

# RULE MAKING ACTIVITIES

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Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency  
01 -the *State Register* issue number  
96 -the year  
00001 -the Department of State number, assigned upon receipt of notice  
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

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## Banking Department

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### EMERGENCY RULE MAKING

#### Community Reinvestment Act Requirements

**I.D. No.** BNK-36-06-00010-E

**Filing No.** 1017

**Filing date:** Aug. 22, 2006

**Effective date:** Aug. 22, 2006

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

**Action taken:** Amendment of Part 76 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 10, 14(1) and 28-b

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

**Specific reasons underlying the finding of necessity:** The purpose of the Community Reinvestment Act ("CRA") is to encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Every New York State-chartered bank must comply with both the State and Federal CRA laws and regulations and is examined by State and Federal regulators with respect to CRA.

Effective September 1, 2005, State chartered banks will have to comply with the amended Federal CRA regulations recently adopted jointly by the

Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

When Part 76 was first adopted, and for the subsequent amendments made thereto, the State CRA regulation was designed to create compatibility with the Federal CRA regulations so that banks chartered under the New York Banking Law would not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden. Consequently, the recently adopted CRA Federal amendments which become effective September 1, 2005, necessitate the emergency adoption of the amendments to Part 76 of the General Regulations of the Banking Board to make the State CRA regulations compatible with the Federal CRA regulation.

**Subject:** Compliance with Community Reinvestment Act requirements.

**Purpose:** To encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations.

**Substance of emergency rule:** Section 76.2(b) is amended to include references to "metropolitan divisions" in determining an area's median family income.

Section 76.2(f) is amended to revise the definition of "community development" to include activities that revitalize or stabilize disaster areas and distressed or underserved middle-income nonmetropolitan geographies.

Section 76.2(q) is amended to add a definition of "metropolitan division".

Sections 76.2(q) to 76.2(w) are renumbered to account for the added definition in Section 76.2(q), as noted above.

Section 76.2(t) is amended to raise the asset threshold for a "small banking institution" to \$1 billion, to introduce the new concept of an "intermediate small banking institution," and to add provisions for adjusting the asset thresholds for small and intermediate small banking institutions.

Section 76.2(u) is amended to reflect the aforementioned renumbering, and to update references to the Banking Department's address.

Section 76.2(v) is amended to reflect the aforementioned renumbering, to clarify a reference to Federal Reserve Regulation BB and to update references to the Banking Department's address.

Section 76.5(a) is amended to replace the requirement for biennial CRA examinations with more flexible CRA examination scheduling criteria and to clarify the connection between the numerical ratings specified in Part 76 and the words commonly used to describe the rating.

Section 76.5(b) is amended to provide examples of laws, rules and regulations that, when violated, could lead to reduced CRA performance ratings.

Section 76.6(b) is amended to include references to metropolitan divisions.

Section 76.6(c)(1) is amended to include references to metropolitan divisions.

Section 76.8(a)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending as part of the institution's CRA performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.8(b)(2) is amended to eliminate a reference to loan renewals.

Section 76.8(c)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending by an affiliate of the institution as part of the institution's CRA

performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.8(d) is amended to clarify that the loans being discussed in the Section are community development loans.

Section 76.8(d)(1) is amended to identify the specific data an institution must maintain if it elects to have regulators consider certain optional types of lending by an affiliate of the institution as part of the institution's CRA performance evaluation. The Section also is amended to include references to the locations of various offices where an individual can obtain copies of a specified document.

Section 76.10(d)(1) is amended to clarify the circumstances under which additional consideration will be given for branches located outside low- or moderate-income areas.

Section 76.10(d)(2) is amended to clarify the criteria for evaluating an institution's record of opening new branches and closing existing branches.

Section 76.10(f) is amended to add a provision specifying that the Banking Department will look favorably upon an institution's efforts to establish a Banking Development District.

Section 76.12(a)(1) is added to identify which performance criteria apply to small banking institutions that are not intermediate small banking institutions.

Section 76.12(a)(2) is added to identify the performance criteria that apply to intermediate small banking institutions.

Section 76.12(b) is added to delineate the Lending Test criteria that apply to all small banking institutions.

Section 76.12(c) is added to identify the Community Development Test performance criteria that apply only to intermediate small banking institutions.

Section 76.13(g)(1) is amended to correct an inaccurate cross-reference.

In addition, various technical amendments have been made to Part 76 to correct punctuation, renumber sub-paragraphs, and make similar minor adjustments.

**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 November 19, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

#### **Regulatory Impact Statement**

##### **1. Statutory authority:**

Banking Law Sections 10, 14(1) and 28-b authorize the Banking Board to promulgate rules and regulations effectuating the provisions of the Community Reinvestment Act ("CRA").

##### **2. Legislative objectives:**

The purpose of CRA is to encourage banking institutions to help meet the credit needs of their local communities, including low- and moderate income neighborhoods, consistent with safe and sound operations. The amendments to Part 76 make compatible the New York State CRA regulations to the changes made to the federal CRA regulations, recently adopted jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the "Federal Agencies") that became effective on September 1, 2005. As a result, the amendments establish a CRA framework paralleling that in the federal CRA regulation, by which the State of New York Banking Department ("Banking Department") can assess a banking institution's record of helping to meet the credit needs of its local community.

##### **3. Needs and benefits:**

Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations. Thus, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. This rule making primarily involves amendments to Part 76 with respect to certain provisions of the State CRA regulation to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law do not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden.

Specifically, the rule includes amendments that reduce the regulatory burden imposed on banks with an asset size between \$250 million and \$1 billion, now referred to as "intermediate small banking institutions", without regard to holding company affiliation, by exempting them from CRA

loan data collection and reporting obligations. The intermediate small banking institutions will not be subject to the lending, investment, and service CRA performance tests. Instead, their CRA performance will be evaluated under the small bank lending test combined with a flexible new community development CRA performance test. This has the effect of reducing regulatory burden on institutions that fall within this category because they are relieved from their obligation to collect and report information about small business, small farm, and community development loans.

As mentioned above, the rule includes the implementation of a community development test for intermediate small banking institutions that provides a more appropriate framework for assessing community reinvestment performance by these banks. The number and amount of community development loans, the number of qualified investments, and the provision of community development services by an intermediate small banking institution, and the bank's responsiveness through such activities to community development lending, investment, and service needs, are evaluated in the context of the individual bank's capacities, business strategy, the bank's assessment area(s), and the number and types of opportunities for community development activities.

The rule also revises the definition of "community development" to increase the number and kinds of tracts in which bank activities are eligible for community development consideration. Specifically, the category of community development with respect to activities that "revitalize or stabilize" is revised to provide that activities that revitalize or stabilize areas designated by the federal agencies as "distressed or underserved nonmetropolitan middle-income geographies" will qualify as community development activities. In addition, the rule extends the definition of "community development" to cover efforts made by banks to revitalize or stabilize designated disaster areas.

Further, the rule amends Part 76 to reflect certain technical changes to the regulation implementing the CRA to conform to changes made by the Office of Management and Budget ("OMB") regarding the standards for defining Metropolitan Statistical Areas, and changes related to census tracts adopted by the U.S. Bureau of the Census ("Census"). OMB standards for defining statistical areas provide nationally consistent definitions to use when collecting, tabulating and publishing federal statistics by geographic area. The CRA regulation relies on OMB standards for defining metropolitan areas for purposes of CRA data collection and reporting and for delineating institutions' assessment areas.

The CRA definition of "geography" affects CRA assessment area delineation, data collection and reporting. The CRA regulation defined the term "geography" as a "census tract or a block-numbering area delineated by the United States Bureau of the Census in the most recent decennial census." Beginning with the 2000 Census, the Census only assigns tracts and no longer assigns block-numbering areas. Accordingly, the regulation amends the definition of geography to delete the term "block-numbering area".

Amendments to Part 76 also establish a CRA examination schedule for State chartered banks that will more closely align, to the extent feasible, the State CRA examination schedule with that of the bank's federal regulator, thereby eliminating, when possible, non-concurrent CRA examinations.

In addition, the rule includes certain amendments that clarify the existing CRA regulations to assist regulated entities whose CRA performance is being assessed. In particular, Part 76 is amended to clarify, by way of examples, actions that evidence discrimination, or evidence credit practices that violate an applicable law, rule, or regulation. Such evidence will adversely affect the evaluation of a bank's CRA performance.

Also included in the rule are clarifying amendments that: (a) describe the level of CRA performance associated with the CRA numerical performance ratings currently referred to throughout the regulation, (b) explain the criteria currently considered for evaluating a bank's CRA performance with respect to branch distribution, (c) specify the data referred to that must be maintained with respect to additional lending activity if banks elect to have additional lending activity considered in assessing their CRA performance, (d) make explicit the Banking Department's already existing practice to consider a bank's efforts to establish a Banking Development District in evaluating the bank's service test CRA performance criteria, and (e) state the Department's existing practice to apply the CRA performance criteria uniformly.

In addition to the foregoing, there are other small amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number

sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

#### 4. Costs:

Costs to State Government: None.

It is expected that there will not be an increase in the amount of examiner hours needed to conduct CRA examinations of State-chartered banks by amending the State's CRA regulations to create compatibility with the federal CRA regulations, and establishing a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator.

Costs to Local Government: None.

Costs to the Regulated Entities: The Banking Department expects that because every New York State-chartered bank must comply with both the State and federal CRA laws and regulations, and the rule primarily seeks amendments to the State's CRA regulation to create compatibility with the federal CRA regulations, there will be no additional costs to the regulated entities due to the amendments to Part 76.

It is expected that the changes in Part 76, overall, will result in cost-savings to the regulated entities. Specifically, because the amendments to Part 76 primarily create compatibility with the federal CRA regulations, New York State-chartered banks that are subject to both the State and federal CRA laws and regulations will not incur the additional costs that would likely result if the regulated entities were required to satisfy two conflicting sets of CRA regulations. The estimated savings to the regulated entities in this regard can not be quantified by the Banking Department because there are a number of factors affecting a bank's CRA compliance costs, including the institution's asset size, the scope and type of its CRA programs, and the personnel involved in administering the programs and compliance with CRA.

Additionally, because the rule establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator, eliminating the regulatory burden of non-concurrent examinations, when possible, in this area will eliminate additional costs to the regulated entities for CRA examinations. The Banking Department is unable to estimate the savings to the regulated entities in this respect because the costs to an institution for an on-site CRA examination can vary greatly according to the institution's asset size, the scope and type of its CRA programs, and the number of personnel needed to assist in connection with the examination.

#### 5. Local government mandates:

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

#### 6. Paperwork:

The rule will provide regulatory relief for State-chartered banks with an asset size between \$250 million and \$1 billion (intermediate small banking institutions) because it exempts these banks from CRA loan data collection and reporting obligations. As a result, such intermediate small banking institutions will be relieved of their obligation to collect and report information to the State and federal regulators about small business, small farm, and community development loans.

Additionally, since the rule establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator, a reduction in paperwork will result since the banks will have to produce the necessary paperwork only once per CRA evaluation period for concurrent examinations.

#### 7. Duplication:

Every New York State-chartered bank must comply with both the State and federal CRA laws and regulations. Consequently, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. The rule seeks amendments to Part 76 of the State CRA regulation to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law do not have to satisfy conflicting sets of CRA regulations.

#### 8. Alternative Approaches:

Proposal – New York State-chartered banks must comply with both the State and federal CRA laws and regulations. Therefore, each State-chartered bank is examined by the State and a federal regulator to measure how well it meets the credit needs of its local communities. As previously discussed in the Needs and Benefits section contained herein, the rule is necessary because it primarily amends Part 76 in various ways so that the State CRA regulation is compatible with the federal CRA regulation and

establishes a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator.

Due to the fact that State-chartered banks are required to comply with State and federal laws and regulations with respect to CRA, the Banking Department reasoned when Part 76 was first established, and during subsequent amendments thereto, that the State CRA regulation should be compatible with the federal CRA regulation. This approach to CRA has provided the regulated institutions with a consistent set of performance criteria with respect to their CRA activity. Accordingly, the rule contains amendments to Part 76 that will again provide a consistent approach to CRA compliance for the regulated entities so that they will not have to satisfy conflicting sets of CRA regulations. To the extent possible, it will also enable them to be examined concurrently by the State and federal regulator for CRA purposes, thereby eliminating the regulatory burden of non-concurrent CRA examinations. In the past, preventing regulated institutions from having to satisfy two different sets of CRA regulations has reduced their CRA regulatory burden. For that reason, it is expected that the current amendments will have a similar effect.

Do not propose the rule – If this alternative were considered, regulated entities would be faced with CRA compliance requirements under the State and federal regulations that would be substantially different. The regulated entities also would be required to submit to non-concurrent CRA examinations by the State and federal regulators. As explained in the Needs and Benefits section, this approach was not considered because the Banking Department believes that it is unnecessary to increase the regulatory burden placed on State-chartered banks by having them comply with conflicting sets of CRA regulations and subjecting them to non-concurrent CRA examinations.

#### 9. Federal standards:

Federal CRA regulations recently adopted by the Federal Agencies become effective on September 1, 2005. The rule amends the State CRA regulation to make it compatible with the federal CRA regulations.

#### 10. Compliance schedule:

Compliance with the rule is required upon its becoming effective.

#### **Regulatory Flexibility Analysis**

The rule makes amendments to Part 76, the State's CRA regulation, primarily to make it compatible with the recently amended federal CRA regulations, which become effective September 1, 2005. All New York State-chartered banks must comply with both the State and federal CRA laws and regulations.

#### Effect of the rule:

With respect to asset size of the State-chartered banks, the rule specifically includes amendments to Part 76 similar to the changes recently adopted in the federal CRA regulations, that reduce the regulatory burden imposed on banks with an asset size between \$250 million and \$1 billion (referred to as "intermediate small banking institutions"), without regard to holding company affiliation. These amendments exempt intermediate small banking institutions from CRA loan data collection and reporting requirements. Also, the intermediate small banking institutions will not be subject to the lending, investment, and service CRA performance tests. Instead, their CRA performance will be evaluated under the small bank lending test combined with a flexible new community development CRA performance test. This has the effect of reducing regulatory burden on institutions that fall within this category because they are relieved from their obligation to collect and report information about small business, small farm, and community development loans.

The implementation of a new community development test for the intermediate small banking institutions will provide a more appropriate framework for assessing community reinvestment performance by these banks. The number and amount of community development loans, the number of qualified investments, and the provision of community development services by an intermediate small bank, and the bank's responsiveness through such activities to community development lending, investment, and service needs is evaluated in the context of the individual bank's capacities, business strategy, the bank's assessment area(s), and the number and types of opportunities for community development activities. Accordingly, because the performance standards for the intermediate small banking institutions will have the effect of reducing regulatory burden on these institutions, it is apparent that the amendments will not impose any appreciable or substantial adverse impact on State-chartered banks licensed under New York Law.

The rule affects State-chartered banks. It will have no effect on local governments because there are no local governments that are State-chartered banks.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. As is more fully described in the Regulatory Impact Statement, the rule contains amendments to Part 76 to make various changes with respect to the ways in which the CRA performance is assessed for banks with a certain asset size to make the State CRA rules compatible with the recently adopted amendments to the federal CRA regulation. The amendments to Part 76 also establish a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator. Additionally, amendments to Part 76 seek to clarify certain provisions of the existing State CRA regulation to assist the regulated entities whose CRA performance is being assessed. Finally, there are certain amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

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

**Job Impact Statement**

The purpose of CRA is to encourage banking institutions to help meet the credit needs of their local communities, including low and moderate income neighborhoods, consistent with safe and sound operations. Every New York-State chartered bank must comply with both the State and federal CRA laws and regulations and is examined by State and federal regulators with respect to CRA. Recent amendments to the federal CRA regulation that apply to federal as well as State-chartered banks were adopted and will become effective September 1, 2005. Accordingly, the amendments to Part 76, the State's CRA regulations, are intended primarily to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law will not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden.

As is more fully described in the Regulatory Impact Statement, the rule contains amendments to Part 76 to make various changes with respect to the ways in which certain bank's CRA performance is assessed to make the State CRA rules compatible with the recently adopted amendments to the federal CRA regulation. Furthermore, amendments to Part 76 establish a CRA examination schedule for State-chartered banks that will be more closely aligned, to the extent feasible, with the CRA examination schedule of the bank's federal regulator. Additionally, amendments to Part 76 seek to clarify certain provisions of the existing State CRA regulation to assist the regulated entities whose CRA performance is being assessed. Finally, there are certain amendments to Part 76 in the form of corrections and updates that make current references to the location of the New York City office of the Department, re-number sections of the rule as needed, remove redundant terminology, insert proper cross-referencing and correct typographical errors.

Accordingly, based on the nature and purpose of the rule, it will have no impact on jobs in New York State.

**NOTICE OF ADOPTION****Licensed Cashers of Checks**

**I.D. No.** BNK-13-06-00009-A

**Filing No.** 1004

**Filing date:** Aug. 16, 2006

**Effective date:** Sept. 6, 2006

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

**Action taken:** Amendment of Part 400 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 37(3), 369, 371 and 372

**Subject:** Licensed cashers of checks.

**Purpose:** To regulate commercial check cashing.

**Text or summary was published** in the notice of proposed rule making, I.D. No. BNK-13-06-00009-P, Issue of March 29, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION****Regulation of Budget Planning Activities**

**I.D. No.** BNK-13-06-00011-A

**Filing No.** 1006

**Filing date:** Aug. 17, 2006

**Effective date:** Sept. 6, 2006

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

**Action taken:** Addition of Part 404 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-C, section 587

**Subject:** Regulation of budget planning activities conducted by entities licensed under art. 12-C of the Banking Law.

**Purpose:** To set forth the regulatory requirements and standards of operation for entities licensed under art. 12-C of the Banking Law; conduct the business of budget planning when licensees use the services of third party entities in making payments of debtor funds to creditors of debtors.

