

# 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 Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-44-05-00003-A  
**Filing No.** 108  
**Filing date:** Jan. 30, 2006  
**Effective date:** Feb. 15, 2006

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

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

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-44-05-00003-P, Issue of November 2, 2005.

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

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-44-05-00004-A  
**Filing No.** 110  
**Filing date:** Jan. 30, 2006  
**Effective date:** Feb. 15, 2006

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from the non-competitive class in the Department of Environmental Conservation and the State University of New York.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-44-05-00004-P, Issue of November 2, 2005.

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

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-44-05-00005-A  
**Filing No.** 106  
**Filing date:** Jan. 30, 2006  
**Effective date:** Feb. 15, 2006

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

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

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-44-05-00005-P, Issue of November 2, 2005.

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

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-44-05-00006-A

Filing No. 107

Filing date: Jan. 30, 2006

Effective date: Feb. 15, 2006

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

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

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-44-05-00006-P, Issue of November 2, 2005.

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

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Jurisdictional Classification

I.D. No. CVS-44-05-00007-A

Filing No. 109

Filing date: Jan. 30, 2006

Effective date: Feb. 15, 2006

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

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

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-44-05-00007-P, Issue of November 2, 2005.

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

**Text of rule may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: Shirley.laplante@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED

## Jurisdictional Classification

I.D. No. CVS-07-06-00002-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by increasing the number of positions of  $\phi$ Secretary 2 from 9 to 10.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED

## Jurisdictional Classification

I.D. No. CVS-07-06-00003-P

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

**Proposed action:** Amendment of the Rules for the Classified Service in Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of State, by adding thereto the position of Local Government Liaison (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P

Department of Economic  
DevelopmentEMERGENCY  
RULE MAKING

## Empire Zones Program

I.D. No. EDV-07-06-00001-E

Filing No. 106

Filing date: Jan. 25, 2006

Effective date: Jan. 25, 2006

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

**Action taken:** Amendment of Parts 10 through 14 of Title 5 NYCRR.

**Statutory authority:** General Municipal Law, art. 18-B, section 959

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

**Specific reasons underlying the finding of necessity:** The reforms enacted in L. 2005, ch. 63 require reconfiguration of the existing Empire Zones by January 1, 2006. Immediate guidance to affected parties is required.

**Subject:** Empire Zones Program.

**Purpose:** To conform the regulations to existing statute and recent statutory amendments (L. 2005, ch. 63) and clarify and improve administrative procedures.

**Substance of emergency rule:** The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2005, as well as a comprehensive review of administrative procedures and existing regulations. The amended laws require the existing Empire Zones to identify revised zone boundaries—that is, placement of zone acreage into “distinct and separate contiguous areas”—to the Department of Economic Development by January 1, 2006. The existing regulations are affected by this requirement, but at the same time the zones need immediate guidance which requires amending the existing regulations in an accelerated fashion. At the same time, the existing regulations contain several outdated references, and the Department has also taken the opportunity to improve its administrative procedures. The Empire Zone regulations contained in 5 NYCRR Parts 10 through 14 are hereby amended as follows:

First, pursuant to Chapter 63 of the Laws of 2000 and Chapter 63 of the Laws of 2005, the emergency rule would reflect the name change of the program from Economic Development Zones to the Empire Zones and add reference to three new tax benefits: the Qualified Empire Zone Enterprise (“QEZE”) Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

Second, the emergency rule would conform the regulations to existing statutory terminology, definitions and practices. For example, an incorrect reference to a local empire zone administrator is being corrected to read local empire zone certification officer or simply, the local empire zone, if applicable. Pursuant to statute, the chief executive officer must ensure that the information on a designation application is accurate and complete, not the local legislative body. The requirements for a shift resolution did not contain all the criteria as set forth in statute. Certain regulatory provisions regarding application for zone designation were not in accord with the statute, such as whether certain information must be contained in local law rather than the application itself. In addition, tracking the statutory changes from Chapter 63 of the Laws of 2005, census tract zones are renamed “investment zones”, county-created zones are renamed “development zones”, and the new term “cost-benefit analysis” is defined. The emergency regulation also tracks the amended statute’s deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

Third, the emergency rule would amend the Department’s discretionary provision that limits the designation of nearby lands in investment zones to 320 acres. Such regulatory limitations are arbitrary and unnecessarily exceed or are inconsistent with State statute, and at the same time place undue limits on the reconfiguration of zones; municipalities cannot effectively utilize zone acreage to create opportunities for business investment and job growth in economically distressed areas that are not necessarily located in eligible or contiguous census tracts. At the same time, the Department is required to provide guidance in regulation on placement of nearby zone lands, and cannot countenance abuse of the program’s requirements on acreage placement. Thus, placement of nearby lands can exceed 320 acres provided that the municipality demonstrates that (1) there is insufficient existing or planned infrastructure within eligible or contiguous tracts to accommodate business development in a highly distressed area, or to accommodate development of strategic businesses or (2) placing up to 960 acres in eligible or contiguous census tracts would be inconsistent with open space and wetland protection or (3) there are insufficient lands available for further business development within eligible or contiguous census tracts or (4) lands previously designated in the eligible or contiguous census tracts that were otherwise suitable for development and have not had any appreciable commercial activity or capital investment or (5) changes to eligible census tracts as a result of the 2000 Census, combined with the requirement in the amended statute that the distinct and separate contiguous areas accommodate already designated lands, alter the amount of nearby acreage used and available for development.

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

zone acreage within eligible or contiguous census tracts, and this provision follows essentially the same method for concentrating acreage within distressed areas as the General Municipal Law employed for census tract zones.

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

Sixth, the emergency rule tracks the new statutory requirement that certain defined “regionally significant” projects can be located outside of the new distinct and separate contiguous areas. There are four categories of projects identified in Chapter 63; only one category of applications, manufacturers projecting the creation of 50 or more jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. The emergency rule identifies a timetable for meeting the minimum job creation requirement: 25% of the minimum jobs required to meet the definition of regionally significant project within 2 years of the date of designation of the project as regionally significant, 50% of the minimum jobs within 3 years, 75% of the minimum jobs within 4 years, and 100% of the minimum jobs within 5 years. Failure to achieve a milestone would trigger a decertification process.

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

Eight, the emergency rule clarifies Chapter 63’s permission for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be “grandfathered” shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

Ninth, the emergency rule tracks Chapter 63’s requirement that new zone development plans, created in the conjunction with the new distinct and separate contiguous areas to be approved by the Empire Zones Designation Board, are to be approved by the Department within 90 days of submission. The emergency rule defines the date of submission for each zone as the date of approval of the distinct and separate contiguous areas by the Empire Zones Designation Board.

Tenth, the emergency rule fulfills the requirements of Chapter 63 to subject all businesses applying for zone benefits to meet a “cost-benefit analysis”. The cost-benefit analysis is to be included in the zone development plan by the applicant municipality. The definition included in the emergency rule lays out the basic formula for calculating the benefits received to the costs incurred.

Eleventh, the emergency rule clarifies the status of community development projects as a result of the reconfiguration of the zones pursuant to Chapter 63. The current regulations require the community development projects to be located in an Empire Zone in order for investments in those projects to qualify for tax benefits. Drawing distinct and separate contiguous areas around community development projects would severely limit the ability of Empire Zones to include as many eligible businesses as possible into the new distinct and separate contiguous areas. Community development projects are not necessarily required to be certified. There is a strong public policy preference for these projects and there is an expectation by their sponsors that they continue to offer tax credits to contributors until fundraising for the projects are completed. To that end, all community development projects approved by the Department before April 1, 2005

would be considered to be located within its respective Empire Zone, and a community development project will be considered to be located in the Empire Zone if it can demonstrate that a zone has been working with the project before April 1, 2005 for the purpose of submitting a boundary revision for inclusion in to the Zone that would include job creation.

Twelfth, the emergency rule would revise the application process in order to ensure timely action and improve efficiency and accountability. For example, the proposed process would no longer require the applicant to submit an application to both the Department and the Department of Labor. In addition, the proposed process allows the applicant to cure incomplete or deficient applications within a set time period.

Lastly, the emergency rule would add certain programmatic information that is helpful to zone administrators, applicants, and practitioners such as the method for determining the effective dates for certifications and boundary revisions.

The full text of the rule is available at [www.empire.state.ny.us](http://www.empire.state.ny.us)

**This notice is intended** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire April 24, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Donald T. Ross, Deputy Commissioner and General Counsel, Department of Economic Development, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: [dtross@empire.state.ny.us](mailto:dtross@empire.state.ny.us)

#### **Regulatory Impact Statement**

##### STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt rules and regulations governing the criteria of eligibility for empire zone designation, the application process, and the joint certification of a business enterprise.

##### LEGISLATIVE OBJECTIVES:

The rule making accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to recent statutory amendments and the remaining revisions conform the regulations to existing statute or clarify administrative procedures of the program. It is the public policy of the State to offer special incentives and assistance that will promote the development of new businesses, the expansion of existing businesses and the development of human resources within areas designated as Empire Zones. The proposed amendments help to further such objectives by enabling the Department of Economic Development to administer the program in a more efficient manner.

##### NEEDS AND BENEFITS:

The emergency rule is required in order to bring the regulations into accord with statute and to improve the overall administration and effectiveness of the program. There are several benefits that would be derived from this emergency rule making. First, the emergency regulations would conform to statutory provisions and thereby eliminate potential confusion to the practitioner. Second, the emergency rule would clarify the application process to ensure timely action and improve efficiency and accountability.

##### COSTS:

I. Costs to private regulated parties (the Business applicants): None. The emergency regulation will not impose any additional costs to the business applicants beyond the existing program. In fact, there may be a cost savings due to a clearer application and the ability to cure application deficiencies rather than being immediately denied.

II. Costs to the regulating agency for the implementation and continued administration of the rule: While there will be additional costs to the Department of Economic Development associated with the emergency rule making, this is a result of the statutory changes which the emergency regulation language tracks or interprets. All existing Empire Zones have to revise their boundaries as a result of the statutory changes, with certain exceptions tied to specific types of business or the timing of certain applications. This results in more paperwork and additional staff time over the course of the next twelve months as the program is reconfigured. However, over time staff and paperwork costs will be minimized because the statutory changes have clarified eligibility for the program and the revised regulations have made procedures for processing applications easier to understand.

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

IV. Costs to local governments (the Local Zone administration): None. The emergency regulation will not impose any additional costs to the local zone administration beyond any additional costs associated with implementing the statutory requirements which reform the program. In the long

term, there may be some cost savings in regards to staff time due to a clarification of program requirements.

##### LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones Program. If a local government chooses to participate, there is a cost associated with local administration. However, this emergency rule does not impose any additional costs to the local governments beyond any additional costs associated with implementing the statutory requirements which reform the program.

##### PAPERWORK:

The emergency rule does create additional paperwork, insofar as the various Empire Zones have to refile applications to reconfigure their Zone acreage, identify regionally significant projects and "grandfathered" businesses where necessary, and process boundary revisions before deadlines enumerated in statute which are reproduced verbatim from the statute.

##### DUPLICATION:

The emergency rule will not duplicate or exceed any other existing Federal or State statute or regulation.

##### ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. Certain alternatives to policies seeking to be adopted were considered in certain subject areas where the Legislature provided some room for interpretation; for example, acreage devoted to existing businesses outside of the reconfigured zone areas, creation of investment zones within development zones, the placement of "nearby" acreage, the location of "grandfathered" businesses and the continuation of community development projects. In each case, interpretation was geared to preserving, to the extent possible, the expectation of benefits for existing zone businesses, making zone reconfiguration as clear as possible for existing zones, and enabling zone acreage to be utilized in the most effective manner. Finally, with regard to the application process, an alternative was considered to include more time for review of the application at the State level. This alternative was rejected because it was determined that certification of a business, which has a complete and sufficient application, should not be delayed.

##### FEDERAL STANDARDS:

There are no Federal standards in regard to the Empire Zones program; it is purely a state program that offers, among other things, state and local tax credits. Therefore, the emergency rule does not exceed any Federal standard.

##### COMPLIANCE SCHEDULE:

The affected State agencies (Economic Development and Labor), local zone administration and the business applicants will be able to achieve compliance with the emergency regulation as soon as it is implemented.

##### **Regulatory Flexibility Analysis**

Participation in the Empire Zones Program is entirely at the discretion of each eligible municipality and business enterprise. Neither General Municipal Law Article 18-B nor the emergency regulations impose an obligation on any local government or business entity to participate in the program. The emergency regulation does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses and/or local governments. In fact, the emergency regulations may have a positive economic impact on the small businesses and local governments that do participate due to clarifying changes, the added flexibility and a new application process. The administrative structure of the program was designed to offer a streamlined application and approval process by extracting only essential information from the applicants. In addition, the changes to the regulations that track changes in statute and result in a reconfiguration of zones will actually enhance the ability of businesses yet to apply which are located in distressed areas to receive program benefits. Local governments will have the additional short-term burden of taking the legal and administrative steps necessary to reconfigure their zones, but this is a statutorily imposed burden, not solely a regulatory one. Because it is evident from the nature of the emergency rule that it will have either no substantive impact, or a positive impact, on small businesses and local governments, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

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

The program is a statewide program. There are eligible municipalities and businesses in rural areas of New York State. However, participation is entirely at the discretion of eligible applicant municipalities and eligible business enterprises. The program does impose some responsibility on those municipalities and businesses which participate in the program such

as submitting applications and reports. The emergency rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency regulation will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

**Job Impact Statement**

The emergency regulation relates to the Empire Zones Program. The Empire Zones Program itself is a job creation incentive. The emergency regulation will not have a substantial adverse impact on jobs and employment opportunities. In fact, the regulations, which result from statutory-based reforms, will enable the program to better fulfill its mission: job creation and investment for economically distressed areas. At the same time, businesses currently receiving benefits will not have their status jeopardized as a result of the regulations. Because it is evident from the nature of the emergency amendment that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Department of Environmental Conservation

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**NOTICE OF ADOPTION**

**Camping Opportunities for People with Disabilities**

**I.D. No.** ENV-36-05-00004-A

**Filing No.** 111

**Filing date:** Jan. 30, 2006

**Effective date:** Feb. 15, 2006

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

**Action taken:** Addition of sections 190.0(b)(10) and 190.3(f) to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101(3)(b), (d), 3-0301(1)(b), (d), (2)(m), 9-0105(1), (3); and Executive Law, section 816(3)

**Subject:** Providing camping opportunities for people with disabilities.

**Purpose:** To provide the Department of Environmental Conservation with the authority necessary to reserve certain accessible campsites for people with disabilities.

**Text of final rule:** Paragraphs (10), (11), (12) and (13) of subdivision 190.0(b) are renumbered paragraphs (11), (12), (13) and (14) and a new paragraph (10) of subdivision 190.0(b) is added to read as follows:

*(10) Person with a disability for the purposes of this Part shall mean a person with a physical impairment that substantially limits one or more of the major life activities of such individual.*

A new subdivision (f) of section 190.3 is added to read as follows:

*No person other than a qualified person with a disability and that person's associated camping group, shall occupy any camping site that the Department has designated as "reserved" for use by persons with disabilities. Eligibility records for determination of qualification shall include: a valid Temporary Revocable Permit for Motor Vehicle Access for Persons With Disabilities or a Non-Ambulatory Hunting Permit as issued by the Department, a Handicapped Parking Permit issued pursuant to Section 1203-a of the Vehicle and Traffic law, an Access Pass issued by the New York State Office of Parks, Recreation, and Historic Preservation or an equivalent certification of disability.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 190.0(b)(10) and 190.3(f).

**Text of rule and any required statements and analyses may be obtained from:** Thomas Wolfe, Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255, (518) 402-9428, e-mail: [tbwolve@gw.dec.state.ny.us](mailto:tbwolve@gw.dec.state.ny.us)

**Additional matter required by statute:** A negative declaration has been prepared in compliance with art. 8 of the Environmental Conservation Law.

**Regulatory Impact Statement**

The non-substantive changes made to the rule clarified the intent of who is eligible to use camping sites that the Department has designated as reserved for use by persons with disabilities and to provide a link to the inclusion of eligibility criteria. Because these changes are clarifications and do not change the intent of the rule, it was not necessary to revise the Regulatory Impact Statement.

