the department or pursuant to 2805-k.

Further authority is contained in section 366-g of the Social Services Law (SSL) and section 2803(8) of the Public Health Law, which require DOH to establish procedures to ensure Medicaid eligibility for newborns as soon as possible after birth. Social Service Law Section 366-g requires the Department to issue an active Medicaid card no later than ten business days from notification of the birth by a hospital and imposes on hospitals requirements for notification of births. The Statewide Perinatal Data System (SPDS) will be the most efficient conduit for hospitals to use in reporting these births to the state.

Finally, PHL Article 41 authorizes the Department to collect birth certificate data for all births outside of New York City. The SPDS will be the vehicle for this collection.

Legislative Objectives:

A primary legislative objective of Article 25 of the PHL is the protection and promotion of the health of mothers and children, through targeted public health interventions. A primary objective of Article 28 of the PHL is the protection and promotion of the health of all the inhabitants of this State, through high quality, efficiently provided hospital services. Sections 206(1)(e) and 2803-j(3) authorize the Commissioner to collect, compile and preserve birth and maternity related data, in the most effective and least burdensome manner possible. Section 2500(1) authorizes the Commissioner to act in matters pertaining to the safeguarding of motherhood, the prevention of maternal, perinatal and infant mortality, the prevention of diseases, low birth weight, and defects of childhood and the promotion of maternal, perinatal and child health. Section 2803(2) authorizes the State Hospital Review and Planning Council to adopt rules to effectuate the provisions and purposes of Article 28.

This proposed regulation will further the legislative objectives of Articles 25 and 28 by establishing a Statewide Perinatal Data System to collect timely birth-related data, which the Department currently lacks. It will enable the Commissioner to fulfill her statutory duties to compile maternity related statistics, to identify and address public health matters related to perinatal care and to ensure the quality of health care provided to mothers and infants.

In accordance with the mandate in section 366-g of the SSL, the regulations will serve as the long-term mechanism for the Department to establish Medicaid eligibility for newborns as soon as possible after birth.

Needs and Benefits:

This regulation will enable the Department to establish a Statewide Perinatal Data System. The system will consolidate collection, reporting, and analysis of birth-related data in a single internet-based, statewide system, streamlining data functions for hospitals and providing the Department and hospitals statewide with timely data for public health promotion and health care quality improvement. The SPDS will also facilitate expedited Medicaid enrollment of eligible newborns, ensuring that they have immediate access to needed health services.

SPDS will improve the Department's access to timely data about birth outcomes. The SPDS will provide the Department with vitally needed data, enabling the Commissioner to fulfill her statutory duties to identify and address public health matters related to perinatal care and to ensure the quality of care provided to mothers and infants. It will provide the Department with essential data for addressing problems such as infant and maternal mortality, low birth weight, and teen pregnancy problems that disproportionately affect certain subpopulations in New York.

Lacking timely perinatal data, evaluation of adverse perinatal events reported by hospitals or the media is impossible. The SPDS is designed to address this inadequacy, enabling the Department to identify and respond proactively to poor birth outcomes.

The SPDS will provide invaluable data to hospitals statewide to support quality improvement efforts, preventing poor outcomes before they become public health crises. In addition to providing data about their patients, SPDS will give them data analysis tools to track quality indicators, such as outcomes of care. In New York City, where hospitals have a later implementation date than upstate hospitals, the existing vital records system will provide a potential interim means of providing access to comparable data for quality improvement purposes until this date.

Lack of timely statewide data seriously hampers the Department's ability to improve the quality of perinatal care. The state's perinatal regionalization system requires every maternity hospital to be affiliated with a Regional Perinatal Center (RPC) that will work with them to improve their quality of care. Most RPCs, including those in New York City where the majority of high-risk births occur, currently have no data about their affiliate hospitals, severely hampering their ability to address quality concerns. The SPDS will give RPCs essential data to support quality improvement efforts and allow RPCs to review birth information from all affiliate hospitals in a timely fashion, identify emerging issues and potential quality of care concerns, and to take appropriate action within a clinically meaningful timeframe.

Other than in New York City, the SPDS is the mechanism for electronic collection of birth certificate data. The SPDS streamlines hospital data collection and minimizes the burden of duplicative reporting by serving multiple data requirements: collecting data for vital records, enrolling eligible newborns in Medicaid in a timely fashion, providing the ability to prepopulate the immunization registry; and generating statistics for accreditation. The regulations will ensure confidentiality of data by permitting only authorized individuals to access data that includes patient identifiers.

Data will be analyzed and reported to the public to help consumers learn about perinatal services. For example, hospital performance reports will be developed for high-risk neonatal care, modeled after reports that have significantly improved quality of cardiac surgery.

The Medicaid enrollment benefit of the regulation will improve department operations under section 366-g of the Social Services Law. That law requires DOH to enroll eligible newborns in Medicaid as soon after their birth as possible, specifying that an expedited system for determining newborns' eligibility should be in place by July 1, 2000. An interim system was implemented to meet the deadline; however, with the implementation of SPDS hospitals will have the ability to send newborn data to Medicaid through SPDS. SPDS provides an efficient long-term solution by collecting data needed for this purpose in conjunction with other perinatal data. The SPDS database will be matched daily with Medicaid eligibility files to identify and enroll eligible newborns.

The benefits of SPDS are significant, and confidentiality will be protected as required by PHL 2805-m, providing access to affiliate hospitals and their Regional Perinatal Centers only in the context of their quality improvement role.

#### COSTS:

Costs for Implementation of and Continuing Compliance with these Regulations to Regulated Entities:

Some hospitals may experience initial costs in adopting the Statewide Perinatal Data System, but quality and efficiency improvements resulting from improved data will offset such costs. Hospitals outside of New York City had the opportunity to participate in a videoconference on SPDS and received technical assistance from the Department and RPCs which resulted in less staff time to implement the system. Additional cost savings, although not quantifiable, are expected from improved quality of care leading to improved birth outcomes and fewer cases requiring extraordinary and costly care. Quality improvements should also contribute to reductions in malpractice actions and stronger ability to defend in such actions.

A study of the cost-benefit of the Central New York regional prototype of the SPDS showed that it decreased hospitals' total costs for data collection and reporting, through improved efficiency in meeting multiple data needs. The study was described in a journal article: "A Cost Evaluation of Implementing a Quality-Oriented, Regional Perinatal Data System" (Dye Timothy, *et al.*, *Journal of Public Health Management and Practice*, 1997, 3(2)), which may be obtained from Eileen Shields, Bureau of Women's Health, Coming Tower 1882, Empire State Plaza, Albany, NY 12237. The study compared time and costs of data processing at 23 hospitals in Central New York before and after implementation of the regional perinatal data system. Time and costs remained constant for collecting birth certificate data, but time and costs to complete quality improvement reports decreased by 70%. Prior to implementation of the system, total time spent

collecting and tabulating perinatal statistics was, on average, 16.2 minutes per birth. A year later, after the system had been implemented, the time was only 6.4 minutes per birth. Costs were likewise reduced from \$3.72 per birth to \$1.56. The report concluded, "Given the richness of the reports and efficacy with which they are produced, hospitals are encouraged to adopt electronic means of birth certificate processing and accessing these data for quality improvement reporting." Since SPDS will serve more data needs than the regional prototype, its expected cost benefit is even greater.

#### Costs to State and Local Governments:

The system is not expected to impose additional costs on state or local government because it imposes no additional data collection or reporting requirements on them. (Costs for government-operated hospitals are addressed in costs to regulated parties.) New York City Department of Health and Mental Hygiene estimates that a new birth registration system, required in order to conform to the new National Center of Health Statistics (NCHS) requirements for birth certificates, will cost them approximately \$1.1 million. New York State, however, is prepared to make this software, which is already NCHS compliant, available to NYCDOHMH at no charge, which should result in significant savings to them in implementation of a new system. SPDS may, in fact, lead to cost savings by serving multiple data collection needs and by facilitating community health assessments, which they currently conduct. The magnitude of the savings will depend on the extent to which the system is used.

#### Costs to the Department of Health:

The cost of implementing and using the SPDS will be roughly \$3 million annually, including support for data personnel in Regional Perinatal Centers. The Department is in the process of identifying funds for SPDS.

#### Paperwork:

By consolidating multiple data needs of perinatal care programs, this regulation will decrease overall paperwork for hospitals. As described above, a cost analysis of the prototype demonstrated significant time saving on paperwork, with a reduction from 16.2 minutes per birth to 6.4 minutes per birth (Dye T, *op. cit.*).

#### Local Government Mandates:

These amendments do not impose any new program, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. Note, however, that hospitals operated by local governments will be subject to the same reporting requirements as other hospitals. New York City, a separate vital records registration district, has worked extensively with the NYSDOH on development of the regulations, and after extensive negotiation as discussed below has approved these regulations as meeting the needs of their jurisdiction. Provision has been made for the regulations to be effective in New York City when the NYCDOHMH implements SPDS.

#### Duplication:

These regulations do not duplicate any other State or federal law or regulation.

#### Alternatives:

The regulations were drafted after extensive consultation with affected parties to design a data system that meets multiple needs of users in the most functional and least burdensome manner. This provides an internet-based alternative to the regional prototype of the SPDS, previously used upstate. Each hospital using that system had to maintain its own copy of the software, and even minor changes in the system required every hospital to install new software. This led to significant data consistency problems, which would be compounded by requiring all hospitals statewide to use the system. Another alternative doing nothing to improve perinatal data infrastructure would leave the health department and hospitals statewide with woefully inadequate data for public health surveillance and health care quality improvement efforts related to infant mortality, teen pregnancy, and other critical health status measures.

#### Federal Standards:

These regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas. The Statewide Perinatal Data System's implementation will bring New York State into compliance with new National Center for Health Statistics standards regarding the content of birth certificates nationwide. SPDS will be implemented in New York State outside New York City upon filing the notice of adoption and, in New York City, on January 1, 2007.

#### Compliance Schedule:

The proposed regulation will become effective upon publication of a Notice of Adoption in the State Register, except in New York City where it will become effective on January 1, 2007, unless New York City Depart-

ment of Health and Mental Hygiene submits a waiver request for a further delay.

System training will be provided to all hospitals prior to implementation. A three-tier technical support structure similar to the support system established during upstate implementation Regional Perinatal Centers, a technical support team based at the software contractor's office, and DOH will provide support and on-site assistance with implementation, data collection, entry and transmission, and system maintenance.

#### **Regulatory Flexibility Analysis**

Pursuant to section 202-b of the State Administrative Procedure Act, a Regulatory Flexibility Analysis is not required. These amendments will establish a Statewide Perinatal Data System that will consolidate data collection and reporting requirements and thus decrease a facility's total cost of data collection and reporting. It will have no adverse impact on any affected parties. The proposed rules will not impose adverse economic impact on small businesses or local governments in New York State and will not impose additional recordkeeping, reporting or other compliance requirements on them. It will provide a tool that hospitals can use to collect and store data and generate reports about birth outcomes and perinatal care for themselves, their regional perinatal center and local health departments, as well as community-based organizations. New York City Department of Health and Mental Hygiene estimates that a new birth registration system, required in order to conform to the new National Center of Health Statistics (NCHS) requirements for birth certificates, will cost them approximately \$1.1 million. New York State, however, is prepared to make this software, which is already NCHS compliant, available to NYCDOHMH at no charge, which should result in significant savings to them in implementation of a new system.

In developing this regulation, the Department sought and received extensive input from hospitals, related professional associations, and hospital associations over a period of four years. It was also imperative to involve the New York City Department of Health and Mental Hygiene (NYCDOHMH), as New York City is a separate Vital Records registration district. From February 10, 2003 through July 13, 2004, monthly conference calls were held with NYCDOHMH Vital Records to obtain input into the regulation and discuss plans for implementation of SPDS in New York City. The Department made iterative revisions to the proposed regulations over the course of this period to incorporate NYCDOHMH comments. Although the conference calls were postponed until NYCDOHMH is ready to discuss plans for SPDS implementation, negotiation regarding the proposed regulations continued. A priority was to ensure that hospitals in New York City were not forced to do duplicate data entry if SPDS was required in New York City prior to the implementation of SPDS by NYCDOHMH. Based on these negotiations, the proposed regulations were revised several additional times to ensure that the implementation date in New York City was appropriate and feasible for the NYCDOHMH. Ongoing discussions will continue to ensure SPDS meets the needs of the NYCDOHMH as well as the Department.

An *Ad Hoc* Work Group on Perinatal Regionalization was convened in 1996 to advise the Department about the impact of managed care on perinatal regionalization. Its thirty-three members included pediatricians, neonatologists, obstetricians, and representatives of hospitals, managed care plans, and other organizations concerned with perinatal health around the state. Organizations involved included the Greater New York Hospital Association, the Healthcare Association of New York State, the Medical Society of the State of New York, the State Senate, the NYS HMO Council, the NYS Perinatal Association, District II of the American College of Obstetricians and Gynecologists, and the American Academy of Pediatrics. The Work Group advised the Department about revising the regionalized perinatal care system, particularly in light of the growth of managed care. A critical recommendation was that the Department "should continue and increase its efforts to develop a statewide perinatal system in order to enhance statewide quality improvement, surveillance, and monitoring of care. Data should be available, with all appropriate confidentiality safeguards, to all hospitals providing perinatal care, county health departments, prenatal/perinatal programs, insurers, HMOs, and other payers."

Additionally, a subset of this workgroup consisting of representatives of the two major hospital associations (Greater New York Hospital Association and the Healthcare Association of New York State) were consulted after every major adjustment of the regulations pursuant to our ongoing discussions with NYCDOHMH to ensure that any changes made were consistent with the interests of their member hospitals.