**Text of final rule:****PART 404****BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES****§ 404.1 Definitions.**

For purposes of this Part:

(a) The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.

(b) The term "licensee" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individual or entity that has a 10% or more ownership interest in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

**§ 404.2 Explanatory note.**

Section 580.4 of Article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under Article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to Section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law

Section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law Section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law Section 580.4.

#### § 404.3 Servicing By a Licensee Service Provider.

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the licensee service provider.

(2) A description of the services to be provided by the licensee service provider.

(3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by the licensee service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the Superintendent confirming that the Superintendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under Section 404.3(c) of this Part.

(e) Notwithstanding the provisions of Section 404.3(c) of this Part, if a licensee maintains a surety bond and seeks to utilize a licensee service provider, as defined in section 404.1(c) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(f) If the use of an alternate mechanism pursuant to Section 404.3(e) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(g) If a licensee proposes the use of an alternate mechanism to a licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, pursuant to Section 404.3(e) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

#### § 404.4 Servicing By A Non-Licensee Service Provider.

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the non-licensee service provider.

(2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

(1) The non-licensee service provider gives the Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under Section 404.4(c)(2) of this Part, have been provided to the Superintendent, and the licensee receives written notice from the Superintendent confirming that the Superintendent has received all such information.

(d) Notwithstanding the provisions of Section 404.4(c)(2) of this Part, if a licensee maintains a surety bond and seeks to utilize a non-licensee service provider, as defined in Section 404.1(d) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the non-licensee service provider maintaining assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(e) If the use of an alternate mechanism pursuant to Section 404.4(d) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(f) If a licensee proposes the use of an alternate mechanism to a non-licensee service provider maintaining assets on deposit pursuant to Section 404.4(d) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

#### § 404.5 Termination of Agreements or Contracts.

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) *A licensee shall immediately notify the Superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 404.6.

**Text of rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

#### **Revised Regulatory Impact Statement**

##### **1. Statutory Authority:**

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the Superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

##### **2. Legislative Objective:**

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

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

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

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

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

Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

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

##### **3. Needs and Benefits:**

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

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

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

Budget Planning is a regulated financial service in New York State. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services. It is the Banking Department's belief that the rule as proposed is necessary. It provides the mechanism by which the budget planning entities that are currently licensed, as well as those seeking to obtain such a license, can continue to operate using the services

of third party entities in distributing Debtor funds to creditors. At the same time, the rule satisfies the legislative requirement as set forth in Banking Law Section 580(4) to provide certain protection to Debtors in contract with licensees, in cases where third party entities are used by the licensees in distributing Debtor funds to creditors.

4. Costs:

(a) Costs to State Government: None.

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

(b) Costs to Local Government: None.

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

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

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

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

5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

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

Under the proposed rule, licensed budget planners will have to provide the Banking Department with the following information: a) the name and address of the third party entity used in distributing debtor funds to creditors, b) a description of the services being provided by the third party entity, c) a copy of the agreement or contract entered into with the third party entity, d) information regarding the highest daily amount of Debtor funds that the third party entity will be providing services for under the

contract or agreement, and e) information with respect to the termination of any such agreement or contract. All of this information is of the type that licensees using third party entities in distributing Debtor funds will have readily available to provide to the Banking Department.

7. Duplication:

None.

8. Alternatives:

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

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

(b) Do not propose the rule.

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

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

9. Federal Standards:

None.

10. Compliance Schedule:

Compliance with the rule is required on its effective date.

**Revised Regulatory Flexibility Analysis**

The change from the proposed rule deleting the specified effective date does not require any changes to the Regulatory Flexibility Analysis filed with the proposed rule.

**Revised Rural Area Flexibility Analysis**

The change from the proposed rule deleting the specified effective date does not require any changes to the statement in lieu of a Rural Area Flexibility Analysis which was filed with the proposed rule.

**Revised Job Impact Statement**

The change from the proposed rule deleting the specified effective date does not require any changes to the statement in lieu of a Job Impact Statement filed with the proposed rule.

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-25-06-00002-A

**Filing No.** 1013

**Filing date:** Aug. 18, 2006

**Effective date:** Sept. 6, 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 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Temporary State Commission of Investigation.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-25-06-00002-P, Issue of June 21, 2006.

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

**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-25-06-00003-A

**Filing No.** 1010

**Filing date:** Aug. 18, 2006

**Effective date:** Sept. 6, 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 classify a position in the non-competitive class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-25-06-00003-P, Issue of June 21, 2006.

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

**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-25-06-00004-A

**Filing No.** 1011

**Filing date:** Aug. 18, 2006

**Effective date:** Sept. 6, 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 classify a position in the non-competitive class in the Department of Audit and Control.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-25-06-00004-P, Issue of June 21, 2006.

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

**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-25-06-00006-A

**Filing No.** 1014

**Filing date:** Aug. 18, 2006

**Effective date:** Sept. 6, 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 the non-competitive in the Department of Labor.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-25-06-00006-P, Issue of June 21, 2006.

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

**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-25-06-00007-A

**Filing No.** 1012

**Filing date:** Aug. 18, 2006

**Effective date:** Sept. 6, 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 classify a position in the non-competitive class in the Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-25-06-00007-P, Issue of June 21, 2006

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

**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-25-06-00008-A

**Filing No.** 1016

**Filing date:** Aug. 18, 2006

**Effective date:** Sept. 6, 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) 3 of Part 57 of the Regulations of the State Civil Service Commission.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the labor class in the State Department Service.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-25-06-00008-P, Issue of June 21, 2006.

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



**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

### Jurisdictional Classification

**I.D. No.** CVS-25-06-00011-A

**Filing No.** 1015

**Filing date:** Aug. 18, 2006

**Effective date:** Sept. 6, 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 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-25-06-00011-P, Issue of June 21, 2006.

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

**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

(iii) A description of the violation of Title III that is alleged to have occurred, is occurring, or is about to occur;

(iv) An indication whether the complainant requests a hearing; and

(v) The signature of the complainant sworn to under oath or affirmation before a notary public or commissioner of deeds.

(3) A complaint shall be based upon personal knowledge and belief and be relevant to the matters complained of.

(4) The burden of proof applied to all formal complaints shall be a preponderance of the evidence.

(5) A complaint shall be filed within sixty (60) days after the occurrence of the actions or events that form the basis for the complaint.

(6) Complaints must be filed, either in person or by mail, with the New York State Board of Elections, Office of Enforcement Counsel, 40 Steuben Street, 3rd Floor, Albany, NY 12207.

(7) A complainant may withdraw a complaint at any time by providing written notice to the SBOE.

(c) Processing of Complaints

(1) Upon receipt of a formal written complaint, the SBOE, within two (2) business days, shall assign a complaint number, review the complaint, and consolidate, if it deems appropriate.

(2) If the complaint form is not properly completed, the SBOE, shall notify the complainant to re-submit a corrected or completed complaint.

(3) Upon receipt of a completed or corrected complaint, as determined by its Office of Enforcement Counsel, the SBOE shall accept the complaint for filing, and shall issue a Notice of Acceptance of Complaint, to notify the complainant of the tracking number assigned. The time frame in which a determination must be issued by the SBOE commences on the date the Notice of Acceptance of Complaint is issued.

(4) Within five (5) business days of receipt of the Notice of Acceptance of Complaint, complainant shall send a copy of the Notice, the complaint, and supporting materials, to the respondent by certified mail or commercial courier service. Complainant shall file proof of service with the SBOE no later than ten (10) business days of receipt of the Notice of Acceptance of Complaint.

(d) Hearings on Complaints

(1) Upon the written request of the complainant or respondent, there shall be a hearing on the record, unless prior to the hearing, the SBOE, sustains the formal complaint as being uncontested.

(2) The complainant or respondent may withdraw his/her initial request for a hearing at any time. The parties may also agree, to resolve the complaint through an informal conference.

(3) The SBOE, Office of Enforcement Counsel, shall schedule a hearing if one has been requested by either the complainant or respondent, or if it is deemed necessary by the SBOE.

(4) The SBOE, Office of Enforcement Counsel, shall provide final written notice of the date, time and place of the hearing not less than five (5) business days prior to the date of the hearing.

(5) Hearings shall be conducted by a panel of two Commissioners of the SBOE who are representatives of the two major Parties or senior staff members as selected by the Commissioners of that Party.

(6) Hearings shall be conducted at the SBOE Offices. An alternate location may be selected when deemed necessary upon agreement of the hearing panel.

(7) The complainant shall have an opportunity to present evidence relevant to the allegations in the complaint. The Hearing Panel can request written materials or oral presentations by persons who are not parties.

(8) The following rules of evidence shall be followed in the admission of testimony and exhibits in all hearings:

(i) The hearing panel shall, exclude immaterial or unduly repetitious evidence.

(ii) Documentary evidence in the form of copies may be received at the discretion of the hearing panel, if the original is not found readily available.

(iii) Cross examination may be conducted as the hearing panel shall find to be required for a full and true disclosure of the facts.

(iv) Any exhibit admitted as evidence by the hearing panel in a prior hearing may be offered as evidence in a subsequent hearing.

(9) The hearing may be recessed and continued to a later time or day, at the discretion of the hearing panel.

(10) All hearings shall be electronically recorded, and a record of the proceedings shall be compiled by the SBOE. The record shall include:

(i) The electronic recording of the hearing;

(ii) A transcript of the hearing on the record if such a hearing was requested in writing by the complainant or respondent;

## State Board of Elections

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

#### Administrative Complaint Procedure for Resolution of Violations of Title III Provisions of HAVA

**I.D. No.** SBE-36-06-00009-P

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

**Proposed action:** Addition of Part 6216 to Title 9 NYCRR.

**Statutory authority:** Election Law, sections 3-102, 3-105; L. 2005, ch. 23

**Subject:** Administrative complaint procedure for resolution of violations of Title III provisions of HAVA.

**Purpose:** To provide a procedure.

**Substance of proposed rule (Full text is posted at the following State website: [www.elections.state.ny.us](http://www.elections.state.ny.us)):** This rule making provides a uniform, nondiscriminatory administrative complaint procedure for any person who believes that there is a violation of any provision of Title Three of the Federal Help America Vote Act of 2002 (HAVA).

The Procedure for HAVA Administrative Complaint Proceedings

(a) Initiation of Proceeding and Informal Complaints.

(1) A complaint alleging that there is a violation may be made in person, by telephone, or in writing. Such complaints may be made to the appropriate local board of elections or to the State Board of Elections (The "SBOE").

(b) Formal Complaints.

(1) All formal complaints shall be filed with the SBOE. All formal complaints shall be written, signed and sworn on the complaint form promulgated by the SBOE.

(2) All formal complaints shall contain the following information:

(i) The full name, mailing address, telephone number and email address if applicable, of the complainant;

(ii) Identification of the local or state official(s) or entity/entities who is alleged to have violated Title III (the "respondent");

(iii) Any documents or other tangible items introduced into evidence at the hearing, and a list of same in the order in which they were introduced;

(iv) The complaint and written response;

(v) All notices and correspondence between the SBOE, the complainant and the respondent; and

(vi) The results of any investigation conducted by SBOE staff in response to the complaint.

(e) Determinations

(1) If the hearing panel does not agree to sustain the complaint, the formal complaint shall be deemed dismissed and that shall constitute the determination of the panel.

(2) If no hearing has been requested in writing, and if one was not required by the SBOE, then a panel of two Commissioners of the SBOE of the two major Parties or designated senior staff members of those Parties shall make a determination.

(3) The determination of the panel will be final unless changed by the SBOE within ninety (90) days of issuing the Notice of Acceptance of Complaint. A final determination dismissing a formal complaint may be filed by any one member of the panel.

(4) The final determination shall include findings of fact and an appropriate remedy if a Title III violation is found. If no violation is found, then the final determination shall dismiss the complaint.

(5) The SBOE, Office of Enforcement Counsel shall provide copies of the final determination to the complainant and respondent.

(f) Remedies

(1) Remedies available under this procedure must be consistent with state law.

(2) A remedy provided for under this rule may not include any award of damages or payment of costs, penalties or attorneys fees, and may not include the invalidation of any election or a determination of the validity of any ballot or vote.

(3) No provision of this section shall be construed to impair or supersede the right of an aggrieved party to seek a judicial remedy.

(g) Costs of conducting hearings

(1) The SBOE shall be responsible for the costs of administering hearings. This shall not include any expenses of any complainant or respondent to the hearing.

The process for Alternative Dispute Resolution

(a) Purpose and Overview

(1) Whenever a final determination of a formal complaint is not made within ninety (90) days of the date of acceptance, the SBOE shall refer the formal complaint to an independent, alternative dispute resolution (ADR) agency.

(b) Referral to ADR Agency

(1) As soon as the SBOE has exceeded the ninety (90) calendar day period the complaint will be forwarded immediately to the administrative office of the ADR agency selected by the SBOE.

(2) The materials forwarded shall include:

(i) The electronic recording of the hearing;

(ii) A transcript of the hearing on the record if such a hearing was so requested in writing by the complainant or respondent;

(iii) Any documents or other tangible items introduced into evidence at the hearing;

(iv) The complaint and written response;

(v) All notices and correspondence between the SBOE, the complainant and the respondent; and

(vi) The results of any investigation conducted by SBOE staff in response to the complaint.

(vii) Contact information for each party which will include addresses, phone numbers, fax numbers and email, if available;

(viii) Any other information relevant to the complaint, including any specific requirements for arbitration.

(c) Selection of Arbitrators for Inclusion on Panel

(1) The ADR agency select arbitrators who shall be evaluated for inclusion onto a panel each case submitted under this program.

(2) The ADR agency will approve an arbitrator based upon background, training and requisite experience.

(3) The ADR agency panel recommendations will be sent to the State Board of Elections which may challenge inclusion based upon just cause.

(4) The panel shall include at least two (2) arbitrators able to perform hearings within each of the six regions currently established by the Election's Commissioners' Association of New York State.

(5) Arbitrators approved for inclusion on the panel will be required to attend an orientation for this program and issues relative to HAVA.

(6) There will be periodic roster review by the applicable ADR agency and the SBOE, to occur at least every two (2) years.

(7) A training component may be added by the ADR agency fulfilling the geographic representation cannot be obtained after an adequate search.

(d) Assignment of arbitrators to specific cases

(1) An arbitrator will be selected by the ADR agency for each case submitted under this program.

(2) Selection of an arbitrator shall be done geographically based upon the origin of the complaint. First preference will be given to a local arbitrator in a region.

(3) An arbitrator may be removed from serving on a particular case for bias or any financial or personal interest, or prior relationship to one or both parties or their representatives.

(e) Case processing

(1) The ADR agency will conduct an expedited cost-effective process, but not at expense of a full and complete investigation.

(2) The ADR agency will review the materials submitted by the SBOE, and forward a copy of the materials to the appointed arbitrator. Within fifteen (15) to twenty (20) calendar days after receipt of the complaint, the arbitrator will schedule the hearing convenient location to the complainant.

(3) The ADR agency will forward the following information to the parties:

(i) Date of arbitration;

(ii) Location of arbitration;

(iii) Appointed arbitrator, and summary of arbitrator vitae when requested;

(iv) Any disclosure statement the arbitrator may deem relevant;

(4) The parties will have seven (7) calendar days to object to the arbitrator on the grounds of a prior relationship or due to another reason deemed sufficient.

(5) An arbitration will be held, giving the parties full opportunity to present evidence and testimony.

(6) The arbitrator will analyze all materials relevant to the complaint, and develop a written statement explaining his/her decision and a remedy, if applicable.

(7) The arbitrator's decision will be advisory in nature, not constituting a final and binding award.

(8) The process from complaint forwarding to the ADR agency, to dissemination of the decision to the parties will take no more than sixty (60) calendar days.

(9) The procedures and relative elements of the Arbitration Program will be subject to review.

(f) Arbitration remedies

(1) Recommended remedies available pursuant to arbitration must be consistent with state law.

(2) A recommended remedy may not include any award of damages, payment of costs, penalties or attorneys fees, and may not include the invalidation of any election or a determination of the validity of any ballot or vote.

(3) No decision of the arbitrator shall be construed to impair or supersede the right of an aggrieved party to seek a judicial remedy.

(g) Costs of conducting arbitration

(1) The SBOE shall be responsible for the costs of administering arbitrations. This shall not include any expenses of any complainant or respondent to the arbitration.

**Text of proposed rule and any required statements and analyses may be obtained from:** William J. McCann, Jr., Board of Elections, 40 Steuben St., Albany, NY 12207, (518) 474-2063, e-mail: wmccann@elections.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:

Election Law § 3-102 gives the State Board of Elections general rule making authority, Election Law § 3-105(4) requires promulgation of regulations to move from State Board of Elections to Alternative Dispute Resolution to close complaints not resolved by the agency.

2. Legislative Objectives:

To comply with the federal Help America Vote Act of 2002, and to provide the voting public with a uniform, non-discriminatory process for addressing complaints of violations of HAVA Title III.