**Regulatory Flexibility Analysis**

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

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal.

**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. The proposed rule solely relates to the designation of a limited number of primitive campsites for the exclusive use of persons with disabilities.

**Job Impact Statement**

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed rule solely relates to the designation of a limited number of primitive campsites for the exclusive use of persons with disabilities.

**PROPOSED RULE MAKING HEARING(S) SCHEDULED**

**Clean Water State Revolving Fund Program**

**I.D. No.** ENV-07-06-00021-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 649 of Title 6 NYCRR.

**Statutory authority:** L. 1989, ch. 565

**Subject:** CWSRF Program.

**Purpose:** To conform DEC's CWSRF regulations to current DEC and EFC administrative policies and practices; update the Project Priority System (PPS) for the purpose of ensuring equitable statewide treatment of funding priorities; and integrate the water quality objectives as set forth in the Federal Clean Water Act (CWA) sections 212, 319 and 320.

**Public hearing(s) will be held at:** 1:00 p.m. on April 3, 2006 at William K. Sanford Town Library, 629 Albany Shaker Rd., Loudonville, 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 websites: [www.nysefc.org](http://www.nysefc.org); [www.dec.state.ny.us](http://www.dec.state.ny.us)):** I. Subject:

The proposed revised regulations are for the New York State Water Pollution Control Revolving Fund ("CWSRF"), Section 1285-j of the Public Authorities Law ("PAL"), created and established in the joint custody of the New York State Environmental Facilities Corporation ("EFC") and the New York State Department of Environmental Conservation ("DEC"), by the Legislature pursuant to Chapter 565 of the Laws of 1989.

II. Purpose:

The proposed regulations set forth rules and procedures whereby DEC and EFC can adhere to its current administrative policies and practices and also updates the CWSRF Project Priority System ("PPS") for the purpose of ensuring equitable Statewide treatment of funding priorities and to integrate the water quality objectives set forth in the Clean Water Act ("CWA") Sections 212, 319 and 320.

III. General Substance:

It is proposed to amend the CWSRF regulations found within 6 NYCRR Part 649 in the following manner (Companion regulations found within 21 NYCRR Part 2602 will also be changed):

The proposed regulatory amendments serve to update several important definitions and to phase out inactive program requirements. The proposed amendments will also clarify financing eligibility of private entities carrying out certain water quality improvement projects and payment structures to certain recipients in accordance with state and federal authority. The proposed regulations will also allow for equitable scoring for not only the CWSRF's existing financing programs, but also non-point source ("NPS") projects, national estuary implementation projects and the water quality components of "non-traditional" projects.

In order to implement the expansion of the types of projects eligible for CWSRF financing, certain definitions will have to be amended within the regulations. It is proposed to add a new definition of "recipient" that will encompass both public and private entities, including individuals, partnerships and corporations. This new term will replace the majority of instances in the regulations where "municipality" is used. The definition of "project" will also be amended for the purposes of allowing CWSRF financing to be extended to additional activities anticipated under the CWA, including any activity whose purpose is the preservation, protection and/or improvement of water quality.

A new definition for CWSRF assistance of "Financing" will be included to also provide for non-loan assistance. This new term is defined as meaning any financial assistance from the CWSRF that is permitted under applicable laws and regulations.

It is also proposed that the Priority Ranking System scoring criteria be modified to ensure that unmet water quality needs receive the highest possible scoring. Point adjustments have been made to each scoring criterion to achieve a primary emphasis on water quality improvement and a secondary emphasis on water quality protection. Additional points have been added for projects addressing water quality problems in a DEC approved watershed management plan and for eligible land acquisition projects for which the State has committed interest and there are documented achievable water quality benefits.

It is also proposed that the PPS be expanded to include a new category (Category E) for non-municipal projects allowed under Sections 319 and 320 of the CWA. The addition of a new Category E will permit CWSRF funding to be extended to non-municipal projects while requiring only minor changes in both project scoring and the method by which annual funding levels are allocated and set forth in the Intended Use Plan ("IUP"). This new category will serve to protect the integrity of the existing municipal financing system, while at the same time preventing unfair competition between municipalities and private clients.

The proposed regulations state that an annual allocation for Category E, including a project funding cap, be determined annually by the Commissioner and described in the IUP. Through these changes, CWSRF funds may be made available to a variety of recipients (public and private) carrying out NPS projects, including land purchases and Brownfield remediation.

The proposed regulations also incorporate DEC's program which provides CWSRF assistance for land acquisition consistent with the provisions of 319 and 320 of the CWA.

In addition, there are proposed administrative-oriented changes to DEC's regulations. The following definitions, among others, will be changed for the purposes of following CWSRF administrative procedure: "Completion of Construction", "Engineering Report", and "Land Acquisition Plan or Management Plan." Grammatical changes will include the consistent use of the acronym "CWSRF" instead of "SWPSRF."

**Text of proposed rule and any required statements and analyses may be obtained from:** Judith A. Avent, Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997, (518) 402-6968, e-mail: [avent@nysefc.org](mailto:avent@nysefc.org)

**Data, views or arguments may be submitted to:** Judith Avent at the above address and also Richard E. Draper, Department of Environmental Conservation, 625 Broadway, 4th Fl., Albany, NY 12233-3505, (518) 402-8111, e-mail: [redraper@gw.dec.state.ny.us](mailto:redraper@gw.dec.state.ny.us)

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

### Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY

When the Legislature enacted Chapter 565 of the Laws of 1989, it created the New York State Water Pollution Control Revolving Fund ("CWSRF") and, in part, amended the State's Public Authorities Law ("PAL"), creating Section 1285-j, which sets forth the provisions of the CWSRF. Under Environmental Conservation Law ("ECL") Section 17-1909(3), the New York State Department of Environmental Conservation is given statutory authority to promulgate regulations to fulfill its purposes

under the CWSRF. Under Section 1285 of the PAL, the New York State Environmental Facilities Corporation ("EFC") is given the statutory authority to administer the CWSRF. Pursuant to Section 1285-j(4), the Legislature provided that "moneys in the water pollution control revolving fund shall be applied by the corporation to provide financial assistance to municipalities for construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner, for such other purposes permitted by the Federal Water Pollution Control Act, as amended..." PAL Section 1284, which sets forth the general powers of the corporation, provides that EFC has the power "...to make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title..." PAL Section 1284(5). In addition, the Federal Clean Water Act of 1986 ("CWA") provided for the establishment, by each State, of a revolving fund, for certain identified water pollution control projects. During the last several years, EPA has issued additional guidance encouraging States to further expand the types of projects eligible for financing through the CWSRF, including privately-owned projects and encouraging states to consider developing new parameters for eligibility and prioritization for CWSRF funding.

#### 2. LEGISLATIVE OBJECTIVES

In creating the CWSRF under the PAL, the Legislature directed DEC and EFC to provide assistance in support of the planning, development and construction of municipal water pollution control projects and other types of projects permitted by the CWA. EPA has consistently encouraged the States to expand the types of projects eligible for funding. In the Fall of 1996, DEC received a grant from EPA for the purposes of developing a unified priority ranking system that would provide equitable funding to eligible projects applying for financial assistance through the CWSRF. Since that time, both DEC and EFC have worked on amending the regulations governing the CWSRF.

The proposed regulations amend the CWSRF regulations found in 6 NYCRR Part 649 and the 21 NYCRR Part 2602 companion regulations of EFC to: (i) add a new definition of "recipient" that will encompass both public and private entities, including individuals, partnerships and corporations, replacing the majority of the instances in the regulations where "municipality" is used; (ii) add a new definition for CWSRF assistance of "Financing" to clarify that non-loan assistance is permitted; (iii) expand the CWSRF Project Priority System ("PPS") to include a new category (Category E) for non-municipal projects allowed under Sections 319 and 320 of the CWA; (iv) other administrative-oriented changes, including the changing of various definitions in the regulations for purposes of CWSRF administrative procedure.

#### 3. NEEDS AND BENEFITS

As set forth above, ECL Section 17-1909(3), gives DEC the authority to make and alter regulations to fulfill its purposes under its enabling statutes. PAL Section 1285-j(4) gives EFC the power to provide assistance for such other purposes permitted by the CWA, as amended. In 1996, the DEC accepted a grant to develop a model integrated project priority system that brings together CWA Section 212 (point source), 319 (non-point source) and 320 (national estuary program) eligible projects in a single priority ranking system. The funds were used to enhance the system already in place by first studying scoring practices and then revising rating factors to ensure that project scoring is based on water quality and watershed objectives. The proposed regulations address the recommended enhancements to the scoring system.

The proposed regulations also add a new Category E, which will permit CWSRF funding to be extended to non-municipal projects, while requiring only minor changes in both project scoring and the method by which annual funding levels are allocated and set forth in the Intended Use Plan (IUP). Originally, the CWSRF made loans only for municipally owned sewage treatment plants and related facilities. Based upon guidance issued by EPA beginning in 1993 and thereafter, States have been encouraged by EPA to further expand the types of projects eligible for financing through the CWSRF. By encouraging financing through the CWSRF, EPA has effectively requested that States fund a vast range of water quality projects, including those carried out by private entities, through the CWSRF. Accordingly, EFC has prepared amendments to such regulations and is now submitting the same for consideration and adoption.

In addition to encouraging the expansion of the types of loans eligible for financing, EPA has already permitted certain types of financing, such as the purchase or refinancing of debt obligations of municipalities. Other permitted financing arrangements are set forth in the CWA, *i.e.*, investments in municipal obligations, and using the CWSRF as a source of security for loan re-payments.

With the changes outlined above being made to the current CWSRF regulations, a clean up of the regulatory definition will need to be done to reflect these changes. For example, the proposed regulations add a new definition of "recipient" that will encompass both private and public entities, including, but not limited to, individuals, partnerships and corporations. This new term will replace the majority of instances in the regulations where "municipality" is used. A new definition of "Financing" will be included to clarify that non-loan assistance is permitted.

4. COSTS

The proposed amendments will not result in any additional costs.

5. LOCAL GOVERNMENT MANDATES

None. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would be responsible for compiling the documentation necessary to submit a complete application to EFC for its consideration and review.

6. PAPERWORK

None. The proposed amendments do not require any additional paperwork. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would simply have to submit the documentation required for a complete application to EFC for its consideration.

7. DUPLICATION

The proposed amendments to 6 NYCRR Part 649 will be mirrored in EFC's CWSRF regulations found in 21 NYCRR Part 2602 with the exception of the provisions pertaining to the scoring for the PPS.

8. ALTERNATIVES

Upon review of the current regulations and the programmatic changes sought to be implemented, the proposal outlined above is the most efficient means by which the CWSRF regulations can be updated and the programmatic changes implemented.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal government standards.

10. COMPLIANCE SCHEDULE

There is no relevant compliance schedule to consider.

**Regulatory Flexibility Analysis**

The New York State Department of Environmental Conservation has determined that, pursuant to Section 201-b(3) of the State Administrative Procedure Act, a regulatory flexibility analysis is not required. The proposed regulations for the New York State Water Pollution Control Revolving Fund Program ("Program") will not have an adverse impact on small businesses or local governments and will not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

The Program provides a process whereby low cost financial assistance may be obtained by municipalities for the planning, design and construction of projects for the construction of publicly owned treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed regulations will extend this financing to privately owned NPS or estuary projects, which will have positive impacts on small businesses and local governments. Participation in the Program is intended to result in a financial benefit for the entity applying for assistance and improved job and employment opportunities. Participation in the Program is voluntary and any reporting, recordkeeping or other requirements are imposed only if an entity elects to participate in the Program.

For the same reasons, it is economically and technically feasible for small businesses and local governments to comply with these regulations.

This conclusion is based on the express nature and purpose of the statute authorizing the Program and the regulations proposed herein.

**Rural Area Flexibility Analysis**

The New York State Department of Environmental Conservation has determined that, pursuant to Section 202-BB(4) of the State Administrative Procedure Act, a rural area flexibility analysis is not required. The proposed regulations for the New York State Water Pollution Control Revolving Fund Program ("Program") will not have an adverse impact on rural areas and will not impose reporting, recordkeeping or other compliance requirements on rural areas.

The Program provides a process whereby low cost financial assistance may be obtained by municipalities for the planning, design and construction of projects for the construction of publicly owned treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The pro-

posed regulations will extend this financing to privately owned NPS or estuary projects, which will have positive impacts on rural areas. Participation in the Program is intended to result in a financial benefit for the entity applying for assistance and improved job and employment opportunities. Participation in the Program is voluntary and any reporting, recordkeeping or other requirements are imposed only if an entity elects to participate in the Program.

This conclusion is based on the express nature and purpose of the statute authorizing the Program and the regulations proposed herein.

**Job Impact Statement**

The New York State Department of Environmental Conservation has determined that, pursuant to Section 201-a of the State Administrative Procedure Act, a job impact statement is not required. The proposed regulations for the New York State Water Pollution Control Revolving Fund Program ("Program") will not have an adverse impact on jobs and employment opportunities.

The Program provides a process whereby low cost financial assistance may be obtained by municipalities for the planning, design and construction of projects for the construction of publicly owned treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed regulations will extend this financing to privately owned NPS or estuary projects, which will have positive job impacts. Participation in the Program is voluntary and any reporting or recordkeeping requirements are imposed only if an entity elects to participate in the Program.

This conclusion is based on the express nature and purpose of the statute and regulations being proposed herein.

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## Environmental Facilities Corporation

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Clean Water State Revolving Fund Program**

**I.D. No.** EFC-07-06-00020-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 2602 of Title 21 NYCRR.

**Statutory authority:** L. 1989, ch. 565

**Subject:** CWSRF Program.

**Purpose:** To conform EFC's CWSRF regulations to current EFC and DEC administrative policies and practices; update the Project Priority System (PPS) for the purpose of ensuring equitable statewide treatment of funding priorities; and integrate the water quality objectives as set forth in the Federal Clean Water Act (CWA) sections 212, 319 and 320.

**Public hearing(s) will be held at:** 1:00 p.m. on April 3, 2006 at William K. Sanford Town Library, 629 Albany Shaker Rd., Loudonville, 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 websites: [www.dec.state.ny.us](http://www.dec.state.ny.us); [www.nysefc.org](http://www.nysefc.org)):** I. Subject:

The proposed revised regulations for the New York State Water Pollution Control Revolving Fund ("CWSRF"), Section 1285-j of the Public Authorities Law ("PAL"), created and established in the joint custody of the New York State Environmental Facilities Corporation ("EFC") and the New York State Department of Environmental Conservation ("DEC"), by the Legislature pursuant to Chapter 565 of the Laws of 1989.

II. Purpose:

The proposed regulations set forth rules and procedures whereby EFC and DEC can adhere to its current administrative policies and practices and also updates the CWSRF Project Priority System ("PPS") for the purpose

of ensuring equitable Statewide treatment of funding priorities and to integrate the water quality objectives set forth in the Clean Water Act ("CWA") Sections 212, 319 and 320.

### III. General Substance:

It is proposed to amend the CWSRF regulations found within 21 NYCRR Part 2602 in the following manner (Companion regulations found within 6 NYCRR Part 649 will also be changed):

The proposed regulatory amendments serve to update several important definitions and to phase out inactive program requirements. The proposed amendments will also clarify financing eligibility of private entities carrying out certain water quality improvement projects and payment structures to certain recipients in accordance with state and federal authority. The proposed regulations will also allow for equitable scoring for not only the CWSRF's existing financing programs, but also non-point source ("NPS") projects, national estuary implementation projects and the water quality components of "non-traditional" projects.

In order to implement the expansion of the types of projects eligible for CWSRF financing, certain definitions will have to be amended within the regulations. It is proposed to add a new definition of "recipient" that will encompass both public and private entities, including individuals, partnerships and corporations. This new term will replace the majority of instances in the regulations where "municipality" is used. The definition of "project" will also be amended for the purposes of allowing CWSRF financing to be extended to additional activities anticipated under the CWA, including any activity whose purpose is the preservation, protection and/or improvement of water quality.

A new definition for CWSRF assistance of "Financing" will be included to also provide for non-loan assistance. This new term is defined as meaning any financial assistance from the CWSRF that is permitted under applicable laws and regulations.