As a result of the advice of the Ad Hoc Work Group on Perinatal Regionalization, the Department convened a second work group called the

Work Group on Perinatal Re-designation in late 1997. Its charges were to implement the recommendations of the Ad Hoc Work Group on Perinatal Regionalization, including the development of draft regulations, revising current maternal and newborn hospital code and adding new regulations designed to implement perinatal re-designation and a statewide perinatal data system. Its members included neonatologists, obstetricians, hospital administrators, representatives of professional organizations, and representatives of the three largest hospital associations in the state Greater New York Hospital Association, the Healthcare Association of New York State, and the Nassau-Suffolk Hospital Council.

In 1997, the Department also convened a committee of obstetricians, pediatricians, nurses, public health professionals, and data experts to provide advice about development of the Statewide Perinatal Data System. The committee recommended specific revisions to the birth certificate and helped develop a method for risk adjusting the data. Since the convening of the workgroups, the perinatal re-designation process has been completed.

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

Pursuant to section 202-bb of the State Administrative Procedure Act, a Rural Area Flexibility Analysis is not required. These amendments will establish a Statewide Perinatal Data System that will consolidate electronic birth certificate data collection and reporting with other existing or statutorily required data requirements and thus decrease a facility's total cost of data collection and reporting. It will have no impact on any affected parties. The proposed rules will not impose an adverse economic impact on rural areas in New York State and will not impose any additional recordkeeping, reporting or other compliance requirements on public or private entities in rural areas. The SPDS will consolidate current data collection and reporting requirements, decreasing total costs and efforts related to perinatal data.

The system will provide them with readily usable data that they did not previously have access to, and it has strengthened their efforts to improve birth outcomes and the quality of health care.

#### **Job Impact Statement**

A Job Impact Statement is not included because it is apparent from the nature and purpose of this amendment that it will not have a substantial adverse impact on jobs and employment opportunities. The establishment of a Statewide Perinatal Data System will not affect the number or nature of jobs being performed in health care facilities or other sites. Individuals who had been responsible for entering data in the electronic birth certificate and for analyzing birth data had the skills necessary to interface with the new data system. The new system did not change the number of individuals required to enter or analyze perinatal data in a hospital.

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## Higher Education Services Corporation

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### EMERGENCY RULE MAKING

#### **Senator Patricia K. McGee Nursing Faculty Scholarship Program**

**LD. No.** ESC-41-05-00008-E

**Filing No.** 1293

**Filing date:** Oct. 27, 2005

**Effective date:** Oct. 27, 2005

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

**Action taken:** Addition of section 2201.5 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 679-c

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

**Specific reasons underlying the finding of necessity:** This emergency rule is necessary because compliance with the requirements of the proposal process may adversely impact the applicants by delaying both the processing of scholarship applications and the awarding of the scholarships for the school year currently in progress.

**Subject:** Senator Patricia K. McGee Nursing Faculty Scholarship Program.

**Purpose:** To implement the program.

**Text of emergency rule:** New section 2201.5 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.5 Senator Patricia K. McGee Nursing Faculty Scholarship*

(a) *Authority:* The provisions contained within this regulation are made pursuant to authority granted to the Higher Education Services Corporation in sections 653, 655, and 679-c of the Education Law.

(b) *Definitions:* "Faculty" means a position that is primarily teaching, rather than administrative or research.

(c) *Eligibility:* In addition to those requirements already provided in sections 661 and 679-c of the Education Law, these additional requirements shall apply in the selection of the program recipients:

(1) *Applications for the Senator Patricia K. McGee Nursing Faculty Scholarship shall be postmarked or electronically transmitted no later than July 1st of each year, provided that this deadline may be extended at the discretion of the corporation;*

(2) *Applications shall be filed annually on forms prescribed by the corporation;*

(3) *The pool of applicants shall be those who have successfully met the filing deadline;*

(4) *The applicant shall have been accepted into a nursing faculty preparation program at an accredited nursing school in the State of New York, at the time of application. The corporation will waive the requirement that the applicant be accepted into a "nursing faculty preparation program" for any individual who receives a scholarship prior to the 2008-2009 academic year to permit curriculum development;*

(5) *First priority shall be given to applicants who have received payment of an award pursuant to section 679-c of the Education Law in the prior academic year;*

(6) *The applicant shall have a grade point average of 3.0 or higher if the applicant has already completed a semester in a master's degree program in nursing; and*

(7) *The following formula shall be used in determining award recipients:*

i. *On a 4.0 scale, the applicant's final grade point average received from the nursing program where the applicant received their diploma or degree in professional nursing;*

ii. *On a 4.0 scale, the applicant's current grade point average, provided that the applicant has already completed a semester in a master's or doctoral degree program in nursing; and*

iii. *On a scale of 0-10 for experience as a licensed registered professional nurse, where:*

A. *0 equals less than one year experience;*

B. *2 equals one to three years of experience;*

C. *5 equals three to five years of experience;*

D. *8 equals five to seven years of experience; and*

E. *10 equals greater than seven years of experience.*

iv. *The corporation shall add the points from paragraphs i, ii, and iii and then rank the eligible candidates based upon highest scores.*

v. *Tie scores shall be decided by lottery, as determined by the corporation. The lottery shall be conducted by random selection.*

(8) *Successful applicants shall execute a service contract prescribed by the corporation.*

(d) *Disqualifications:* The applicant shall be disqualified from receiving a scholarship award for any of the following conditions:

(1) *The applicant has a service obligation to the State of New York or another entity; or*

(2) *The applicant is in default on a federally guaranteed student loan or state loan or has defaulted on any prior service obligation.*

(e) *Amounts:*

(1) *The amount of the scholarship award shall be determined in accordance with section 679-c of the Education Law.*

(2) *Disbursements shall be made each semester and pro-rated by credit hour.*

(3) *Scholarship awards shall be reduced by the value of other scholarships and grants.*

(f) *Penalty:*

(1) *The scholarship award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to complete their education or who fail to complete their service in the allotted time.*

(2) *Interest for the life of the loan shall be fixed, and equal to that published annually by the U.S. Department of Education for federal PLUS loans at the time the service contract was signed.*

(3) *Interest shall begin to accrue on the day the award money was first disbursed to the school and/or recipient.*

(4) *Interest shall be capitalized on the day the scholarship award recipient violates the service contract or on the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract.*

(5) *The corporation may in its discretion waive a portion of the repayment of a scholarship award that is commensurate with service completed.*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. ESC-41-05-00008-P, Issue of October 12, 2005. The emergency rule will expire January 24, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** David E. Reid, Deputy Counsel, Office of Counsel, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: DReid@hesc.com

#### **Regulatory Impact Statement**

Statutory authority:

New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the McGee Nursing Faculty Scholarship Program is codified in sections 653, 655 and 679-c of the Education Law.

Section 679-c of the Education Law was originally introduced in a budget bill and eventually signed into law in Chapter 57 of the Laws of 2005.

On April 13, 2005, Chapter 63 of the Laws of 2005 repealed section 679-c. In its stead, a new section 679-c was added containing a virtually identical scholarship program. At HESC's request, this new section contained minor programmatic changes. Among other things, the new section specifically authorized HESC to promulgate regulations to ensure the competitiveness of the loan forgiveness program (Ed Law § 679-c[1][a]), and added a New York State residency requirement (Ed Law § 679-c[1][b][iv]).

Legislative objectives:

The legislature established the McGee Scholarship to increase the number of nurse faculty by encouraging eligible applicants to obtain their master's degrees. Recipients incur a service obligation and are expected to teach in New York State for four years upon obtaining their master's degree.

The McGee Scholarships are awarded on a competitive basis. Successful applicants will be awarded the cost of attendance at the State University of New York, City University of New York, or a commensurate amount to attend a private college or university. The statute establishes a maximum amount of total funding that may be appropriated for awards at \$600,000.00 annually. It also converts the scholarship into a loan if the student fails to complete their master's program or fulfill their service obligations within the allotted time.

The statute requires the agency to determine eligibility, develop competitive criteria for making awards, and choose an interest rate for the loan.

Needs and benefits:

There is a need for nurses and nurse faculty in New York State. This proposal will benefit nursing schools and nursing students by encouraging qualified applicants to become nurse faculty in New York State who in turn will teach more nurses.

At this time, there are approximately 35 public and private institutions of higher education in New York State that offer a master's degree in nursing, 17 of which offer a concentration in nurse-teaching. This proposal provides for the programmatic and administrative functioning of the nursing faculty scholarship program relative to the schools, the nurses, and the agency itself.

First, the proposal defines "faculty" to ensure that recipients comport with the intent of the law by actually teaching, rather than providing administrative duties.

The proposal creates filing deadlines that are not specified in statute, but which are needed to establish the applicant pool. It also creates an orderly competitive scheme to determine eligibility by assigning points to applicants for GPA as well as for experience. To ensure continuity and to facilitate orderly progression of eligible applicants into nursing faculty programs, the proposal gives a preference to returning recipients in the second year of the program and thereafter.

The proposal enumerates factors that would disqualify an applicant. Applicants may be disqualified for defaulting on student loans or for owing a previous service obligation. The proposal requires recipients to sign

contracts, similar to those signed in HESC's other scholarship programs, memorializing the recipient's rights and obligations relative to their service obligation. Under the proposal, a recipient can also be disqualified for violating the contract.

Under the proposal, the interest rate is equal to the rate of the federal PLUS loan at the time the contract is signed.

**Costs:**

a. It is anticipated that there will be no costs for the implementation of, or continuing compliance with this rule, except for programmatic administration costs.

b. The cost of the program to the State shall not exceed \$600,000.00. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

c. The source of the cost data in (b) above is derived from the statutory language capping the program cost at \$600,000.00.

**Local government mandates:**

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

**Paperwork:**

This proposal will require potential recipients of the McGee Scholarship to submit an annual application and supporting documentation to establish their eligibility for this program. No additional paperwork will be required.

**Duplication:**

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

**Alternatives:**

This proposal was made after meeting with representatives from schools and from nursing and education associations. This proposal is the fair and equitable result of these meetings.

The schools expressed a preference for students who possessed practical experience. As a result, the agency altered the point system so that applicants are awarded increased weighting for experience. Discussions with the nursing association resulted in waiving the requirement that the applicant be accepted into a "nursing faculty preparation program" until July 1, 2008. The nurses had advised us that at the present time, graduation from a nursing faculty preparation program is not required in order to teach. The waiver will allow all nursing students enrolling in master's degree programs to be eligible for the scholarship immediately, while allowing schools a reasonable amount of time to develop the curriculum necessary to constitute a nursing faculty preparation program by 2008. Thus, all 35 schools offering a master's degree program in nursing, and their students, are eligible for the program; not just the 17 schools offering a nursing faculty preparation program.

Additionally, federal nursing and teaching programs were reviewed. As a result, a definition for the term "faculty" was adopted to ensure that recipients will provide teaching rather than administrative services upon obtaining their master's degrees.

**Federal standards:**

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoptions of the loan interest rate and the definition of "faculty" from similar federal programs.

**Compliance schedule:**

Because the agency waived the requirement that an applicant be enrolled in a nursing faculty preparation program until 2008, all nursing students enrolling in a master's degree program, and all schools offering a master's degree in nursing, will be able to comply with the regulation immediately upon its adoption. Monitoring of schools will be necessary in 2008 to determine if they have complied with the provision to develop a nursing faculty preparation program by that deadline.

**Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2201.5 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a statutory financial aid program intended to increase the number of nurses and nurse faculty within New York State.

**Rural Area Flexibility Analysis**

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2201.5 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Moreover, the proposal implements a statutory financial aid program intended to increase the number of nurses and nurse faculty within New York State. The proposal opens up the program to all of the approximately 35 schools in New York State offering a master's degree in nursing. Roughly half of these schools reside outside the downstate metropolitan area, including Buffalo, Rochester, Syracuse, Binghamton, Utica-Rome, New Paltz and the Albany Capital District area. Thus, the successful implementation of this proposal should have a positive effect on all areas within New York State, including any rural areas served by these upstate schools.

**Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to add a new section 2201.5 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. The legislature is addressing a shortage of nurses and nurse faculty in New York State by creating a financial aid program intended to increase the number of nurses and nurse faculty within New York State. The successful implementation of this proposal will create jobs and keep them in New York State.

**EMERGENCY  
RULE MAKING**

**New York State Nursing Faculty Loan Forgiveness Incentive Program**

**I.D. No.** ESC-41-05-00009-E

**Filing No.** 1294

**Filing date:** Oct. 27, 2005

**Effective date:** Oct. 27, 2005

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

**Action taken:** Addition of section 2201.6 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 679-d

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

**Specific reasons underlying the finding of necessity:** This emergency rule is necessary because compliance with the requirements of the proposal process will delay student loan forgiveness to applicants who are immediately eligible based on the statutory retroactivity of awards.

**Subject:** New York State Nursing Faculty Loan Forgiveness Incentive Program.

**Purpose:** To implement the program.

**Text of emergency rule:** New section 2201.6 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.6 New York State Nursing Faculty Loan Forgiveness Incentive Program*

(a) *Authority: The provisions contained within this regulation are made pursuant to authority granted to the Higher Education Services Corporation in sections 653, 655, and 679-d of the Education Law.*

(b) *Definitions:*

(1) "Year" or "Academic year" means one calendar year beginning July 1st and concluding on June 30th.

(2) "Nursing Degree Program" means those classes that are related to the diploma or degree in professional nursing (including non-nursing electives) but does not include classes or loans obtained for a non-nursing degree.

(3) "Faculty" means a position that is primarily teaching, rather than administrative or research.