3. Needs and Benefits:

A uniform, nondiscriminatory process for the redress of complaints helps to assure public confidence in the electoral process.

## 4. Costs:

Costs are difficult to determine, as it depends upon the number of complaints which require hearings. All costs are borne by New York State Board of Elections except costs of any transcripts ordered by parties to a hearing. The State Board of Elections also absorbs costs of a toll-free telephone number to access its complaint line.

## 5. Local Governmental Mandates:

There are no local government mandates as a result of this rule.

## 6. Paperwork:

There are no new or additional recordkeeping or reporting requirements as a result of this rule.

## 7. Duplication:

This regulation implements both federal and state statutory mandates. There is not, however, any duplication.

## 8. Alternatives:

There are no significant alternatives.

## 9. Federal Standards:

This rule doesn't exceed federal minimal standards.

## 10. Compliance Schedules:

Compliance can be immediate upon publication.

**Regulatory Flexibility Analysis**

The rule imposes no obligations on small businesses or local governments.

**Rural Area Flexibility Analysis**

This rule has no adverse impact on private or public entities in rural areas.

**Job Impact Statement**

This rule has no adverse effect upon existing or future employment opportunities in New York State.

procedures for various programs that fall under the auspices of Uniform Procedures, clarify procedures for transferring a permit, clarify how to apply for variances, add several minor categories that will save applicants time and money without impacting the environment, clarify department and applicant responsibilities in various stages of the application review process, amend cross references to Part 621 that appear in Parts 622, 624, 663, 370 series and 380 series, and update addresses and telephone numbers of regional offices including FAX numbers and the department's website.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 621.2(g), (j), (m), (v), (w), (ad), 621.3(a)(2), (3), (7)(iv), (8), (12), (b), (e), 621.4(a)(5), (c)(3), (d)(3), (e)(5), (j)(2)(ii) and (xxiii), (3), (k)(3), (p)(3), 621.6(b), (e), (g), 621.7(a)(3), (6)(vi), (d)(4) and (5), (i)(4) and (5), 621.9(g), 621.11(b)(1), (c)(6), (d), (e), (f), (m)(5), (6), 621.13(a)(6).

**Text of rule and any required statements and analyses may be obtained from:** Charles B. Gardner, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-9154, e-mail: cbgardne@gw.dec.state.ny.us

**Additional matter required by statute:** A negative declaration was prepared pursuant to art. 8 of the Environmental Conservation Law (SEORA).

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

This Notice of Adoption contains nonsignificant changes made to the last published rule that do not necessitate revisions to the previously published RIS, RFA, RAFA or the JIS. The majority of the revisions were made in response to public comment that resulted in further clarification of the proposed regulations. Other changes were made where the department did not have adequate authority for proposed requirements or the wording was confusing to the public and did not contribute to the clarification of uniform procedures.

Six definitions were clarified in section 621.2 based on public comments. Section 621.3(a)(8) regarding compliance with the State Historic Preservation Act was clarified after the proposed section cause confusion based on public comment.

Some comments raised the issue of fees required by other regulations. As this fee section was confusing to the public it was deleted from the regulations.

The paragraphs referring to notification requirements in regards to air permits was reworded based on comments that stated the proposed language may unduly limit the extent to which these entities must be notified. The paragraphs were also moved, based on another comment, to the section on notification requirements.

Several commentors pointed out that the department was also responsible for other laws beyond the Environmental Conservation Law (ECL). This led to a clarification in several sections that the department can exercise its authority pursuant to the ECL "or other environmental laws administered by the department".

Four programs (freshwater wetlands, use and protection of waters, transportation of water by vessel and coastal erosion management) had been given maximum permit terms in the proposed regulation. There was no basis in regulation or statute for these maximum permit terms so they were deleted from the final regulation.

Three sections of the proposed regulation, sections 621.5, 621.6 and 621.7, were rearranged in response to public comment to more closely follow the permitting process and to accurately reflect the title of the sections.

Similarly, comments were made regarding electronic submission of documents. Upon further inquiry the department found that it could not require documents to be electronically submitted so this section was deleted.

These changes are not substantive and do not require changes to any of the ancillary rule making documents.

**Summary of Assessment of Public Comment**

Most of the comments received were in regards to more clarification of processes or terms used in the regulations. Many of these comments resulted in non substantive changes to the regulations in order to clarify them.

One commentor suggested that the definition of Permittee was unclear and that landowners, not subject to the permit, should not be held liable for non-compliance. There are some instances where the landowner might be liable for non-compliance so the definition was not changed.

Several comments were received on "sufficient application" for renewal that lead to clarification of some terms.

## Department of Environmental Conservation

### ERRATUM

A Notice of Continuation, I.D. No. ENV-46-05-00010-C, pertaining to Environmental Remediation Programs, published in the April 5, 2006 issue of the *State Register* was erroneously submitted by the Department of Environmental Conservation prior to 120 days after the last public hearing announced in the previously filed Notice of Proposed Rule Making, as required by SAPA 202(3)(a).

The Department of State erroneously published such Notice of Continuation. Included in this issue of the *State Register* is a Notice of Continuation submitted by the Department of Environmental Conservation which meets the requirements of SAPA 202(3)(a). The expiration date for this rule making is March 15, 2007.

### NOTICE OF ADOPTION

**Uniform Procedures**

**I.D. No.** ENV-31-05-00006-A

**Filing No.** 1008

**Filing date:** Aug. 17, 2006

**Effective date:** Sept. 6, 2006

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

**Action taken:** Amendment of Parts 621, 622, 624, 663, 370 series and 380 series of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 70-0107.1

**Subject:** Uniform procedures.

**Purpose:** To clarify the permit application review process and incorporate relevant permit program requirements, eliminate discrepancies between the uniform procedures regulations and program regulations, and add permits for discharge and disposal of radioactive material to the environment to those programs subject to uniform procedures.

**Substance of final rule:** The proposed amendments to Part 621, Uniform Procedures will change the order of the regulation to more closely follow the application review process, add needed definitions, clarify and update

A suggestion to add wording from the State Environmental Quality Review Act regulations (Part 617) to Part 621 was made and included that clarifies time frames on public scoping when it is required.

Commentors were confused by the New York State Historic Preservation Act of 1980 section in the proposed regulation so the section was rewritten to clarify the requirements.

Suggestions were made to the new section on electronic submission of documents but subsequent to the proposal of the regulations a question was raised as to whether the department could require documents to be submitted electronically so the section was subsequently withdrawn.

Several questions came up regarding fees that were required by other department regulations. Upon consideration it became obvious that the fee section had no relevance to the Uniform Procedures regulations so the section was withdrawn.

Concern was raised over the department's ability to treat minor actions as major. The provision added to the existing section concerned minor actions that required public notice. After review, it was determined that the department will retain its discretion to treat minor actions as major. Additional time, afforded by the time frames for major projects, is needed when an action goes to public notice so staff can consider comments and determine if a hearing is necessary.

Some comments suggested that wording be added to broaden the department's regulatory authority to statutes beyond what it was responsible for administering. These comments resulted in a nonsignificant change since the department does exercise some jurisdiction based on statutes such as the Navigation Law. Somewhat related to this issue were comments received on the department's authority to the suspend the application review process. Commentors asked the department to look beyond the applicant to corporations, or other legal entities, for compliance when deciding to suspend an application review. The department typically focuses on the environmental aspects of a proposed action and does not go beyond the applicant to determine compliance of corporations or other legal entities affiliated with the applicant. Record of compliance reviews may not result in the suspension of application review but may influence the final decision on an application.

Actions that constitute an enforcement action were clarified in the final regulation. It was determined that a Notice of Violation, Administrative Appearance Ticket, or a Notice of Hearing and Complaint constitute enforcement actions.

One commentor was opposed to the change in minor protection of water permits that increases the threshold for minor actions from 50 feet to 100 feet. In over 30 years of implementation the department has found that actions greater than 50 feet engendered very little public comment. This change will not diminish the department's scrutiny of the action and, if necessary, the department may treat these actions as major. Similarly, permits for the transportation of low level radioactive waste was made a minor action. There has been no contamination of the environment related to the transportation of this type of material and again there will be no less scrutiny of these permit applications by the department.

Comments were received on the department's requirement for expanded public participation in certain instances. One of the primary objectives of the Uniform Procedures Act (UPA) is to provide for public notice and comment during the department's review and decision making on permit applications. The expanded public participation will ensure that the public is aware of permit applications before the department and the opportunity to comment on them.

One comment suggested that a section was misplaced. After review, the department agreed and this comment led to a reorganization of sections 621.5, 621.6, and 621.7.

A section of the proposed amendments allowed department staff to verify site conditions in the review of a permit. A comment was received relating to the timeliness of this requirement. As written, if a site inspection was not completed it could hold up the final decision on an application for a permit. This section was rewritten so that site inspections could take place, with notice to the applicant, at any time during application review. It was not the department's intent to make the site inspection a component of a complete application.

Comments can be received on applications for a period of time after "the date of publication" of a public notice. There was a question as to what constituted the date of publication since publication is required in both the Environmental Notice Bulletin (ENB) and newspapers possibly resulting in dates of publication that may not coincide. This section was clarified to note that the date of publication, for purposes of the receipt of public comments, is the last publication date whether it is in the ENB or newspapers.

The term "affected community" was used in the proposed regulation and was not defined leading to confusion by some commentors. The term "affected community" was deleted and the original wording, "in the area in which the proposed project is to be located" was reinserted in place of "affected community".

Comments were made on notification procedures for air sources. The proposed regulations unduly limited the extent to which the department must provide notice of complete applications for air emission permits to affected states, tribes and federal land managers. The department agreed in part with the comments. This section was rewritten and will rely on the definitions, for those who are to be notified, in air regulations in Part 201 of this Title.

A comment was made on public participation in general. The comment stated that it is impossible to make comments and participate in public hearings when the public is denied access to relevant material upon which to base the comments. In the particular case the material was treated as trade secret and not all of it was released even after a Freedom of Information Law (FOIL) request was made. This comment goes beyond the scope of Part 621, Uniform Procedures. Part 616, Access to Records, of this title regulates how the department deals with FOIL requests and trade secrets. Part 624, Permit Hearing Procedures, of this title allows parties an additional opportunity to obtain access to documents and related information on an action.

Comments were received regarding the administrative renewal of State Pollution Discharge Elimination System (SPDES) permits. Response to these comments explained the procedure for administrative renewals which includes public notice, comment and hearing, if necessary, which could lead to the modification of the permit if necessary. The proposed regulations were changed to ensure that the applicant and the public are aware of these requirements.

One comment thought that the prohibition against transferring Water Supply Permits and Waste Transporter Permits was unduly limiting. Prospective permittees for water supply permits must make certain demonstrations of their ability to run and finance a water supply to the department before they can obtain a permit. Part 364, Waste Transporter Permits, precludes the transfer of these permits.

In addition, a comment was made that compliance history should be considered when permits are transferred. The department acknowledges that compliance history is within the department's scope when reviewing applications for permit transfers.

A phrase was used in the section on transfer that said any noncompliance must be resolved or must not represent an "impediment" to the transfer. Commentors were confused by what the word "impediment" actually referred to. The word was eliminated from the final regulations.

Commentors stated that any permit modification, including a department initiated modification involving any of the criteria contained in sections 621.11(f)(1) - (5), should be subject to public notice. The department disagreed with this comment and retains its discretion to allow for effective administration and to reasonably carry out its functions.

A recommendation was made to treat all delegated SPDES renewals as new applications since it appeared that administrative renewals had abbreviated reviews with no public participation. The commentors believed there was a contradiction between Article 17 and Article 70 of the ECL regarding administratively renewed SPDES permits and treating such renewals as new permits. The department does not believe that there is a contradiction between the statutes. Administrative renewals and modifications of SPDES permits follow a prioritized full technical review that affords public notice and consideration of public comment prior to renewal or modification. These procedures are the same as treating the permit as new under the UPA and allow opportunity for a hearing prior to making a decision on the permit.

It was suggested that the term "material" be inserted into the phrase "there has been no change in environmental conditions" in the section for the reissuance of permits. The phrase will now read "there has been no material change in environmental conditions" since some change in environmental conditions is expected to occur.

Expired permits can be reissued pursuant to proposed 621.11(m) if the previous permit term and the reissued permit term do not exceed the maximum permit term. This would, however, preclude public notice, comment and hearing. Therefore, this provision is only to be used for permits that are not an on-going activity and not afforded protection under the State Administrative Procedure Act (SAPA). Examples of these are freshwater wetlands permits, and use and protection of water permits. The department has established criteria that, if met, would allow these permits to be reissued without being subject to public notice. If the criteria are not met

the applicant must apply for a new permit and be subject to public notice when required.

Commentors made a point that reissuance of permits should only be allowed when the combined length of the original and reissued permit terms, plus the intervening period during which the permit was expired, do not exceed the maximum permit term. The department has limited the time period between the effective date of the original permit and the expiration of any reissued permit to 10 years.

Occasionally third parties approach the department and ask that a permittee's permit be modified, suspended or revoked. Commentors requested that the department allow for some flexibility on how it handles third party requests, and also thought that the proposed regulation restricted opportunities for public participation. The department believes that it has adequate authority to provide for public notice, comment or hearing on third party requests where warranted. The department does not want to raise expectations of third parties [that if their requests is not acted upon that they would have a right to a public hearing].

Commentors believe that public participation rights should apply to department initiated modifications for SPDES delegated or non delegated permits, regardless of whether the modifications weaken or strengthen existing standards. The department disagrees and will maintain its discretion to issue permit modifications without public notice where such changes in permit requirements are not made less stringent.

## NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

### Environmental Remediation Programs

I.D. No. ENV-46-05-00010-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. ENV-46-05-00010-P was published in the *State Register* on November 16, 2005.

**Subject:** Environmental remediation programs.

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

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

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

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

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

Accordingly, the Department is:

1. Incorporating requirements of New York State's Chapter 1, Laws of 2003;

2. Revising/enhancing the Inactive Hazardous Waste Disposal Site Remedial Program and Environmental Restoration Program regulations to address necessary legal, technical, and policy developments, as well as to reflect our extensive experience in remediating sites, that have occurred since the last major revisions to Part 375 in 1992 and 1996, respectively;

3. Establishing Regulations for the Brownfield Cleanup Program.

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

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

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

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

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

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

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

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

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

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

#### Subpart 375-6: REMEDIAL PROGRAM SOIL CLEANUP OBJECTIVES

Subpart 375-6 contains soil cleanup objectives applicable to the remedial programs set forth in Subparts 375-2 through 375-4. Additionally, it sets forth the procedures for development of soil cleanup objectives for compounds not included in the soil cleanup objective tables.

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

**Changes to rule:** The agency has made substantive changes to the proposed rule and has published a notice of revised rule making in the *State Register* on July 12, 2006.

375-1.1(a)  
375-1.1(b)(4)  
375-1.1(b)(5)  
375-1.1(d)  
375-1.2(a)  
375-1.2(x)  
375-1.2(ac)  
375-1.2(af)  
375-1.2(ag)  
375-1.2(ak)  
375-1.2(am)  
375-1.2(an)  
375-1.2(aq)  
375-1.2(at)  
375-1.2(au)  
375-1.2(aw)  
375-1.5(a)(1)  
375-1.5(a)(2)

375-1.5(b)(1)  
 375-1.5(b)(2)(i)  
 375-1.5(b)(3)(v)  
 375-1.5(b)(3)(vi)  
 375-1.5(b)(5)  
 375-1.6(a)  
 375-1.8(a)  
 375-1.8(d)  
 375-1.8(d)(1)  
 375-1.8(e)(2)  
 375-1.8(f)(9)(ii)(a)  
 375-1.8(g)  
 375-1.8(h)(3)(v)  
 375-1.9(a)  
 375-1.9(c)(5)  
 375-1.9(d)  
 375-1.9(g)  
 375-1.10(a)  
 375-1.10(c)  
 375-1.10(h)  
 375-1.11(c)(1)  
 375-1.11(c)(2)(v)  
 375-1.11(c)(7)  
 375-1.11(d)(3)  
 375-1.11(e)  
 375-1.11(f)  
 375-2.1(a)  
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 375-2.2(j)  
 375-2.3(b)  
 375-2.5(a)(1)  
 375-2.5(b)(2)(iv)  
 375-2.5(b)(7)  
 375-2.7(a)(3)  
 375-2.7(b)(6)(ii)  
 375-2.7(d)(2)  
 375-2.7(e)(4)  
 375-2.7(e)(5)  
 375-2.7(f)(5)(ii)(b)  
 375-2.8(b)  
 375-2.8(b)(1)  
 375-2.8(c)  
 375-2.8(c)(3)  
 375-2.9(b)  
 375-2.10(f)  
 375-2.11(a)(1)  
 375-3.1  
 375-3.2(e)  
 375-3.2(f)  
 375-3.2(g)  
 375-3.2(j)  
 375-3.3(a)  
 375-3.4(b)(4)  
 375-3.4(b)(5)  
 375-3.4(b)(6)  
 375-3.4(c)  
 375-3.4(d)  
 375-3.5(c)  
 375-3.5(c)(2)  
 375-3.5(c)(3)  
 375-3.5(e)  
 375-3.5(f)  
 375-3.6  
 375-3.7(b)(2)  
 375-3.8(b)(2)  
 375-3.8(b)(3)  
 375-3.8(b)(4)  
 375-3.8(d)  
 375-3.8(e)  
 375-3.8(f)  
 375-3.8(g)(1)  
 375-3.8(g)(2)  
 375-3.8(h)

375-3.8(i)  
 375-3.9(a)  
 375-4.1  
 375-4.2(f)  
 375-4.3(a)  
 375-4.3(d)(1)(iv)  
 375-4.4(c)(3)  
 375-4.5(b)(1)(ii)  
 375-4.5(b)(6)  
 375-4.8(b)  
 375-4.8(c)  
 375-4.8(d)  
 375-4.8(e)  
 375-4.9(a)  
 375-6 (new Subpart added)

**Expiration date:** March 15, 2007.

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

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

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

### Mercury Reduction Program for Coal-Fired Electric Utility Steam Generating Units

**I.D. No.** ENV-36-06-00011-P

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

**Proposed action:** Addition of Part 246 to Title 6 NYCRR.

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

**Subject:** Mercury Reduction Program for coal-fired electric utility steam generating units.

**Purpose:** To reduce the emission and deposition of mercury pollution from the burning of coal in electric utility steam generating units.