Section 2602.3(a) of EFC's proposed new regulations regarding the PPS make a cross reference to the PPS contained in Section 649.12 of DEC's regulations. It is proposed that the PPS be expanded to include a new category (Category E) for non-municipal projects allowed under Sections 319 and 320 of the CWA. The addition of a new Category E will permit CWSRF funding to be extended to non-municipal projects while requiring only minor changes in both project scoring and the method by which annual funding levels are allocated and set forth in the Intended Use Plan ("IUP"). This new category will serve to protect the integrity of the existing municipal borrowing system, while at the same time preventing unfair competition between municipalities and private clients.

The proposed regulations state that an annual allocation for Category E, including a project funding cap, be determined annually by the Commissioner and described in the IUP. Through these changes, CWSRF funds may be made available to a variety of recipients (public and private) carrying out NPS projects, including land purchases and Brownfield remediation.

The proposed regulations also incorporate EFC's program which provides CWSRF assistance for land acquisition consistent with provisions 319 and 320 of the CWA.

In addition, there are proposed administrative-oriented changes to EFC's regulations. The following definitions, among others, will be changed for the purposes of following CWSRF administrative procedure: "Completion of Construction", "Engineering Report", and "Land Acquisition Plan or Management Plan." Grammatical changes will include the consistent use of the acronym "CWSRF" instead of "SWPSRF."

**Text of proposed rule and any required statements and analyses may be obtained from:** Judith A. Avent, Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997, (518) 402-6968, e-mail: [avent@nysefc.org](mailto:avent@nysefc.org)

**Data, views or arguments may be submitted to:** Judith Avent at the above address and also Richard E. Draper, Department of Environmental Conservation, 625 Broadway, 4th FL., Albany, NY 12233-3505, (518) 402-8111, e-mail: [redraper@gw.dec.state.ny.us](mailto:redraper@gw.dec.state.ny.us)

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

### Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY

When the Legislature enacted Chapter 565 of the Laws of 1989, it created the New York State Water Pollution Control Revolving Fund ("CWSRF") and, in part, amended the State's Public Authorities Law ("PAL"), creating Section 1285-j, which sets forth the provisions of the CWSRF. Under Section 1285 of the PAL, the New York State Environmental Facilities Corporation ("EFC") is given the statutory authority to administer the CWSRF. Pursuant to Section 1285-j(4), the Legislature

provided that "moneys in the water pollution control revolving fund shall be applied by the corporation to provide financial assistance to municipalities for construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner, for such other purposes permitted by the Federal Water Pollution Control Act, as amended..." PAL Section 1284, which sets forth the general powers of the corporation, provides that EFC has the power "...to make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title..." PAL Section 1284(5). In addition, the Federal Clean Water Act of 1986 ("CWA") provided for the establishment, by each state, of a revolving fund, for certain identified water pollution control projects. During the last several years, EPA has issued additional guidance encouraging States to further expand the types of projects eligible for financing through the CWSRF, including privately-owned projects and encouraging states to consider developing new parameters for eligibility and prioritization for CWSRF funding.

#### 2. LEGISLATIVE OBJECTIVES

In creating the CWSRF under the PAL, the Legislature directed EFC and DEC to provide assistance in support of the planning, development and construction of municipal water pollution control projects and other types of projects permitted by the CWA. EPA has consistently encouraged the States to expand the types of projects eligible for funding. In the Fall of 1996, the Department of Environmental Conservation ("DEC") received a grant from EPA for the purposes of developing a unified priority ranking system that would provide equitable funding to eligible projects applying for financial assistance through the CWSRF. Since that time, both DEC and EFC have worked on amending the regulations governing the CWSRF.

The proposed regulations amend the CWSRF regulations found in 21 NYCRR Part 2602 and the 6 NYCRR Part 649 companion regulations of DEC to: (i) add a new definition of "recipient" that will encompass both public and private entities, including individuals, partnerships and corporations, replacing the majority of the instances in the regulations where "municipality" is used; (ii) add a new definition for CWSRF assistance of "Financing" to clarify that non-loan assistance is permitted; (iii) expand the CWSRF Project Priority System ("PPS") to include a new category (Category E) for non-municipal projects allowed under Sections 319 and 320 of the CWA; (iv) other administrative-oriented changes, including the changing of various definitions in the regulations for purposes of CWSRF administrative procedure.

#### 3. NEEDS AND BENEFITS

As set forth above, PAL Section 1284(5), gives EFC the authority to make and alter regulations to fulfill its purposes under its enabling statutes. PAL Section 1285-(j)(4) gives EFC the power to provide assistance for such other purposes permitted by the CWA, as amended. The proposed regulations also add a new Category E, which will permit CWSRF funding to be extended to non-municipal projects, while requiring only minor changes in both project scoring and the method by which annual funding levels are allocated and set forth in the Intended Use Plan (IUP). Originally, the CWSRF made loans only for municipally owned sewage treatment plants and related facilities. Based upon guidance issued by EPA beginning in 1993 and thereafter, States have been encouraged by EPA to further expand the types of projects eligible for financing through the CWSRF. By encouraging financing through the CWSRF, EPA has effectively requested that States fund a vast range of water quality projects, including those carried out by private entities, through the CWSRF. Accordingly, EFC has prepared amendments to such regulations and is now submitting the same for consideration and adoption.

In addition to encouraging the expansion of the types of loans eligible for financing, EPA has already permitted certain types of financing, such as the purchase or refinancing of debt obligations of municipalities. Other permitted financing arrangements are set forth in the CWA, *i.e.*, investments in municipal obligations, and using the CWSRF as a source of security for loan repayments.

With the changes outlined above being made to the current CWSRF regulations, a clean up of the regulatory definition will need to be done to reflect these changes. For example, the proposed regulations add a new definition of "Recipient" that will encompass both private and public entities, including, but not limited to, individuals, partnerships and corporations. This new term will replace the majority of instances in the regulations where "municipality" is used. A new definition of "Financing" will be included to clarify that non-loan assistance is permitted.

#### 4. COSTS

The proposed amendments will not result in any additional costs.

5. LOCAL GOVERNMENT MANDATES

None. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would be responsible for compiling the documentation necessary to submit a complete application to EFC for its consideration and review.

6. PAPERWORK

None. The proposed amendments do not require any additional paperwork. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would simply have to submit the documentation required for a complete application to EFC for its consideration.

7. DUPLICATION

The proposed amendments to 21 NYCRR Part 2602 will be mirrored in DEC's CWSRF regulations found in 6 NYCRR Part 649.

8. ALTERNATIVES

Upon review of the current regulations and the programmatic changes sought to be implemented, the proposal outlined above is the most efficient means by which the CWSRF regulations can be updated and the programmatic changes implemented.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal government standards.

10. COMPLIANCE SCHEDULE

There is no relevant compliance schedule to consider.

**Regulatory Flexibility Analysis**

The New York State Environmental Facilities Corporation has determined that, pursuant to Section 201-b(3) of the State Administrative Procedure Act, a regulatory flexibility analysis is not required. The proposed regulations for the New York State Water Pollution Control Revolving Fund Program ("Program") will not have an adverse impact on small businesses or local governments and will not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

The Program provides a process whereby low cost financial assistance may be obtained by municipalities for the planning, design and construction of projects for the construction of publicly owned treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed regulations will extend this financing to privately owned NPS or estuary projects, which will have positive impacts on small businesses and local governments. Participation in the Program is intended to result in a financial benefit for the entity applying for assistance and improved job and employment opportunities. Participation in the Program is voluntary and any reporting, recordkeeping or other requirements are imposed only if an entity elects to participate in the Program.

For the same reasons, it is economically and technically feasible for small businesses and local governments to comply with these regulations.

This conclusion is based on the express nature and purpose of the statute authorizing the Program and the regulations proposed herein.

**Rural Area Flexibility Analysis**

The New York State Environmental Facilities Corporation has determined that, pursuant to Section 202-BB(4) of the State Administrative Procedure Act, a rural area flexibility analysis is not required. The proposed regulations for the New York State Water Pollution Control Revolving Fund Program ("Program") will not have an adverse impact on rural areas and will not impose reporting, recordkeeping or other compliance requirements on rural areas.

The Program provides a process whereby low cost financial assistance may be obtained by municipalities for the planning, design and construction of projects for the construction of publicly owned treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed regulations will extend this financing to privately owned NPS or estuary projects, which will have positive impacts on rural areas. Participation in the Program is intended to result in a financial benefit for the entity applying for assistance and improved job and employment opportunities. Participation in the Program is voluntary and any reporting, recordkeeping or other requirements are imposed only if an entity elects to participate in the Program.

This conclusion is based on the express nature and purpose of the statute authorizing the Program and the regulations proposed herein.

**Job Impact Statement**

The New York State Environmental Facilities Corporation has determined that, pursuant to Section 201-a of the State Administrative Procedure Act, a job impact statement is not required. The proposed regulations for the New York State Water Pollution Control Revolving Fund Program ("Program") will not have an adverse impact on jobs and employment opportunities.

The Program provides a process whereby low cost financial assistance may be obtained by municipalities for the planning, design and construction of projects for the construction of publicly owned treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed regulations will extend this financing to privately owned NPS or estuary projects, which will have positive job impacts. Participation in the Program is voluntary and any reporting or recordkeeping requirements are imposed only if an entity elects to participate in the Program.

This conclusion is based on the express nature and purpose of the statute and regulations being proposed herein.

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## Department of Health

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

**Agricultural Fairgrounds**

**I.D. No.** HLT-07-06-00019-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 Subpart 7-5 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225

**Subject:** Agricultural fairgrounds.

**Purpose:** To modify the campsite size and camping unit separation distance requirements at agricultural fairgrounds and consolidate other campground regulations from Subpart 7-3 (Campgrounds) into Subpart 7-5.

**Text of proposed rule:** New subdivisions (o), (p), (q) and (r) are added to section 7-5.1 as follows:

(o) *Camping cabin means a hard sided tent or shelter less than 400 square feet in area which is on skids or otherwise designed to be readily moveable and which does not have cooking facilities, sinks, showers, laundry or toilet facilities.*

(p) *Camping unit means a tent, camping cabin, recreational vehicle or other type of portable shelter intended, designed or used for temporary human occupancy.*

(q) *Recreational vehicle means a vehicular camping unit primarily designed as temporary living quarters for recreational, camping, travel or seasonal use that either has its own motive power or is mounted on or towed by another vehicle. Recreational vehicles include, but are not limited to, camping trailers, fifth wheel trailers, motor homes, park trailers, travel trailers, and truck campers.*

(r) *Scavenger equipment means a combination of a portable holding tank, pumping or other waste transfer method, and water tight hose connections, whereby a water tight seal can be made between the sewer connection of a recreational vehicle and a portable holding tank to empty the contents of the recreational vehicle sewage holding tank for transport to an approved sewage disposal system.*

Subparagraph (ix) is amended, subparagraph (x) is renumbered as subparagraph (xi) and a new subparagraph (x) is added in section 7-5.5(b)(1) as follows:

(ix) if food service is provided by the agricultural fairground owner, the presence of any public health hazard identified in section 14-1.10(b) or (c) of this Title; [and]

(x) *the condition of the electric service, wiring or electrical system components in the camping area is such that an imminent fire or shock hazard exists; and*

[x] (xi) any other condition determined by the permit-issuing official to be a public health hazard.

Subdivision (a) of section 7-5.7 is amended as follows:

(a) Prior to construction of structures for overnight occupancy, a *campground or campsites*, food service, water and sewage facilities, including alterations, enlargements, conversions, or relocation of such structures, *campsites*, or facilities, the owner shall submit written notice of intent to the permit-issuing official at least 30 days prior to the commencement of work. The notice shall contain the name of the city, village, or town in which the property is located, the street address of the development, improvement, or conversion, and the name, mailing address, and telephone number of the person giving the notice.

Section 7-5.8 is repealed and a new section 7-5.8 is added as follows:

**7-5.8 Campgrounds and campsites.**

(a) *Campsite space requirements.* A campsite shall meet the space requirements specified in either paragraph 1, 2, or 3 below as applicable. An agricultural fairground owner may select one or more of these options when establishing campsite sizes within the agricultural fairground.

(1) The minimum area per site for campsites that existed prior to March 7, 2001 shall be either: 1,500 square feet; or, in compliance with paragraph (2) or (3) of this section.

(2) New campsites constructed and existing campsites modified after March 7, 2001 shall be a minimum of 1,250 square feet. These campsites shall be large enough to allow at least a five foot clearance between the boundaries of the campsite and the exterior surfaces of the camping unit placed on it as well as any add-on structures or appurtenances attached to it, so as to provide for a 10 foot separation distance between camping units on adjacent campsites.

(3) The minimum area per site may be less than the requirements specified in 7-5.8(a)(1) and (2) when:

(i) a separation distance of 10 feet or greater is maintained between camping units including any add-on structures or appurtenances attached to the camping unit; or

(ii) a separation distance of at least 5 feet is maintained between camping units including any add-on structures or appurtenances attached to the camping units; and

(a) Charcoal grills, gas grills or other open flame cooking devices cannot be used within 10 feet of any camping unit.

(b) Bonfires or recreational fires are prohibited on campsites. Such fires cannot be conducted within 25 feet of any camping unit.

(c) Adequate fire extinguishers or other extinguishing equipment shall be readily available to all camping areas. Fire extinguishers, where used, shall be installed and maintained in accordance with the recommendations of the equipment manufacturer and generally accepted standards.

(d) Fire apparatus access roads shall be provided within 300 feet of each camping unit and shall have an unobstructed width of no less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches.

(b) *Electrical.*

(1) Installation of electrical service, wiring, and fixtures shall conform to the Uniform Code. A certificate of approval provided by a qualified electrical inspector shall be submitted for all new electrical work.

(2) The electrical service, wiring and fixtures shall be in good repair and safe condition. Where conditions indicate a need for inspection, the electrical service and wiring shall be inspected by a qualified electrical inspector, and a copy of the inspection report and certificate of approval shall be submitted to the permit-issuing official.

Section 7-5.9 is amended as follows:

7-5.9 Overnight transient occupancy. Structures at an agricultural fairground not meeting the definition of a camping unit which are available for overnight transient occupancy shall meet the requirements of Subpart 7-1 of this Title.

Subdivisions (a) and (b) of section 7-5.12 are amended as follows:

(a) An agricultural fairground served by an off-site public water system (as defined in Subpart 5-1 of this Title) must comply with the requirements of Subdivisions (d)(1), (d)(3), (d)(4), (d)(5), (d)(6)(i, iii, and iv), (d)(7), (e), (f), (g)(excluding source water and nitrate/nitrite monitoring), (h), (i), (j)(2), (k), (l) and (m) of this Section.

(b) An agricultural fairground served by a non-public agricultural fairground water system must comply with those requirements of Subpart 5-1 of this Title that apply to non-community water systems and Subdivisions (c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(6), (d)(7), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of this Section. The agricultural fairground owner shall ensure that the agricultural fairground's water supply complies with all applicable requirements.

A new paragraph (7) is added to section 7-5.12(d) as follows:

(7) *Campgrounds water supply.*

(i) *Potable water shall be readily available, easily accessible and in a quantity capable of providing at least 55 gallons per day per campsite, which includes water use for toilets, hand washing, showers and individual campsite food preparation and clean-up.*

(ii) *Potable water shall be provided within 250 feet of all campsites. One water spigot with a soakage pit or other disposal facilities shall be provided for each 10 campsites not provided with individual spigots on the campsites.*

A new subdivision (e) is added to section 7-5.13 as follows:

(e) *At least one sanitary dumping station for each 100 campsites or less, or an acceptable operator-run scavenger service for routine collection of sewage from recreational vehicles must be provided. Information regarding the scavenger equipment and collection schedule shall be submitted to the permit-issuing official for review and approval. Sites with individual sewer connections shall not be counted when determining the required number of sanitary dumping stations. Sanitary dump stations shall not be required at campgrounds for tent use only.*

A new paragraph (3) is added to section 7-5.14(a) as follows:

(3) *at campgrounds, a minimum of four toilets, two per sex, shall be provided within 500 feet of each campsite.*

(i) *for every two toilets, one handwash facility shall be provided. Handwash facilities shall be located in close proximity to the toilets.*

**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: regsna@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.

**Consensus Rule Making Determination**

Statutory Authority:

The Public Health Council is authorized by Section 225 (4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL Sections 201(1)(l) and (m) and 225(5)(a) authorize the SSC to regulate the sanitary aspects of businesses and activities affecting public health of the people of the State of New York. The regulations for Agricultural Fairgrounds, Subpart 7-5, became effective April 10, 2002.