(4) "Loans" means New York State or federal governmental loans, or loans made by commercial entities subject to governmental examination, related to the nursing degree program. It does not, however, include parent PLUS loans, or loans that may be canceled under any other program including Perkins loans, or private loans given for example by family or friends, or student loan debts paid via credit card.

(c) Eligibility: In addition to those requirements already provided in sections 661 and 679-d of the Education Law, these additional requirements shall apply in the selection of the program recipients:

(1) Applications for the New York State Nursing Faculty Loan Forgiveness Incentive Program shall be postmarked or electronically transmitted no later than August 1st of each year, provided that this deadline may be extended at the discretion of the corporation;

(2) Applications shall be filed annually on forms prescribed by the corporation;

(3) The pool of applicants shall be those who have successfully met the filing deadline;

(4) Applications shall be for prior academic year faculty services, except as provided in paragraph 5 of this subdivision.

(5) Applications for retroactive awards for faculty services provided between January 1, 2001 and June 30, 2004 shall be received by January 1, 2006.

(6) Eligibility for loan forgiveness is based on the duties presented in an official position description, not on the position title.

(7) Recipients shall receive loan forgiveness if they are simultaneously teaching in a part-time status at more than one nursing school, provided that the total number of credit hours is in conformity with the requirements of this program.

(8) Recipients shall receive loan forgiveness only for those classes applicable to their nursing degree programs, not for loans obtained for a non-nursing degree.

(9) First priority shall be given to applicants who have received payment of an award pursuant to section 679-d of the Education Law in a prior academic year.

(10) If there shall not be enough appropriated funds to grant loan forgiveness to all eligible applicants, second priority shall be given to those recipients with loans guaranteed by the corporation.

(11) If there are more applicants than available funds in any year, the remaining recipients shall be decided by lottery. The lottery shall be conducted by random selection.

(d) Disqualifications: The applicant shall be disqualified from receiving an award for any of the following conditions:

(1) The applicant has a service obligation owed to any other state or federal program.

(2) The applicant has loans for which documentation is not available.

(3) The applicant has loans without a promissory note.

(4) The applicant is in default on a federally guaranteed student loan, except if the loan is guaranteed by the corporation.

(5) The applicant's loans are paid in full.

(e) Amounts:

(1) The annual award shall be a simple percentage of the maximum allowable cap under section 679-d(a)(3) of the Education Law, and not a percentage of the amount left over from the previous year's award.

(2) The maximum lifetime value of the loan forgiveness shall not exceed the amount of eligible student loan debt that was documented with the corporation in the first year of the applicant's participation or forty thousand dollars, whichever is less.

(3) The corporation may offset any portion of the loan forgiveness if the applicant is in default on a student loan guaranteed by the corporation.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. ESC-41-05-00009-P, Issue of October 12, 2005. The emergency rule will expire January 24, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** David E. Reid, Deputy Counsel, Office of Counsel, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: DReid@hesc.com

#### Revised Regulatory Impact Statement

Statutory authority:

New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the New York State Nursing Faculty Loan Forgiveness Incentive Program is codified in sections 653, 655 and 679-d of the Education Law.

Section 679-d of the Education Law was originally introduced in a budget bill and signed into law in Chapter 57 of the Laws of 2005. While the plain language of the bill showed a clear intent to have HESC administer the loan forgiveness program, the program was placed outside HESC's jurisdiction in subdivision 13 of section 605 of the Education Law.

On April 13, 2005, Chapter 63 of the Laws of 2005 amended Chapter 57. This new law fixed the jurisdictional problem by: 1) repealing subdivision 13 of section 605 of the Education Law where the loan forgiveness program erroneously resided, and 2) adding new section 679-d of the Education Law containing a virtually identical loan forgiveness program. At HESC's request, the new section contained minor programmatic changes as well. Among other things, the new section specifically authorized HESC to promulgate regulations to ensure the competitiveness of the loan forgiveness program (Ed Law § 679-d[1]), and added several prerequisites to eligibility including possession of a master's degree, employment as a nursing faculty, and New York State residency (Ed Law § 679-d[2][iii-iv]).

Legislative objectives:

The legislature enacted the New York State Nursing Faculty Loan Forgiveness Incentive Program to encourage licensed registered professional nurses to provide nursing education within New York State by awarding them loan forgiveness for each year of instruction that they provide in a nursing program in New York State.

Loan forgiveness is awarded annually for up to five years with each award consisting of a percentage of the maximum cumulative award of \$40,000.00. No recipient can receive more than the amount of the actual student loan debt.

The statute requires the agency to determine eligibility and to develop other criteria necessary to administer the program.

Needs and benefits:

There is a need for nurses and nurse faculty in New York State. This proposal will benefit the general public, nursing schools and nursing students by encouraging licensed registered professional nurses with master's degrees or doctoral degrees to go into the field of nursing education in New York State.

At this time, there are over 100 institutions in New York State offering Associate, Bachelor, Master and Doctoral degrees in nursing. This proposal provides for the programmatic and administrative functioning of the Nursing Faculty Loan Forgiveness Incentive Program relative to these schools, the nurses who choose to teach at them, and the agency itself.

The proposal is necessary to define certain terms that are not defined in the statute. The definition of "faculty" ensures that forgiveness is applied to actual teachers rather than administrators or other non-teaching faculty. The definition of "nursing degree program" will ensure that the appropriations are spent on forgiving only those loans related to the recipient's nursing degree. The definition of "loan" ensures that only qualified loans will be forgiven. Types of loans which will not be forgiven include parent PLUS loans, or loans that may be canceled under any other program including Perkins loans, or private loans given for example by family or friends, or student loan debts paid via credit card. The definition of "year" comports with the federal and state academic year and is necessary to measure completed service.

The proposal creates filing deadlines that are necessary to implement the program but which are not in statute. Retroactive applications covering teaching service already performed are due on January 1, 2006. Thereafter, the deadline is August 1 of each year so that teachers teaching a Fall to Spring academic year will have a reasonable amount of time to submit their applications. Provisions are made for those teachers who have non-traditional schedules as well: teachers may receive loan forgiveness if they teach part time at more than one institution. To ensure continuity and to facilitate orderly progression of eligible applicants into the nursing faculty profession, the proposal gives a preference to returning recipients in the second year of the program and thereafter.

The proposal enumerates factors that would disqualify an applicant. Applicants may be disqualified for owing a duplicative service obligation, and loans are ineligible if they are not documented by a promissory note or proof of debt.

Costs:

a. It is anticipated that there will be no costs to regulated parties for the implementation of, or continuing compliance with this rule, except for programmatic administration costs.

b. The cost of the program to the State shall not exceed \$1,300,000.00. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

c. The source of the cost data in (b) is derived from budgetary language appropriating \$1.3 million for the program.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require potential recipients of the New York State Nursing Faculty Loan Forgiveness Incentive Program to submit an annual application and supporting documentation to establish their eligibility for this program. No additional paperwork will be required.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

This proposal was made after meeting with representatives from the regulated parties including schools, and nursing and education associations. The proposal is the fair and equitable result of these meetings.

The provision in the proposal regarding electronic applications was added after meeting with the nursing association. The provision making part-time teachers eligible for the award was clarified after meetings with the schools.

Additionally, the definitions were adopted after a review of federal nursing and teaching loan forgiveness programs of the United States Department of Health and the United States Department of Education.

Federal standards:

This rule does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of definitions resembling those found in similar federal programs.

Compliance schedule:

Because the statutory deadlines allow for retroactive application of the program, regulated parties will be able to comply with the regulation immediately upon its adoption.

#### **Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2201.6 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a student financial aid loan forgiveness program intended to increase the number of nurses and nurse faculty within New York State.

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

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2201.6 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Moreover, the proposal implements a statutory student financial aid loan forgiveness program intended to increase the number of nurses and nurse faculty within New York State. In addition to the downstate metropolitan area, schools that may employ nurse faculty in their nursing programs can be found in and around such places as Buffalo, Rochester, Utica-Rome, Syracuse, Binghamton, Plattsburgh, Poughkeepsie and the Albany Capital District area. In general, nursing faculty members who teach 12 credit hours per year at any of these schools are eligible for the loan forgiveness program. Successful implementation of the proposal should have a positive impact on all areas of New York State, including rural areas served by these schools.

#### **Revised Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to add a new section 2201.6 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any adverse impact on jobs or employment opportunities. The proposal implements a statutory student financial aid loan forgiveness program intended to increase the number of nurses and nurse faculty within New York State.

The legislature has indicated that there is a shortage of nurse faculty in nursing schools in New York State. Meetings with representatives from the school and nursing industries corroborate this. The successful implementation of this proposal should have a positive effect on jobs and employment opportunities. Nurses with master's degrees will be encouraged to fill the nurse faculty vacancies to have their student loans forgiven. They in turn will train the future nurses of New York State.

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## Department of Motor Vehicles

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

#### **Freedom of Information Requests**

**I.D. No.** MTV-46-05-00007-P

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

**Proposed action:** This is a consensus rule making to amend Part 160 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 202(2); and Public Officers Law, section 89(3) and (4)

**Subject:** Freedom of information requests.

**Purpose:** To make conforming amendments to the freedom of information regulations.

**Text of proposed rule:** Section 160.5 is amended to read as follows:

160.5 Hours of public inspection. The Department of Motor Vehicles shall accept requests for public access to records and produce records between the hours of [8] 8:30 a.m. and [4] 4:30 p.m. on any business day.

Subdivision (b) of section 160.6 is amended to read as follows:

(b) The Department of Motor Vehicles shall respond within five business days to a written request for records, reasonably described. Such response shall consist of either:

- (1) the furnishing of the records requested; or
- (2) the denial of the request in writing; or

(3) a written acknowledgement of the receipt of the request and a statement of the approximate date when such request will be granted or denied.

*If the Department determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within 20 business days from the date of the acknowledgment of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. Failure of the Department to conform to the provisions of this subdivision shall constitute a denial of access to records subject to appeal pursuant to section 160.7 of this Part.*

Subdivisions (a) and (c) of section 160.7 are amended to read as follows:

(a) The [Chairman] *Chair* of the Administrative Appeals Board, Swan Street Building, Empire State Plaza, Albany, NY 12228, shall hear appeals for denial of access to records under the Freedom of Information Law.

(c) An appeal from a denial of access to records shall be *made within 30 days of such denial and shall be* in writing, stating the reason therefor, the date and location of the request for records, the records to which the requester was denied access, and the name and return address of the requester.

Section 160.8 is amended to read as follows:

160.8 Fees. As prescribed by section 202 of the Vehicle and Traffic Law, the fee for a single search shall be [\$5] \$10 and the fee for copies or records searched shall be one dollar per page (a page being one of two sides of material), except that the fee for a copy of an accident report shall be \$15, *plus the \$10 search fee.* Notwithstanding the foregoing, there shall

be no fee for a search for a publication or a manual, and there shall be no fee for a copy of a publication except where a fee is provided by statute. A manual shall be provided free of charge upon the request of a selected public or an employee for whom the publication was produced, but a fee of seven cents per page (a page being one of two sides of material) shall be charged upon the request of any other person. [Notwithstanding the foregoing, there shall be a fee of \$25 dollars for each specially prepared form MV-144A (accident summary) and a fee based upon the time involved for a unique output summary requiring specialized programming. There shall be no fee for the production of a standard form MV-144A (accident summary).]

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele L. Welch, 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 rule is being submitted as a consensus rulemaking because no person is likely to object to its adoption because it merely implements or conforms to nondiscretionary statutory provisions. Specifically, the amendments include recent changes to the Public Officers Law pursuant to Chapter 22 of the Laws of 2005 regarding timeframes within which state agencies must respond to freedom of information requests. Additionally, the search fee for documents requested under the Freedom of Information Law is increased from six dollars to ten dollars pursuant to Chapter 61 of the Laws of 2005. The other amendments are minor and technical in nature. For example, the MV-144 form has been obsolete for four years.

**Job Impact Statement**

A Job Impact Statement is not submitted with this rulemaking because it will have no adverse impact on existing or future jobs or employment opportunities.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0135SA1)

**NOTICE OF ADOPTION**

**Pole Attachment Rental Rate by Rochester Gas and Electric Corporation**

**I.D. No.** PSC-22-05-00006-A

**Filing date:** Oct. 27, 2005

**Effective date:** Oct. 27, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 05-G-0566, approving amendments to Rochester Gas and Electric Corporation's (RG&E) schedule for electric service—P.S.C. No. 19.

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

**Subject:** Tariff filing by RG&E.

**Purpose:** To approve RG&E's tariff filing.

**Substance of final rule:** The Commission approved Rochester Gas and Electric Corporation's tariff revisions, with modifications, to revise the annual rental charges for cable television attachments.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0566SA1)

**NOTICE OF ADOPTION**

**Initial Tariff Schedule by Four Corners Water Works Corporation**

**I.D. No.** PSC-23-05-00015-A

**Filing date:** Oct. 31, 2005

**Effective date:** Oct. 31, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 05-W-0615, allowing Four Corners Water Works Corporation to revise its tariff schedule, P.S.C. No. 1—Water.

**Statutory authority:** Public Service Law, section 89-e(0)

**Subject:** Initial tariff schedule—electronic filing.

**Purpose:** To approve the Four Corners Water Works Corporation initial tariff schedule, P.S.C. No. 1—Water, which sets forth rates, charges, rules and regulations under which the company will operate.