**Public hearing(s) will be held at:** 1:00 p.m., Oct. 11, 2006, at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129, Albany, NY; 9:00 a.m., Oct. 12, 2006, at Department of Environmental Conservation Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; and 9:00 a.m., Oct. 13, 2006, at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY.

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

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

**Substance of proposed rule (Full text is posted at the following State website: [www.dec.state.ny.us](http://www.dec.state.ny.us)):** On May 18, 2005, EPA promulgated Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, 70 Fed. Reg. 28606-28700 (40 CFR Parts 60, 62, and 75). Under 40 CFR 60.24(h) each state identified in paragraph (h)(1) of the section, New York is one such state listed, is subject to the requirements in paragraphs (h)(2) through (7) of that section. State plans are allowed to be submitted to EPA through 40 CFR 60.24(h)(1) where, by November 17, 2006 through State Plan submittal each state can decide to adopt the federal model cap-and-trade rule or can identify another means to satisfy the requirements contained in 40 CFR 60.24(h)(2) through (7). New York State has opted to not accept the model cap-and-trade rule, but in its stead submit a State Plan containing a state specific strategy to reduce mercury emissions from coal-fired power plants. Through submittal of a state specific, alternate plan and subsequent approval by EPA the state trading budget for New York State of 0.393 tons mercury per year contained within 40 CFR 60.4140 becomes set as a hard state cap not to be exceeded. Regardless if a State is adopting the federal program or creating its own State control plan, all States must meet the allocations designated in section 60.4140. Additionally, under 40 CFR 60.4141 of this regulation, all States are required to submit to the Administrator their designated mercury allowances covering years 2010, 2011, 2012, 2013, and 2014 for each coal-fired electric generating unit by October 31, 2006. For New York

State, these distributions equal 786 pounds (0.393 tons) per year of allowable mercury release in 2010-2017 and 310 pounds (0.155 tons) per year in 2018 and beyond.

The Division of Air Resources is proposing a hybrid of the US EPA's Clean Air Mercury Rule (CAMR) cap-and-trade program and a traditional emission limit based program. In 2010, Phase I, the proposed State regulation, 6 NYCRR Part 246, will accept the New York State cap but will not allow emission trading between applicable coal-fired utility units in New York and other units in the State or with units outside of New York State. The facility-wide cap will be in effect from 2010 to 2014. In 2015, Phase II, in conjunction with other electric sector regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the CAIR, the State mercury regulation will implement a unit specific mercury emission limit at each facility. The proposed rule, Part 246, will be submitted to EPA in lieu of the CAMR, satisfying the federally mandated requirements.

The Regulation, 6 NYCRR Part 246 is divided into the following sections:

#### 246.1 – Definitions

To the extent that the definitions are not inconsistent with the specific definitions in this Part, the general definitions of Part 200 apply. Part 246 adds definitions addressing the automatic data handling systems, the specific differences between a Part 246 facility and a Part 246 unit and time frames used to determine compliance.

#### 246.2 – Applicability

Owners or operators of coal-fired steam generating units with nameplate capacity of more than 25 MWe producing electricity for sale firing coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year, including a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater.

#### 246.3 – Standard Requirements

The Standard requirement section has the following subdivisions: (1) addresses the applicability dates between new and existing facilities; (2) sets the requirements for coal sampling for mercury and chlorine and two years of stack testing to determine speciated mercury compounds, such as elemental mercury, divalent mercury and particle mercury from existing sources; (3) sets timelines for recordkeeping submittals; (4) describes regulatory procedures for violations; and (5) restricts banking or trading of excess emissions.

#### 246.4 – Permit Requirements

This section addresses the requirements of submitting a Title V operating program renewal or modification. The owner or operator of a MRP facility must have a permit issued by the department pursuant to Part 201 of this Title.

#### 246.5 – Mercury Reduction Program Facility Wide Cap

In the first phase of the Mercury Reduction Program rule beginning in 2010 the Division of Air Resources proposes to accept the federal 786 pounds per year allowance and distribute emissions to New York's applicable units but these emissions will be treated as facility-wide caps and not allowances for trading. The determination of facility-wide caps will be based upon the requirements in section 60.4142 of CAMR which state that allowances, or in our case caps, will be calculated from the average of the three highest heat input years from 2000 to 2004.

#### 246.6 – Mercury Reduction Program Emission Unit Limits

For the second phase of the Mercury Reduction Program rule the Division of Air Resources will set a numerical limit for each applicable unit. This numerical limit will be 0.6 pounds per trillion Btu heat input and represents an overall statewide 90 percent mercury mass reduction from the 1999 Information Collection Request estimations.

#### 246.7 – Monitoring and Reporting

The rule adopts the federal requirements of the Clean Air Mercury Rule (CAMR) for sources to install continuous emission monitors (CEMs) or sorbent traps for the measurement of total mercury by specific timelines and reporting deadlines. Any person who owns or operates a MRP facility must comply with the monitoring, recordkeeping, and reporting requirements as provided in this section, Part 201 of Title 6, and 40 CFR Part 75, Subpart I. Specifically, each facility must install all monitoring systems to monitoring mercury mass emissions and individual unit heat input (including all systems required to monitor mercury concentration, stack gas moisture content, stack gas flow rate, and carbon dioxide or oxygen concentration, as applicable, in accordance with 40 CFR 75.81 and 75.82 of Subpart I and Performance Specification 12A, 40 CFR 60 Appendix B.

#### 246.8 – Initial Monitoring Certification and Recertification

This section includes the mandated federal requirements for the certification of the continuous emission monitoring system and the approved alternative sorbent trap monitoring system. For continuous emission monitoring systems, the applicable quality-assurance and quality-control requirements in 40 CFR 75.21 and 40 CFR 75 Appendix B apply. For sorbent trap monitoring system, the applicable quality-assurance and quality-control requirements of 40 CFR 75.15 and 40 CFR 75 Appendix K and sections 1.5 and 2.3 of 40 CFR 75 Appendix B apply. The section also addresses the reduced monitoring requirements for low mass mercury emission units.

#### 246.9 – Missing Data Procedures and Out of Control Periods for Continuous Monitoring Systems

Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable missing data procedures in 40 CFR 75 Subpart D. Subpart D contains sections 40 CFR 75.30 through 75.39 and describes procedures for initial missing data periods, those occurring in the first 720 quality-assured monitor operating hours following initial certification, and standard missing data procedures for mercury CEMS and sorbent trap monitoring systems. Subpart D also deals with missing data for all other required monitoring including, but not limited to moisture, units with control devices, and missing data for heat input rate determinations. This section also covers out of control periods as described in 40 CFR 70.24 where the owner or operator shall take corrective action if an out-of-control period occurs to a monitor or continuous emission monitoring system and repeat the tests applicable to the "out-of-control parameter" as described in 40 CFR 75 Appendix B.

#### 246.10 – Notifications

This is a federally mandated section requiring all Mercury Reduction Program units to notify the USEPA under 40 CFR 75.61. Notifications required include, but are not limited to: initial certification and recertification test notifications; new unit, newly affected unit, new stack, or new flue gas desulfurization system operation notification; unit shutdown and commencement of commercial operation; and periodic relative accuracy test audits, 40 CFR 75 Appendix E retests, and low mass emissions unit retests.

#### 246.11 – Recordkeeping and Reporting

This section is a federally mandated section requiring all Mercury Reduction Program facilities to submit reports on monitoring plans, certification and recertification plans and quarterly reports to the Department and USEPA Administrator. Recordkeeping requirements include those required by this section in addition to those applicable requirements contained in 40 CFR 75.84(a) through (c). Reporting requirements include those required by this section in addition to those applicable requirements contained in 40 CFR 75.84(d) through (f).

#### 246.12 – Petitions

The owner or operator of a MRP unit may submit a petition under section 40 CFR 75.66 to the USEPA Administrator requesting approval to apply an alternative to any requirement of 246.8 through 246.12. Application of an alternative to any requirement of 246.8 through 246.12 is in accordance with this section and 246.8 through 246.12 only to the extent that the petition is approved in writing by the USEPA Administrator, in consultation with the Department.

#### 246.13 – Additional Requirements to Provide Heat Input Data

The owner or operator of a MRP unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system shall also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR Part 75.

#### 246.14 – Severability

Each section, or portion thereof, of this Part shall be deemed severable, and in the event that any section, or portion thereof, of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

**Text of proposed rule and any required statements and analyses may be obtained from:** David Gardner, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, e-mail: 246camr@gw.dec.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.

**Additional matter required by statute:** Pursuant to article 8 of the State Environmental Quality Review Act, a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file. This rule must be approved by the Environmental Board.



**Summary of Regulatory Impact Statement****1. STATUTORY AUTHORITY**

The statutory authority for this amendment is the Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311. Section 1-0101 outlines the policy declaration for the Department of Environmental Conservation (Department) regarding the protection of New York State's environment and natural resources.

**2. LEGISLATIVE OBJECTIVES**

Article 19 of the ECL was enacted for the purpose of safeguarding the air resources of New York from pollution, to ensure the protection of the public health and welfare, the natural resources of the State, physical property, and industrial development. It is the stated policy of the State to require the use of all available practical and reasonable methods to prevent and control air pollution in New York. To facilitate this policy objective, the Legislature bestowed specific powers and duties on the Department, including the power to adopt and promulgate regulations for preventing, controlling and prohibiting air pollution. This authority specifically includes promulgating standards for the coordination of State and Federal pollution reduction programs.

On March 15, 2005 EPA announced the final Clean Air Mercury Rule (CAMR). CAMR limits mercury emissions from new and existing coal-fired electric steam generating units, and creates a market-based cap-and-trade program that will permanently cap utility mercury emissions nationwide in two phases: the first phase cap is 38 tons beginning in 2010; the second phase cap set at 15 tons beginning in 2018. EPA believes these mandatory declining caps will ensure that mercury reduction requirements are achieved and sustained. On May 18, 2005, EPA promulgated Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units. (70FR 28606-28700) Pursuant to 40 CFR 60.4141, all States are required to submit to the Administrator their designated mercury allowances for each coal-fired electric steam generating unit by November 15, 2006. Regardless if a State is adopting the federal program or creating its own State control plan, all States must require applicable sources to limit mercury emissions at or below levels which meet the allocations designated in 40 CFR 60.4140. For New York State, these distributions equal 786 pounds per year of allowable mercury emissions in 2010-2017 and 310 pounds per year in 2018 and beyond.

The Department is proposing to adopt a mercury regulation which incorporates the Phase I emission cap established in the federal rule for the years 2010-2014 and beginning in 2015 establishes a unit-based emission limit for each applicable unit. Phase I of the proposed State regulation, 6 NYCRR Part 246, will impose annual facility-wide mercury emission limitations, based upon the state mercury budget distributed to New York State by EPA. Applicable facilities will not be permitted to generate and trade mercury reductions with other facilities or other States. The annual facility-wide emission limitations will be in effect from 2010 to 2014. Starting in 2015, Phase II, in conjunction with other electric sector regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the Clean Air Interstate Rule (CAIR), the State mercury regulation will establish a unit-based emission limit for each applicable unit. The Department will submit Part 246 to EPA for approval in lieu of New York State accepting the model rule requirements CAMR.

**3. NEEDS AND BENEFITS**

Mercury is a toxic metal that persists and cycles in the environment as a result of natural and human activities. When mercury is released into the air, it is transported and eventually deposited back onto the earth. The distance of this transport and eventual deposition depends on the chemical and physical form of the mercury emitted. In aquatic ecosystems, inorganic mercury is transformed into an extremely toxic organic form of mercury, methylmercury. Methylmercury bioaccumulates up the food chain as humans and animals consume mercury-contaminated organisms, particularly fish. Two conditions common in the Northeast, acidified water bodies and elevated ozone levels, are thought to promote the deposition of mercury into the environment.

The term "hot-spot" has been used by the EPA and environmental organizations to describe a particular area vulnerable to sustained mercury deposition based upon different regulatory scenarios. One of the shortcomings of CAMR is that the federal cap-and-trade strategy will not mitigate the current "hot-spots" created by localized deposition from coal-fired electric utilities who buy allowances rather than installing pollution control to reduce emissions. The Department believes,<sup>1</sup> that the Adirondacks or the Northeast region is a "hot-spot" due in part to persistent deposition of mercury from the coal-fired electric utility sector. Consequently, the Department has opposed the trading of mercury allowances. Recent research

in Ohio and Massachusetts has addressed the issue of localized deposition at near-by receptors from coal-fired electric utilities and municipal waste combustors respectively. New York State has implemented regulations<sup>2</sup> that are stricter than the federal National Emission Standard for Hazardous Air Pollutants for Municipal Waste Combustors to minimize localized deposition impacts, and anticipates that reductions achieved from the proposed Part 246 will do the same for the coal-fired electric utilities located in New York State.

The electric utility industry, along with municipal solid waste combustors and the Portland cement manufacturing sector comprise the largest point source categories of mercury emissions in New York State. Since 1999, New York State has reduced emissions from the municipal solid waste combustor sector by approximately 90 percent. New York State is currently examining technology to reduce emissions in the Portland cement manufacturing sector following the EPA's promulgation of a National Emission Standard for Hazardous Air Pollutants (NESHAP) which did not control mercury from this source category.<sup>3</sup> With the proposed reductions targeted for 2015, the statewide reduction in mercury from 1999 levels will equate to 75 percent<sup>4</sup> statewide for all point sources comprising of fuel burning equipment, incineration and manufacturing.

The Department has determined that federal cap-and-trade program would prolong the existence of "hot spots" in the Catskill and Adirondack region until 2020 and beyond. Allowing the banking and sale of mercury emissions to be sold to New York applicable facilities or to facilities in regions where westward winds prevail would not reduce the unacceptable mercury concentrations in fish and wildlife in New York's lakes, streams and estuaries. Regional concentrations will be reduced sooner through implementation of a New York State rule which controls unit-level mercury emissions five years earlier and to a greater extent than the federal rule.

**4. COSTS****a.) Costs to Regulated Utilities**

New York currently has thirteen coal-fired electric utility steam generating stations, two of which, AES Hickling and AES Jennison, have been on cold standby since 2001. The thirteen stations have electric generation capacities per plant ranging from 50 MW to 800 MW. There are two cogeneration facilities, Trigen Energy-Syracuse and WPS Niagara Generating Facility, generating steam for both electric production and process use. At this time, only those units which meet the federal definition of electric utility steam generating unit, including the thirteen coal-fired steam generating stations and the two co-generation units, will be subject to Part 246.

The future actual costs of regulating mercury emissions from the electric utility steam generating sector are directly related to any additional control device(s) required on a plant-by-plant basis, in addition to the volume and cost of reagent required, which in most cases consists of a powdered activated carbon or a carbon enhanced with a halogen such as bromine. The incremental cost of generation for New York coal-fired units implementing a standard or enhanced powdered activated carbon system will be in the range of 0.37 to 1.66 mills/kWh<sup>5</sup>.<sup>6</sup> A mill is defined as one-tenth of a cent. This is approximately a one to eight percent increase on the 20 to 30 mills/kWh (\$0.02/kWh to \$0.03/kWh) most coal-fired power plants currently incur to produce electricity. For comparison, in the day ahead market during a summer month a kWh is sold by a generator for approximately \$0.08 upstate and \$0.15 downstate<sup>7</sup>. Monitoring, record-keeping and reporting are being incorporated into Part 246 from CAMR and regulated facilities will incur the same costs with the Department's program or the federal CAMR. Costs of monitoring, recordkeeping, and reporting are going to be fixed as adoption of EPA's model rule is required for national reporting. Currently, mercury CEMS cost in the range of \$130,000 to \$200,000 installed with an approximate testing, maintenance, and operation cost of \$89,500 per year<sup>8</sup>.

Most facilities in New York will need to install activated carbon injection systems to work in conjunction with existing cold-side ESPs, especially those facilities burning western sub-bituminous coals. Some facilities may need to install pulse jet fabric filter baghouse systems for particulate collection to achieve the higher rates of mercury capture proposed for 2015 than could be realized through operation of a cold-side ESP alone. For those facilities combusting sub-bituminous coals, high percentage sub-bituminous coal blends, or facilities with existing fabric filter baghouses, total capital requirements include the purchase and installation of dosing and storage equipment related to the powdered activated carbon injection (PACI) system. The PACI will be a nearly fixed cost of \$984,000 (year 2003 dollars). Annualized over 20 years at an interest rate of approximately 10 percent this translates to a cost of \$117,460 per year<sup>9</sup>.