Basis:

The proposed amendments to Subpart 7-5 (Agricultural Fairgrounds) of the State Sanitary Code will modify the campsite size and camping unit separation distance requirements. The amendments also simplify campground requirements by incorporating applicable sanitary regulations from Subpart 7-3 and eliminating the need to refer to another Subpart.

The amendment is submitted as a consensus rule because no objection to the changes are anticipated and the proposed revisions have been implemented at the majority of agricultural fairgrounds as waivers and/or variances since 2002. The amendments were initiated at the request of the New York State Association of Agricultural Fairs (NYSAAF) because of the difference between camping at agricultural fairgrounds, which typically provide accommodations for workers and owners of livestock, and recreational camping by the vacationing public. NYSAAF representatives were consulted during development of the proposed amendments. The NYSAAF membership supported the amendments at their annual meeting on January 15, 2005 and requested that the changes be made in time for the 2005 operating season. Since that time, NYSAAF representatives have contacted department of health staff on numerous occasions to check on the status of processing the regulation, in hope that it would be effective for the 2006 season. The proposed amendments were provided to local health departments for review and comment. No negative comments were received.

**Job Impact Statement**

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

## Division of Housing and Community Renewal

### NOTICE OF ADOPTION

#### Qualified Allocation Plan for the Allocation of Low-Income Housing Credits

**I.D. No.** HCR-40-05-00017-A

**Filing No.** 115

**Filing date:** Jan. 30, 2006

**Effective date:** Feb. 15, 2006

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

**Action taken:** Amendment of Part 2040 of Title 9 NYCRR.

**Statutory authority:** U.S. Internal Revenue Code, section 42(m); Public Housing Law, section 19; and Executive Order Number 135

**Subject:** Adoption of amendments to the State of New York's Qualified Allocation Plan for the allocation of low-income housing credits.

**Purpose:** To amend the process by which DHCR reviews low-income housing credit applications; utilizes selection criteria and assesses fees for low-income housing credit applications and awards; and increase consistency with Federal statutes.

**Text of final rule:** 9 NYCRR Part 2040 is hereby amended as follows:

Subdivision (L) of section 2040.2 is amended to read as follows:

(L) Operating *Deficit* Guarantee shall mean a commitment to pay any [unanticipated] operating deficits incurred during the first thirty-six months after the project is placed in service. The amount of such guarantee shall not be less than one fifth of the developer's fee approved by the Division. The guarantee shall be in the form of an irrevocable letter of credit for a term of not less than term of the guarantee or a cash equivalent approved by the Division.

Subdivision (N) of section 2040.2 is amended to read as follows:

(N) Preservation Project shall mean a project in which residential rental property is rehabilitated to extend its useful life to serve as affordable housing and which meets one of the following conditions: the project is to be carried out pursuant to a workout plan approved by a public agency or[;] the project includes the use of existing housing as part of a community revitalization plan and[;] or .] the project averts the loss of affordable housing currently serving the housing needs of a population whose housing need would justify the replacement of the housing if it ceased to be available to that population. The scope of the rehabilitation must be sufficient for the project to function in good repair as affordable housing for a period equal to at least thirty years and at least fifteen years beyond the remaining term of any existing affordability restrictions.

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

(C) Processing Fees – The Division shall charge an application fee [credit reservation or binding agreement fee] and credit allocation fee. The application fee shall be \$2,000 [\$100; the credit reservation and binding agreement fee shall be \$250;] and the credit allocation fee shall be 6 percent [4 percent] of the first year credit allocation amount. All fees are due at the time of the request for action by the Division and are non-refundable. Not-for-profit applicants (or their wholly-owned subsidiaries) which will be the sole general partner of the partnership/project owner or sole managing member of the limited liability company/project owner may request and be approved to defer payment of fees until the time of carry-over allocation.

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

(D) Credit Allocation Process - Only applications submitted by a published deadline will be evaluated for an allocation. Applications will be reviewed for completeness, eligibility, scoring, project feasibility, and consistency with the Division's underwriting standards. The Division expects to notify applicants within 150 [75] days from the application deadline on allocation decisions. The process the Division employs for allocating credit entails the following:

Subdivision (E)(16) of section 2040.3 is amended to read as follows:

(16) If a project includes the rehabilitation of any [occupied residential] building(s) the acquisition costs of the building(s) may not exceed twenty five percent (25%) of the total development costs of the project; unless: a) it is a Preservation Project (as defined at Section 2040.2(N)) or b) the Commissioner has determined that the preservation of the build-

ing(s) is in the best interest of the State (not applicable to applications reviewed under Section 2040.4).

Subdivision (E)(17) of section 2040.3 is added to read as follows:

(17) *Project construction has not started without prior authorization by the Division.*

Subdivision (F)(8) of section 2040.3 is amended to read as follows:

(8) Participation of Local Tax Exempt Organizations (5 points) - Scored on: a) whether a not-for-profit 501 (C)(3) or its for-profit wholly owned subsidiary will own an interest in the project and materially participate in the development and operation of the project throughout the compliance period [is involved as a general partner and in project management] (3 points); and, b) whether such organization has submitted [an] a written agreement to acquire the low income portion of the project at a cost equal to or below the minimum permitted pursuant to the Code for the purposes of a "Qualified Contract" (2 points).

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

(9) Special Needs (5 points) - Scored if: [a]) the project will give preference in tenant selection to special populations for at least 15% of the units [(3 points);] and [b]) whether the special population given a preference will be served by supportive services *as evidenced by an agreement or commitment in writing with an experienced social service provider* [(2 points)].

Subdivision (F)(10) of section 2040.3 is amended to read as follows:

(10) Tenant Buy-Out Plan (2 points) [(5 points)] – Scored on whether there is an effective plan for the existing tenants to purchase the project as part of a buy-out plan at the end of the compliance period of 15 years.

Subdivision (F)(12) of section 2040.3 is renumbered as Subdivision (F)(14).

Subdivision (F)(12) of section 2040.3 is added to read as follows:

(12) *Energy Efficiency (2 points) – Scored to the extent the project will utilize Energy Star appliances and Energy Star Heating Ventilation Air-Conditioning systems or other modifications that produce the same or comparable energy efficiency or savings.*

Subdivision (F)(13) of section 2040.3 is added to read as follows:

(13) *Project Amenities (1 point) – Scored if the project will provide central air-conditioning or will improve access to high speed internet service in all credit-assisted units .*

Subdivision (B) of section 2040.4 is amended to read as follows:

(B) *Application Process – Complete* [A] applications must be submitted at least 60 days prior to the proposed construction start date on a form approved by DHCR and will be accepted and processed throughout the calendar year. The Division may request any and all information it deems necessary for project evaluation. If any submission is incomplete or if documentation is insufficient to complete any evaluation of the proposed project, processing will be suspended. DHCR will notify applicants how the submission is incomplete and provide at least ten business days for the applicant to submit the requested documentation. Complete applications will be reviewed relative to criteria contained herein at Section 2040.3 (E) and (F) for eligibility and public purpose. Within 60 [30 working] days after receipt of a complete application the Division will issue to the applicant a finding as to whether the application is consistent with this Qualified Allocation Plan and the amount of LIHC for which the project qualifies pursuant to Section 2040.3(G). If the application is consistent with this Qualified Allocation Plan, the applicant will receive processing instructions for a final allocation of credit. If the project is found to be inconsistent with the Division's Qualified Allocation Plan the owner will be notified of the reasons.

Subdivision (C) of section 2040.4 is amended to read as follows:

(C) *Processing Fees:* The Division shall charge an application fee of \$2,000 [\$100], due at the time of application. A credit allocation fee of 3 percent [1 percent] of the first year credit allocation amount is due at the time of request for the issuance of IRS Form 8609. *Not-for-profit applicants (or their wholly-owned subsidiaries) which will be the sole general partner of the partnership/project owner or sole managing member of the limited liability company/project owner may request and be approved to defer payment of the application fee until the time of issuance of the IRS Form 8609 allocation.* Subdivision (D) of section 2040.4 is amended to read as follows:

(D) *Determination of Credit Amount* - In accordance with Code Section 42(m)(2)(D) the issuer of the tax exempt bonds is responsible for determining the dollar amount of credit which is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. Such determination must be included in the applicant's request to the Division for a final allocation of credit. The

Division will process requests for a final allocation of credit within 60 [30] days from receipt of all required documentation including an executed credit regulatory agreement with proof of recording. *The Division will apply the criteria as set forth in Section 2040.3 (G) (except for Section 2040.3(G)(1)(b)) in determining the amount for the final credit allocation.*

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

(b) The certification required by this section (b) shall not be required if a waiver of the annual income recertification has been obtained for the project from the U.S. Internal Revenue Service [pursuant to Internal Revenue Service Revenue Procedure 94-64,] and a copy of the recertification waiver has been attached to the annual certification required by Section 2040.8. The Division shall not provide a statement in support of an owners application for a recertification waiver to the U.S. Internal Revenue Service that each residential rental unit in the building was a low-income unit under Section 42 of the Code at the end of the most recent credit period for the building, if the Division has (1) determined that the project is not in compliance with the provisions of this Low-Income Housing Credit Qualified Allocation Plan or the regulatory agreement required by section 2040.5, (2) has notified the project owner of the event(s) of non-compliance, and (3) the project owner has not documented correction of, or otherwise resolved, the non-compliance to the satisfaction of the Division.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 2040.4(d), (b), 2040.3(f)(12) and (13).

**Text of rule and any required statements and analyses may be obtained from:** Arnon Adler, Division of Housing and Community Renewal, 38-40 State St., Albany, NY 12207, (518) 486-3305

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

Executive Order Number 135, dated February 27, 1990, authorizes the Commissioner to administer the State's annual allotment of federal low-income housing tax credits and designates DHCR as the State's lead Housing Credit Agency ("HCA"). U.S. Internal Revenue Code ("IRC") Section 42(m) provides that Low-Income Housing Credit ("Credit") must be allocated pursuant to a plan approved by the Governor. The 2005 – 2006 State Budget provides DHCR with the authority to collect application, allocation and monitoring fees for the administration of the federal Low-Income Housing Credit Program (the "Program") and the monitoring required thereunder.

##### 2. Legislative Objectives:

The Program was enacted to encourage private investment in the construction or rehabilitation and operation of adequate, safe, and sanitary housing which is affordable to persons of low-income. The Program authorizes States to allocate Credit to owners of low-income housing which meets the eligibility and operating requirements of Section 42 of the IRC ("Federal Requirements"). Each state receives an annual allocation of Credit based upon population and must allocate the Credit in a timely manner or forfeit the unallocated Credit to a national pool which is distributed to states which have fully allocated their credit (the "Credit Pool"). New York State has never forfeited Credit to the Credit Pool.

##### 3. Needs and Benefits:

Pursuant to the State Administrative Procedure Act, DHCR promulgates its plan for allocating Credit as a rule. The changes to the existing plan (the "Existing Rule") which would be made by this Proposed Rule (the "Proposed Rule") will amend 9 NYCRR, Part 2040 to:

1. Clarify the definition of Operating Deficit Guarantee. DHCR's Existing Rule provides for additional developer's fee in projects if funding for unanticipated operating deficits is guaranteed by the project owner. Issues have arisen over when an operating deficit is, "unanticipated". The elimination of the word "unanticipated" from the definition makes DHCR's existing policy clear – that in order to qualify for a 5 percent increase in the amount of the developer's fee, all operating deficits must be covered by the owner for the three year period.

2. Revise the definition of Preservation Project limiting the conditions under which a project could be considered subject to the Preservation Project set aside. The revision will narrow the definition so that all projects considered under the set-aside will avert the loss of affordable housing to market-rate housing or deterioration and abandonment, a key goal of DHCR's in maintaining the portfolio of affordable housing in New York State.

3. Increase the Credit application fee from \$100 to \$2,000 for projects applying for Credit from the State's Credit Ceiling, eliminate the Credit reservation and binding agreement fees and increase the Credit allocation fee from 4 percent to 6 percent of the amount of the credit allocated. The

elimination of the Credit reservation and binding agreement fees will reduce complexity and processing tasks for both DHCR staff and successful applicants. As confirmed in a roundtable discussion held with private and not-for-profit developers, bank lenders and credit investors, the increase in the Credit application fee and the allocation fee will not have a significant impact on the applicants. Not-for-profit developers may defer the application fee until carryover allocation; therefore, not-for-profit applicants will not face undue financial hardships. The increase will bring DHCR's credit fees to a level commensurate with that of other states and enable the administration of the program to be better supported by the fee collected.

4. Revise the DHCR application decision notification date from 75 days to 150 days from the application deadline. This provides a more workable notification timeframe, necessitated by an extensive review process, entailing reviews of completeness, eligibility, project rating and ranking, and design and underwriting project feasibility and project viability.

5. Clarify that applications for projects that include the rehabilitation of an existing building may not include building acquisition costs in excess of 25 percent of total development costs unless the project meets the criteria for a "Preservation Project" by eliminating the words "occupied residential" from the threshold Eligibility Review Criteria at Subdivision (E)(16) of section 2040.3. This revision eliminates the possibility that an applicant could misconstrue the regulation to mean that vacant buildings would not be subject to this limitation on acquisition costs.

6. Add a threshold eligibility requirement limiting eligibility to those projects not yet under construction unless previously authorized in writing by DHCR. This addition codifies existing DHCR policy and assures that DHCR can assess a project's design and underwriting feasibility prior to an owner's incurring significant construction costs. This will avoid the problem of project owners starting construction, expecting a credit allocation and then facing severe financial hardships and potential project abandonment if DHCR determines that the project does not qualify for Credit.

7. Revise the conditions under which projects receive scoring points for participation by Local Tax Exempt Organizations to be consistent with the IRC requirement that states allocate 10 percent of the annual Credit Ceiling to projects in which a "qualified nonprofit organization is to own an interest in the project and materially participate in the development and operation of the project". DHCR must comply with the IRC's requirement that 10 percent of the credit allocated by a State, be allocated to projects in which a "qualified nonprofit organization is to own an interest in the project and materially participate in the development and operation of the project . . ." The Existing Rule's scoring and ranking criteria provides for the additional scoring points for applications in which a not-for-profit general partner participates in the management of the project, however it does not precisely match this IRC requirement. The Proposed Rule's scoring and ranking criteria clarifies that not-for-profit project participants must meet the IRC's standards of qualifying under the not-for-profit set-aside in order to obtain the scoring points.

8. Require that projects serving "special populations" such as persons with physical or mental disabilities provide supportive services for such tenants. The IRC requires that qualified allocation plans include certain selection criteria, including serving "tenant populations with special housing needs". The Existing Rule awards 3 points to proposed projects which give a preference in tenant selection to "special populations" which include persons with AIDS, mentally ill persons, homeless persons, persons with disabilities, victims of domestic violence, and frail elderly persons. Under the Existing Rule, an additional 2 points are given to a project application if the special populations (s) are served by supportive services. The Proposed Rule will award 5 points to project applications which commit to both give a preference to "special populations" and to serve those populations with supportive services by requiring applicants to provide a written agreement with a social service provider. With this change the Rule will more closely reflect the intent of the IRC and the experience of DHCR in recognizing that "special populations" require supportive services in order to live independently.

9. Reduce the points awarded an applicant for proposing an effective tenant buy-out plan at the end of the 15 year compliance period; The reduction in scoring points for applicants proposing a tenant buyout at the end of the 15 year compliance period will enable DHCR to meet an IRC requirement for preference for projects with tenant buy-out plans without over emphasizing the preference and reallocating three scoring points in the Proposed Rule to new agency, as follows:

a. two points for projects which will utilize Energy Star appliances and Energy Star Heating Ventilation Air-Conditioning systems or other modi-

fications that produce the same or comparable energy efficiency or savings, furthering energy and environmental conservation; and

b. one point for projects providing certain amenities in all credit-assisted units - central air-conditioning or modifications which will improve access to high speed internet service - which are desirable but not always included in housing developed for low-income households, furthering health and education.