**Substance of final rule:** The Commission authorized Four Corners Water Works Corporation (Four Corners) to file its initial tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate, and directed Four Corners to file on November 1, 2005, on not less than one day's notice, to become effective on a temporary basis, subject to refund or reparation, if appropriate, further amendments and statement of its tariff schedule, PSC No. 1, Water, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

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**Public Service Commission**

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**NOTICE OF ADOPTION**

**Conveyance of Real and Personal Property by The Brooklyn Union Gas Company**

**I.D. No.** PSC-10-05-00013-A

**Filing date:** Oct. 26, 2005

**Effective date:** Oct. 26, 2005

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

**Action taken:** The commission, on Sept. 21, 2005, adopted an order in Case 05-G-0135, approving the joint petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and the City of New York for the transfer of property.

**Statutory authority:** Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (4), (5), (8), (9), (10), (11), (12) and 70

**Subject:** Conveyance of real and personal property, and accounting and ratemaking treatment.

**Purpose:** To approve the sale of property by KeySpan Energy Delivery New York to the City of New York.

**Substance of final rule:** The Commission approved the joint petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) and the City of New York for the conveyance of KeySpan's property located at Grand Avenue and 79th Street, Maspeth, Borough of Queens, to the City of New York, and determined the accounting and ratemaking treatment of the sale, subject to the conditions set forth in the order.

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

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-W-0615SA1)

**NOTICE OF ADOPTION**

**Gas Portfolios by The Brooklyn Union Gas Company and KeySpan Gas East Corporation**

**I.D. No.** PSC-32-05-00010-A

**Filing date:** Oct. 29, 2005

**Effective date:** Oct. 29, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order approving the joint petition of The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (the companies) to combine their gas resource portfolios.

**Statutory authority:** Public Service Law, sections 65(1), (2), 66(5), (6), (8), (12), 66-e(1), (2) and (3)

**Subject:** To combine the companies' gas portfolios and the method of allocating gas commodity and capacity costs between the companies.

**Purpose:** To approve the combination of the companies' gas portfolios and the method of allocating gas commodity and capacity between the companies.

**Substance of final rule:** The Commission approved the joint petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (the companies) to combine their gas resource portfolios and allocate gas costs for commodity and capacity between the companies and to modify their Gas Adjustment Clauses effective November 1, 2005, subject to the conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0903SA1)

**NOTICE OF ADOPTION**

**RPS Program Funding of Maintenance Resources**

**I.D. No.** PSC-33-05-00005-A

**Filing date:** Oct. 31, 2005

**Effective date:** Oct. 31, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 03-E-0188 concerning revisions to the Renewable Portfolio Standard Program (RPS) maintenance resource category.

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

**Subject:** Revisions regarding RPS funding of maintenance resources.

**Purpose:** To revise the RPS program's maintenance resource category.

**Substance of final rule:** The Commission approved revisions to the Retail Renewable Portfolio Standard maintenance resource category, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-0188SA9)

**NOTICE OF ADOPTION**

**Capacity Release Service by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-33-05-00009-A

**Filing date:** Oct. 27, 2005

**Effective date:** Oct. 27, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 05-G-0918 approving amendments to Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff schedule, P.S.C. No. 9—Gas.

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

**Subject:** Capacity release service.

**Purpose:** To approve Con Edison's request to continue capacity release service for an additional year.

**Substance of final rule:** The Commission authorized Consolidated Edison Company of New York, Inc. (Con Edison) to extend its Capacity Release Service Program for an additional year, rejected Con Edison's proposal to eliminate the credit surcharge mechanisms, and directed Con Edison to file the necessary amendments to implement the change, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0918SA1)

**NOTICE OF ADOPTION**

**Capacity Release Service by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-33-05-00010-A

**Filing date:** Oct. 27, 2005

**Effective date:** Oct. 27, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 05-G-0919 approving amendments to Orange and Rockland Utilities, Inc.'s (O&R) tariff schedule, P.S.C. No. 4—Gas.

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

**Subject:** Capacity release service.

**Purpose:** To approve O&R's request to continue capacity release service for an additional year.

**Substance of final rule:** The Commission authorized Orange and Rockland Utilities, Inc. (O&R) to extend its Capacity Release Service Program for an additional year, rejected O&R's proposal to eliminate the credit surcharge mechanisms, and directed O&R to file the necessary amendments to implement the change, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(05-G-0919SA1)

### NOTICE OF ADOPTION

#### Non-Core Transportation Service for Electric Generation by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

**I.D. No.** PSC-33-05-00011-A  
**Filing date:** Oct. 27, 2005  
**Effective date:** Oct. 27, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 00-G-0996, approving amendments to The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY's (KEDNY) schedule for gas service—P.S.C. No. 12.

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

**Subject:** Tariff filing by KEDNY.

**Purpose:** To approve KEDNY's tariff filing.

**Substance of final rule:** The Commission approved The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY's tariff revisions to revise its SC. No. 20 - Non-Core Transportation Service for Electric Generation, to change the number of days of fuel inventory requirement for electric generators who contract for interruptible gas service.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(00-G-0996SA9)

### NOTICE OF ADOPTION

#### Electric Generation Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI

**I.D. No.** PSC-33-05-00012-A  
**Filing date:** Oct. 27, 2005  
**Effective date:** Oct. 27, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 00-G-0996, approving amendments to KeySpan Gas East Corporation d/b/a Keyspan Energy Delivery LI's (KEDLI) schedule for gas service—P.S.C. No. 1.

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

**Subject:** Tariff filing by KEDLI.

**Purpose:** To approve KEDLI's tariff filing.

**Substance of final rule:** The Commission approved KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI's tariff revisions to revise its SC. No. 14 - Electric Generation Service, to change the number of days of fuel inventory requirement for electric generators who contract for interruptible gas service.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

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

(00-G-0996SA10)

### NOTICE OF ADOPTION

#### Pension Accounting and Related Rate Making by Taconic Telephone Corporation

**I.D. No.** PSC-35-05-00008-A  
**Filing date:** Oct. 27, 2005  
**Effective date:** Oct. 27, 2005

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

**Action taken:** The commission, on Oct. 27, 2005, adopted an order in Case 05-C-1002 concerning Taconic Telephone Corporation's petition on handling the accounting gain resulting from the termination of its employee's defined benefit pension plans.

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

**Subject:** Pension accounting and ratemaking treatment.

**Purpose:** To determine appropriate accounting treatment of pension related deferrals.

**Substance of final rule:** The Commission approved a petition of Taconic Telephone Corporation (Taconic) for the disposition of a gain from termination of a defined benefit pension plan, determined that Taconic will no longer be required to comply with the accounting requirements of the Pension Policy Statement effective November 1, 2005, and directed Taconic to file revised tariff amendments consistent with its findings, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(05-C-1002SA1)

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

#### Rider C—Gas Rates for Residential Distributed Generation Facilities by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-46-05-00012-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 Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 4.

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

**Subject:** Rider C—gas rates for residential distributed generation facilities.

**Purpose:** To remove from Rider C a load factor test for determining customer eligibility for residential gas rates for distributed generation.

**Substance of proposed rule:** The Commission is considering Orange and Rockland Utilities, Inc. request to remove from the "Eligibility" and "Term" provisions of Rider C (a discounted rate available to residential customers that use gas to fuel on-site generating equipment) an annual load factor test used to determine eligibility. Such load factor test requires customers to maintain an annual load factor of at least 50 percent to remain eligible for the rate.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**Data, views or arguments may be submitted to:** Jaclyn A. Brillig, 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-0515SA16)

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

**Reconciliation Month for Ancillary Reimbursements by Central Hudson Gas and Electric Corporation**

**I.D. No.** PSC-46-05-00013-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 whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service — P.S.C. No. 15 to become effective Feb. 1, 2006.

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

**Subject:** Revised reconciliation month for ancillary reimbursements.

**Purpose:** To revise the reconciliation time frame for ancillary reimbursements.

**Substance of proposed rule:** On October 25, 2005, Central Hudson Gas & Electric Corporation (Central Hudson) filed proposed tariff amendments to change the reconciliation time frame for ancillary reimbursements from two months after the initial reimbursement to three months after the initial reimbursement. The Commission may approve, reject or modify, in whole or in part, Central Hudson's proposed tariff revisions.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, 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.

(05-E-1330SA1)

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

**Transfer of Ownership Interests by Orion Power Holdings, Inc., et al.**

**I.D. No.** PSC-46-05-00014-P

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

**Proposed action:** The commission is considering a petition from Orion Power Holdings, Inc., Astoria Generating Company, L.P., and Astoria Generating Company Acquisitions, LLC requesting approval of the transfer of ownership interests in three generating facilities located in New York, NY, totaling approximately 2,072 MW in size, and requesting authorization for the new owner to issue corporate debt.

**Statutory authority:** Public Service Law, sections 69 and 70

**Subject:** Transfer of ownership interests in electric generation facilities sized at approximately 2,072 MW located in New York, NY and the issuance of corporate debt.

**Purpose:** To approve the transfer of ownership interests in electric generation facilities sized at approximately 2,072 MW located in New York, NY and the issuance of corporate debt.

**Substance of proposed rule:** The Commission is considering a petition from Orion Power Holdings, Inc., Astoria Generating Company, L.P., and Astoria Generating Company Acquisitions, LLC requesting approval of the transfer of ownership interests in three generating facilities located in New York, NY, totaling approximately 2,072 MW in size, and requesting authorization for the new owner to issue corporate debt. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, 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.

(05-E-1341SA1)

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

**Sale of Real and Personal Property by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and Steel Arrow, LLC**

**I.D. No.** PSC-46-05-00015-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 Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) and Steel Arrow, LLC (Steel Arrow), for: (1) approval under section 70 of the Public Service Law of the proposed sale of KeySpan's real and personal property located at 809-873 Neptune Ave., Brooklyn, NY; (2) approval of the proposed accounting and rate treatment for the transaction; and (3) related relief. The commission may also consider other related matters.

**Statutory authority:** Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8), (9), (10), (11), (12) and 70

**Subject:** Approval of the sale of real and personal property, and related contract, accounting and other matters.

**Purpose:** To consider the proposed sale of real and personal property, the accounting and rate treatment associated with the transaction, and related matters.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, the proposed sale of real and personal property located at 809 - 873 Neptune Avenue, Brooklyn, NY, by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) to Steel Arrow, LLC (Steel Arrow). According to the petition, Steel Arrow proposes to use this property for commercial development. The Commission is also considering KeySpan's proposed accounting and rate treatment for the transaction, and it may consider other related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, 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.

(05-G-1284SA1)

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## Department of State

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### EMERGENCY RULE MAKING

#### Qualifying Courses for Home Inspection Applicants

**I.D. No.** DOS-46-05-00005-E

**Filing No.** 1295

**Filing date:** Oct. 28, 2005

**Effective date:** Oct. 28, 2005

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

**Action taken:** Addition of Subpart 197-2 to Title 19 NYCRR.

**Statutory authority:** Real Property Law, section 444-c(6)(A) and 444-L

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

**Specific reasons underlying the finding of necessity:** This amendment was adopted on an emergency basis to preserve the public welfare by ensuring that schools and students will know what courses are required in order for an applicant to qualify for a home inspection license pursuant to Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law. Article 12-B provides, in part, that, on and after December 31, 2005, no person shall conduct a home inspection for compensation unless such person is licensed as a home inspector pursuant to Article 12-B. To qualify for a license, an applicant must successfully complete a course of study to be prescribed and approved by the Department of State. Accordingly, in order to ensure that prospective applicants can obtain the required courses and to ensure that schools are prepared to offer approved courses, this rule has been adopted on an emergency basis.

**Subject:** Qualifying courses for home-inspection applicants.

**Purpose:** To establish standards for home-inspection courses, as well as procedures for course approval.

**Text of emergency rule:** A new Subpart 197-2 of Part 197 of Title 19 of the NYCRR is adopted to read as follows:

*Subpart 197-2*

*Home Inspection Qualifying Courses*

*Section 197-2.1 Approved entities.*

*Home Inspection courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education; public and private schools; and home inspection related professional societies and organizations.*

*Section 197-2.2 Request for approval of courses of study.*

*Applications for approval to conduct courses of study to satisfy the requirements for licensed home inspector shall be made 60 days before the proposed course is to be conducted. The application shall be prescribed by the Department to include the following:*

*(a) name and business address of the proposed school which will present the course;*

*(b) if applicant is a partnership, the names and home addresses of all the partners of the entity;*

*(c) if applicant is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;*

*(d) the name, home and business address and telephone number of the education coordinator that will be responsible for administering the regulations contained in this part;*

*(e) locations where classes will be conducted;*

*(f) title of each course to be conducted;*

*(g) detailed outline of each module, together with the time sequence of each segment;*

*(h) final examination to be presented for each course, including the answer key;*

*(i) all times included on each test form must be consistent with content specifications indicated for each course. Weighing of significant content areas should fall within the weight ranges indicated. All reference sources used to support each correct answer must be included. Linkage to each*

*answer must be indicated with a footnote showing page number, subject matter, etc.;*

*(j) description of materials that will be distributed;*

*(k) the books that will be used for the outline and the final exams; and*

*(l) a detailed description of the means of providing the 40 hour field based training.*

*Section 197-2.3 Subjects for study - home inspection.*

*The following are the required subjects to be included in the course of study in home inspection for licensure as a home inspector, and the required number of hours to be devoted to each such subject. All approved schools must follow this course syllabus in conducting their program.*

*Home Inspection Course Modules - 140 hours*

*Module 1*

*Structural*

*Exterior*

*Roof*

*25 hours*

*Final Exam*

*Module 2*

*Interior*

*Insulation and Ventilation*

*Electrical*

*25 hours*

*Final Exam*

*Module 3*

*Heating*

*Cooling*

*Plumbing*

*25 hours*

*Final Exam*

*Module 4*

*Overview of Profession*

*NYS License Law*

*Report Writing*

*25 hours*

*Final Exam*

*Module 5*

*40 hours*

*(1) 40 hours of unpaid field-based training in the presence of and under the direct supervision of a home inspector licensed by New York State, or a professional engineer or architect regulated by New York State who oversees and takes full responsibility for the inspection and any report produced.*

*(2) Students have the option of not completing the field-based training by an approved school; however, all entities requesting approval for the Home Inspection qualifying curriculum must be approved for and make available to their students the 40 hours of unpaid field-based training and provide the Department of State with a detailed description of the means for providing the training.*

*(3) Schools must maintain a log of all inspections completed for purposes of providing proof of each student's field based training. The log must contain the following information:*

*(a) the student's name;*

*(b) the date of the home inspection;*

*(c) the address of the property inspected;*

*(d) the name of the client;*

*(e) the amount of time that was spent on the inspection; and*

*(f) the name, unique identification number and signature of the licensed home inspector, professional engineer or architect.*

*(4) Approved entities must verify hours of training and provide the student with a certificate of completion.*

*(5) If field-based training is not completed by an Approved Home Inspection School, the student must maintain a log of all inspections completed for purposes of providing proof of their field based training. The log must contain the following information:*

*(a) the date of the inspection;*

*(b) the address of the property inspected;*

*(c) the name of the client;*

*(d) the amount of time that was spent on the inspection; and*

*(e) the name, unique identification number and signature of the licensed home inspector, professional engineer or architect.*

*(6) Completed home inspections must be maintained by the licensed home inspector, professional engineer or architect, and are subject to review by the Department of State.*

Section 197-2.4 Equivalency pre-licensing education courses completed prior to January 1, 2006.