A Department and the New York State Energy and Research Authority (NYSERDA) analysis compared a reference or business-as-usual case (absent either CAIR or mercury) to each of three policy cases: New York's proposed approach for implementing both CAIR and mercury, CAIR only, and mercury only. CAIR and Mercury policies (implemented together, as proposed) could increase wholesale electricity prices by an average of 1.7 percent or \$1.14 per MWh over the 2010 to 2020 timeframe. For a typical residential customer (using 750 Kwh per month), this translates into a monthly retail bill increase of \$0.86. Model runs assuming CAIR only (i.e., without a mercury control program) and mercury only control program (i.e., without CAIR) indicate that virtually the entire incremental electricity price impact of implementing CAIR and a mercury rule together is due to CAIR. There is virtually no incremental electricity price impact due to mercury control in conjunction with the sulfur and NOx CAIR program.<sup>10</sup>

#### b.) Costs to the State

The costs to the Department for promulgating Part 246 will include additional Central Office staff and Regional Office staff to modify permits and create monitoring conditions in the permitting database to assure uniformity from Region to Region. Approximately 15 Title V facility permits will have to be modified to incorporate Part 246 requirements. Department staff will be responsible to review stack test protocols, field witness the required stack tests, review final reports and CEM relative accuracy tests. Implementation of the federal or state rule requires quarterly submittals of compliance documentation which will need to be reviewed, tracked and acted upon if necessary.

The modification of a Title V permits require trained environmental engineers with knowledge of utility combustion systems, sulfur and particle control devices and knowledge of CEM documentation and stack testing. At the current staffing levels, the addition of new staff will be needed to continue some of the routine permitting and compliance work currently being performed by more experienced staff.

These costs however would be incurred whether the Department adopted Part 246 or implemented the federal rule as written. Indeed, the federal cap and trade program would likely entail more significant administrative costs since the Department would have to approve and keep track of trading allowances. Under Part 246, facilities in New York will not be allowed to trade mercury allowances.

#### c.) Source of Information upon which the cost analysis is based.

The information used to determine the costs to the affected industries is based upon the Department of Energy's National Energy Technology Laboratory (DOE/NETL). DOE/NETL continues to conduct pilot studies involving slip stream tests and full scale tests involving many innovative technologies to determine mercury control<sup>11</sup> from applicable CAMR facilities.

### 5. LOCAL GOVERNMENT MANDATES

The future actual costs of regulating mercury emissions from the electric generating utility sector are directly related to any additional control device required on a plant-by-plant basis. Jamestown Power's Samuel A. Carlson Generating Station operates four boilers in total, which are divided into two emission units. The facility exhausts flue gas through one stack per generator for a total of two stacks. Taking into consideration the installation an activated carbon injection system and use of an enhanced activated carbon at a rate of 3 lb carbon/MMACF; electric use to operate any additional pollution control equipment; and operating costs in addition to reagent materials and land filling of additional fly ash, the installation would have an associated incremental cost of generation (implementation cost) in the range of 0.23 to 0.63 mills/kWh. The facility would also be required to install, operate, and maintain a continuous emission monitoring system to measure and record mercury mass emissions. The installation of a mercury monitoring system is currently in the range of \$130,000 to \$200,000 per unit installed. An annualized cost per monitoring unit is predicted by EPA to be on the order of \$89,500 per year for testing, maintenance, and operation<sup>12</sup>. Any estimated impact on wholesale electricity price based on the cost of mercury emission control equipment would not directly reflect the implementation costs incurred by the affected generator owners, because coal generators generally do not set the marginal market price of electricity. However, the on-site cost of installing, operating, and maintaining mercury emission control equipment directly reduces the operating margin (similar in concept to profit) of the Mercury Reduction Program units.

### 6. PAPERWORK

Part 246 adopts the federal requirements for monitoring, reporting, and recordkeeping thereby eliminating redundant or duplicative reporting. Facilities will not incur additional costs in this regard. In addition, Part 246 does not implement the labor intensive cap-and-trade-portion of the feder-

ally mandated model rule, which requires the tracking of emission credits, reducing the regulatory burden on facilities to track allowances. Facilities subject to Part 246 are required to submit quarterly reports electronically, in accordance with federal requirements, and along with their compliance reporting for under the Acid Rain and the Clean Air Interstate Rule. The coordination of reporting for these three regulatory programs will reduce paperwork requirements substantially.

### 7. DUPLICATION

The proposed rule does not duplicate or conflict with any other New York or federal rule. The federal model rule, Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, is the first time the emission of a bio-persistent, bioaccumulating hazardous air pollutant has been controlled from an electric steam generating source. New York State has opted to not accept the model cap-and-trade rule, but in stead submit a State Plan containing an alternate strategy to reduce mercury emissions from coal-fired power plants in a shorter time frame requiring greater reductions.

### 8. ALTERNATIVES

The alternatives to adopting Part 246 are to: (1) take no action and submit a state regulation resembling the model rule, Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units; (2) allow the federal government to run the program under a Federal Implementation Plan (FIP); or (3) adopt the suggested model rule from STAPPA/ALAPCO; or (4) submit a state specific, alternate plan with subsequent approval by EPA.

### 9. FEDERAL STANDARDS

The proposed regulation, Part 246, exceeds the minimum standards of the federal government in the following ways. First, the proposed rule disallows trading of excess mercury emissions within or out of state because the cap-and-trade program would maintain existing local hot spots of mercury deposition and more importantly, continue to contribute to widespread regional concentrations of mercury. Regional concentrations could be reduced much sooner through implementation of a New York State rule which limits mercury emissions earlier and to a greater extent. Second, the Part 246 shortens the timeframe for final compliance from 2018 to 2015. Third, the Part 246 does not allow "banking" of excess emissions to be sold and/or kept for future use after 2018. These last two items highlight the Department's goal of adopting a mercury rule which will not exacerbate or contribute to widespread deposition of mercury in New York State's sensitive Adirondack and Catskill mountain lakes areas and coastal estuaries.

The Department, in cooperation with NYSERDA, has calculated the costs of the proposed mercury rule and the federal Clean Air Interstate Rule (CAIR) on the citizens of New York in the form of their monthly electric bill increase due to these regulatory actions. The estimated New York retail electricity price impact showed that the costs to the consumer of implementing Part 246 to be \$0.002 per month and for both regulations CAIR and Part 246 the cost will be \$0.86 per month equating to 0.8 percent of their total monthly bill. For the industrial consumer, the cost increase for CAIR and Part 246 equals \$193 per month or 1.7 percent of their monthly bill, the mercury only portion for the industrial user is \$0.5 cents per month.<sup>13</sup> Thus the Department concluded costs associated with the adoption and implementation of Part 246 was reasonable given the significant benefits associated with reducing mercury deposition to the environment.

### 10. COMPLIANCE SCHEDULE

The compliance schedule for the proposed rule includes two Phases, Phase I, 2010 and Phase II, 2015. The first compliance date is mandated from the federal Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units, and all electric generating units in the nation will be on the same compliance schedule. In Phase II, the proposed rule coordinates the requirements of the Clean Air Interstate rule and the Regional Greenhouse Gas Initiative. The Department believes that the regulated sources will have ample time to comply with the Phase II portion of the rule three years earlier than federally required because of the advances in mercury pollution control demonstrated by the Department of Energy's National Energy Technology Laboratory.

<sup>10</sup>Docket letter - OAR-2002-0056-5458, Comments on the Proposed Clean Air Mercury Rule, June 2004

<sup>12</sup>NYCRR Parts 219-2 and 219-7, Municipal and Private Solid Waste Incineration Facilities and Mercury Emission Limitation for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

<sup>13</sup>NESHAP for Portland Cement Manufacturing, Subpart LLL, 6/14/99

<sup>14</sup>NESCAUM inventory for 1998-2202 Mercury Study, A Framework for Action, February, 1998.

<sup>5</sup>USDOE/NETL, Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant, prepared by Science International Corporation, May 2003

<sup>6</sup>Sorbent Technologies Corporation, Sid Nelson Jr. - Recipient Project Director, Advanced Utility Mercury-Sorbent Field-Testing Program: Semi-Annual Technical Progress Report

<sup>7</sup>New York State Independent System Operator, July 26, 2005 -URL [http://www.nyiso.com/public/market\\_data/zone\\_maps.jsp](http://www.nyiso.com/public/market_data/zone_maps.jsp)

<sup>8</sup>*Federal Register* / Vol. 70, No. 95 / Wednesday, May 18, 2005 / Rules and Regulations / pp. 28634

<sup>9</sup>USDOE/NETL, Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant, prepared by Science International Corporation, May 2003

<sup>10</sup>NYSDEC, NYSEDA, and ICF International, Modeling Results for CAIR and Mercury, May 18, 2006

<sup>11</sup>USDOE/NETL, Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant, prepared by Science International Corporation, May 2003

<sup>12</sup>*Federal Register* / Vol. 70, No. 95 / Wednesday, May 18, 2005 / Rules and Regulations, pp 28634

<sup>13</sup>NYSDEC, NYSEDA, and ICF International, Modeling Results for CAIR and Mercury, May 18, 2006

#### **Regulatory Flexibility Analysis**

The Department is proposing to adopt 6 NYCRR Part 246 which will require coal-fired electric utility steam generating facilities above a certain size threshold to control emissions of mercury. New York currently has two cogeneration facilities and thirteen coal-fired electric utility steam generating facilities, two of which are on cold standby and have not operated since October 2000. The facilities have electric generation capacities per plant ranging from 50 MW to 800 MW. One of these coal-fired facilities is owned by a local government, the Samuel A Carlson Generating Station owned by the Jamestown Board of Public Utilities. None of the facilities is owned or operated by a small business. As discussed in more detail below, and in the other rule making documents, the adoption of Part 246 is not expected to result in increases in electricity prices to consumers. The adoption of Part 246 will therefore not have an adverse impact on small businesses and/or local governments.

For the thirteen operating facilities to achieve compliance with the proposed regulation emission limits, the Department envisions two options for mercury control devices. The owner of a facility with an existing cold-side electrostatic precipitator (ESP) for particulate control may select the addition of a powdered activated carbon injection unit to work with the existing cold-side ESP or may choose to utilize a fabric filter baghouse to work in conjunction with a powdered activated carbon injection unit. Facilities installing control systems for the purpose of controlling SO<sub>2</sub> or NO<sub>x</sub> for the Clean Air Interstate Rule (CAIR) may realize mercury reductions at their facility as a co-benefit. Those co-benefit control systems may require some modification to achieve the year 2015, Phase II, level of control required in Part 246.

The Department will utilize the CAMR emission budgets to set facility-wide annual emission limitations in the first phase and a traditional unit level emission rate limit based program in the second phase. In 2010, Phase I, Part 246 establishes annual facility-wide emission limitations based on the New York State trading budget identified in 40 CFR 60.4140. Unlike CAMR, Part 246 will not allow emission trading between applicable coal-fired utility units in New York State or with units outside of New York State. The annual facility-wide emission limitation will be in effect from 2010 to 2014. In 2015 - Phase II, in conjunction with other electric sector regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the CAIR, establishes a unit specific mercury emission limit at each facility representing a 90 percent overall State reduction of mercury emissions from 2005 levels. Part 246, will be submitted to EPA for approval as the State's mercury control plan in lieu of adopting CAMR.

#### **1. EFFECT OF RULE:**

Part 246 regulates private and public electric generating utilities and will not have any significant adverse impact on small businesses directly. The Department in coordination with the New York State Energy Research Authority (NYSEDA) estimates that the majority of cost passed on to the consumer, including small businesses, of the two rules, the federal Clean Air Interstate Rule (CAIR) and the New York State mercury rule, will be from CAIR. There is virtually no wholesale electricity cost impact from

the implementation of the proposed mercury rule. The modeled impact on the average New York wholesale electricity price resulting from the mercury proposal without CAIR is predicted to be \$0.003/MWh or about 0.01 percent. It is important to recognize that the estimated impacts on wholesale electricity prices are not directly related to the implementation costs incurred by the affected generator owners, because coal generators generally do not set the marginal market price of electricity. The day-ahead and hour-ahead marginal market prices are more commonly set by those facilities utilizing fuels other than coal to generate electricity. Electric generation at those facilities is more costly primarily because of fuel cost. NYSEDA estimates the Department's proposed Part 246 will not be more costly than the federally mandated CAMR.

The one municipally owned electric generating facility affected by Part 246 is the Samuel A Carlson generating Station in Jamestown, NY, Chautauqua County. All electric generators, including Jamestown Power, will experience a small increase in the cost of electric generation due to the adoption of Part 246 which will directly reduce the operating margin of the affected units<sup>1</sup>. However, the more significant cost increase will occur as a result of EPA's promulgation of the federal Clean Air Interstate Rule (CAIR).

#### **2. COMPLIANCE REQUIREMENTS:**

Facilities subject to Part 246 will have to achieve compliance with the annual facility-wide emission limitations during Phase I and meet emission limit requirements in Phase II. In addition, Mercury Reduction Program facilities (facilities) will be subject to recordkeeping and reporting requirements. The recordkeeping and reporting requirements imposed by Part 246 are mandated under the federal Clean Air Mercury Rule and are necessary to receive approval from the Administrator. Thus, these requirements would apply whether the Department adopted CAMR or Part 246.

Section 246.8, "Monitoring and Reporting," requires facilities to install a continuous monitoring system, a continuous emission monitoring systems (CEMS) or sorbent trap monitoring system (STMS), to measure and record the mass of total mercury. Section 246.9, "Initial Monitoring Certification and Recertification Procedures," requires facilities to certify continuous emissions monitoring systems and any excepted sorbent trap monitoring system. Section, 246.12, "Recordkeeping and Reporting," requires all facilities to submit reports detailing monitoring plans, certification and recertification plans, and quarterly reports to the Department and the Administrator.

#### **3. PROFESSIONAL SERVICES:**

Each coal-fired steam generating facility is unique in setup and site layout and requires site specific considerations in the planning, design, construction, and installation of an air pollution control device. The professional services that Jamestown Power will require will consist of engineering services from an environmental consulting firm and one or more vendors of pollution control equipment. In order to reduce the burden to the regulated community of complying with Part 246, CAIR, and RGGI, the department has coordinated the implementation of Part 246 with the other rules. All three rules have common implementation dates, enabling facilities to more effectively schedule outage periods for the implementation of pollution control systems. Some control systems may even provide a co-benefit control for emissions of sulfur dioxide, oxides of nitrogen, and mercury. Thus, mercury emissions can be reduced with the same pollution control technology that is required for the reduction of sulfur dioxide, particulate matter, and oxides of nitrogen.

#### **4. COMPLIANCE COSTS:**

The future actual costs of regulating mercury emissions from the electric generating utility sector are directly related to the costs of installing and operating additional pollution control devices, and are determined on a case-by-case basis. Jamestown Power's Samuel A. Carlson Generating Station operates four boilers divided into two sets of two boilers where each set provides steam for a generator. The facility exhausts flue gas through one stack per generator for a total of two stacks. The installation of an activated carbon injection system and use of an enhanced activated carbon at a rate of 3 lb carbon/MMACF would have an associated incremental cost of generation (implementation cost) in the range of 0.23 to 0.63 mills/kWh. The facility would also be required to install, operate, and maintain a continuous monitoring system to measure and record mercury mass emissions. Through discussions and interviews with mercury emissions monitoring companies the purchase and installation of a mercury monitoring system is currently in the range of \$130,000 to \$200,000 per unit. An annualized cost per monitoring unit is predicted by EPA to be on the order of \$89,500 per year for testing, maintenance, and operation<sup>2</sup>. The on-site cost of installing, operating, and maintaining mercury emission control equipment will not have an impact on cost of electricity to the

consumer, as previously discussed in the document, but it will slightly reduce the operating margin (similar in concept to profit) of the Mercury Reduction Program units<sup>3</sup>.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

For the Samuel A. Carlson Generating Station to achieve compliance with Part 246's emission limitations, the Department envisions two options for mercury emission control systems. Based on Staff research, a facility with an existing cold-side ESP for particulate control will select one of the following options: (1) the addition of a powdered activated carbon injection unit to work with the existing cold-side electrostatic precipitator; or (2) the installation of a fabric filter baghouse after the existing ESP, or a fabric filter baghouse replacing the existing cold-side ESP, working in conjunction with a powdered activated carbon injection unit. Facilities not requiring additional add-on control devices would be those already equipped with wet flue gas desulfurization systems (wet scrubbers), which in conjunction with the cold side ESPs, may demonstrate a near equivalent degree of control as a pulse jet fabric filter baghouse in combination with the carbon injection system. Jamestown may decide to install a wet scrubber for the control of sulfur dioxide to meet its obligations under CAIR and realize a co-benefit of mercury emission reductions. A future addition of an oxidizing catalyst or precipitant additive may be required if Jamestown installs wet scrubbers to promote further oxidation of elemental mercury with subsequent precipitation yielding greater capture and control.

The information used to determine costs to the affected industries is based upon the Department of Energy's National Energy Technology Laboratory (DOE/NETL). DOE/NETL have conducted over 20 pilot studies involving slip stream tests and full scale tests involving many innovative technologies to determine mercury control<sup>4</sup> and have determined that mercury control is economically and technically feasible.