10. For projects financed by private activity bonds: requiring that complete applications be submitted at least 60 days prior to construction start; clarifying existing DHCR policy that applications must be complete; applying the review standards and requirements which are utilized for allocations from the State's Credit Ceiling; increasing the application fee to \$2,000 from \$100, and the allocation fee from 1 percent to 3 percent of the first year credit allocation amount, permitting not-for-profit applicants to defer application payment until allocation, and providing 60 days rather than 30 working days for DHCR to issue a final allocation of credit. DHCR is a member of the National Council of State Housing Agencies (NCSHA), an organization of state credit agencies which administer housing programs. DHCR took a lead role in 2004 in developing NCSHA's Recommended Practices for administering LIHC, in order to standardize and improve program administration. An important aspect of the NCSHA Recommended Practices are the state rules governing the allocation of credit to projects which receive tax-exempt bond financing and receive credit which is not competitive nor allocated from the state's housing credit allocation ceiling. In light of the NCSHA recommendations, DHCR has increased its review role for these projects over the past two years. The Proposed Rule will codify DHCR's existing review policies, better mirror the requirements of the IRC and bolster review responsibilities to assure project feasibility and viability through the LIHC regulatory period and the responsible use of credit resources for projects in need of a credit allocation, as follows:

a. prospective applicants must submit applications at least 60 days prior to the proposed construction start date, allowing DHCR sufficient time to review the project's feasibility before the owner incurs significant costs;

b. DHCR will issue a finding within 60 days, rather than the Existing Rule's 30 working days, regarding the project's consistency with the Qualified Allocation Plan and the amount of LIHC the project qualifies for according to our programmatic parameters. Additionally, at project completion, DHCR will process requests for a final allocation of Credit within 60 days, rather than 30 days, enabling DHCR to apply its review criteria and program guidelines in determining the final credit allocation amount. These provisions provide DHCR with a reasonable amount of time to process initial reviews and final credit allocations on a timely basis and apply DHCR's standards to tax-exempt bond financed projects; and

c. the increased application fee of \$2,000 and credit allocation fee of 3 percent of the first year credit allocation will assist in covering DHCR's staff costs in the increased review responsibilities for credit applications for tax-exempt bond financed project. The increased fee levels are commensurate with the fees charged by other state housing credit agencies and bond issuing agencies and will not impose a financial hardship on the applicants, who will pay the fee out of tax credit equity generated from the sale of the tax credit.

11. Eliminate the outdated reference to the IRS Revenue Procedure for obtaining an annual income recertification waiver. This will help project owners to avoid referencing outdated procedures when making requests to the Internal Revenue Service.

4. Costs:

(a) Costs to State government:

The costs incurred by the State Government under both the Existing Rule and this Proposed Rule are costs incurred because of the need to maintain compliance with IRC Section 42. The changes to the Existing Rule that would be made by this Proposed Rule may result in some increased costs to State Government, which will be offset by the increase in fees of the Proposed Rule.

(b) Costs to local government:

None.

(c) Cost to private regulated parties:

The Proposed Rule should reduce some costs by eliminating the requirement of collecting multiple fees required by the Existing Rule. The overall increase in fees collected by DHCR are needed by DHCR to keep pace with increased staffing and recordkeeping costs of administering the program in compliance with the IRC, as well as increased review responsibilities for many credit projects. The increases are consistent with fees charged by other states.

5. Local Government Mandates:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

The alternative to the Proposed Rule is the Existing Rule which does not adequately address the Division's need to clarify its definitions, strengthen and broaden its scoring criteria to meet more programmatic goals, cover the costs of existing staff and DHCR's increased review function for all projects, including those financed by tax-exempt bonds. Specifically:

1. The alternative to adding the word "Deficit" to the definition of Operating Deficit Guarantee and eliminating the word "unanticipated" in regard to the developer's commitment to pay project operating deficits is to not amend the definition, causing project owners and developers to continue to question this definition and its applicability to their project, requiring more staff time to explain the definition.

2. The alternative to revising the definition of the term "Preservation Project" is to leave the current definition unaltered requiring DHCR to consider projects for the set-aside which may not avert the loss of affordable housing, which is contrary to DHCR's intent in preserving existing affordable housing in New York State.

3. The alternative to the increase in the Credit application fee will mean a loss of an important deterrent to the submission of frivolous applications for significantly infeasible projects which were submitted by applicants because of the minimal application fee, and would mean a loss of an important and fair source of state revenue needed to cover increasing staff costs. Without funds sufficient to cover the level of DHCR staff needed to review projects and administer the program, the potential for mistakes which could impair the program, delay projects from proceeding in the mandated timeframe and threaten DHCR's ability to fully allocate its annual Credit ceiling. Failure to fully allocate the annual Credit Ceiling would result in a loss of jobs and a decrease in the state's ability to develop and foster private investment in affordable housing.

4. The alternative to revising the expected DHCR application review notification date from 75 days of the application deadline to 150 days would result in DHCR's failure to comply with its own regulations or an inadequate review of applications.

5. The alternative to adding a threshold eligibility requirement limiting eligibility to those projects not yet under construction unless previously authorized in writing by DHCR may result in a project's failure to comply with other threshold requirements, such as the permanent involuntary displacement of existing tenants, failure to obtain all local governmental approvals including building permits and failure to notify the local chief executive officer of the locality of the project and/or respond to objections to the project. Further, DHCR's inability to review plans and specifications prior to project construction could result in hazardous, unsanitary and uninhabitable building construction which would fail to meet local or State building codes, creating blight in a community.

6. Failure to revise the scoring so projects with not-for-profit participation must meet the parameters of the IRC 10 percent not-for-profit set-aside might result in DHCR's inability to meet the 10 percent set-aside, an annual allocation requirement necessary so that DHCR fully allocates its annual Credit ceiling. Failure to abide by the IRC's requirement to allocate 10 percent of the Credit Ceiling to projects in which "qualified nonprofit organization is to own an interest in the project . . . and materially participate . . . in the development and operation of the project . . ." could result in the voiding of Credit allocated to projects not complying with the requirement, or sanctions by the IRS.

7. Failure to adjust the scoring criteria for projects serving tenant populations with special needs by requiring a written agreement with a social service provider is the potential failure to adequately serve the special housing needs of such populations. These populations include homeless persons, persons with HIV/AIDS and mentally and physically disabled persons, who are attempting to live in an "integrated" residential environment. These social services are necessary in order for these persons to live independently. These conditions result in damage to the apartments, elimination of these apartments from the housing stock pending repairs, additional costs to the project, evictions, and for some, may lead to reinstitutionalization.

8. DHCR believed that the importance of the tenant buyout criteria was being overemphasized, and believed that it was more important to reallocate 3 points to new criteria - utilization of energy efficient measures and/or amenities such as central air-conditioning and high-speed internet ac-

cess. No negative comments to the reduction in points for the tenant buyout were raised at the Roundtable.

9. DHCR has, at the urging of developers and project owners, as well as Roundtable participants, proposed to provide points for projects utilizing energy efficient measures and/or amenities such as central air-conditioning and high-speed internet access. For many elderly residents and people suffering from respiratory conditions, air conditioning is necessary for maintaining health. Lack of access to high speed internet access can limit educational opportunities. The alternative to providing points for these amenities is to fail to promote these desirable state policies.

10. DHCR has found that the current rule provides the issuers of private activity bonds and applicants with insufficient guidance regarding DHCR's process and the IRC's requirements with respect to Credit allocations for projects financed by private activity bonds. The alternative to revising DHCR's rule is the existing rule provision which DHCR believes may result in errors which jeopardize investors, developers, the development of the housing projects contemplated and, accordingly the welfare of prospective tenants in need of decent affordable housing.

#### 9. Federal Standards:

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

#### 10. Compliance Schedule:

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

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

Insubstantial changes to text of rule as previously submitted with DHCR's Notice of Proposed Rulemaking have had no impact on the validity of the statements made in the Rural Area Flexibility Analysis, Regulatory Flexibility Analysis or the Job Impact Statement submitted at that time. The changes will not impose any adverse impacts on small businesses, local governments, public or private entities in rural areas, jobs or employment opportunities. Therefore DHCR has not submitted a Revised Rural Area Flexibility Analysis, Regulatory Flexibility Analysis, or a Revised Job Impact Statement.

### **Assessment of Public Comment**

#### Proposed amendment of 9 NYCRR Part 2040

Fifteen persons provided written or oral comments to the Division of Housing and Community Renewal (DHCR) in response to proposed amendments to 9 NYCRR Part 2040 - the Low-Income Housing Credit Program Qualified Allocation Plan ("QAP").

The following summarizes public comment received regarding the proposed QAP amendments and DHCR's response.

#### SECTION 1. COMMENTS/PROVISIONS PROMPTING CHANGES TO TEXT

##### A. PROJECTS FINANCED WITH TAX-EXEMPT BONDS

Section 2040.4(D), For projects financed by private activity bonds, applying the underwriting and design criteria utilized for allocations from the State's Credit Ceiling and providing 60 rather than 30 working days for DHCR to issue a final allocation.

Comments: DHCR received one comment in support and three comments expressed reservations regarding this change.

One commenter stated that the change was unnecessary. Local bond issuers conduct their own reviews. Further the Internal Revenue Code ("IRC") makes the bond issuer responsible for determining the credit amount necessary for financial feasibility. Duplicate reviews would unnecessarily delay projects.

Another expressed concerns that the proposed amendment would apply DHCR's underwriting and design criteria in QAP Section 2040.3(G) in determining the final credit allocation amount.

Another stated that DHCR's underwriting standards must reflect the material differences between bond financed projects and DHCR capital financed projects, and recommended that DHCR show more flexibility since the credit is not a restricted commodity.

Response: As a member of the National Council of State Housing Agencies (NCSHA), a national organization of state housing credit agencies, DHCR participated in NCHSA's 2003 development of Recommended Practices for administering LIHC to preserve congressional support for the program by standardizing and improving administration. An important aspect of the Recommended Practices is increased state oversight of tax exempt bond financed projects. NCHSA recommended that states evaluate bond-financed Low-Income Housing Credit ("LIHC") projects as they do other LIHC projects.

Accordingly, DHCR has increased its review responsibilities to assure project viability and the responsible use of credit.

In response to comments, DHCR eliminated the reference to "underwriting and design" and clarified its intent by expressly stating that section 2040.3(G)(1)(b) is inapplicable.

Section 2040.4 (B), For projects financed by private activity bonds, requiring application submission at least 90 days prior to construction start and provide 60 days after receipt of full application for issuance of a finding as to whether the application is consistent with the QAP.

Section 2040.3 (E)(17), Add a threshold requirement limiting eligibility to projects not yet under construction.

Comments: DHCR received two comments regarding the proposed amendment, one suggesting clarification of the submission timeframe and one opposed the change stating that it would impede development. Another comment opposed the addition of Section 2040.3(E)(17), stating that the eligibility requirement is not helpful to organizations experiencing changes in a project's financing structure during construction.

Response: The current QAP has no timeframe for the submission of applications prior to construction. Applicants submitted applications after construction had begun without anticipating the time DHCR needed for review.

DHCR's rationale for adding Section 2040.3(E)(17) is to codify existing policy and assure that DHCR will be able to assess a project's feasibility prior to an owner incurring significant costs.

Further, DHCR has reviewed the comments and wording of the proposed amendment and determined that a change was needed making this and other QAP provisions' timeframes consistent, addressing legitimate comments, while providing sufficient application review time. The text now requires a less restrictive requirement - that complete applications be submitted only 60 days prior to construction start. This time frame is consistent with the 60 day timeframe for determinations of consistency with the QAP and the credit amount, and highlights the need for complete applications.

##### B. ENERGY EFFICIENCY

Section 2040.3 (F)(12) Energy Efficiency (2 points), Add 2 scoring points for projects utilizing energy efficient measures above minimum code requirements.

Comments: DHCR received four comments in support of providing points for energy efficiency while requesting specificity regarding measures, which would qualify for points. One questioned Energy Star label availability for all building systems and DHCR regulation and enforcement measures. Another commentator recommended a single five point category called "Green Initiatives." Another commentator suggested DHCR provide additional points for projects incorporating water conservation and health-friendly building materials.

Response: To clarify DHCR's requirements, the text of the rule now reads as follows:

"Energy Efficiency (2 points) – Scored to the extent the project will utilize Energy Star appliances and Energy Star Heating Ventilation Air-Conditioning systems or other modifications that produce the same or comparable energy efficiency or savings [energy efficient measures above minimum code requirements]."(Deletions in brackets); additions are underlined.)

Applicants seeking these points who wish to propose alternatives to Energy Star appliances systems may contact DHCR before application for a determination.

Regarding enforcement and regulation, DHCR currently requires as-built drawing submission prior to final credit allocation, and DHCR's LIHC Regulatory Agreement includes provisions which require the maintenance of such amenities.

Regarding the additional points suggestion, DHCR believes awarding a total of two points is sufficient at this time. DHCR will show flexibility in its review of proposed energy efficient measures and will assess the results of this scoring item upon completion of the application funding round.

##### C. ADDITIONAL POINTS FOR AMENITIES

Section 2040.3 (F)(13) Add 1 point for projects providing central air-conditioning or high-speed internet access.

Comments: DHCR received three comments in support of this change which suggested clarification of requirements for obtaining the point. Two questioned whether a system connection where the owner provides wiring and the tenant pays for access was sufficient. Another asked how DHCR's underwriting parameters might be changed to accommodate this expense. Another proposed language specifying acceptable networks. Another commenter suggested that this provision might have a disparate impact on rural areas which do not have cable wiring.

Response: The section will now read as follows:

“Project Amenities (1 point) – Scored if the project will provide central air-conditioning or will improve access to high speed internet service [access] in all credit-assisted units.” (Deletions in brackets]; additions are underlined.)

Because this is a new scoring category, DHCR will utilize a flexible approach by awarding a point for any internet enhancement which exceeds local code requirements or financing requirements. DHCR will assess the amendment upon completion of the application funding round, including analyzing associated development and operating expenses.

Regarding specifying qualifying networks, DHCR believes the flexible language chosen is best at this time to encourage high speed internet service in credit-assisted units.

Comment: Regarding the point available for central air-conditioning, one commentator suggested that the word “central” be deleted, stating that individual heating/air-conditioning units are more economical in many upstate areas and many tenants don’t use air-conditioning.

DHCR Response: DHCR disagrees with the suggestion to eliminate the word “central.” Individual air-conditioning units, especially in wall “sleeves,” are a primary source of heat loss in residential developments. Central air-conditioning is a significant means for reducing energy consumption.

## SECTION 2. COMMENTS NOT REQUIRING CHANGE

### A. APPLICATION AND ALLOCATION FEES

Section 2040.3 (C), Increase application fees from \$100 to \$2,000 for allocations from the State’s Credit Ceiling, eliminate the Credit reservation and binding agreement fees and increase the allocation fee from 4 percent to 6 percent of the amount of the credit allocated.

Comments: DHCR received three comments regarding this item: one opposed the increase of application fee; one supported the change; and, one requested a timeframe change for not-for-profit’s payments.

DHCR Response: The increase will bring DHCR’s fee to a level consistent with other states. Based on feedback from the affordable housing industry at a Roundtable discussion, the proposed fees will not have a significant impact on applicants and has widespread support in the industry. Not-for-profit developers will not face undue hardships since they may defer the application fee until carryover allocation – a time when financing sources are available to cover this cost.

Section 2040.4 (C), For projects financed by private activity bonds, increasing the application fee to \$2,000 from \$100, and the allocation fee from 1 percent to 3 percent of the first year credit allocation amount, permitting not-for-profit applicants to defer application payment until allocation.

Comments: DHCR received one comment opposed to this fee structure stating that the fee is excessive for these project types and that should be due at the time of the issuance of IRS Form 8609.

DHCR Response: DHCR performs significant reviews of all projects to assure project feasibility and viability, as well as the responsible use of credit resources. The increased fee is needed to better cover review costs and is consistent with fees required by other states.

In addition, the proposed amendment to the QAP already provides clear guidance that for not-for-profit applicants who have deferred payment of the application fee, the application and allocation fees are due at the time of issuance of the IRS Form 8609.