(a) The criteria for approval of courses completed prior to the January 1, 2006, shall be that the course or courses have substantially covered the same subject matter, classroom hours of attendance and completed standards as prescribed by this Subpart as a prerequisite of licensing.

(b) Application for course evaluation must be accompanied by an official transcript or other documentation showing the subjects taken, the hours of instruction devoted to each subject and the hours attended by said applicant together with the date completed. In addition, a course description or outline must be provided by the school along with an applicant's equivalency request.

(c) The Department may request additional supportive documentation to determine course equivalency.

#### Section 197-2.5 Computation of instruction time.

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 50 minutes. For every 50 minutes of instruction there shall be an additional 10 minute break. The time of the breaks shall be left to the discretion of the individual education coordinator. Breaks shall not be considered optional, nor are they to be used to release the class earlier than scheduled.

#### Section 197-2.6 Attendance and examinations.

(a) No person shall receive credit for any course module presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course module pursuant to Section 197-2.3 of this Subpart, and no person shall be absent from the class room except for a reasonable and unavoidable cause.

(b) Students who fail to attend the required scheduled class hours may, at the discretion of the approved entity, make up the missed subject matter during subsequent classes presented by the approved entity.

(c) Final examinations may not be taken by any student who has not satisfied the attendance requirement.

(d) A make up examination may be presented to students at the discretion of the approved entity. Make up examinations must be submitted for approval to the Department in accordance with guidelines noted in Section 197-2.2 of this Subpart.

(e) All examinations required for course work shall be written and given within a reasonable time after the course work has been conducted. The failure of the final exam shall constitute failure of the course module.

#### Section 197-2.7 Facilities.

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course.

#### Section 197-2.8 Record retention.

All organizations conducting approved courses of study shall retain the attendance records, the final examinations and a list of students who successfully complete each course module for a period of three years after completion of each course module. All documents shall at all times during such period be available for inspection by duly authorized representatives of the Department of State.

#### Section 197-2.9 Faculty.

(a) Each instructor for an approved home inspection course of study must be approved by the Department of State. To be approved, an instructor must submit an application along with a resume reflecting three years of experience as a home inspector during which time the applicant has completed at least 250 home inspections.

(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.

Section 197-2.10 Policies concerning course cancellation and tuition refund.

Any educational institution or other organization requesting from the Department of State approval for home inspection courses must have a policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

Section 197-2.11 Revocation, suspension and denial of course approval.

The Department of State may deny, suspend, or revoke the approval or renewal of a home inspection course or a home inspection instructor, if it is determined that they are not in compliance with the law and rules, or if

the offering does not adequately reflect and present current home inspection knowledge as a basis for a level of home inspection practice, or if the course provider or instructor has obtained, used or attempted to obtain or use the Department of State's home inspection examination questions. Prior to the denial of an application, suspension or revocation, the course provider or instructor shall have the opportunity to be heard by the Secretary of State or his designee.

#### Section 197-2.12 Advertisements.

Any education institution or other organization offering approved courses may not make or publish any false or misleading statement regarding employment opportunities which may be available as a result of the successful completions of a course or as a result of acquisition of a home inspector license.

#### Section 197-2.13 Auditing.

A duly authorized representative of the Department of State may audit any course offered, and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

#### Section 197-2.14 Open to public.

All courses approved pursuant to this Subpart shall be open to all members of the public regardless of the membership of the prospective student in any home inspection related professional society or organization.

#### Section 197-2.15 Certificates of completion and student lists.

(a) Evidence of successful completion of a course module must be furnished to students in certificate form. The certificate must indicate the following: name of the student; name of the course provider; title of the home inspection module; number of hours; code number of the module; a statement that the student, who shall be named, has satisfactorily completed a course of study in home inspection subjects or unpaid field-based training approved by the Secretary of State in accordance with the provisions of Section 197-2.3 of this Subpart, and that his or her attendance record was satisfactory and in conformity with the law, and that such module was completed on a stated date. The certificate must be signed and dated with an original signature by the owner or course coordinator.

(b) A list of the names and addresses of students who successfully complete each course module must be submitted to the Department of State within 15 days of completion of a course module.

**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 January 25, 2006.

**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:

The Real Property Law, Section 444-d, provides, in part, that on and after December 31, 2005, no person shall perform a home inspection for compensation unless such person is licensed as a home inspector. The Real Property Law, Section 444-e(b)(I), provides that an applicant for a home inspection license must have successfully completed a course of study of not less than 140 hours approved by the Secretary of State. The Real Property Law, Section 444-c(6)(A) authorizes the Secretary of State to adopt standards for home-inspection training, including standards for course approval. In addition, the Real Property Law, Section 444-l, authorizes the Secretary of State to adopt such rules and regulations as shall be necessary to implement the home-inspection licensing program. This rule establishes standards for home-inspection training and procedures for course approval. Accordingly, the Secretary of State has express authority to adopt this rule.

##### 2. Legislative objectives:

By enacting Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law, the Legislature sought, in part, to ensure that home inspectors would be qualified by training and experience. As required by Article 12-B, this rule establishes standards for home-inspection training, as well as procedures for course approval. Accordingly, this rule advances the objectives that the Legislature sought to advance when it enacted Article 12-B.

##### 3. Needs and benefits:

This rule is needed to ensure that schools can offer and that prospective license applicants can obtain the approved courses that will be needed to qualify for a home inspection license. Without this rule, courses cannot be approved and, if no courses are approved, prospective applicants will be unable qualify for home inspection licenses.

##### 4. Costs:

a. Costs to regulated parties:

The Department of State solicited comments and costs from nine schools. Three schools responded with estimates of anticipated costs of complying with the rule. The following costs are based on those responses:

Estimated cost of preparing an application for course approval: \$750 to \$2,500.

Estimated cost per module for students: \$400 to \$600 per module.

Estimated cost of providing student with a certificate of completion: \$5 to \$10 per certificate.

Estimated cost of submitting names and addresses to the Department of State: \$10 to \$20 per student.

b. Costs to the Department of State:

The Department of State anticipates that the cost of implementation and continued administration of this rule will be minimal and that the Department's role in approving courses can be accomplished using existing staff and resources.

c. Cost to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The following sections of the rule have paperwork requirements:

Section 197-2.2 requires the submission of an application for approval of home inspection courses. Submission of an application is necessary if the Department of State is to evaluate and approve courses.

Section 197-2.3, Module 5(3), requires that an approved school maintain a log of all home inspections completed by each student as proof of the student's field-based training. The log is necessary for audit purposes and will be used as a means of providing proof that the student has completed his or her field-based training.

Section 197-2.3, Module 5(5), requires that a student maintain a log of all home inspections completed if the student's field-based training is not completed with an approved school. The log is necessary for audit purposes and will be used as a means of providing proof that the student has completed his or her field-based training.

Section 197-2.4 requires that an application for evaluation be filed if an applicant is claiming credit for unapproved courses that were taken prior to January 1, 2006. Submission of this application will provide an applicant with a means to obtain credit for a course taken prior to January 1, 2006, if the course is equivalent to the course curriculum prescribed in Section 197-2.3 of this rule.

Section 197-2.8 requires that an approved school shall retain attendance records, final examinations, and a list of students who successfully complete each course module for a period of three years. The rule is required for audit purposes and, this rule will benefit any student who may need a duplicate certificate of completion because he or she may have lost or misplaced the original certificate prior to filing their application with the Department of State.

Section 197-2.9 requires that each instructor file an application for approval before teaching an approved course. The rule is necessary to ensure that instructors are qualified by training and experience to teach the approved home-inspection courses.

Section 197-2.10 requires that an approved school shall, prior to accepting any fee from a student, provide to the student a written statement of the school's policy regarding cancellations and refunds. The rule is necessary to ensure that a student knows the school's cancellation and refund policy before paying any fee or tuition to a school.

Section 197-2.15(a) requires an approved school provide each student with a certificate of successful completion for each course module successfully completed by the student. The rule is necessary to ensure that students have proof of their having successfully completed an approved course.

Section 197-2.15(b) requires that an approved school submit to the Department of State a list of the names and addresses of the students who have successfully completed a course module and that such list be submitted within 15 days of completion of the course module. The rule is necessary for audit purposes.

7. Duplication:

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

8. Alternatives:

The Department of State did not identify any significant alternatives to the provisions of this rule.

9. Federal standards:

There are no federal standards for the training of prospective home inspectors. Accordingly, this rule does not exceed any existing federal standard.

10. Compliance schedule:

The Department of State anticipates that schools will be able to immediately comply with this rule. The schools that commented on the draft for this rule did not note any compliance difficulties.

#### **Regulatory Flexibility Analysis**

1. Effect of rule:

The rule will affect schools that offer approved courses for home inspectors. The Department of State knows of nine schools that may offer approved courses. However, the Department anticipates that there will be others. The Department believes that all of the schools can be classified as small businesses for the purpose of this analysis.

The rule will affect persons wishing to be come licensed as home inspectors. However, the Department of State is able to predict how many persons intend to become licensed as home inspectors. The Department believes that all such persons can be classified as small businesses for the purpose of this analysis.

The rule does not apply to local governments.

2. Compliance requirements:

The reporting and recordkeeping requirements for are detailed in section 6 of the Regulatory Impact Statement. Those requirements will affect the small businesses identified in section 1 of this Analysis.

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

3. Professional services:

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

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

4. Compliance costs:

Estimates of the costs of compliance are detailed in section 4 of the Regulatory Impact Statement.

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

5. Economic and technological feasibility:

The estimated costs of compliance, as set forth in section 6 of the Regulatory Impact Statement, suggest that it will be economically feasible for small businesses to comply with the rule. The rule does not require any technical expertise in order to comply with the rule.

The rule does not affect local governments.

6. Minimizing adverse economic impact:

Since all of the regulated parties are small businesses, the rule does not adversely impact small businesses relative to large businesses. Accordingly, differing reporting or compliance requirements were not a practical option. The nature of the rule does not lend itself to the adoption of performance standards, and the rule, which follows a statutory mandate, does not allow for exceptions. Accordingly, although the Department considered the approaches suggested in State Administrative Procedure Act, § 202-b(1), the Department did not adopt any of those approaches.

7. Small business and local government participation:

The Department of State solicited and received comment from schools that are likely to offer home-inspection courses, as well as comment from the New York State Association of Home Inspectors.

Since the rule would not affect local governments, the Department did not solicit comment from local governments.

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

(a) Types and estimated numbers of rural areas:

This rule will apply equally to all home-inspector applicants and all home-inspector schools in all areas of the State—urban, suburban and rural.

(b) Reporting, recordkeeping and other compliance requirements and professional services:

(1) The reporting, recordkeeping and other compliance requirements are set forth fully in Section 6 of the Regulatory Impact Statement.

(2) Home-inspector applicants and home-inspector schools in rural areas will not need to employ any professional services in order to comply with this rule.

(c) Costs:

The compliance costs are set forth in Section 4 of the Regulatory Impact Statement. The Department of State does not anticipate that those estimated costs will vary significantly for different types of public or private entities in rural areas.

(d) Minimizing adverse impact:

Article 12-B (Home Inspection Professional Licensing) of the Real Property Law seeks to establish minimum qualifications for home inspectors throughout the State. In doing so, Article 12-B prescribes that an applicant must complete a course of study consisting of at least 140 hours of study approved by the Secretary of State. In developing this rule, the Department of State did not identify any areas of study that were unique to home inspectors in rural areas. Accordingly, the rule prescribes a course of study that will be required of all prospective applicants, including those in rural areas. In addition, Article 12-B does not provide the Department of State with authority to exempt applicants who live in rural areas of the State.

(e) Rural area participation:

Because the rule will apply in all areas of the State, the Department of State could not identify any practical way to notify interested parties in all of rural areas of the State. However, the Department of State worked closely with New York State Association of Home Inspectors, many of whose members practice as home inspectors in rural areas of the State.