#### 6. MINIMIZING ADVERSE IMPACTS:

Although the promulgation of Part 246 may result in a modest increase in the cost of electric generation, this cost is not expected to impact small business generators since none of the 13 facilities subject to the rule are owned by small businesses. Only one local government owned facility is subject to the rule. Part 246 does offer options for regulatory flexibility which will minimize the impact of installing pollution control equipment. During Phase I of the rule, facilities can choose which units to control to meet the facility-wide cap, enabling them to target the most economically feasible units. Phase one also allows facilities to realize a mercury emission reduction co-benefit through the installation of control devices for CAIR. Although a cap-and-trade program structure is feasible for other pollutants which are emitted in great quantities (i.e. tons) and produced by many fuel burning facilities involving all fuels, mercury is emitted in pounds an often measured in increments as low as ounces. The Department believes that the administrative expenses associated with a mercury cap-and-trade program could result in increased costs to both electric generators and consumers of electricity beyond costs projected for the implementation of Part 246.

The Department and NYSDERDA have conducted an electricity system modeling analysis to estimate the incremental cost of implementing the Clean Air Interstate Rule (CAIR) and a mercury rule in New York. Inputs to the modeling analysis included capital costs per kilowatt produced (\$/kW), fixed operation and maintenance costs, and variable operation and maintenance costs. Model inputs were developed through use of the CUECost model<sup>5</sup>. The CUECost economic analysis workbook is a Y2K-compliant system designed to produce study level cost estimates (+30percent/-30percent accuracy) of the installed capital and annualized operating costs for air pollution control systems installed on coal-fired power plants to control sulfur dioxide, nitrogen oxides, and particulate matter. The workbook is capable of calculating estimates of an integrated air pollution control system or individual component costs for various air pollution control technologies currently used in the utility industry<sup>6</sup>.

The Department and NYSDERDA analysis compared a reference or business-as-usual case (absent either CAIR or mercury) to each of three policy cases: (1) New York's proposed approach for implementing both CAIR and Part 246, (2) CAIR only, and (3) Part 246 only. CAIR and Part 246 (implemented together, as proposed) could increase wholesale electricity prices by an average of 1.7 percent or \$1.14 MWh over the 2010 to 2020 timeframe. For a typical residential customer (using 750 kWh per month), this translates into a monthly retail bill increase of \$0.86. Model runs assuming CAIR only (i.e., without Part 246) and Part 246 only (i.e., without CAIR) indicate that virtually the entire 1.7 percent incremental electricity price impact of implementing CAIR and Part 246 together is due

to CAIR. There is virtually no (0.01 percent) incremental electricity price impact due to Part 246 and specific controls for mercury<sup>7</sup>.

In satisfying the requirements of section 202-b for minimizing adverse impacts for small business, the requirements of the State Administrative Procedures Act (SAPA) require that each proposal address the following:

- 'Establishment of differing compliance or reporting times.' The compliance and reporting times are established in CAMR and States are required to implement CAMR or other mercury control programs which meet these requirements. Even if New York did not adopt Part 246, CAMR would apply and the facilities subject to part 246 would be subject to the requirements of CAMR.

- 'Use of performance rather than design standards.' Part 246 is based on performance standards. Part 246 requires a specific level of reduction in mercury emissions but does not dictate what control strategies facilities must implement to achieve those reductions. The Department ruled out the possibility of the federal cap-and-trade program as a performance option due to the public health consequences of allowing mercury pollution credits to be sold upwind of current ecological hotspots such as the Western Adirondacks.

'Exemption from coverage by the rule for small business and local governments.' CAMR dictates what facilities are subject to mercury control. The Department cannot alter the applicability of requirements found in CAMR without losing the parity required by the EPA Administrator.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department will directly notify interested parties on the requirements of Part 246, including the City of Jamestown. By law, the public, including small business and local governments will be able to comment on the proposed rule under the mandatory 30-day noticing of all Department regulations.

<sup>1</sup>Modeling results for CAIR and Mercury, New York State Energy Research and Development Authority - NYSDERDA, May 18, 2006

<sup>2</sup>*Federal Register* / Vol. 70, No. 95 / Wednesday, May 18, 2005 / Rules and Regulations, pp 28634

<sup>3</sup>Modeling results for CAIR and Mercury, NYS DEC and the New York State Energy Research and Development Authority - NYSDERDA, May 18, 2006

<sup>4</sup>USDOE/NETL, Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant, prepared by Science International Corporation, May 2003

<sup>5</sup>CUECost - Coal Utility Environmental Cost Model, developed for EPA by Raytheon Engineers & Constructors and Eastern Research Group, Version 1, November 25, 1998 (revised 2-9-00 as CUECost 3.xls)

<sup>6</sup>cuecost.txt, version 2-9-00

<sup>7</sup>NYSDERDA, NYSDERDA, and ICF International, Modeling Results for CAIR and Mercury. May 18, 2006

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

On March 15, 2005 EPA announced the final Clean Air Mercury Rule (CAMR). CAMR limits mercury emissions from new and existing coal-fired electric steam generating units, and creates a market-based cap-and-trade program that will permanently cap utility mercury emissions nationwide in two phases: the first phase cap is 38 tons beginning in 2010; the second phase cap set at 15 tons beginning in 2018. EPA believes these mandatory declining caps will ensure that mercury reduction requirements are achieved and sustained. On May 18, 2005, EPA promulgated Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units. (70FR 28606-28700) Pursuant to 40 CFR 60.4141, all States are required to submit to the Administrator their designated mercury allowances for each coal-fired electric steam generating unit by October 31, 2006. Regardless if a State is adopting the federal program or creating its own State control plan, all States must require applicable sources to limit mercury emissions at or below levels which meet the allocations designated in 40 CFR 60.4140, the State trading budget. For New York State, the State trading budget equates to 786 pounds per year of allowable mercury emissions in 2010-2017 and 310 pounds per year in 2018 and beyond.

The Department is proposing to adopt 6 NYCRR Part 246 which utilizes the CAMR emission budgets to set facility-wide annual emission limitations in the first phase and a traditional unit level emission rate limit based program in the second phase. In 2010, Phase I, Part 246 establishes annual facility-wide emission limitations for subject facilities based on the New York State mercury budget. New York facilities will not be allowed to trade mercury emissions with other facilities. The annual facility-wide

emission limitation will be in effect from 2010 through 2014. In 2015, Phase II, in conjunction with other electric sector regulations such as the Regional Greenhouse Gas Initiative (RGGI) and the second phase of the Clean Air Interstate Rule (CAIR), Part 246 establishes a unit-based emission limit for each facility representing a 90 percent reduction of mercury emissions from 2005 levels. The Department will submit Part 246 to EPA for approval as New York's mercury state plan, in lieu of adopting CAMR.

#### TYPES AND ESTIMATED NUMBER OF RURAL AREAS AFFECTED

6 NYCRR Part 246 applies to coal-fired electric utility steam generating boilers or a coal-fired electric utility steam generating combustion turbines with nameplate capacity of more than 25 MWe (Megawatt electrical, or Megawatt produced as electricity) which produces or has produced electricity for sale firing coal or coal-derived fuel. In addition, Part 246 applies to cogeneration units which serve or have served a generator with a nameplate capacity of more than 25 MWe and supply in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. The Department has identified 13 facilities in New York which are subject to Part 246. These facilities are large industrial sources that produce electricity for commercial sale. These units are located in both rural and urban areas in western New York and the Hudson River Valley. Facilities subject to Part 246 may dispose of fly ash in lagoons or onsite landfills. Depending on the mercury control strategy implemented at the facility and the capacity of the generating units, the proposed regulation may negatively increase the volume of fly ash generated, resulting in up to an additional 500 tons per year of fly ash disposed of in landfills<sup>1</sup>.

#### REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

CAMR imposes certain minimum requirements, requirements that states must include in a state plan to be approved by EPA, for reporting and recordkeeping and other compliance requirements such as the requirement to meet the State mercury budget through facility-wide emission caps, and continuous emission monitors for mercury calculation. These requirements are not envisioned to affect local governments, except in the case of Jamestown which owns and operates an affected facility, or citizens of rural areas.

#### COSTS

Most facilities in New York will need to install activated carbon injection systems to work in conjunction with existing cold-side ESPs, especially those facilities burning western sub-bituminous coals. Some facilities may need to install pulse jet fabric filter baghouse systems for particulate collection to achieve the higher rates of mercury capture proposed for 2015 than could be realized through operation of a cold-side ESP alone. For those facilities combusting sub-bituminous coals, high percentage sub-bituminous coal blends, or facilities with existing fabric filter baghouses, total capital requirements include the purchase and installation of dosing and storage equipment related to the powdered activated carbon injection (PACI) system. The PACI will be a nearly fixed cost of \$984,000 (year 2003 dollars)<sup>2</sup>. Annualized over 20 years at an interest rate of approximately 10 percent this translates to a cost of \$117,460 per year. Through research projects partially funded by DOE, it has been realized that mercury emissions from facilities burning sub-bituminous coals are more readily controlled than previously predicted through the use of an enhanced PACI system and brominated or treated carbons<sup>3</sup>.

The cost of land filling the additional carbon material can vary greatly, but can be approximated as \$17/ton of fly ash through a 2001 report from the American Coal Ash Association<sup>4</sup>, which translates to an additional \$2,000 to \$20,000 for year 2004 disposal costs. Numerous studies have shown that mercury captured on activated carbon surfaces will not leach into liquid collection systems in landfills after disposal. Those facilities that are currently selling collected ash may have problems associated with carbon content of ash and may find it difficult to continue sale of the product. Average sales are approximately \$18/ton of fly ash with 50 percent of the ash sold going to Portland cement companies as a kiln additive. An alternative control scheme would be to install activated carbon injection with a polishing baghouse after the primary particulate collection device, for example a cold-side ESP, so that fly ash composition and its sale would not be negatively affected.

The future actual costs of regulating mercury emissions from the electric utility steam generating sector are directly related to any additional control device(s) required on a plant-by-plant basis, in addition to the volume and cost of reagent required. With regards to costs to rural communities or rural entities it is not envisioned that Part 246 will affect these areas of the State.

#### MINIMIZING ADVERSE IMPACT

The objective of Part 246 is to reduce mercury emissions statewide. The Rural Area Flexibility Analysis (RAFA) under section 202-bb(2)(b) of the State Administrative Procedures Act requires State agencies to take into consideration issues which may impact the ability of regulated entities in rural areas to comply with regulatory requirements. The Legislature has stated that the ability of private and public sector interests in rural areas to respond to state agency regulations may be constrained by operating environments which are distinctly different from that found in suburban and urban areas, including, among other things, population sparsity, limited access to financial and technical resources, and lack of economies of scale. Agencies must assess the regulatory impact and alternatives for rural areas and whether alternative regulatory approaches such as differing compliance or reporting requirements, the use of performance or outcome standards, or exemptions from applicability are warranted.

The Department has considered these issues and determined that Part 246 will not have an adverse impact on rural areas. Notably, Part 246 affects large industrial electric generators who produce electricity for commercial sale, some of which are located in rural areas. The ability of a facility to meet the requirements of Part 246, which include the installation and operation of pollution control technologies and continuous emission monitors, and recordkeeping and reporting, will not be influenced by the location of the facility in a rural versus a suburban or urban area. Moreover, as a matter of federal law, the Department is constrained to adopt requirements no less stringent than CAMR, which include emission caps based on the New York State mercury budget and federal reporting requirements. Part 246 meets these minimum federal requirements.

Currently, mercury emissions continue to be a major threat to public health and natural resources in New York State's rural areas. Due to the high levels of mercury in freshwater fish, the Department and the New York State Department of Health have issued specific warnings advising that pregnant women and children should not consume any servings of specific fish species that are caught in 93 lakes and more than 265 miles of rivers in the State. The New York State Department of Health publication, 'Chemicals in Game and Sportfish 2006-2007', identified fifty-two new areas with elevated mercury levels in fish since the 2003-2004 edition, bringing the number of lakes in New York State with specific fish advisories for mercury to ninety-three<sup>5</sup>. Many of the lakes sampled are in remote rural and mountainous areas of the State that do not have any known mercury inputs other than atmospheric deposition. With the proposed regulation, the current deposition rate of mercury in all areas of New York State, urban and rural will be reduced to a much greater degree than would be achieved by the emissions caps sought to be established by EPA as part of the federal proposed cap-and-trade program.

The Western Adirondacks is considered a "hotspot" due to its unique geology and acidified lakes. A significant inverse relationship is found in Adirondack lakes between lower pH levels and increasing fish mercury levels and adult and juvenile loons.<sup>6</sup> The Department implemented the Acid Deposition Reduction Programs for Sulfur Dioxide and Nitrogen Oxides in 2003 and the federal Clean Air Interstate Rule will add to these reductions in 2009 and 2015. Part 246 is designed to work in conjunction with these regulations and their timeframes. The recovery of New York's lakes and rivers will be a slow process and the Department needs to act sooner than the federal program prescribes to protect New York's rural areas.

CAMR's cap-and-trade provisions which allow for the banking of mercury allowances, and the potential for New York's emission reductions to be sold to facilities located in upwind states, will prolong the "hot spots" in the rural Catskill and Adirondack region until 2020 and beyond. Regional concentrations will be reduced sooner through implementation of Part 246 which controls unit-level mercury emissions at least three years earlier than the federal cap-and-trade program and to a greater extent. CAMR's cap and trade provisions jeopardize the public health of New Yorkers and the natural resources of the State.

#### RURAL AREA PARTICIPATION

The State Administrative Procedures Act requires agencies to provide public and private interests in rural areas the opportunity to participate in the rule making process and or public hearings. The Department will hold public hearings on Part 246 in upstate areas and will notify interested parties of this proposed rule making.

<sup>1</sup>EPA Office of Solid Waste and Emergency Response, EPA 530-S-99-010, March 1999, Report to Congress: Waste from the Combustion of Fossil Fuels

<sup>2</sup>USDOE/NETL, Preliminary Cost Estimate of Activated Carbon Injection for Controlling Mercury Emissions from a Un-Scrubbed 500 MW Coal-Fired Power Plant, prepared by Science International Corporation, May 2003

<sup>3</sup>Sorbent Technologies Corporation, Sid Nelson Jr. - Recipient Project Director, Advanced Utility Mercury-Sorbent Field-Testing Program: Semi-Annual Technical Progress Report

<sup>4</sup>American Coal Ash Association, 2001 coal combustion product (CCP) production and use statistics

<sup>5</sup>New York State Department of Health. 2006-2007 Health Advisories: Chemicals in Sportfish and Game. 2006. URL <http://www.health.state.ny.us/nysdoh/fish/fish.htm>

<sup>6</sup>Internal DEC work, Bureau of Habitat, Division of Fish and Wildlife, H. Simonim, J. Loukmas, paper to be published 2006

#### **Job Impact Statement**

##### **1. Nature of impact:**

The proposed rule (6 NYCRR Part 246) is not expected to have a substantial adverse impact on jobs or employment opportunities in New York State.

##### **2. Categories and numbers affected:**

The proposed regulation could impact the cost of generation at coal-fired electric utility stations in New York State. New York currently has thirteen permitted coal-fired electric utility steam generating stations, two of which, AES Hickling and AES Jennison, have been on cold standby at least since October 2000. In addition to the traditional steam generating stations there are two cogeneration facilities, Trigen-Syracuse and the Niagara Generating Facility, generating steam for both electric production and process use that fall within the scope of the proposed rule. The on-site cost of installing, operating, and maintaining mercury emission control equipment that may be required to satisfy the proposed regulation directly reduces the operating margin (similar in concept to profit) of the Mercury Reduction Program units. It is unlikely that the associated small increase in the cost of electric generation would adversely impact employment opportunity at these facilities.

##### **3. Regions of adverse impact:**

None.

##### **4. Minimizing adverse impact:**

Minimizing adverse impact to the generator and obtaining maximum mercury reduction was best accomplished by dividing the regulation into two phases, an annual facility emission limitation phase in 2010 and a unit mercury emission rate limit phase in 2015. The first phase will allow utility owners to identify the emission units where the greatest emission reductions can be achieved first and manage their facility with respect to future electrical needs and other regulations such as the Clean Air Interstate Rule (CAIR). In addition to the two-phase system, alignment of compliance dates with other rules being promulgated for the control of SO<sub>2</sub> and NO<sub>x</sub> may reduce the need for further scheduled outages for coal-fired facilities and allow concurrent construction schedules and installations.

There will be no significant adverse impact to job opportunities at those locations that consume electricity at the modeled wholesale Residential, Commercial and Industrial customer level. The Department in cooperation with NYSEDA has conducted an electricity system modeling analysis to estimate the incremental cost of implementing the CAIR and a mercury rule in New York. The electricity system modeling analysis compared a reference or business-as-usual case (absent either CAIR or mercury) to each of three policy cases: New York's proposed approach for implementing both CAIR and mercury, CAIR only, and mercury only. CAIR and mercury policies (implemented together, as proposed) could increase wholesale electricity prices by an average of 1.7% or \$1.14 MWh over the 2010 to 2020 timeframe. For a typical residential customer (using 750 Kwh per month), this translates into a monthly retail bill increase of \$0.86. Model runs assuming CAIR only (i.e., without mercury) and mercury only (i.e., without CAIR) indicate that virtually the entire incremental electricity price impact of implementing CAIR and mercury together is due to CAIR. There is virtually no incremental electricity price impact due to mercury<sup>1</sup>.