### B. PARTICIPATION BY TAX EXEMPT ORGANIZATIONS

Section 2040.3 (F)(8), Revise the conditions under which projects receive scoring points for participation by Local Tax Exempt Organizations to be consistent with the IRC requirement that states allocate 10 percent of the annual Credit Ceiling to projects in which a “qualified nonprofit organization is to own an interest in the project and materially participate in the development and operation of the project.”

Comments: DHCR received 5 comments in regard to the proposed amendment of this scoring item. The comments were either supportive of the proposed change, recommended clarification or additional guidance on some of its provisions and/or requested that projects meeting this scoring item receive more points than that currently allotted.

One comment stated that the criteria for participation by a local tax exempt organization remains vague. One commenter suggested that DHCR might consider limiting the number of counties where a not-for-profit can be considered “local.”

DHCR Response: No changes to the proposed amendments are necessary. This criterion has been in effect for several years and requires a nexus between not-for-profits and communities.

Comment: One comment supported making these requirements consistent with the IRC; further, it suggested that DHCR require that such non-

profit organizations record a written agreement (*i.e.*, Right of First Refusal) to acquire the low income portion of the project and score independently whether the not-for-profit meets the IRC non-profit set aside requirements.

DHCR Response: DHCR’s existing policy has been to separate and independently allot the three scoring points for participation of a local tax-exempt organization and the two points available for such an organization having a written agreement to acquire the low income portion of the project at the end of the 15-year credit period.

The recommendation that DHCR require a recorded Right of First Refusal is not properly included in the QAP, since the recording could not occur until project completion - after application submission and scoring.

Comment: Another commentator stated that guidance be provided regarding the extent of not-for-profit involvement needed to obtain points and asked to work with DHCR to insure that certain specified activities would be sufficient.

DHCR Response: DHCR requires not-for-profits to participate at a level required by the Internal Revenue Code’s set-aside for qualified not-for-profits. The IRC requires that a qualified non-for-profit own an interest in the project and materially participate in the development and operation of the project by having specific development and operation phase-related tasks on a regular, continuous and substantial basis.

### C. SPECIAL NEEDS POPULATIONS

Section 2040.3 (F)(9), Require that projects receiving points for serving “special populations” such as physically or mentally handicapped persons provide supportive services for such populations.

Comments: DHCR received three comments in support of this proposed amendment to the QAP. One requested that DHCR provide one point for a preference for 15% of units, two points for 30% and three points for 45% or more. Another recommended that social service providers have more substantial involvement in the project, such as serving as special limited partner, to obtain the points.

DHCR Response: Providing points for serving special populations was previously considered at a Roundtable discussion with representatives of the affordable housing industry, including developers of projects successfully serving these populations. Participants agreed that the 15% standard was best to provide a mainstreamed environment; encouraging developers to increase to 45% would undermine this goal. Applicants may propose any percentage of units for persons with special needs.

### D. OPERATING DEFICIT GUARANTEE

Section 2040.2 (L), Clarify the definition of Operating Deficit Guarantee.

Comments: DHCR received two comments about the Operating Deficit Guarantee, one of which opposed the guarantee and the other requesting DHCR review its policy about what type of documentation it will accept.

DHCR Response: This amendment clarifies the current definition. DHCR has required this guarantee since the inception of the LIHC program. This provision is of critical importance for assuring the financial stability of LIHC projects. The proposed change has no substantive impact on the definition or DHCR’s documentation review policy.

### E. PRESERVATION PROJECTS

Section 2040.2 (N), Revise the definition of Preservation Project limiting the conditions under which a project could be considered subject to the Preservation Project set aside.

Comments: DHCR received three comments regarding the proposed revision to the definition of a Preservation Project, including one comment requesting that DHCR reconsider changing the definition, as well as elaborating on the meaning of one aspect of the definition, the term “community revitalization plan” and two comments supporting the set aside.

DHCR Response: DHCR has determined that it will retain the proposed revision to the definition as the best means of assuring that all projects considered under the preservation project set-aside will avert the loss of affordable housing to market-rate housing, deterioration or abandonment, a key goal of DHCR’s in maintaining the portfolio of affordable housing in the state.

Regarding the term “community revitalization plan,” the term is not defined in the Internal Revenue Code. DHCR will maintain its current practice of accepting a consolidated plan, a local resolution, other formal action by local government or other independently developed plan for improving a neighborhood or area which includes the use of existing housing and/or a local government commitment to improving such things as local infrastructure, public facilities and/or retail establishments in the area.

### F. TENANT BUY-OUT PLAN

Section 2040.3 (F)(10), Reduce from 5 to 2 the points awarded an applicant for proposing an effective tenant buy-out plan at the end of the 15 year compliance period.

Comments: DHCR received two comments regarding this proposed amendment. One stated that scoring should not be reduced and that a provision be required in the operating agreement which will make the proposed plan more attainable.

Another supported the reduction in points and proposed combining the points for the tenant buy-out plan with Section 2040.3(F)(8), which provides two points to non-profits having a written agreement (*i.e.*, Right of First Refusal) to acquire the low income portion of the project at a cost equal to or below the minimum permitted pursuant to the Code for the purposes of a "Qualified Contract" at the end of the 15 year compliance period.

DHCR Response: DHCR believes that the two scoring points allotted for a tenant buy-out plan are sufficient to encourage applicants to provide this opportunity to tenants; a position supported by representatives of the housing industry at the Roundtable discussion. By reducing this item to two points, DHCR will meet the IRC requirement for preference for projects with tenant buy-out plans without over-emphasizing the preference and reallocating three scoring points to project amenities and energy efficiency.

### SECTION 3. COMMENTS FOR FUTURE CONSIDERATION

Comments: A total of eight comments were provided regarding topics not related to specific proposed amendments to the QAP, including: scoring provisions for mixed income housing, DHCR-priority projects, preservation projects/existing housing, efficiency of credit use weighted for smaller projects; DHCR's designation of Westchester County as a housing credit agency; revision of the definition of the "Cost of Real Estate Operations" to include supportive services; increasing the amount of the amount preservation projects set-aside from the current \$2 million level to \$5 million; and, revising Section 2040.3(G)(2)(b) of the QAP to reduce the potential developers fee available to applicants proposing 4% credit projects with high acquisition costs.

DHCR Response: Since these requests were not about the proposed amendments to the QAP, DHCR will not consider these requests pursuant to the current QAP amendment process. DHCR will review these requests subsequent to adoption of the new QAP.

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## Insurance Department

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### ERRATUM

A Notice of Emergency Rule Making, I.D. No. INS-03-06-00002-E, pertaining to Claims for Personal Injury Protection Benefits, published in the January 18, 2006, issue of the *State Register* contained a typographical error. The opening paragraph of the emergency rule read as follows:

Subdivisions (b) and (c) of section 65-3.12 is amended to read as follows:

(b) If a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Once an insurer concludes that it was not the first insurer contacted to provide first party benefits it shall issue a denial of claim for (NF-10) that includes the following statement in box 33:*

In the third line above the second section reference (65.4(a)) is a typographical error. The correct section is 65-3.4(a).

### NOTICE OF ADOPTION

#### Prepaid Legal Services Plan

**I.D. No.** INS-49-05-00004-A

**Filing No.** 112

**Filing date:** Jan. 30, 2006

**Effective date:** Feb. 15, 2006

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

**Action taken:** Amendment of Part 261 (Regulation 161) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1113(a)(29), 1116 and art. 23

**Subject:** Prepaid legal services plans.

**Purpose:** To permit prepaid legal services plan to be issued or delivered on a group basis for students of a university or college.

**Text or summary was published** in the notice of proposed rule making, I.D. No. INS-49-05-00004-P, Issue of December 7, 2005.

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

**Text of rule and any required statements and analyses may be obtained from:** Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## State Commission on Judicial Conduct

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

#### Political Activity and Disqualification of Commission Members and the Commission's Office Addresses

**I.D. No.** JDC-07-06-00006-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 7000.14 and amendment of section 7001.4(a) and (b) of Title 22 NYCRR.

**Statutory authority:** Judiciary Law, section 42(5)

**Subject:** Political activity by commission members, disqualification of commission members, and the commission's office addresses.

**Purpose:** To prohibit certain political activity by commission members, articulate situations in which a commission member would be disqualified from a matter, and update the office addresses.

**Text of proposed rule:** A new section 7000.14 is added to read as follows:

*Section 7000.14. Special rules for commission members.*

(a) *Campaigns for judicial office. No commission member shall participate in or contribute to any campaign for judicial office, except where the member is a candidate for judicial office. When a commission member is associated with a bar association committee or other organization that endorses or rates candidates for judicial office, the member shall not participate in that process.*

(b) *Campaigns for non-judicial office. A commission member who is involved in any political campaign for non-judicial office shall not make reference to the member's affiliation with the commission or act in any way that indicates support for the candidate by the commission.*

(c) *Disqualification based on fiduciary appointment. A commission member who has accepted a discretionary fiduciary appointment from a judge shall be disqualified from participating in any complaint involving that judge or the judge who approves the commission member's fee for such appointment, for the period beginning on the date of the appointment and ending two years after the appointment is formally terminated or the member's final fee for the appointment is awarded, whichever comes later.*

Subdivision (a) of section 7001.4 is amended to read as follows:

[801 Second Avenue, 17th Floor] 61 Broadway, New York, N.Y. [10017] 10006;

Subdivision (b) of section 7001.4 is amended to read as follows:

[277 Alexander Street] 400 Andrews Street, Rochester, N.Y. [14607] 14604; and

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert H. Tembeckjian, Commission on Judicial Conduct, 61 Broadway, New York, NY 10006, (212) 809-0566, e-mail: tembeck@scjc.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: Judiciary Law, Section 42(5)
2. Legislative objectives: The proposal articulates situations in which a Commission Member would be disqualified from participating in a matter. The proposal also updates the Commission’s New York City and Rochester office addresses.
3. Needs and benefits: The proposal prohibits certain political activity by Commission Members, sets forth the remedy for situations in which a Commission Member’s impartiality might reasonably be questioned, and identifies the Commission’s updated office addresses.
4. Costs: None.
5. Local government mandates: None.
6. Paperwork: None.
7. Duplication: None.
8. Alternatives: None.
9. Federal standards: None.
10. Compliance schedule: None.

**Regulatory Flexibility Analysis**

1. Effect of rule: These are internal agency operating rules concerning disciplinary proceedings against judges. No small businesses or local governments are affected.
2. Compliance requirements: None.
3. Professional services: None.
4. Compliance costs: None.
5. Economic and technological feasibility: Not applicable.
6. Minimizing adverse impact: There is no economic impact on small businesses or local governments.
7. Small business and local government participation: These internal agency operating rules concerning disciplinary proceedings against judges do not involve small businesses or local governments.

**Rural Area Flexibility Analysis**

This proposal will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. The agency analyzed the plain language of the proposed rules and concluded that the subject matter – i.e., prohibiting certain political activity by Commission Members, identifying situations in which a Commission Member should be disqualified from participating in a case, and updating the addresses of the agency’s New York City and Rochester offices – are not addressed to rural areas and, in any event, contain no reporting or recordkeeping requirements.

**Job Impact Statement**

This proposal will not impose any adverse impact on jobs and employment opportunities. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. It does not add or eliminate any jobs, nor does it impose or modify any responsibilities associated with existing jobs. The agency analyzed the plain language of the proposed rules and concluded that the subject matter – i.e., prohibiting certain political activity by Commission Members, identifying situations in which a Commission Member should be disqualified from participating in a case, and updating the addresses of the agency’s New York City and Rochester offices – does not address, create or impact upon any jobs.

**Office of Mental Retardation and Developmental Disabilities**

**EMERGENCY/PROPOSED  
RULE MAKING  
HEARING(S) SCHEDULED**

**Rate/Fee Setting**

**I.D. No.** MRD-07-06-00007-EP  
**Filing No.** 116  
**Filing date:** Jan. 31, 2006  
**Effective date:** Feb. 1, 2006

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

**Action taken:** Amendment of sections 635-10.5 and 681.14 of Title 14 NYCRR.

**Statutory authority:** Mental Health Law, sections 13.07, 13.09(b) and 43.02

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

**Specific reasons underlying the finding of necessity:** Fiscal uncertainties preclude OMRDD from securing necessary control agency approvals to allow for timely proposal and promulgation of these amendments within the regular SAPA procedural time frames. The emergency amendments revise the rates/fees of reimbursement of the referenced facilities and services. If OMRDD did not file this emergency adoption and establish the regulatory authority to pay the revised rates and fees effective February 1, 2006, the loss of revenues could have a deleterious effect on the fiscal viability of some providers, especially those which have smaller operations. This potential negative effect could translate into compromised services for citizens with developmental disabilities who need such services.

**Subject:** Rate/Fee Setting in voluntary agency operated Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (635-10.5) and Intermediate Care Facilities for Persons with Developmental Disabilities (681.14).

**Purpose:** These amendments revise the methodologies used to calculate rates/fees of the referenced facilities or programs. More specifically, the amendments establish supplemental trend factors applicable to the referenced facilities and services effective February 1, 2006 to cover prior period costs not recognized in the previous year.

**Public hearing(s) will be held:** April 3, 2006\*, 10:30 a.m. at OMRDD, Counsel’s Office Conference Rm., 3rd Fl., 44 Holland Ave., Albany, NY; and April 4, 2006\*, 10:30 a.m. at OMRDD, Conference Rm. B., 4th Fl., 44 Holland Ave., Albany, NY. \*Please call OMRDD at (518) 474-1830 no later than Monday, March 27, 2006 to indicate that you intend to participate.

**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.

**Text of emergency/proposed rule:** Paragraph 635-10.5(i)(1) - Add new subparagraph (xxiii) and renumber current subparagraph (xxiii) as (xxiv):  
 (xxiii) Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xxii) of this paragraph for the fee period July 1, 2005 to June 30, 2006 were increased in the amount of 2.0 percent. The trend factor in effect for the fee period ending June 30, 2006 shall be deemed to be increased in the amount of 2.0 percent. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section.

[[xxiii]](xxiv) 3.03 percent to trend 2005-2006 costs to 2006-2007. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.

Note: Rest of paragraph is renumbered accordingly.

Paragraph 635-10.5(i)(2) - Add new subparagraph (xxiii) and renumber current subparagraph (xxiii) as (xxiv):

(xxiii) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xxii) of this paragraph for calendar year 2005 were increased in the amount of 2.0 percent. The trend factor in effect for the fee period ending December 31, 2005 shall be deemed to be increased in the amount of 2.0 percent. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section.*

[(xxiii)](xxiv) 3.03 percent to trend calendar 2005 costs to calendar year 2006. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.

Note: Rest of paragraph is renumbered accordingly.

Subparagraphs 681.14(h)(1)(xv)-(xvii) are amended as follows:

(xv) 3.33 percent for 2004-2005 to 2005-2006; [and]

(xvi) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xv) of this paragraph for the rate period of July 1, 2005 to June 30, 2006 were increased in the amount of 2.0 percent. The trend factor in effect for the rate period ending June 30, 2006 shall be deemed to be increased in the amount of 2.0 percent; and*

[(xvi)](xvii) 3.03 percent for 2005-2006 to 2006-2007.

Subparagraphs 681.14(h)(2)(xv)-(xvii) are amended as follows:

(xv) 3.33 percent for 2004 to 2005; [and]

(xvi) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xv) of this paragraph for calendar year 2005 were increased in the amount of 2.0 percent. The trend factor for the rate year ending December 31, 2005 shall be deemed to be increased in the amount of 2.0 percent; and*

[(xvi)](xvii) 3.03 percent for 2005 to 2006.

Subparagraphs 681.14(h)(3)(xxiii)-(xxv) are amended as follows:

(xxiii) 3.33 percent for 2004-2005 to 2005-2006; [and]

(xxiv) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xxiii) of this paragraph for the rate period of July 1, 2005 to June 30, 2006 were increased in the amount of 2.0 percent. The trend factor in effect for the rate period ending June 30, 2006 shall be deemed to be increased in the amount of 2.0 percent; and*

[(xxiv)](xxv) 3.03 percent for 2005-2006 to 2006-2007.

Subparagraphs 681.14(h)(4)(xxiii)-(xxv) are amended as follows:

(xxiii) 3.33 percent for 2004 to 2005; [and]

(xxiv) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xxiii) of this paragraph for calendar year 2005 were increased in the amount of 2.0 percent. The trend factor for the rate year ending December 31, 2005 shall be deemed to be increased in the amount of 2.0 percent; and*

[(xxiv)](xxv) 3.03 percent for 2005 to 2006.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 30, 2006.