**Job Impact Statement**

This rule will not have any substantial adverse impact on jobs and employment opportunities. Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law requires that an applicant for a home inspection license provide proof of having completed a course of study of at least 140 hours as approved by the Secretary of State. If this rule was not adopted, home-inspector schools would not be able to offer approved courses and, accordingly, students would be unable to obtain the required 140 hours of study required of an applicant for a home inspector's license. Therefore, this rule will promote employment opportunities for those who will teach the courses and for those students who aspire to become licensed home inspectors.

## EMERGENCY RULE MAKING

### General Liability Insurance for Licensed Home Inspectors

**I.D. No.** DOS-46-05-00006-E

**Filing No.** 1296

**Filing date:** Oct. 28, 2005

**Effective date:** Oct. 28, 2005

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

**Action taken:** Addition of Part 197 and Subpart 197-1 to Title 19 NYCRR.

**Statutory authority:** Real Property Law, sections 444-k and 444-l

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

**Specific reasons underlying the finding of necessity:** This rule was adopted on an emergency basis to preserve the public welfare. Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law provides, in part, that, on and after December 31, 2005, no person shall conduct a home inspection for compensation unless such person is licensed as a home inspector pursuant to Article 12-B. Further, section 444-k of Article 12-B provides that every licensed home inspector shall secure, maintain and file with the Secretary of State proof of a certificate of liability coverage, the terms and conditions of which shall be determined by the Secretary of State. Accordingly, in order to ensure that prospective applicants will know, prior to December 31, 2005, the terms and conditions of the required liability coverage, this rule has been adopted on an emergency basis.

**Subject:** General liability insurance for licensed home inspectors.

**Purpose:** To establish the type and amount of liability coverage that will be required of licensed home inspectors.

**Text of emergency rule:** A new Part 197 and Subpart 197-1 of Title 19 of the NYCRR are adopted to read as follows:

Part 197

Home Inspectors

Subpart 197-1 Business practices and standards

Section 197-1.1 Liability Coverage

(a) Every applicant and every licensed home inspector shall secure, maintain, and file with the Department of State proof of general liability insurance of at least \$150,000 per occurrence and \$500,000 in the aggregate.

(b) Every proof of liability coverage shall provide that cancellation or nonrenewal of the policy shall not be effective unless and until at least ten days' notice of intention to cancel or nonrenew has been received in writing by the Secretary of State.

(c) In addition, every proof of liability coverage shall include the following information:

(1) the name and business address of the insured;

(2) the name, business address and telephone number of insurance company;

(3) the policy number;

(4) the term of the policy; provided, however, that the proof of liability coverage shall provide that the coverage shall not expire until a notice of intention to cancel or non-renewal has been received in writing by the Secretary of State at least ten days prior to the date of cancellation or non-renewal;

(5) a statement indicating that the policy provides general liability coverage of at least \$150,000 per occurrence and \$500,000 in the aggregate.

**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 January 25, 2006.

**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:

The Real Property Law, Section 444-d, provides, in part, that on and after December 31, 2005, no person shall perform a home inspection for compensation unless such person is licensed as a home inspector. Further, Section 444-k of Article 12-B provides that every licensed home inspector shall secure, maintain and file with the Secretary of State proof of a certificate of liability coverage, the terms and conditions of which shall be determined by the Secretary of State. In addition, the Real Property Law, Section 444-l, authorizes the Department of State to adopt such rules and regulations as shall be necessary to implement the home-inspection licensing program. This rule establishes the type and amount of the liability coverage that will be required of licensed home inspectors. Accordingly, the Department of State has express authority to adopt this rule.

2. Legislative objectives:

By enacting Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law, the Legislature sought, in part, to ensure that home inspectors would be qualified by training and experience and that home inspectors would maintain liability coverage, the terms and conditions of which would be determined by the Department of State. This rule establishes the type and amount of the liability coverage that will be required of licensed home inspectors. Accordingly, this rule advances the objectives that the Legislature sought to advance when it enacted Article 12-B.

3. Needs and benefits:

The rule is needed because, without the rule, home-inspector applicants could not comply with Real Property Law, Section 444-k, which requires that an applicant obtain and file with the Department of State proof of liability coverage, the terms and conditions of which shall be prescribed by the Department of State. By adopting this rule, the Department of State has ensured that home-inspector applicants can obtain liability coverage that will allow the applicants to comply with Section 444-k.

4. Costs:

a. Costs to regulated parties:

The Department of State solicited comments and costs from several insurance agents, and the estimated cost was \$500 per year for general liability insurance in the amount of \$150,000 per occurrence and \$500,000 in the aggregate.

b. Costs to the Department of State:

The Department of State anticipates that the cost of implementation and continued administration of this rule will be minimal and that implementation and administration will be accomplished using existing resources.

c. Cost to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The Real Property Law, Section 444-k, provides that every licensed home inspector shall secure, maintain and file with the Department of State proof of liability coverage. This rule provides that the proof of liability coverage shall contain the following information:

- (1) the name and business address of the insured;
- (2) the name, business address and telephone number of insurance company;
- (3) the policy number;
- (4) the term of the policy; provided, however, that the proof of liability coverage shall provide that the coverage shall not expire until a notice of intention to cancel or non-renewal has been received in writing by the Secretary of State at least ten days prior to the date of cancellation or non-renewal;
- (5) a statement indicating that the policy provides general liability coverage of at least \$150,000 per occurrence and \$500,000 in the aggregate.

7. Duplication:

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

8. Alternatives:

The Department of State was advised by several insurance agents that there are three basic forms of liability coverage available to businesses. They are automobile liability insurance, general liability insurance, and errors-and-omissions liability insurance. The Department of State decided to require general liability insurance. Automobile liability insurance was rejected as an option because it is already required by State law for any vehicle registered in the State of New York. Errors-and-omissions liability insurance was rejected because the Legislature had not specified errors-and-omissions liability insurance. An early version (A. 76-A) of Article 12-B had specified errors-and-omissions insurance in the amount of \$500,000 per occurrence. However, the final version (A. 76-B) dropped the errors-and-omissions liability insurance and substituted "liability coverage, which terms and conditions shall be determined by the Secretary of State. . ." Accordingly, the Department of State interpreted that change as an indication that the Legislature did not intend to require that home inspectors obtain errors-and-omissions liability insurance.

9. Federal standards:

There are no federal standards prescribing insurance for licensed home inspectors. Accordingly, this rule does not exceed any existing federal standard.

10. Compliance schedule:

The Department of State anticipates that home inspectors will be able to immediately comply with this rule.

**Regulatory Flexibility Analysis**

1. Effect of rule:

The rule will affect persons wishing to become licensed as home inspectors. However, the Department of State is not able to predict how many persons intend to become licensed as home inspectors. The Department believes that all such persons can be classified as small businesses for the purpose of this analysis.

The rule does not apply to local governments.

2. Compliance requirements:

The reporting and recordkeeping requirements are detailed in section 6 of the Regulatory Impact Statement. Those requirements will affect the small businesses identified in section 1 of this Analysis.

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

3. Professional services:

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

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

4. Compliance costs:

Estimates of the costs of compliance are detailed in section 4 of the Regulatory Impact Statement.

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

5. Economic and technological feasibility:

The estimated cost of compliance, as set forth in section 6 of the Regulatory Impact Statement, suggests that it will be economically feasible for small businesses to comply with the rule. Compliance with the rule will not require any technical expertise.

The rule does not affect local governments.

6. Minimizing adverse economic impact:

Since all of the regulated parties are assumed to be small businesses, the rule does not adversely impact small businesses relative to large busi-

nesses. Accordingly, differing reporting or compliance requirements for small businesses was not a practical option. In addition, the nature of the rule does not lend itself to the adoption of performance standards, and the rule, which follows a statutory mandate, does not allow for exceptions. Accordingly, although the Department considered the approaches suggested in State Administrative Procedure Act, Section 202-b(1), the Department did not adopt any of those approaches.

7. Small business and local government participation:

The Department of State solicited and received comment from the New York State Association of Home Inspectors, which has members who work in rural areas.

Since the rule would not affect local governments, the Department did not solicit comment from local governments.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

This rule will apply equally to all home-inspector applicants in all areas of the State—urban, suburban and rural.

2. Reporting, recordkeeping and other compliance requirements:

(1) The reporting, recordkeeping and other compliance requirements are set forth fully in Section 6 of the Regulatory Impact Statement.

(2) Home-inspector applicants in rural areas will not need to employ any professional services in order to comply with this rule.

3. Costs:

The estimated compliance cost is set forth in Section 4 of the Regulatory Impact Statement. The Department of State does not anticipate that the estimated cost will vary significantly for different types of public or private entities in rural areas.

4. Minimizing adverse impact:

The Real Property Law, Section 444-k, requires that a licensed home inspector file with the Department of State proof of liability coverage, the terms and conditions of which shall be determined by the Secretary of State. Since a home inspector can inspect homes in any part of the State, the rule prescribes the same insurance requirement for all home inspectors. Further, Article 12-B does not provide the Department of State with authority to exempt home inspectors who live and work in rural areas.

5. Rural area participation:

Because the rule will apply in all areas of the State, the Department of State could not identify any practical way to notify interested parties in all of rural areas of the State. However, the Department of State worked closely with New York State Association of Home Inspectors, many of whose members practice as home inspectors in rural areas of the State.

**Job Impact Statement**

This rule will not have any substantial adverse impact on jobs and employment opportunities. Section 444-k of the Real Property Law requires that an applicant for a home inspection license provide the Department of State with proof of having liability coverage, the terms and conditions of which shall be determined by the Secretary of State. If this rule were not adopted, prospective applicants could not comply with Section 444-k. Therefore, this rule will promote employment opportunities by ensuring that applicants can comply with Section 444-k and, thereby, qualify for a license as a home inspector.

**NOTICE OF CONTINUATION  
NO HEARING(S) SCHEDULED**

**Apartment Information Vendors**

**I.D. No.** DOS-24-05-00003-C

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

**The notice of proposed rule making**, I.D. No. DOS-24-05-00003-P was published in the *State Register* on June 15, 2005.

**Subject:** Apartment information vendors.

**Purpose:** To better regulate the apartment information vendor industry in light of the increased use of the internet as a tool for the distribution of apartment information and repeal obsolete rules that made compliance and regulation difficult.

**Substance of rule:** Amend sections 190.1, 190.2, 190.3, 190.6 and 190.7 and repeal sections 190.4 and 190.8 of Title 19 NYCRR.

**Changes to rule:** No substantive changes have been made to the rule as originally proposed at this time. However, it is anticipated that a Notice of Revised Rule Making will be submitted in the near future.

**Expiration date:** June 15, 2006.

**Text of proposed rule and changes, if any, may be obtained from:** Whitney A. Clark, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: wclark@dos.state.ny.us

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

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## Office of Temporary and Disability Assistance

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

#### Public Assistance Employment Programs

**I.D. No.** TDA-46-05-00002-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 repeal Part 1300 of Title 12 NYCRR; amend Parts 358 and 387; and add Part 385 to Title 18 NYCRR.

**Statutory authority:** L. 2005, ch. 57, part C; and Social Services Law, sections 20(3)(d), 34(3)(f) and art. 5, title 9-B

**Subject:** Public assistance employment programs.

**Purpose:** To transfer the regulations concerning public assistance employment programs from the Department of Labor to the Office of Temporary and Disability Assistance.

**Substance of proposed rule (Full text is posted at the following State website: [www.otda.state.ny.us](http://www.otda.state.ny.us)):** The proposed amendments transfer the public assistance employment program regulations, currently located in 12 NYCRR Part 1300, to 18 NYCRR Part 385. The transfer of these regulations implements the provisions of Part C of Chapter 57 of the Laws of 2005 which transferred responsibility for the public assistance employment program from the Department of Labor to the Office of Temporary and Disability Assistance. The regulations that are being transferred from the Department of Labor to the Office of Temporary and Disability Assistance were revised only to refer to correct regulatory citations required by the transfer. In addition, the proposed regulations amend several sections in 18 NYCRR Part 358 concerning fair hearings. Those amendments change references to sections in Part 1300 of 12 NYCRR to sections in Part 385 of 18 NYCRR. The proposed amendments also amend several sections in Part 387 of 18 NYCRR (Food Stamps Program) to delete references to a repealed section of 18 NYCRR and to refer to sections in 18 NYCRR Part 385.

The purpose of the proposed amendments is solely to effect a transfer of responsibility for the public assistance employment program regulations from the Department of Labor to the Office of Temporary and Disability Assistance. It is not the intent of the transfer of responsibility to make any substantive changes to the regulations.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ann Grace, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-9498

**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

Set forth below is the justification of the Office of Temporary and Disability Assistance for the determination that no person is likely to object to the adoption of the rule as written.

The proposed amendments transfer the public assistance employment program regulations, currently located in 12 NYCRR Part 1300, to 18 NYCRR Part 385. The transfer of these regulations implements the provisions of Part C of Chapter 57 of the Laws of 2005 which transferred responsibility for the public assistance employment program from the Department of Labor to the Office of Temporary and Disability Assistance. The regulations that are being transferred from the Department of Labor to the Office of Temporary and Disability Assistance were revised only to refer to correct regulatory citations required by the transfer. In addition, the proposed regulations amend several sections in 18 NYCRR Part 358 concerning fair hearings. Those amendments change references to

sections in Part 1300 of 12 NYCRR to sections in Part 385 of 18 NYCRR. The proposed amendments also amend several sections in Part 387 of 18 NYCRR (Food Stamps Program) to delete references to a repealed section of 18 NYCRR and to refer to sections in 18 NYCRR Part 385.

The purpose of the proposed amendments is solely to effect a transfer of responsibility for the public assistance employment program regulations from the Department of Labor to the Office of Temporary and Disability Assistance. It is not the intent of the transfer of responsibility to make any substantive changes to 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.