The promulgation of Part 246 is expected to increase employment for a time period, up to two or more years at each facility, in jobs associated with air pollution control device installation including but not limited to construction steel workers, welders, pipe fitters, and electricians. Therefore, a short-term measurable positive effect on numbers of construction steel, electrical, fan, and pumping and piping jobs is anticipated. Furthermore, there will be no associated adverse impact from the proposed rule related to monitoring, recordkeeping and reporting requirements as adoption of EPA's model rule is required for national reporting, regardless of the

promulgation of a State rule. Instead, there will be an increase in jobs associated with the installation, operation, and maintenance of mercury monitoring systems and any laboratory technical staff required to analyze sorbent traps that may be used in place of mercury continuous emission monitoring systems.

##### **5. Self-employment opportunities:**

There are no adverse impacts towards self-employment opportunities associated with the proposed regulation. The types of facilities affected by this regulatory addition are larger operations than what would be found in a self-employment situation. Even though it is expected that most design, engineering, and construction will be performed by larger consultation and construction firms, there will be an opportunity for self-employed consultants to advise facilities on how best to comply with the new requirements.

<sup>1</sup>NYSDEC, NYSEDA, and ICF International, Modeling Results for CAIR and Mercury. May 18, 2006

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

### **New Major Facilities and Major Modifications to Existing Facilities**

**I.D. No.** ENV-36-06-00012-P

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

**Proposed action:** Amendment of Parts 200, 201 and 231 of Title 6 NYCRR.

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

**Subject:** Requirements for proposed new major facilities and major modifications to existing facilities located in attainment and nonattainment areas of the state.

**Purpose:** To add a definition for routine maintenance repair and replacement, and modify the definition for major stationary source. Part 200 will also be revised to reflect that the department is no longer delegated responsibility for implementation of the Federal Prevention of Significant Deterioration Program. The existing nonattainment NSR Program at Part 231 will be re-titled as New Source Review for New and Modified Facilities and will include new Subparts 231-3 through 231-13. The existing Part 231 regulations (Subparts 231-1 and 231-2) are being retained with only modification of applicability dates. The new Subparts will implement nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration [PSD]). The NNSR requirements are based on New York's existing NNSR Program 6 NYCRR Subpart 231-2, with revisions to include selected provisions from the Dec. 31, 2002 Federal NSR reform rule. The PSD requirements are also based in large part on the Dec. 31, 2002 Federal NSR reform rule as codified at 40 CFR 52.21.

**Public hearing(s) will be held at:** 1:00 p.m., Oct. 11, 2006 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129, Albany, NY; 9:00 a.m., Oct. 12, 2006 at Department of Environmental Conservation, Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; and 9:00 a.m., Oct. 13, 2006 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY.

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

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

**Substance of proposed rule (Full text is posted at the following State website: [www.dec.state.ny.us](http://www.dec.state.ny.us)):** The Department of Environmental Conservation (DEC) proposes to amend Parts 200, 201 and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "General Provisions," "Permits and Registrations" and "New Source Review in Nonattainment Areas and Ozone Transport Regions."

The proposed rule making will revise Parts 200 and 201 respectively by adding a definition for Routine Maintenance Repair and Replacement, and modifying the definition for Major Stationary Source. Part 200 will also be

revised to reflect that the Department is no longer delegated responsibility for implementation of the federal Prevention of Significant Deterioration program. The Part 200 definition is codifying current Department practice of reviewing activities on a case by case basis, taking into account the nature and extent of the activity and its frequency and cost.

Existing Part 201 is being revised to update the definition of "major stationary source or major source" at 201-2.1(b)(21). A new term "major facility" is being included in the definition, and revisions to the applicability provisions are being made in light of re-designation and reclassification of areas of the State.

The existing nonattainment New Source Review program at Part 231 will be re-titled "New Source Review for New and Modified Facilities" and will include new Subparts 231-3 through 231-13. The existing Part 231 regulations (Subparts 231-1 and 231-2) are being retained with only modification of applicability dates. The new Subparts will implement nonattainment New Source Review (NSR) and attainment New Source Review (Prevention of Significant Deterioration [PSD]). The NSR requirements are based on New York's existing NSR program 6 NYCRR Subpart 231-2, with revisions to include selected provisions from the December 31, 2002 Federal NSR reform rule. The PSD requirements are also based in large part on the December 31, 2002 Federal NSR reform rule as codified at 40 CFR 52.21.

The proposed revisions to Part 231 will change the basis of applicability for modifications and emission reduction credits (ERCs) from an "Emission Unit" basis to an "Emission Source" basis, incorporate various federal requirements, provide clarification of existing requirements, and require comprehensive reporting, monitoring, and recordkeeping that will conform to the requirements of Title V.

The Department will retain existing Subpart 231-1 "NSR provisions applicable prior to November 15, 1992" and Subpart 231-2, "Requirements for emission units subject to the regulation on or after November 15, 1992". These regulations are currently cited in many air permits issued throughout the State and retaining them will facilitate implementation and enforcement of the NSR program. Existing Subpart 231-2 will be revised only to indicate that the Subpart will not apply after the date the proposed revisions become effective. Thus, permit applications received on or after the effective date of revised Part 231 will be processed according to the provisions of Subparts 231-3 through 231-13, as applicable.

New Subparts 231-3 through 231-13 have been added to include provisions from the EPA December 31, 2002 NSR Rule, and incorporate the Federal PSD program. The nonattainment NSR provisions currently specified in Subpart 231-2 are being updated and incorporated into these new Subparts. The Department is also adopting a State PSD program which is largely based on the Federal PSD rule and included in Subparts 231-6, 231-8, and 231-12. The Subparts of the proposed regulation are being organized to ease determinations of applicability, to collect common requirements into groups, and to streamline the regulation. The organization of the new regulation strives to make a more coherent series of requirements and obligations.

Subpart 231-3 General Provisions specifies provisions which apply generally including a transition plan, general permit requirements, general prohibitions, exemptions, and circumvention.

Subpart 231-4 defines the terms used throughout Part 231 and incorporates terms from both the existing Subpart 231-2 and the Federal PSD rule, 40 CFR 52.21. The Department has made minor revisions to terms used in existing Subpart 231-2 and 40 CFR 52.21 so that definitions are consistent for both nonattainment and attainment NSR and with New York's regulations.

To facilitate the implementation and administration of Part 231, the Department has included the requirements for new and modified facilities in four main Subparts depending on the facility's location in an attainment or nonattainment area.

Subpart 231-5 is applicable to new facilities and existing non-major facilities in nonattainment areas. Proposed new major facilities will continue to be subject to the requirements to install LAER and obtain emission offsets as they are under existing Subpart 231-2. The Department is modifying emission offset requirements to reflect the State's designation under the 8-hour Ozone National Ambient Air Quality Standard. The Subpart also specifies that non-major facilities undertaking projects which are major by themselves, or increase the emissions of the facility above major thresholds must obtain permits which limit emissions.

Subpart 231-6 applies to modifications to existing major facilities in nonattainment areas. The Subpart continues the requirements for LAER technology and emission offsets that exist in the Department's current nonattainment NSR program. The Subpart also specifies that facilities can

perform a netting exercise to determine whether the modification, when considering other contemporaneous activities at the facility, would exceed emissions thresholds.

Subpart 231-7 applies to new facilities and to existing non-major facilities in attainment areas. The Subpart implements the requirements for determination of air quality impacts through modeling, and the application of BACT for proposed new major facilities. Non-major facilities which undertake a project that has the potential to emit above major source thresholds will be required to obtain a permit with an emission limit reflecting the project's potential.

Subpart 231-8 applies to modifications at existing major facilities in attainment areas of the State. The Subpart implements the requirements for determination of air quality impacts through modeling and the application of BACT in the case of facilities which undertake a major modification. These requirements address Federal PSD requirements. Facilities can perform a netting analysis to determine whether the modification, when considered in conjunction with other contemporaneous emissions reductions and increase, would result in less than a significant emissions increase. The Subpart also specifies that facilities can perform a netting exercise to determine whether the modification, when combined with other contemporaneous activities at the facility, would exceed emissions thresholds.

The remaining five Subparts include general provisions that apply to both new and modified subject facilities.

Subpart 231-9 sets forth the requirements for establishing Plantwide Applicability Limitations (PAL) at Title V facilities. A PAL allows a facility to undertake modifications without being subject to NSR review as long as the facility does not exceed its PAL emission limit. Subpart 231-9 is based on the PAL provisions created December 31, 2002 in the Federal NSR rule (67 Fed Reg at 80278), which specify PAL creation, duration, and expiration. The Department has made a few minor adjustments to the regulatory language to take into account 6 NYCRR Subpart 201-6, New York's approved Title V regulation. PALs are established in Title V permits and are subject to Title V permit application and processing procedures for creation, modification, or renewal. PALs are created for an initial period of 10 years, less if established during the middle of a Title V permit term, and can be renewed for 10 years, subject to certain restrictions.

Subpart 231-10 defines emission offset and Emission Reduction Credit (ERC) creation and use. The provisions for ERC creation and use are substantially the same as existing Subpart 231-2. The proposed rule does not retain the requirements to create and transfer ERCs through paper certificates or retain 25 percent of ERCs resulting from a facility shutdown or curtailment of permitted activities.

Subpart 231-11 sets forth general permit requirements that apply to subject sources, and includes provisions for recordkeeping, compliance monitoring and reporting. These requirements are in addition to any Part 201 requirements that may apply.

Subpart 231-12 specifies the ambient air quality impact analysis requirements for facilities in attainment areas. These requirements emanate from the Federal PSD rule which is codified at 40 CFR 52.21.

Subpart 231-13 includes tables and lists emission thresholds applicable throughout Part 231, including: major facility thresholds; significant project thresholds; and emission offset ratios. Fine particulate thresholds for significant projects and major facilities are included in the tables. Emission offset requirements for nonattainment areas reflect revised offset ratios for those areas formerly designated severe ozone nonattainment.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ken Newkirk, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8403, e-mail: 231nsr@gw.dec.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.

**Additional matter required by statute:** Pursuant to art. 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule must be approved by the Environmental Board.

#### **Summary of Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

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

## 2. LEGISLATIVE OBJECTIVES:

Article 1 of the ECL was adopted to establish that the policy of the State of New York will be to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well being.

Article 3 of the ECL establishes the organization, functions, powers, duties and jurisdiction of the New York State Department of Environmental Conservation (Department).

Congress enacted the Clean Air Act Amendments of 1970 "to provide for a more effective program to improve the quality of the Nation's air." The Act requires EPA to promulgate national ambient air quality standards ("NAAQS") for criteria air pollutants and directs the states to devise implementation plans for improving air quality in polluted areas and complying with the standards.

The EPA created programs to improve air quality in attainment areas, through a Prevention of Significant Deterioration (PSD) program, and in non-attainment areas, through a Nonattainment New Source Review (NNSR) program. The PSD and NNSR programs are preconstruction review and permitting programs applicable to new major facilities and major modifications to existing facilities of air contaminants. The program is intended to reduce emissions from existing facilities at the time of modification, and limit the emissions of new facilities.

The Department is taking this opportunity to improve its NNSR regulations and incorporate a PSD program while addressing the required and court approved NSR Reform provisions, honoring the intent of the Environmental Conservation Law, and following the Federal Clean Air Act. The Department formerly implemented the PSD program through a delegation agreement with the USEPA, and operated its own NNSR regulations which were effective November 15, 1992. The EPA promulgated New Source Review Reform provisions on December 31, 2002 effective in delegated states March 3, 2003. The Department objected to provisions in the revised regulations and litigated on various aspects of the provisions.

The D.C. Circuit Court issued a decision, dated June 24, 2005, which specified which of the provisions from the NSR Reform regulation must be incorporated in State regulations. The provisions the litigation supported include: the definition of a two year baseline chosen from the preceding ten years of operation; an actual-to-projected-actual methodology for determining applicability; exclusion of emission increases due to unrelated demand growth; and the provision for a Plantwide Applicability Limitation.

The D.C. Circuit Court found that the Clean Unit applicability test and the Pollution Control Projects allowance, originally included in the 2002 NSR Reform provisions, were impermissible interpretations of the Clean Air Act, and found the reasonable possibility allowance to be arbitrary and capricious. The Court decision also noted that EPA acted arbitrarily and capriciously when it determined that sources making changes need only to keep records if there is a reasonable possibility that the changes constitute modifications under NSR review.

The D.C. Circuit Court decision supported the emission calculation methodology, emission baseline, and Plantwide Applicability Limitation (PAL) provisions. The calculation methodology for determining applicability of the regulation is to be based on an actual-to-projected-actual emission methodology. The emission baseline provides for the use of any 24 consecutive month period in the ten years prior to the modification.

## 3. NEEDS AND BENEFITS:

The purpose of this rule making is to fulfill the mandate in the December 31, 2002 Federal NSR rule that States submit a revised NNSR program for SIP approval which incorporates the NSR reform provisions promulgated by EPA. Major NSR is part of a comprehensive scheme of Congressionally mandated SIP requirements States are required to implement to address problems associated with the nonattainment of NAAQS and to ensure areas which attain the NAAQS continue to do so.

From the State's perspective, major NSR is a critical tool in meeting the Legislature's air quality objectives. The program ensures that healthful air quality is preserved in areas of the state that meet the NAAQS and does not further degrade, but actually improves, in areas of the State which currently are not in attainment of the NAAQS.

The State of New York currently has areas that are designated nonattainment for ozone and PM<sub>2.5</sub>. As a result, the Department must have a NNSR program that meets the requirements of Part D of Title I of the Act to adopt permit programs for the construction, modification and operation of major stationary sources in non-attainment areas.

The proposed regulation is one in a series of programs intended to track pollution, ensure that sources are meeting their regulatory obligations, and

maintain permits. These permits contain provisions to limit emissions of ozone precursors (volatile organic compounds and nitrogen oxides), fine particulate matter, sulfur dioxide, carbon monoxide, and lead.

The Subparts of the proposed regulation are being organized to ease determinations of applicability, to collect common requirements into groups, and to streamline the regulation. The organization of the new regulation strives to make a more coherent series of requirements and obligations. The existing Subparts 231-1 and 231-2 are being retained with only modifications of the applicability dates. The initial Subparts, Subpart 231-3 General Provisions and Subpart 231-4 Definitions, specify those provisions and definitions applicable throughout the regulation. The next four Subparts address new and modified facilities in nonattainment and attainment areas. These specific Subparts are intended to clearly indicate which provisions apply to facilities in different areas of the state. Subpart 231-5 provisions apply to new facilities and existing non-major facilities in nonattainment areas and Subpart 231-6 applies to modifications to existing facilities in nonattainment areas. Subpart 231-7 applies to new facilities and to existing non-major facilities in attainment areas and Subpart 231-8 applies to existing major facilities in attainment areas of the State. The remaining five Subparts specify how various major provisions apply to the four scenarios in Subparts 5 through 8. Subpart 231-9 defines how Plantwide Applicability Limitations can be applied to facilities that choose to undertake them. Subpart 231-10 defines emission offset and Emission Reduction Credit (ERC) creation and use. Subpart 231-11 provides some of the general permit, monitoring, reporting, and recordkeeping requirements that are cited throughout the proposed regulation. Subpart 231-12 embodies the Ambient Air Quality Impact analysis requirements for facilities in attainment areas. Subpart 231-13 compiles tables and lists emission thresholds applicable throughout the proposed regulation.

The proposed revisions to Part 231 will change the basis of applicability for modifications and emission reduction credits (ERCs) from an "Emission Unit" basis to an "Emission Source" basis, incorporate various federal requirements, provide clarification of existing requirements, and require comprehensive reporting, monitoring, and recordkeeping that will conform to the requirements of Title V. The revisions are expected to make the regulations less burdensome to the business community without compromising air quality. The revisions are not expected to have any measurable impact on employment opportunities in the State.

The proposed regulations will make revisions to the current Part 231 to address deficiencies previously identified by the EPA, and incorporate new federal regulatory text for use in the state. These regulations are necessary to further our efforts to comply with the NAAQS. Revision of the existing Subpart 231-2 provisions is the result of feedback by EPA on the existing program and the influencing litigation.

In May 2004, the Department convened a workgroup to discuss the development and adoption of a State NSR rule. Participants included members of the regulated community, State and Federal agencies, and environmental organizations.

The Department held four meetings in the Summer and Fall of 2004 to discuss the major reform provisions included in the December 31, 2002 NSR Rule and the ERP Rule.

The workgroup reconvened on February 16, 2006 to discuss a draft State NSR rule. The Department requested written comments and revised the draft Rule, as appropriate, taking into account those comments. The Department has also provided outreach through Part 231 rule making presentations at the NYS Business Council's 2005 Annual Industry-Environmental Conference held on October 13 & 14, 2005 in Saratoga Springs, NY, and at the Air & Waste Management's Ninth Annual Environmental, Health & Safety Seminar held in Rochester, NY on February 15, 2006. Comments from these presentations were also considered during development of the proposed rule making.

## 4. COSTS:

The current regulation at 6 NYCRR Subpart 231-2 imposes requirements to obtain permits, collect data to support compliance with the permit, revise the permit under various circumstances, and approach the Department when interested in modifying the facility. Through the reorganization of the existing nonattainment regulation and incorporation of a similarly structured regulation applicable in attainment areas, the clarification of the applicability procedures and process for complying with the regulation should actually reduce costs and complications in complying with the regulation.