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

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

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

#### Regulatory Impact Statement

##### 1. Statutory authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

##### 2. Legislative objectives:

These emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The enactment of these emergency/proposed amendments will ensure the funding to voluntary agency providers of the following services:

a. Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5).

b. Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD) (amendments to section 681.14).

This funding is necessary in order to enable voluntary agencies that operate the above facilities and services to maintain services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and developmental disabilities.

##### 3. Needs and benefits:

From the time of their inception and implementation in New York State, OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities. The emergency/proposed amendments are concerned with establishing a supplemental trend factor applicable to these facilities and services effective February 1, 2006 to cover prior period costs not recognized in the previous year.

Fiscal uncertainties precluded OMRDD from securing necessary control agency approval to allow for previous proposal and timely promulgation of these amendments within the regular SAPA procedural time frames. The loss of revenues, if OMRDD did not file this Emergency/Proposed Agency Action and establish the regulatory authority to reimburse providers of the above referenced facilities and services at the revised rates/fees effective February 1, 2006 could have a negative effect on the fiscal viability of some providers, especially those which have smaller operations. This potentially negative effect could translate into compromised services for citizens with developmental disabilities.

##### 4. Costs:

a. Costs to the Agency and to the State and its local governments. The aggregate cost of the application of the supplemental trend factors contained in the emergency/proposed amendments is approximately \$75.6 million. This represents approximately \$38.8 million in State funds and \$38.8 million in federal funds.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

The specific impacts by facility or program type are as follows:

For Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). As of December 2006, there were 415 voluntary provider agencies authorized by OMRDD to operate IRA facilities and provide HCBS Waiver residential habilitation, day habilitation, supported employment, respite, and prevocational services to persons with developmental disabilities in New York State. Effective February 1, 2006, the emergency/proposed amendments establish a supplemental trend factor of 2.0 percent to be applied to the fees in effect for the calendar 2005 and the 2005-2006 fee periods. The estimated cost for implementation of the supplemental trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$55.6 million. This represents approximately \$27.8 million in State share and \$27.8 million in federal funds. There are no costs to local governments as a result of these amendments.

For Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2005, there were 113 voluntary provider agencies certified by OMRDD to provide ICF/DD services in New York State. Effective February 1, 2005, the emergency/proposed amendments establish a supplemental trend factor of 2.0 percent to be applied to the rates in effect for the calendar 2005 and the 2005-2006 rate periods. The estimated cost for implementation of the supplemental trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$20.0 million. This represents approximately \$10.0 million in State share and \$10.0 million in

federal funds. There are no costs to local governments resulting from the emergency/ proposed amendments to section 681.14.

In all instances, these estimated cost impacts have been derived by applying the supplemental trend factor provisions of the emergency/proposed amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of December, 2005.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency/proposed amendments are necessary to maintain funding of the above cited facilities at revised levels of reimbursement in effect as of February 1, 2006. Since the amendments establish supplemental trend factor increases for the affected providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

#### 5. Local government mandates:

Other than the local share discussed above, there are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

#### 6. Paperwork:

No additional paperwork will be required by most of the emergency/proposed amendments.

#### 7. Duplication:

The emergency/proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

#### 8. Alternatives:

The current course of action as embodied in these emergency/proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these supplemental trend factors were considered. There is no alternative to emergency adoption that would allow for prompt, timely implementation of the supplemental trend factor provisions contained in the emergency/proposed amendments.

#### 9. Federal standards:

The emergency/proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

#### 10. Compliance schedule:

The emergency rule is effective February 1, 2006. OMRDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. The emergency/proposed amendments are concerned with revising the various reimbursement methodologies to implement supplemental trend factor adjustments for affected facilities and providers of services to persons with developmental disabilities. These amendments do not impose any new requirements with which regulated parties are expected to comply.

### **Regulatory Flexibility Analysis**

#### 1. Effect on small business:

These emergency/proposed regulatory amendments will apply to voluntary not-for-profit corporations that operate the following facilities and/or provide the following services for persons with developmental disabilities in New York State:

Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). As of December 2006, there were 415 voluntary provider agencies authorized by OMRDD to operate IRA facilities and provide HCBS Waiver residential habilitation, day habilitation, supported employment, respite, and prevocational services to persons with developmental disabilities in New York State.

Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2005, there were 113 voluntary providers agencies certified by OMRDD to provide ICF/DD services in New York State.

The OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the above referenced facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

The emergency/proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the emer-

gency/proposed amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements. In fact, the provisions contained in the emergency/proposed amendments will provide for increased reimbursements to small business providers of services, due to the application of the supplemental trend factors. Effective February 1, 2006, the amendments establish supplemental trend factor adjustments of 2.0 percent applicable to affected facilities and services to cover prior period costs not recognized in the previous year. These trend factors are applicable to the rates/fees of in effect for the calendar 2005 and the 2005/2006 rate/fee periods. Specific impacts of the increased funding are set forth in the accompanying Regulatory Impact Statement as costs to State and Federal government.

Pursuant to Social Services Law sections 365 and 368-a and Chapter 58 of the Laws of 2005, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. As discussed on a facility/service specific basis in the Regulatory Impact Statement, there is no local government share associated with implementation of the supplemental trend factor contained in the emergency/proposed amendments.

#### 2. Compliance requirements:

There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these emergency/proposed amendments.

#### 3. Professional services:

In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The emergency/proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

#### 4. Compliance costs:

There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these emergency/proposed amendments.

#### 5. Economic and technological feasibility:

The emergency/proposed amendments are concerned with rate/fee setting in the affected facilities or services, and only revise the reimbursement methodologies which describe the ways in which OMRDD calculates the appropriate reimbursement of such facilities and services. The amendments do not impose on regulated parties the use of any technological processes.

#### 6. Minimizing adverse economic impact:

The purpose of these emergency/proposed amendments is to allow OMRDD to reimburse providers of the referenced facilities and services at revised levels in effect as of February 1, 2006. Specifically, these amendments establish supplemental trend factor adjustments of 2.0 percent applicable to the rates/fees in effect for the calendar 2004 and the 2004-2005 rate/fee periods. The supplemental trend factor provisions will have positive impacts on funding for agencies providing HCBS waiver, IRA, and ICF/DD services because they will result in increased reimbursements to the providers.

As previously stated, the emergency/proposed amendments will have no fiscal impact on local governments.

These amendments impose no adverse economic impact on regulated parties, and no compliance response. Therefore, the approaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

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

To the extent that information regarding provider reimbursement has been available, OMRDD has shared and discussed such information with provider representatives.

In addition, OMRDD is required to hold public hearings only on those amendments to section 635-10.5 as they may affect reimbursement of the room and board components of the community residence fees, and IRAs are a type of community residence. These hearings are scheduled to be held on April 4, 2006, and on April 5, 2006 according to the specifications contained in the Notice for this rule making.

### **Rural Area Flexibility Analysis and Job Impact Statement**

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with providing necessary revisions to the reimbursement methodologies which OMRDD uses in determining the reimbursement of the affected develop-

mental disabilities services or facilities. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodologies are primarily based upon reported costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with providing revisions to the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments establish supplemental trend factors to be applied within the context of reimbursement methodologies for the various facility/program types. These trend factor increases are intended to cover prior period costs not recognized in the previous year and are not expected to result in changes in reimbursements significant enough to affect staffing patterns within the regulated facilities or programs. They will not have any adverse impacts on jobs or employment opportunities in New York State.

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## Public Service Commission

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### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-34-04-00020-P	August 25, 2004
PSC-43-04-00010-P	October 27, 2004
PSC-45-04-00021-P	November 10, 2004
PSC-07-05-00017-P	February 16, 2005
PSC-14-05-00007-P	April 6, 2005
PSC-17-05-00015-P	April 27, 2005
PSC-18-05-00012-P	May 4, 2005
PSC-18-05-00013-P	May 4, 2005
PSC-22-05-00004-P	June 1, 2005
PSC-22-05-00010-P	June 1, 2005
PSC-22-05-00011-P	June 1, 2005
PSC-25-05-00013-P	June 22, 2005
PSC-26-05-00012-P	June 29, 2005
PSC-32-05-00008-P	August 10, 2005
PSC-40-05-00011-P	October 5, 2005
PSC-40-05-00012-P	October 5, 2005

### NOTICE OF ADOPTION

**Transfer of Water Plant Assets between Golf Course Road Lot Owners Association and HHD Development Corp.**

**I.D. No.** PSC-16-05-00015-A

**Filing date:** Jan. 27, 2006

**Effective date:** Jan. 27, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, adopted an order approving the request by Golf Course Road Lot Owners Association to transfer water plant assets formerly owned by HHD Development Corporation.

**Statutory authority:** Public Service Law, section 89-h

**Subject:** Transfer of water plant assets.

**Purpose:** To approve a transfer of water plant assets formerly owned by HHD Development Corporation.

**Substance of final rule:** The Commission approved the request by the Golf Course Road Lot Owners Association to transfer water plant assets formerly owned by HHD Development Corporation, 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-W-0365SA1)

### NOTICE OF ADOPTION

**Water Rates and Charges by Adrian's Acres West Water Company, Inc.**

**I.D. No.** PSC-29-05-00030-A

**Filing date:** Jan. 27, 2006

**Effective date:** Jan. 27, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, adopted an order approving the request of Adrian's Acres West Water Company, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for water service — P.S.C. No. 1.

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

**Subject:** Water rates and charges.

**Purpose:** To increase Adrian's Acres West Water Company, Inc.'s annual revenues by about \$13,984 or 143 percent.

**Substance of final rule:** The Commission approved the request of Adrian's Acres West Water Company, Inc. for an increase in annual revenues and directed the company to file, on not less than one day's notice, Second Revised Leaf No. 13 and Second Revised Leaf No. 14, to become effective February 1, 2006, to its tariff schedule PSC No. 1 — Water, setting forth the approved recommended rates, 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-W-0802SA1)

### NOTICE OF ADOPTION

**Electronic Tariff Filing by the Golf Course Road Lot Owners Association**

**I.D. No.** PSC-35-05-00016-A

**Filing date:** Jan. 27, 2006

**Effective date:** Jan. 27, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, adopted an order approving the request by Golf Course Road Lot Owners Association for a waiver of the commission's rate setting authority and for approval of its electronic tariff schedule P.S.C. No. 1 — Water.

**Statutory authority:** Public Service Law, sections 5(4) and 89-c(10)

**Subject:** Water rates and charges.

**Purpose:** To approve an electronic tariff schedule, P.S.C. No. 1 — Water, for the Golf Course Road Lot Owners Association.

**Substance of final rule:** The Commission granted Golf Course Road Lot Owners Association's (GCRLOA) request for tariff schedule PSC No. 1 — Water, setting forth the approved recommended rates and approved GCRLOA's waiver of the Commission's rate setting authority pursuant to Public Service Law Section 5(4), 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-W-0365SA2)

## NOTICE OF ADOPTION

### Implementation of the RPS Program

**I.D. No.** PSC-38-05-00011-A

**Filing date:** Jan. 26, 2006

**Effective date:** Jan. 26, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, adopted an order concerning specific design details and methodologies pertinent to 2006-08 Renewable Portfolio Standard Program (RPS Program) procurements.

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

**Subject:** Procurement and related matters pertinent to implementation of the RPS Program.

**Purpose:** To establish methodologies and standards for 2006-08 RPS Program procurements.

**Substance of final rule:** The Commission adopted an order concerning specific design details and methodologies pertinent to 2006-08 Renewable Portfolio Standard Program procurements and directed program modifications, 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-0188SA10)

## NOTICE OF ADOPTION

### Implementation of the RPS Program

**I.D. No.** PSC-38-05-00012-A

**Filing date:** Jan. 26, 2006

**Effective date:** Jan. 26, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, adopted an order concerning the unbundling of environmental attributes from energy, allowing entities with physical bilaterals to participate in the Renewable Portfolio Program (RPS Program), and the development of an attribute tracking system that is compatible with the systems of neighboring control areas.

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

**Subject:** Unbundling environmental attributes from energy, physical bilaterals, development of a tracking system and related matters pertinent to implementation of the RPS Program.

**Purpose:** To improve market liquidity so as to contribute to the success of the 2006-08 RPS Program procurements.

**Substance of final rule:** The Commission adopted an order concerning the unbundling of environmental attributes from energy, allowing entities with physical bilaterals to participate in the Renewable Portfolio Program and the development of an attribute tracking system that is compatible with the systems of neighboring control areas, and directed program modifications, 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-0188SA11)

## NOTICE OF ADOPTION

### Market Supply Charge and Energy Cost Adjustment by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-39-05-00004-A

**Filing date:** Jan. 27, 2006

**Effective date:** Jan. 27, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, approved the proposal filed by Orange and Rockland Utilities, Inc. (O&R) to make changes in the rates, charges, rules and regulations contained in its schedule for electric service — P.S.C. No. 2.

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

**Subject:** Market supply charge and energy cost adjustment.

**Purpose:** To approve O&R's proposal to revise its market supply charge (MSC) and energy cost adjustment to reduce the volatility of the MSC.

**Substance of final rule:** The Commission approved Orange and Rockland Utilities, Inc.'s tariff amendments related to the treatment of Transmission Congestion Credits, including the associated modifications to the Energy Cost Adjustment and denied the proposed treatment of the New York Independent System Operator adjustments, 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-E-1090SA1)

## NOTICE OF ADOPTION

### Lightened Regulation by TransCanada Power (Castleton) LLC, et al.

**I.D. No.** PSC-41-05-00028-A

**Filing date:** Jan. 26, 2006

**Effective date:** Jan. 26, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, approved the petition filed by TransCanada Power (Castleton) LLC, 812269 Alberta Ltd. and certain of their affiliates, requesting that a 64MW combined cycle electric generation facility located in Castleton, NY be subject to lightened regulation.

**Statutory authority:** Public Service Law, sections 2(13), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Lightened regulation of a 64MW combined cycle electric generation facility located in Castleton, NY.

**Purpose:** To approve the lightened regulation of a 64MW combined cycle electric generation facility located in Castleton, NY.

**Substance of final rule:** The Commission approved a petition filed by TransCanada Power (Castleton) LLC, 812269 Alberta Ltd. and certain of their affiliates, requesting that a 64MW combined cycle electric generation facility located in Castleton, New York be subject to lightened regulation, 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-E-1095SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by Andrews Building Corporation

**I.D. No.** PSC-45-05-00012-A

**Filing date:** Jan. 25, 2006

**Effective date:** Jan. 25, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, adopted an order approving the petition of Andrews Building Corporation to submeter electricity at 25 W. Houston St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

**Subject:** Petition for the submetering of electricity.

**Purpose:** To allow Andrews Building Corporation to submeter electricity at 25 W. Houston St., New York, NY.

**Substance of final rule:** The Commission adopted an order approving Andrews Building Corporation's petition to submeter electricity at 25 West Houston Street, New York, New York, in the territory of Consolidated Edison Company of New York, Inc.

**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-E-1290SA1)

### NOTICE OF ADOPTION

#### Issuance of Securities by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-47-05-00011-A

**Filing date:** Jan. 30, 2006

**Effective date:** Jan. 30, 2006

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

**Action taken:** The commission, on Jan. 18, 2006, adopted an order approving Orange and Rockland Utilities, Inc.'s request for authority to issue and sell up to \$325 million of unsecured debt obligations having a maturity of more than one year.

**Statutory authority:** Public Service Law, section 69

**Subject:** Issuance of securities.

**Purpose:** To grant Orange and Rockland Utilities, Inc. authority to issue and sell up to \$325 million of unsecured debt obligations having a maturity of more than one year.

**Substance of final rule:** The Commission approved Orange and Rockland Utilities, Inc.'s request to issue and sell new unsecured debt in one or more transactions and to enter into new Revolving Credit Agreements, in a cumulative amount not to exceed \$325 million, not later than December 31, 2009, 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-M-1287SA1)

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

#### Interconnection Agreement between Cassadaga Telephone Corporation and DFT Local Service Corporation

**I.D. No.** PSC-07-06-00008-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 Cassadaga Telephone Corporation and DFT Local Service Corporation for approval of an interconnection agreement executed on Jan. 1, 2006.