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## Workers' Compensation Board

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

#### Waiver Agreements

**I.D. No.** WCB-46-05-00003-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 amend section 300.36 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117, 141 and 32

**Subject:** Waiver agreements pursuant to section 32.

**Purpose:** To provide for the administrative review of waiver agreements.

**Text of proposed rule:** Subdivision (b) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(b) Any agreement submitted to the board for approval shall be on a form prescribed by the chair or, alternatively, contain the information prescribed by the chair. [For the purposes of section 32 of the Workers' Compensation Law and this section, an agreement shall be deemed submitted when it is received by the board at the time a hearing is conducted to question the parties about the agreement. No agreement shall be approved for a period of 10 calendar days after submission to the board.]

Subdivision (c) of section 300.36 of Title 12 NYCRR is amended to read as follows:

(c) The [submission] receipt of an agreement [to] by the board for approval shall act as a stay on all related proceedings before the board.

Subdivision (e) is renumbered (f), a new subdivision (e) is added and renumbered (f) is amended to read as follows:

(e) *The agreement shall be reviewed by the chair, a designee of the chair, a member of the board, or a Workers' Compensation Law Judge, who will make a determination whether to approve or disapprove the agreement. The chair, designee of the chair, member of the board, or Workers' Compensation Law Judge reviewing the agreement may approve or disapprove the agreement administratively, based on a review of the record before the board, or may choose to schedule a meeting to question the parties about the agreement. If the agreement is reviewed administratively, the Board shall advise the parties in writing of the date the agreement shall be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section. If a meeting is scheduled to question the parties about the agreement, the agreement will be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section at such meeting. No agreement shall be approved for a period of 10 calendar days after submission to the board.*

([e]f) The board will advise the parties of the approval or disapproval of all agreements by duly filing and serving a notice of [decision] approval or disapproval.

Subdivisions (f), (g), (h) and (i) of Section 300.36 of 12 NYCRR are renumbered (g), (h), (i) and (j).

**Text of proposed rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Workers' Compensation Board,

Office of General Counsel, 20 Park St., Albany, NY 12207, (518) 486-9564, e-mail: officeofgeneralcounsel@wcb.state.ny.us

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.36. Workers' Compensation Law Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Workers' Compensation Law Section 117(1) further authorizes the Board to adopt reasonable rules consistent with the provisions of the Workers' Compensation Law and the Labor Law.

Section 141 of the Workers' Compensation Law provides that the Chair shall be the administrative head of the Board and authorizes the Chair, in the name of the Board, to enforce all the provisions of the WCL and to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports. Section 142 of the Workers' Compensation Law confers upon the Board the power to hear and determine all claims for compensation or benefits and to approve agreements.

Section 32 of the Workers' Compensation Law provides that whenever a claim for workers' compensation has been filed, the claimant or the deceased claimant's dependents and the employer or its insurance carrier may enter into a written agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. Such agreement shall not be binding unless approved by the Board. Once approved by the Board, the agreement shall be final and conclusive upon the parties. An agreement may be modified at any time by written agreement of all the interested parties provided it is approved by the Board.

##### 2. Legislative objectives:

Section 73 of Chapter 635 of the Laws of 1996 amended Section 32 of the Workers' Compensation Law to permit the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents. This rule would amend the regulations adopted in 1997 implementing Section 73 of Chapter 635 of the Laws of 1996 to provide for the administrative review of waiver agreements.

##### 3. Needs and benefits:

Prior to the enactment of Section 73 of Chapter 635 of the Laws of 1996, a workers' compensation claimant was not permitted to permanently waive his or her right to benefits under the Workers' Compensation Law (hereinafter "WCL"). The 1996 amendment to WCL § 32 permits the parties to a workers' compensation claim to enter into an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, subject to approval by the Board. At first, few waiver agreements were submitted to the Board, and a meeting was held before a Board Commissioner in all cases to question the parties about the agreement. However, in the late 1990's, the number of waiver agreement submitted to the Board increased so dramatically that it was not feasible to hold a meeting in every case in which an agreement was filed. Moreover, most agreements submitted to the Board were routine. Beginning in 2000, Board Commissioners began reviewing routine agreements administratively, without holding a meeting to discuss the agreement with the parties. The majority of settlement agreements are reviewed and approved by the Board without the need for a meeting with the parties. On April 22, 2004, the Appellate Division, Third Department rendered a Memorandum and Order in *Matter of Hart v. Pageprint/Dekalb*, 6 A.D.3d 947, 775 N.Y.S.2d 195 (3rd Dept. 2004), finding that the administrative review of waiver agreements was invalid insofar as it conflicted with the terms of 12 NYCRR 300.36. On April 29, 2004, the Board filed an emergency regulation with the Department of State, effective immediately, to amend 300.36 to permit the Board to review waiver agreements submitted pursuant to Workers' Compensation Law § 32 administratively.

The purpose of this amendment is to permanently amend 12 NYCRR 300.36, consistent with WCL § 32, to permit the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting with the parties.

Permitting the Board to review and approve or disapprove routine waiver agreements administratively, without the need for a meeting benefits all participants to the workers' compensation system. The Board receives approximately 1,000 new waiver agreements each month. Requiring meetings for all waiver agreements would greatly increase the length of

time it would take to review each agreement, as the Board has limited calendar time and only a small number of Board Commissioners. Additionally, claimants would be required to take time during the work day to appear at a Board district office for the meeting. The waiver agreements that are reviewed administratively are routine and the claimants represented. The Board is working to ensure that the parties who have entered into a routine waiver agreement have that agreement reviewed and a decision issued without delay. By redirecting the simple or routine cases from the meeting calendar and processing them administratively, the complex cases that remain on the meeting calendar will progress more quickly.

In addition, this proposed amendment makes two minor changes to 12 NYCRR 300.36 which reflect the current practice of the Board, and have minimal impact on regulated parties. These changes (1) require the Board to stay all proceedings in a case upon the receipt by the Board of a waiver agreement and (2) reflect that the written approval or disapproval by the Board of a waiver agreement is a "notice of approval" or "notice of disapproval," rather than a "notice of decision."

In essence this rule conforms the regulations to practices and procedures that have been in effect since 2000.

##### 4. Costs:

The proposed amendment will not result in any new or additional costs to private regulated parties, State, local governments or the Workers' Compensation Board. This proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not require personal appearances before the Board by the parties. By eliminating the need for personal appearances before the Board for all waiver agreements, parties will experience savings in travel costs, appearance costs and claimants will not have to take time away from work to attend.

##### 5. Local government mandates:

Approximately 2,511 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 in the workers' compensation system, this proposal merely adds a second process for the review and approval or disapproval of waiver agreements, which does not require personal appearances before the Board by the parties.

##### 6. Paperwork:

The proposed amendment does not add any reporting requirements.

##### 7. Duplication:

This amendment will not duplicate any existing Federal or State requirements.

##### 8. Alternatives:

One alternative discussed was to hold a meeting in every case to question the parties about the agreement submitted. However, in most instances, waiver agreements submitted to the Board are routine, questioning of the parties concerning the agreement is not necessary, and a meeting would result in a delay in the processing of such agreements. Pursuant to the proposed amendment, the Board could schedule a meeting to discuss the agreement with the parties when circumstances so warrant.

Representatives of the Board have been meeting with different constituent groups across the State at which this topic is discussed. At a meeting with representatives of both carriers and claimants, it was suggested, to improve the administrative process and alleviate concerns expressed, that the Board modify its internal processing when reviewing waiver agreements administratively. The Board is currently reviewing this suggestion to determine impact and feasibility of implementation.

##### 9. Federal standards:

There are no federal standards applicable to this proposed amendment.

##### 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 2,511 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.

Small businesses that are self-insured will also be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

Small businesses which are self-insured employers and self-insured local governments may voluntarily enter into waiver agreements settling

upon and determining claims for compensation. This amendment will speed the processing and approval of such agreements.

2. Compliance requirements:

The amendment will not require any additional reporting or record-keeping by small businesses or local governments.

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. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers' Compensation Law § 32.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed amendment. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed amendment to comply.

6. Minimizing adverse impact:

This proposed amendment 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 participation and local government participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure small business and local government entities. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement submitted, the majority of comments received support the amendment allowing the Board to review and approve routine agreements administratively.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The rule applies to all claimants, insurance carriers and self-insured employers in all rural areas of the state which are subject to the provisions of the Workers' Compensation Law.

2. Reporting, recordkeeping and other compliance requirements:

The amendment will not impose any additional reporting, recordkeeping or compliance requirements on regulated parties in rural areas.

3. Costs:

This proposal will not impose any compliance costs on rural areas. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to Workers' Compensation Law § 32.

4. Minimizing adverse impact:

This proposed amendment is designed to minimize adverse impact for regulated parties in rural areas. This proposed amendment provides only a benefit to regulated parties in rural areas.

5. Rural area participation:

On April 29, 2004, the Board filed an emergency regulation with the Department of State to amend 300.36 to permit the Board to review routine waiver agreements administratively. After the adoption of the emergency amendment to 300.36, the Board received comments from members of the regulated community, including third-party administrators and insurance carriers who represent and insure employers in rural areas. While some members of the regulated community have indicated a preference that a meeting be held in every case to question the parties about the agreement, the majority of comments received supported the amendment allowing the Board to review and approve routine agreements administratively.

**Job Impact Statement**

The proposed amendment will not have an adverse impact on jobs. This amendment is intended simply to speed the processing and approval of waiver agreements submitted pursuant to WCL § 32 and will therefore ultimately benefit the participants to the workers' compensation system.

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

**Alternative Dispute Resolution Claims Board**

**I.D. No.** WCB-46-05-00004-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 amend section 314.2(d)(5) and add section 314.8 to Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 25(2-c), 117(1) and 141

**Subject:** Written reports of injury in Alternative Dispute Resolution (ADR) claims and board resolution of certain issues arising in ADR claims but not subject to the ADR program.

**Purpose:** To amend the time for filing reports of injury in ADR claims and set forth a procedure for board resolution of certain issues arising in ADR claims which are not subject to the ADR program.

**Text of proposed rule:** Paragraph (5) of subdivision (d) of Section 314.2 of Title 12 NYCRR is hereby amended to read as follows:

(5) a report of injury shall be submitted to the board on an ADR-1 form by the party designated in the agreement within [30] *ten* days after the accident occurs. The board shall assign a file number to the claim;

A new Section 314.8 of Title 12 NYCRR is hereby adopted to read as follows:

*Board Adjudication of Certain Issues*

(a) *Special Funds applications:* Any employer participating in an alternative dispute resolution program pursuant to Section 25(2-c) of the Workers' Compensation Law, or such employer's carrier or third party administrator, that seeks relief pursuant to Sections 14(6), 15(8) or 25-a of the Workers' Compensation Law, shall, at the time its application is filed with the Special Funds Conservation Committee, also file a copy of the application with the board and all affected parties.

(b) *Other applications:* Any such employer, or its carrier or third party administrator, that submits an application for relief involving a claim that is not subject to the same Section 25(2-c) alternative dispute resolution program shall file a copy of its application with the board and all affected parties simultaneously. Such applications may include, but are not limited to, requests for approval of a settlement agreement pursuant to Workers' Compensation Law Section 32 and/or an apportionment of liability pursuant to the Workers' Compensation Law.

(c) *Negotiated resolution:* In the event the parties reach an agreement regarding an application for relief described in subdivision (a) or (b) of this section, a copy of the agreement, signed by an authorized individual for each party, shall be submitted to the board for review. The board shall issue a written decision approving the agreement unless it finds that the agreement is unfair, unconscionable, or improper as a matter of law. No agreement entered into under this subdivision shall become effective until approved by the board. Decisions approving an agreement described in this subdivision shall not be reviewable under Section 23 of the Workers' Compensation Law absent evidence that the agreement is the result of an intentional misrepresentation of a material fact by, or was induced by fraudulent behavior on the part of, a signatory to the agreement or their agent. If the board disapproves a submitted agreement, it shall issue a written decision stating the reasons for such disapproval. Decisions disapproving an agreement shall be reviewable under Section 23 of the Workers' Compensation Law.

(d) *Adjudication:* In the event the parties are unable to reach an agreement regarding an application for relief described in subdivision (a) or (b) of this section, the applicant may request that the board adjudicate the issue or issues raised in the application. Upon receipt of such request, the board shall schedule a hearing before a Workers' Compensation Law Judge or other board attorney for the purpose of resolving the disputed issue or issues. Decisions issued by a Workers' Compensation Law Judge or board attorney pursuant to this subdivision shall be reviewable under Section 23 of the Workers' Compensation Law.

(e) *Nothing herein shall in any way affect or be deemed to modify the statutory agreement approval provisions of Workers' Compensation Law Section 32.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Workers' Compensation Board, Office of General Counsel, 20 Park St., Albany, NY 12207, (518) 486-9564, e-mail: officeofgeneralcounsel@wcb.state.ny.us

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

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

**Regulatory Impact Statement**

1. Statutory Authority:

The Workers' Compensation Board (Board) is authorized to amend 12 NYCRR Part 314. Workers' Compensation Law (WCL) § 117(1) autho-

rizes the Chair of the Board to make reasonable regulations consistent with the provisions of the WCL and the Labor Law. WCL § 141 authorizes the Chair to make administrative regulations providing in part for the receipt, indexing and examining of all notices, claims and reports. WCL § 25(2-c)(a) provides that for the purposes of employments classified under Sections 220, 240, and 241 of the Labor Law, an employer and a recognized or certified exclusive bargaining representative of its employees may include within their collective bargaining agreement provisions to establish an alternative dispute resolution system to resolve any claims arising under this chapter.

#### 2. Legislative Objective:

By Chapter 491 of the Laws of 1995 and extended until December 30, 2005 (Chap. 464 of the Laws of 1999) the legislature amended Workers' Compensation Law § 25 to permit, by negotiated labor agreement, a non-WCB arbitration and/or mediation claim process for employers and employees in the unionized construction industry. As a result, there are now four operating workers' compensation alternative dispute resolution ("ADR") programs in New York State. The proposed rule would amend one provision of the regulations adopted in 1996 to implement Chapter 491 regarding the time period for which a report of injury is submitted to the Board and would add a new section to the regulations dealing with Board approval or adjudication of certain issues not subject to WCL § 25(2-c).

#### 3. Needs and Benefits:

Workers' Compensation Law § 110(2) requires a non-ADR employer to file an accident report with the Board within ten (10) days of the date of accident. Presently, 12 NYCRR § 314.2(d)(5) requires an ADR employer to file an injury report within thirty (30) days of an accident. The requested regulation modification will reduce the amount of time for an ADR employer to file an injury report from thirty (30) days to ten (10) days and will make the ADR employer's time to file an injury report the same as is statutorily required for non-ADR employers. This portion of the rule is consistent with the legislature's objective of promoting the prompt resolution of workers' compensation claims.

It is important for ADR-1s to be filed promptly and at the same time as C-2 accident reports so the Board can quickly identify and separate ADR cases from traditional WCB claim processes. The ADR-1 is the initial and primary indicator that a particular claim is an ADR claim and needs to be segregated from non-ADR workers' compensation claim processing. In the absence of an ADR-1, Board personnel might assume a case is a "regular" compensation case and process the case accordingly. This can result in an ADR case being adjudicated by the Board in the traditional fashion, which defeats the purpose of the alternative dispute resolution process and may cause additional, unnecessary work for corrective action.

A uniform accident report filing date will generate consistency in accident report filing requirements and will assist the Board in accurately and promptly identifying ADR cases for segregation from customary WCB adjudication processes. Additionally, a uniform rule will reduce potential confusion amongst employers as to when accident reports need to be filed with the Board.

WCL § 25(2-c) allows employers and employee representatives covered by the statute to establish an alternative dispute resolution system to resolve claims under the WCL. However, there are some issues that may arise within these claims that are outside the scope of WCL § 25(2-c). These issues can include Section 32 settlement agreements involving non-ADR employers, and situations where an ADR employer is seeking financial relief from the Second Injury Fund or Fund for Re-Opened Cases (Special Funds) represented by the Special Funds Conservation Committee (SFCC), a non-ADR employer or an employer from another ADR program. The Special Funds Conservation Committee, Special Funds it represents and employers not covered under a particular ADR program are not subject to the jurisdiction of the ADR program and are not signatories to the collective bargaining agreement containing the ADR program provisions. The Board is also not a signatory to such collective bargaining agreements. Currently ADR employers seeking Special Funds reimbursement or apportionment of liability from an employer not covered under its ADR agreement have no way to obtain binding determinations against these entities. However, the Board retains jurisdiction over all claims and can address issues in ADR claims where an entity involved is not governed under the ADR agreement. The proposed rule would recognize and clarify the Board's continuing jurisdiction and remedy this problem by requiring that these issues be resolved by either a Board approved negotiated settlement or adjudication by the Board through its traditional processes.

A new section 314.8 makes clear that any applications regarding an issue in a claim that are outside the WCL § 25(2-c) process are to be filed with the affected parties and the Board. Any negotiated settlement regard-

ing these issues would go to the Board for approval, and if approved would not be reviewable under WCL § 23. If the parties cannot reach an agreement on an application, the applicant may request that the Board adjudicate the issue. Decisions by the Board would be reviewable under WCL § 23. Nothing in 314.8 is meant to affect or modify the legal requirements for agreements under WCL § 32.

This clearly delineated procedure contained in Part 314 will avoid delays and confusion in the alternative dispute resolution process. This portion of the rule is consistent with the Legislature's objectives as it removes a financial disincentive (the unavailability of Special Funds reimbursement, apportionment of liability, and/or the ability to make final settlement of claims) for eligible employers to participate in ADR programs. Without the rule, ADR employers could be denied access to financial relief that non-ADR employers routinely obtain. Such denial is not equitable or appropriate, especially with respect to Special Funds reimbursement, as all employers, including ADR participants, are statutorily required to pay the assessments that fund the Special Funds. Without this regulation change, employers who are ADR participants are paying assessments the same as all other employers, but unlike non-ADR participating employers, they cannot obtain reimbursements from the Special Funds. The changes in this rule eliminate this inequity.

#### 4. Costs:

No additional costs for the agency or its constituents are envisioned for the amendment to 314.2(d) (5). In fact, costs may be reduced as it is anticipated that the prompt filing of ADR-1s, concurrently with the present C-2 filing requirement, will reduce the need for post-report filing corrective action that is sometimes needed to remove an ADR case from traditional Workers' Compensation Board claim processes.

Additional costs for the addition of 314.8 will be minimal and should be limited to photocopying, mailing costs, and legal fees associated with applications for relief. The Board's costs will consist of those associated with reviewing and approving negotiated agreements and holding hearings in cases where parties are unable reach an agreement regarding an ADR employer's request for financial relief. As the ADR program is limited in scope and participants, costs are expected to be minor and will be outweighed by the benefits of receiving Special Funds reimbursement and/or apportionment with a non-ADR employer.

#### 5. Local Government Mandates:

There are no local governments who are participants in an ADR program. Therefore the change to 314.2 will have no effect on any local governments. The addition of 314.8 will affect local governments who may be responsible for a portion of a claim originally thought to be the sole responsibility of an ADR employer. Such local governments would be subject to the processes outlined in 314.8.

#### 6. Paperwork:

No additional paperwork will be required as a result of the amendment of 314.2(d)(5). In fact, a uniform rule will likely reduce paperwork needed to rectify potential improper initial processing of ADR cases.

Some additional paperwork will be required for 314.8 as the rule requires applications to the Board and other affected parties and requires applicants to either make a request to the Board for the approval of a negotiated settlement or make a request to the Board to adjudicate an issue. However, the filing of applications ensures access of ADR participants to benefits which may otherwise have been denied.

#### 7. Duplication:

There is no duplication as this is a unique program administered solely by the WCB.

#### 8. Alternatives:

There are no viable alternatives for 314.2(d)(5). A regulatory filing deadline of thirty (30) days presently exists. This proposal will reduce this deadline to ten (10) days for consistency with Workers' Compensation Law § 110(2). This will assist the Board to accurately and promptly process an ADR case.

There are no viable alternatives for the addition of 314.8. The issues addressed in 314.8 cannot be handled within the ADR process and are for the Board to resolve either through the approval of a negotiated settlement or by adjudication. This proposal ensures the Board can resolve these issues within its sole jurisdiction, but only at the request of the parties, so Board involvement in the ADR process is kept to a minimum.

#### 9. Federal Standards:

There are no federal standards applicable.

#### 10. Compliance Schedule:

Affected parties will be able to achieve compliance with the rule upon its adoption.

### **Regulatory Flexibility Analysis**

## 1. Effect of Rule:

Approximately 500 businesses within 4 program groups participate in the ADR program. As a result of the amendment to 314.2 the small businesses within the ADR program will be required to file an ADR-1 within 10 days of an injury as opposed to within 30 days as was required by the previous rule. The change to 314.2 will not affect local governments because no local governments participate in the ADR program.

The new 314.8 requires small businesses (or their carriers or third party administrators) within the ADR program seeking relief involving a claim not subject to WCL § 25(2-c) to file an application with the Board and all affected parties. These issues will be resolved either by a negotiated settlement which must be approved by the Board or be resolved by the Board through its adjudication process. Non-ADR small businesses and local governments who may be responsible for a portion of a claim initially thought to be the sole responsibility of an ADR employer are also subject to the processes outlined in 314.8.

## 2. Compliance Requirements:

The amendment to 314.2 requires that an ADR-1 be filed within 10 days of the injury instead of 30 days. The new requirement deals solely with the time period in which to file a report of injury and brings the ADR time period within which to report injuries into conformance with the time period to file a report of injury for a traditional compensation claim.

The new 314.8 requires small businesses within the ADR program to file an application for relief with the Board and all affected parties. The small businesses must also either request approval of a negotiated settlement or Board adjudication of the issue. It is anticipated that the Board will require the submission of a form or other paperwork seeking either approval of the settlement or adjudication of the issue.

## 3. Professional Services:

It is believed that no additional professional services will be needed to comply with the amendment to 314.2.

It is believed that no additional professional services will be needed to comply with the addition of 314.8. While small businesses and local governments may need legal services to prepare settlement agreements and adjudicate matters before the Board, it is expected that any legal expertise needed would be provided by attorneys who already handle compensation matters for the small businesses and local governments.

## 4. Compliance Costs:

The proposal to amend 314.2 will not impose any compliance costs on small businesses in the ADR program. The only requirement is that the small businesses file the required form earlier than previously required. The filing time period is the same as for regular compensation claims.

Compliance costs for the addition of 314.8 include mailing, photocopying and legal fees for small businesses and local governments are expected to be small and manageable. Annual costs and continuing costs will vary depending on how many applications for relief an ADR small business must file or how many non-ADR small businesses and local governments must address. However, a small outlay in expenditures for ADR small businesses has the potential to result in significant financial relief. Payments by non-ADR employers and local governments are no greater than their liability would normally be under the Workers' Compensation Law.

## 5. Economic and Technological Feasibility:

The economic costs for the rule changes are negligible. There are no known technological costs and it is assumed that small businesses and local governments will be able to comply with the changes.

## 6. Minimizing Adverse Impact:

The amendment to 314.2 is designed to minimize impact to small businesses by having a time period in which to file reports of injury which is uniform. A uniform accident report filing date will generate consistency in accident report filing requirements and will assist the Board in accurately and promptly identifying ADR cases for segregation from customary WCB adjudication processes. Additionally, a uniform rule will reduce potential confusion amongst employers as to when accident reports need to be filed with the Board.

Adverse impact is limited on ADR small businesses because while there are some costs associated with the addition of 314.8, the rule change is necessary to ensure that ADR small businesses have access to financial relief non-ADR employers routinely obtain. Non-ADR small businesses and local governments subject to this rule are not any more adversely impacted than under the traditional workers' compensation system.

## 7. Small Business and Local Government Participation:

The Board is in regular contact with ADR program managers. Prior to proposing these rules, the Board met with some ADR programs and shared copies of the rules, inviting comments, questions, and concerns

with the ADR program. The Board received no comments, and has been questioned by one ADR program as to when this rule will be in effect.

**Rural Area Flexibility Analysis**

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

The changes in the rules apply to all ADR employers. ADR employers are currently located in the eastern part of the state from New York City to Albany. However, 314.8 applies to employers in all areas of the state who may potentially share in a portion of liability for claim with an ADR employer.

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

The amendment to 314.2 changes reporting requirements from 30 to 10 days for any ADR employer, no matter where it is located in the state. However all ADR employers are already required to file an ADR-1. The addition of 314.8 requires ADR employers to file applications with the Board and affected parties for the resolution of issues outside of WCL § 25(2-c). All employers wherever located in the state are potentially subject to 314.8 if an issue arises in a claim as to extent of liability between ADR and non-ADR employers. Additional professional legal services may be needed but should be easily absorbed by the attorneys who presently handle workers' compensation matters for the employers. For non-ADR employers the process is almost identical to existing Board procedure.

## 3. Costs:

No imposition of additional costs is anticipated for the amendment of 314.2. The proposed regulation solely changes the time period in which to file a notice of injury in ADR cases so that it is the same as regular workers' compensation cases.

Additional costs for the addition of 314.8 will be minimal and should be limited to photocopying, mailing costs, and legal fees associated with applications for relief. The Board's costs will consist of those associated with reviewing and approving negotiated agreements and holding hearings in cases where parties are unable reach an agreement regarding an ADR employer's request for financial relief. As the ADR program is limited in scope and participants, costs are expected to be minor and will be outweighed by the benefits of receiving Special Funds reimbursement and/or apportionment with a non-ADR employer. There is no expectation that costs will vary in rural areas.

## 4. Minimizing adverse impact:

The amendment of 314.2 is designed to minimize adverse impact by requiring a report of injury be filed within 10 days as is the requirement for all other claims under the workers' compensation law.

Adverse impact is limited on ADR employers because while there are some costs associated with the addition of 314.8, the rule change is necessary to ensure that ADR employers wherever located within the state have access to financial relief non-ADR employers routinely obtain. Non-ADR employers subject to this rule, wherever located, are not any more adversely impacted than under the traditional workers' compensation system.

## 5. Rural area participation:

The Board is in regular contact with all ADR program managers. Prior to proposing these rules, the Board met with some ADR programs and shared copies of the rules, inviting comments, questions, and concerns with the ADR program. The Board received no comments and has been questioned by one ADR program as to when this rule will be in effect.

**Job Impact Statement**

The amendment to 314.2 will not have an adverse impact on jobs. The amendment merely modifies the time frame in which an ADR employer is required to file an injury report from 30 to 10 days and makes the ADR employer's time to file an injury report the same as what is statutorily required for non-ADR employers.

The addition of 314.8 will not have an adverse impact on jobs. The Board retains jurisdiction of all workers' compensation claims. The new section 314.8 merely acknowledges this fact and outlines the procedure for handling issues that are outside the ADR process which includes Board approval of a negotiated settlement or adjudication.