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

**Subject:** Interconnection of networks for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement.

**Substance of proposed rule:** Cassadaga Telephone Corporation and DFT Local Service Corporation have reached a negotiated agreement whereby Cassadaga Telephone Corporation and DFT Local Service Corporation will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

**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:** Jaelyn 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.

(06-C-0052SA1)

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

#### Modification of the Current Environmental Disclosure Program

**I.D. No.** PSC-07-06-00009-P

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

**Proposed action:** As discussed in the commission’s order authorizing additional main tier solicitations and directing program modifications, issued on Jan. 26, 2006, the commission is considering modifying the current Environmental Disclosure Program to include an attributes accounting system similar to systems used in other states.

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

**Subject:** Modifying the current Environmental Disclosure Program to include an attributes accounting system similar to systems used in other states.

**Purpose:** To improve market liquidity so as to contribute to the success of the 2006-08 RPS Program procurements and enhanced development of the voluntary green market.

**Substance of proposed rule:** In the RPS Program January 26, 2006 Order in Case 03-E-0188, the New York Public Service Commission expressed its inclination to modify the current Environmental Disclosure Program to include an attributes accounting system similar to systems used in other states. This change may affect how all generation data is compiled, aggregated and reported on environmental disclosure labels. It is expected that this change will accommodate proposed modifications to the RPS Program and will encourage the further development of the voluntary green market.

The Commission may accept, reject, or modify any proposals relating to these 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. (94-E-0952SA38)

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

**Unbundling Environmental Attributes from Energy and Physical Bilaterals**

**I.D. No.** PSC-07-06-00010-P

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

**Proposed action:** As discussed in the commission’s order authorizing additional main tier solicitations and directing program modifications, issued on Jan. 26, 2006, the commission is considering recognizing, for the RPS Program, the unbundling of environmental attributes from energy and allowing entities with physical bilaterals to participate in the RPS Program.

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

**Subject:** Unbundling environmental attributes from energy and physical bilaterals.

**Purpose:** To improve market liquidity so as to contribute to the success of the 2006-08 RPS Program procurements.

**Substance of proposed rule:** The New York Public Service Commission is considering specific rules and design details pertinent to the Renewable Portfolio Standard (RPS) Program. In the RPS January 26, 2006 Order, the Commission expressed its inclination to recognize, for the RPS Program, the unbundling of environmental attributes from energy and to allow entities with physical bilateral contracts to participate. These modifications may require significant changes to the Commission’s environmental disclosure label process involving the ways in which all generation data is compiled, aggregated and reported on environmental disclosure labels.

The Commission is considering, for the RPS Program, recognizing the unbundling of environmental attributes for the associated energy and allowing participating renewable generators to enter into physical bilateral agreements for the sale of energy separate from the RPS environmental attributes to which such energy was associated.

The Commission may accept, reject, or modify any proposals relating to these 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. (03-E-0188SA15)

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

**Approval of New Types of Electricity Meters by Elster Electricity  
I.D. No.** PSC-07-06-00011-P

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

**Proposed action:** The commission is considering whether to approve or reject, in whole or in part, a petition dated Dec. 9, 2005 by Elster Electricity for commission approval of the Elster REX line of solid state electricity meters.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of new types of electricity meters—Case 279.

**Purpose:** To permit utilities in New York State to use the Elster Electricity REX line of electricity meters.

**Substance of proposed rule:** The Commission will consider a request filed by Elster Electricity for the approval of the REX line of solid state electricity meters. KeySpan Energy has submitted a letter to the Commission stating its intent to use the REX meter line, if approved. Pending Commission approval of the device KeySpan Energy intends to utilize this line of solid state electric meters to monitor electric flow. The cost of the REX meter line will range from \$70 - \$105 depending on the quantity, type and modules selected.

**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-1607SA1)

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

**Area Development Program by National Fuel Gas Distribution Corporation**

**I.D. No.** PSC-07-06-00012-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 adopt, modify or reject, in whole or in part, a proposal by National Fuel Gas Distribution Corporation (NFG) to establish an area development program (ADP) to provide grants for specific projects in order to stimulate economic activity and redevelopment in the utility’s service territory.

**Statutory authority:** Public Service Law, section 66(1), (2), (12-b) and (12-c)

**Subject:** Consideration of a proposal for an area development program.

**Purpose:** To provide grants for specific projects in order to stimulate economic activity and redevelopment in the utility's service territory.

**Substance of proposed rule:** On October 20, 2005, National Fuel Gas Distribution Corporation (NFG) submitted a proposal for approval of an Area Development Program (ADP) to provide grants for specific projects in order to stimulate economic activity and redevelopment in the utility's service territory. NFG proposes a five-year program that allows for expenditures of up to \$750,000 per year. Unspent funds during each year will be added to the next year's available funds. The Commission may approve, modify or reject, in whole or in part, NFG's request.

**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.

(04-G-1047SA4)

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

**Deferral Accounting and Related Matters by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-07-06-00013-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 a petition of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities Inc. that requests approval to record as a regulatory asset the incremental liabilities that would otherwise be chargeable to income as a result of implementing the Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations." The commission may approve, reject, or modify, in whole or in part, this request, and it may also consider other related matters.

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

**Subject:** Authorization of deferral accounting and related matters.

**Purpose:** To consider a request for deferral accounting of certain liabilities and related matters.

**Substance of proposed rule:** Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (the companies) filed a petition requesting authorization to establish regulatory assets or liabilities to defer charges that would otherwise result from their adoption of Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations". The regulatory assets or liabilities would reverse over time as the related costs are recovered from customers. The companies claim that approval of their request would have no effect on current or future rates charged to customers. The Commission may grant, deny, or modify, in whole or part, the petition, 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-M-1624SA1)

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

**Petition for Rehearing by William Huston**

**I.D. No.** PSC-07-06-00014-P

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

**Proposed action:** The commission is considering whether to approve or reject, in whole or in part, a petition filed by William Huston on Jan. 17, 2006 seeking reconsideration of the commission's Dec. 16, 2005 order dismissing petition and seeking consideration of additional matters regarding compliance with the commission's cable television rules and the Public Service Law.

**Statutory authority:** Public Service Law, section 215(2)

**Subject:** Petition for rehearing and raising other matters related to Compliance with Commission Cable Television Rules and the Public Service Law.

**Purpose:** To consider petition for rehearing and new matters.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, a petition filed by William Huston on January 17, 2006 seeking reconsideration of the Commission's December 16, 2005 Order Dismissing Petition and seeking consideration of additional matters regarding compliance with the Commission's cable television rules and the Public Service Law.

**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.

(04-V-1129SA2)

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

**Initial Tariff Schedule by Muller Water Supply**

**I.D. No.** PSC-07-06-00015-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, or modify, Muller Water Supply's initial tariff schedule, P.S.C. No. 1—Water, to become effective May 1, 2006.

**Statutory authority:** Public Service Law, section 89-e(2)

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

**Purpose:** To approve a tariff schedule, P.S.C. No. 1—Water for Muller Water Supply which sets forth the initial rates, charges, rules and regulations under which the company will operate.

**Substance of proposed rule:** On January 24, 2006 Muller Water Supply (Muller or the company) filed an electronic tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate, to become effective May 1, 2006. Muller serves 8 flat rate customers on Muller Drive in the Town of Deepark, Orange County. No additional customers are expected to connect to the water system. The company proposes a monthly flat rate charge of \$200 per month per customer. Muller also requests approval of a surcharge

mechanism to enable it to recover \$5,170 spent in 2005 to replace its well pump and about \$4,800 to install the facilities necessary to chlorinate the system, as required by the Orange County Department of Health. The initial surcharge proposed would be \$103.85 per customer per month for a one year period. The company also requests that the surcharge mechanism remain in effect to enable it to recover future emergency maintenance expenses that exceed the maintenance allowance included in its base rates, and to also cover needed future capital improvements. Muller's tariff is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us) located under Commission Documents). The Commission may approve or reject, in whole or in part, or modify the company's request.

**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. (06-W-0076SA1)

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

**Water Rates and Charges by Sunrise Ridge Water Company**

**I.D. No.** PSC-07-06-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Sunrise Ridge Water Company to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 2—Water, to become effective May 1, 2006.

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

**Subject:** Water rates and charges.

**Purpose:** To increase Sunrise Ridge Water Company's annual revenues by about \$16,800 or 61 percent.

**Substance of proposed rule:** On January 26, 2006, Sunrise Ridge Water Company (Sunrise or the company) filed to become effective May 1, 2006, Leaf No. 12, Revision 3, to its electronic tariff schedule, P.S.C. No. 2—Water. Sunrise requests to increase its annual revenues by about \$16,800 or 61%. The company provides metered water service to 56 residential customers in a real estate development in both the Town of Carmel, Putnam County and the Town of Yorktown, Westchester County. The average customer's annual metered bill for 70,000 gallons would increase from \$459 to \$754. Sunrise's quarterly minimum rate for the first 9,000 gallons currently is \$76.70 and would increase to \$140. For each additional 1,000 gallons the current rate is \$4.48 and would increase to \$5.50. Sunrise's tariff, along with its proposed changes (Leaf No. 12, Revision 3) is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us))—located under the Commission Documents—Tariffs. The Commission may approve or reject, in whole or in part, or modify Sunrise's request.

**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. (06-W-0112SA1)

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

**Quarterly Surcharge by Sunrise Ridge Water Company**

**I.D. No.** PSC-07-06-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, Sunrise Ridge Water Company's request to institute a quarterly surcharge of \$75 per customer to establish a surcharge account to cover the cost of financing up to a \$150,000 loan for capital improvements effective May 1, 2006.

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

**Subject:** Surcharge to cover the financing of a loan for capital improvements.

**Purpose:** To approve a quarterly surcharge of \$75 per customer to establish a surcharge to cover the cost of financing up to a \$150,000 loan for capital improvements.

**Substance of proposed rule:** On January 26, 2006, Sunrise Ridge Water Company (Sunrise or the company) filed a Capital Improvements Surcharge Statement (CISS) to its P.S.C. Schedule No. 2—Water. Sunrise requests permission for financing a capital improvements program to reflect the cost of a permanent interconnection with the nearby water system, Rainbow Water Company, Inc. (Rainbow), and the cost of getting increased capacity at Rainbow to cover the additional demand of the Sunrise customers. Sunrise and Rainbow have the same owners. A surcharge account would be established to cover the cost of financing up to \$150,000 loan for these capital improvements. Each Sunrise customer would be billed \$75 per quarter until the loan was paid in full. The effective date of the CISS is May 1, 2006. Sunrise provides water service to 56 residential customers in a real estate subdivision located in both the Town of Carmel, Putnam County and the Town of Yorktown, Westchester County. Rainbow provides water service to 88 residential customers in the Rainbow Hill Development located in the Town of Carmel, Putnam County. Sunrise's tariff and Capital Improvements Surcharge Statement No. 1 are available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us))—located under the Commission Documents—Tariffs. The Commission may approve or reject, in whole or in part, or modify Sunrise's request.

**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. (06-W-0112SA2)

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

**Water Rates and Charges by Rainbow Water Company, Inc.**

**I.D. No.** PSC-07-06-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Rainbow Water Company, Inc. to make various changes in the rates,

charges, rules and regulations contained in its tariff schedule, P.S.C. No. 3—Water, to become effective May 1, 2006.

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

**Subject:** Water rates and charges.

**Purpose:** For approval to increase Rainbow Water Company, Inc.'s annual revenues by about \$22,221 or 58 percent.

**Substance of proposed rule:** On January 26, 2006, Rainbow Water Company, Inc. (Rainbow or the company) filed to become effective May 1, 2006, Leaf No. 12, Revision 3, to its electronic tariff schedule, P.S.C. No. 3—Water. Rainbow requests to increase its annual revenues by about \$22,221 or 58%. The company provides metered water service to 88 residential customers in the Rainbow Hill Development located in the Town of Carmel, Putnam County. The average customer's annual metered bill for 59,600 gallons would increase from \$454 to \$690. Rainbow's quarterly minimum rate for the first 9,000 gallons currently is \$85.15 and would increase to \$140. For each additional 1,000 gallons the current rate is \$4.25 and would increase to \$5.50. Rainbow's tariff, along with its proposed changes (Leaf No. 12, Revision 3) is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us))—located under the Commission Documents—Tariffs. The Commission may approve or reject, in whole or in part, or modify Rainbow's request.

**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.

(06-W-0114SA1)

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## Department of State

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### EMERGENCY RULE MAKING

#### General Liability Insurance for Licensed Home Inspectors

**I.D. No.** DOS-07-06-00004-E

**Filing No.** 113

**Filing date:** Jan. 30, 2006

**Effective date:** Jan. 30, 2006

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, § 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 April 29, 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:

Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law was enacted as Chapter 461 of the Laws of 2004 and subsequently amended by Chapter 225 of the Laws of 2005. Section 444-d of Article 12-B 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, § 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, § 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, § 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 § 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, § 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 or 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 be come 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 technical 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 businesses. 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.

## EMERGENCY RULE MAKING

### Qualifying Courses for Home-Inspection Applicants

**I.D. No.** DOS-07-06-00005-E

**Filing No.** 114

**Filing date:** Jan. 30, 2006

**Effective date:** Jan. 30, 2006

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, sections 444-c(6)(A) and 444-1

**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

##### § 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.

##### § 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 at least 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.

##### § 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.

§ 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 descrip-

tion 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 April 29, 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:

Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law was enacted as Chapter 461 of the Laws of 2004 and subsequently amended by Chapter 225 of the Laws of 2005. Section 444-d of Article 12-B 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. Section 444-e(b)(I) of Article 12-B 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. Section 444-c(6)(A) of Article 12-B authorizes the Secretary of State to adopt standards for home-inspection training, including standards for course approval. In addition, 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 to 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:

§ 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.

§ 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.

§ 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.

§ 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 § 197-2.3 of this rule.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 consulted with numerous individuals representing the home inspection industry, as well as industry teachers and building code officials. All parties were in general agreement that the proposed topics are standard topics for the industry. There was some interest in including certain environmental topics. However, in order to keep the required curriculum at 140 hours, it was decided not to include those topics, which can, of course, be offered at the desecration of the schools as addition, unmandated topics or as a continuing education offering.

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) 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) (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) 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) 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) 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.

**NOTICE OF ADOPTION**

**Rule Making Submissions**

**I.D. No.** DOS-41-05-00003-A

**Filing No.** 105

**Filing date:** Jan. 27, 2006

**Effective date:** Feb. 15, 2006

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

**Action taken:** Amendment of sections 260.1, 260.2, 260.6, 261.1, 261.4 and 261.6 and repeal of Appendix 1 of Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 91, 102(2) and 146

**Subject:** Rule making submissions.

**Purpose:** To make amendments necessary due to technological advances, correct incorrect references, simplify submission requirements, and repeal outdated forms.

**Text or summary was published** in the notice of proposed rule making, I.D. No. DOS-41-05-00003-P, Issue of October 12, 2005.

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

**Text of rule and any required statements and analyses may be obtained from:** Deborah Ritzko, Department of State, 41 State St., Albany, NY 12231, (518) 474-6785, e-mail: dritzko@dos.state.ny.us

**Assessment of Public Comment**

An assessment is not attached because no comments were received.

withheld from an employee's income if the employee owes child support arrears or past due child support.

**Substance of rule:** To implement State and Federal laws concerning the process for issuing income execution orders in child support cases and change the method for calculating the amount of any additional deductions to be withheld from an employee's income if the employee owes child support arrears or past due child support.

**Changes to rule:** No substantive changes.

**Expiration date:** September 7, 2006.

**Text of proposed rule and changes, if any, may be obtained from:** Anne Grace, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-9498, e-mail: Anne.Grace@OTDA.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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**NOTICE OF CONTINUATION  
NO HEARING(S) SCHEDULED**

**Enforcement of Support Obligations and Issuance of Income Executions**

**I.D. No.** TDA-36-05-00003-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. TDA-36-05-00003-P was published in the *State Register* on September 7, 2005.

**Subject:** Enforcement of support obligations and issuance of income executions.

**Purpose:** To implement State and Federal laws concerning the process for issuing income execution orders in child support cases and change the method for calculating the amount of any additional deductions to be