Adoption of the revised Part 231 regulations is not expected to entail additional costs for industry, or state and local governments beyond those currently incurred to comply with the requirements of the existing NSR process. The reporting and recordkeeping requirements included to ad-



dress periodic monitoring are already required under Title V and imposed by Part 201.

Major facilities are required to have and renew Title V permits applicable to their facilities. Any new elective or applicable provisions of the regulation will be incorporated at the inception of a new permit, or at the time of renewal of the permit for existing facilities.

The Department maintains staff at centralized and regional offices to review, issue, and renew permits applicable to facilities under this regulation. No additional staff will be required, and minimal additional workload is expected as a result of this regulation.

Regulated industries already must obtain permits, keep records, submit reports and comply with the provisions of Parts 201 and 231. Any increase in burden on regulated industries will be minor. The costs associated with incremental increases in activities already performed at facilities to comply with permitting regulations will be minimal.

#### 5. PAPERWORK:

The proposed rule is not expected to entail any significant additional paperwork for the department, industry, or state and local governments beyond that which is already required to comply with existing Subparts 201-6 and 231-2.

#### 6. STATE AND LOCAL GOVERNMENT MANDATES:

The adoption of the proposed Part 231 revisions is not expected to result in any additional burdens on industry, state, or local governments beyond those currently incurred to comply with the requirements of the existing NSR process under Subparts 201-6 and 231-2.

#### 7. DUPLICATION:

Once the proposed revisions are in effect, and approved by USEPA into the SIP, the Department will have sole responsibility for the PSD provisions, and no duplication will occur.

#### 8. ALTERNATIVES:

Adoption of the proposed amendments to Part 231 is necessary to conform to federal requirements. The Department returned delegation of the PSD rules in a letter to EPA dated May 24, 2004, retroactively effective March 3, 2003. As a result, the Department must develop its own regulations in order to implement the PSD program. The Department is taking the opportunity to resolve issues cited by the USEPA and the regulated community, while incorporating the USEPA NSR Reform provisions, in modified form. The amendments will provide further clarification of existing rules, coordinate review and requirements in both attainment and nonattainment areas, and make Part 231 less burdensome to the regulated community. The Department believes that no viable alternatives to this rule making are available.

The following is a discussion of the available alternatives:

1. Take no action. – This option is not a legitimate option. The State is required to either incorporate the Federal NSR regulations into the SIP or adopt its own program.

2. Strict adoption of federal program. – This option is contrary to state law, contrary to the results of D.C. Circuit Court litigation on the matter, and would leave the State without an approved NSR permitting program.

3. Adoption of a revised NSR program and implementation of a State PSD program. – This option allows the state to update the existing NNSR program, include EPA NSR Reform provisions (in revised form) and incorporate PSD provisions formerly delegated from the EPA.

#### 9. FEDERAL STANDARDS:

The proposed amendments are incorporating federal regulatory language, and will align the state regulation with federal standards for the most part, and exceed minimum federal government standards for other items.

Provisions of the regulation which exceed federal standards include: although the USEPA allows multiple baselines for a single project, the Department is limiting projects to only one baseline for determining whether a project is subject to the regulation; modifications that would otherwise not be subject to the regulation according to the USEPA due to their insignificance are required to keep records of such a modification under the Department regulation; the formerly severe ozone nonattainment areas in the New York Metropolitan area, that the USEPA would allow re-designation to moderate nonattainment are being required to review project for applicability under the same project thresholds as before; certified emission reduction credits are being required for netting analyses for PSD areas that would not otherwise be required by the USEPA; and the PAL allowance is being limited to ten years or less depending on the renewal of the applicable Title V permit, whereas USEPA would allow 10 years regardless of permit duration.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendments do not involve the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the *State Register*.

#### Regulatory Flexibility Analysis

#### EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS:

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

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rule making will apply statewide. Part 231 applies to proposed new major facilities and major modifications at existing facilities. The Part 231 applicability thresholds for facilities in New York State (excluding New York City, Long Island, Rockland and Westchester Counties) is large enough that it is unlikely any small business or local government that owns or operates a facility would be subject to the applicability requirements of Part 231. For New York City, Long Island, Rockland and Westchester Counties, the Part 231 applicability threshold is very small, thus it is likely that some small businesses and local governments would be subject to the proposed revisions. The proposed revisions to Parts 200, 201 and 231, however, while making the regulations more flexible, do not substantially alter the current NSR requirements for any small business or local government that is subject to Part 231. Accordingly, the proposed revisions are not expected to have any adverse effects on small businesses or local governments. The proposed rule making will revise Parts 200 and 201 respectively by adding a definition for Routine Maintenance Repair and Replacement, and modifying the definition for Major Stationary Source. Part 200 will also be revised to reflect that the Department is no longer delegated responsibility for implementation of the federal Prevention of Significant Deterioration program. The existing nonattainment New Source Review (NSR) program at Part 231 will be re-titled "New Source Review for New and Modified Facilities" and will include new Subparts 231-3 through 231-13. The existing Part 231 regulations (Subparts 231-1 and 231-2) are being retained with only modification of applicability dates. The new Subparts will implement nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration [PSD]). The NNSR requirements are based on New York's existing NNSR program 6 NYCRR Subpart 231-2, with revisions to include selected provisions from the December 31, 2002 Federal NSR reform rule. The PSD requirements are also based in large part on the December 31, 2002 Federal NSR reform rule as codified at 40 CFR 52.21.

The proposed revisions to Part 231 will change the basis of applicability for modifications and emission reduction credits (ERCs) from an "Emission Unit" basis to an "Emission Source" basis, incorporate various federal requirements, provide clarification of existing requirements, and require comprehensive reporting, monitoring, and recordkeeping that will conform to the requirements of Title V. The revisions are expected to make the regulations less burdensome to small businesses and local governments without compromising air quality.

#### COMPLIANCE REQUIREMENTS:

The proposed revisions to Parts 200, 201 and 231, while making the regulations more flexible, do not substantially alter the current NSR requirements for any small business or local government that may be subject to Part 231. The revisions to Part 231 will streamline and clarify the new source review process making it less burdensome to the business community and could potentially reduce compliance costs for any small business or local government that may be subject to Part 231. For new major facilities and major modifications, recordkeeping, monitoring, and reporting is required consistent with the requirements of New York's 6 NYCRR Part 201 Title V permit program. In the case of netting at existing major facilities, and for insignificant modifications, the proposed recordkeeping, monitoring, and reporting requirements are more extensive than those included in EPA's December 31, 2002 NSR rule. For netting, the proposed regulation is consistent with current Department practice which requires permits to include enforceable emission limits and appropriate recordkeeping, monitoring, and reporting. For insignificant modifications, the proposed regulation requires that facilities maintain records of the modification and comply with any other requirements that may be applicable, including Part 201 permitting requirements. While proposed Part 231 recordkeeping, monitoring, and reporting requirements may be more extensive than the EPA's NSR rule, from the perspective of New York State's implementation of NSR, the requirements are not significantly changing. Accordingly, these requirements are not anticipated to place any undue burden of compliance on any small business or local government that may be subject to Part 231.



**PROFESSIONAL SERVICES:**

For any small business or local government that is subject to Part 231, the professional services that would be needed will not increase from the services which are currently required to comply with NNSR and PSD requirements. The revisions to Part 231 will streamline and clarify the new source review process making it less burdensome to the regulated community and could potentially reduce compliance costs for facilities, including small businesses and local governments if affected. For new major facilities and major modifications, recordkeeping, monitoring, and reporting is required consistent with the requirements of New York's Title V permit program (6 NYCRR Part 201). In the case of netting at existing major facilities, and for minor modifications, the proposed recordkeeping, monitoring, and reporting requirements are more extensive than those included in EPA's December 31, 2002 NSR rule. For netting, the proposed regulation is consistent with current Department practice which requires permits to include enforceable emission limits and appropriate recordkeeping, monitoring, and reporting. For insignificant modifications, the proposed regulation requires that facilities maintain records of the modification and comply with any other requirements that may be applicable, including Part 201 permitting requirements. While proposed Part 231 recordkeeping, monitoring, and reporting requirements may be more extensive than the EPA's NSR rule, from the perspective of New York State's implementation of NSR, the requirements are not significantly changing. Accordingly, these requirements are not anticipated to place any undue burden on small businesses or local governments.

**COMPLIANCE COSTS:**

The proposed revisions to Parts 200, 201 and 231 are expected to make the regulations less burdensome to small businesses and local governments without compromising air quality. These proposed revisions, while making the regulation more flexible, do not substantially alter the requirements for subject facilities as compared to those that currently exist. The revisions leave in-tact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. The proposed rulemaking will involve a major restructuring of Part 231, allowing for easier implementation.

The revisions will reduce the required ozone nonattainment emission offset ratio for the existing severe ozone nonattainment area due to reclassification of the area as a moderate ozone nonattainment area based on EPA's new 8-Hour ozone standard. Thus, the required amount of ERCs and associated costs for projects located in this reclassified ozone nonattainment area will be reduced. The addition of Plantwide Applicability Limitation (PAL) provisions allows for a facility to accept a 10 year facility-wide emission cap for a particular pollutant and then make changes at the facility avoiding NSR applicability, thus reducing compliance costs, provided the facility remains in compliance with its PAL. The proposed recordkeeping, monitoring, and reporting requirements, while more extensive than EPA's December 31, 2002 NSR reform rule, are in line with the Department's current practice, are consistent with Title V requirements, and address the deficiencies in the Federal NSR rule ('see New York v. EPA 413' F.3d 3 [D.C. Circuit 2005]). The Department expects that small businesses and local governments generally will not be subject to the proposed requirements. Thus, there are no anticipated additional compliance costs as compared to the existing NSR rules.

**MINIMIZING ADVERSE IMPACT:**

The proposed revisions to Parts 200, 201 and existing Subparts 231-1 and 231-2, as described above, are not expected to create significant adverse impacts on small businesses and local governments. The proposed revisions to Part 231 will streamline the new source review process, thus making it less burdensome to small businesses and local governments. The proposed revisions to Part 231 will also involve a major restructuring of the rule to allow for easier implementation. Separate Subparts are being added to address NNSR and PSD review requirements. The revisions will reduce the required ozone nonattainment emission offset ratio for the existing severe ozone nonattainment area due to reclassification of the area as a moderate ozone nonattainment area based on EPA's new 8-Hour ozone standard. Thus, the required amount of ERCs and associated costs for projects located in this reclassified ozone nonattainment area will be reduced. More flexibility in selecting the time period for baseline emissions is being proposed. Also, the addition of PAL provisions allows for a facility to accept a 10 year facility-wide emission cap for a particular pollutant and then make changes at the facility avoiding NSR applicability provided the facility remains in compliance with its PAL.

The proposed rule requires facilities which undertake significant modifications or accept emission caps to avoid being subject to NSR require-

ments to retain records, monitor compliance with emission limits and caps and periodically submit compliance reports to the Department. These requirements are being implemented in conjunction with the Title V permitting program. The Federal NSR rule, while requiring monitoring, reporting, and recordkeeping for significant modifications, consistent with current practice, did not impose mandatory recordkeeping, monitoring and reporting for insignificant modifications. However, the Department's current and long-standing implementation of NSR is to require recordkeeping, monitoring and reporting for facilities which take avoidance caps. New York and a consortium of other northeast states sued EPA, challenging the Federal rule's lack of standards for recordkeeping and compliance monitoring for insignificant modifications. A Federal Court, in June 2005, upheld this challenge, determining that EPA's rule lacked enforceability and was deficient. The proposed recordkeeping, monitoring, and reporting requirements, while more extensive for insignificant modifications than EPA's December 31, 2002 NSR rule, are in line with the Department's current practice, are consistent with Title V requirements, and address the deficiencies with the Federal rule. The proposed revisions are not expected to create significant adverse impacts on any small business or local government that may be subject to Part 231.

**SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:**

The Department has held numerous "interested parties work group" sessions with the NYS Business Council and representatives of the regulated community, including small businesses and local governments, State agencies, and environmental organizations to discuss the development of the proposed revisions to Parts 200, 201 and 231. The comments from these sessions were considered while developing the proposed revisions. The Department also provided outreach through Part 231 rule making presentations at the NYS Business Council's 2005 Annual Industry-Environmental Conference held on October 13 & 14, 2005 in Saratoga Springs, NY, and at the Air & Waste Management's Ninth Annual Environmental, Health & Safety Seminar held in Rochester, NY on February 15, 2006. Comments from these presentations were also considered during development of the proposed rule making. Furthermore, public notice and hearings will be held to obtain additional comments on the Department's proposed revisions to Parts 200, 201 and 231. Participation by every affected party will be actively sought through these hearings.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The revisions are expected to make the regulations less burdensome to the business community without compromising air quality. The proposed revisions, while making the regulation more flexible, do not substantially alter the requirements for subject facilities as compared to those that currently exist. The revisions leave in-tact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. Therefore, the Department believes there are no additional economic or technological feasibility issues to be addressed by any small business or local government that may be subject to the proposed rule making.

**Rural Area Flexibility Analysis****TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED:**

Rural areas are defined as rural counties in New York State that have populations less than 200,000 people, towns in non-rural counties where the population densities are less than 150 people per square mile and villages within those towns.

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rule making will apply statewide and all rural areas of New York State will be affected. The proposed rule making will revise Parts 200 and 201 respectively by adding a definition for Routine Maintenance Repair and Replacement, and modifying the definition for Major Stationary Source. Part 200 will also be revised to reflect that the Department is no longer delegated responsibility for implementation of the federal Prevention of Significant Deterioration program. The existing nonattainment New Source Review (NNSR) program at Part 231 will be re-titled "New Source Review for New and Modified Facilities" and will include new Subparts 231-3 through 231-13. The existing Part 231 regulations (Subparts 231-1 and 231-2) are being retained with only modification of applicability dates. The new Subparts will implement nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration [PSD]). The NNSR requirements are based on New York's existing NNSR program 6 NYCRR Subpart 231-2, with revisions to include selected provisions from the December 31, 2002

Federal NSR reform rule. The PSD requirements are also based in large part on the December 31, 2002 Federal NSR reform rule as codified at 40 CFR 52.21.

The proposed revisions to Part 231 will change the basis of applicability for modifications and emission reduction credits (ERCs) from an "Emission Unit" basis to an "Emission Source" basis, incorporate various federal requirements, provide clarification of existing requirements, and require comprehensive reporting, monitoring, and recordkeeping that will conform to the requirements of Title V. The revisions are expected to make the regulations less burdensome to the regulated community located in a rural area, without compromising air quality. The revisions are not expected to have any impact on areas of the State which are defined as rural, beyond what facilities in those areas are subject to under the existing NSR regulations.

#### COMPLIANCE REQUIREMENTS:

The proposed revisions to Parts 200, 201 and 231, while making the regulation more flexible, do not substantially alter the requirements for public and private entities as compared to those that currently exist. As such, the professional services that will be needed by these entities will not increase from the services which are currently required to comply with NNSR and PSD requirements. The revisions to Part 231 will streamline and clarify the new source review process making it less burdensome to the regulated community and could potentially reduce compliance costs for facilities including those in rural areas. For new major facilities and major modifications, recordkeeping, monitoring, and reporting is required consistent with the requirements of New York's Title V permit program (6 NYCRR Part 201). In the case of netting at existing major facilities, and for insignificant modifications, the proposed recordkeeping, monitoring, and reporting requirements are more extensive than those included in EPA's December 31, 2002 NSR rule. For netting, the proposed regulation is consistent with current Department practice which requires permits to include enforceable emission limits and appropriate recordkeeping, monitoring, and reporting. For insignificant modifications, the proposed regulation requires that facilities maintain records of the modification and comply with any other requirements that may be applicable, including Part 201 permitting requirements. While proposed Part 231 recordkeeping, monitoring, and reporting requirements may be more extensive than the EPA's NSR rule, from the perspective of New York State's implementation of NSR, the requirements are not significantly changing. Accordingly, these requirements are not anticipated to place any undue burden of compliance on businesses in rural areas.

#### COSTS:

The proposed revisions to Parts 200, 201 and 231 are expected to make the regulations less burdensome to the regulated community located in a rural area without compromising air quality. These proposed revisions, while making the regulation more flexible, do not substantially alter the requirements for subject facilities as compared to those that currently exist. Specifically, the revisions leave in-tact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. The proposed rule making will involve a major restructuring of Part 231, allowing for easier implementation.

The revisions will reduce the required ozone nonattainment emission offset ratio for the existing severe ozone nonattainment area due to reclassification of the area as a moderate ozone nonattainment area based on EPA's new 8-Hour ozone standard. Thus, the required amount of ERCs and associated costs for projects located in this reclassified ozone nonattainment area will be reduced. The addition of Plantwide Applicability Limitation (PAL) provisions allows for a facility to accept a 10 year facility-wide emission cap for a particular pollutant and then make changes at the facility avoiding NSR applicability, thus reducing compliance costs, provided the facility remains in compliance with its PAL. The proposed recordkeeping, monitoring, and reporting requirements, while more extensive than EPA's December 31, 2002 NSR reform rule, are in line with the Department's current practice, are consistent with Title V requirements, and address the deficiencies in the Federal NSR rule (see *New York v. EPA* 413 F.3d 3 [D.C. Court 2005]). The Department does not expect the proposed revisions to cause any business located in a rural area to incur any additional compliance costs as compared to the existing NSR rules.

#### MINIMIZING ADVERSE IMPACT:

The proposed revisions to Parts 200, 201 and existing Subparts 231-1 and 231-2, as described above, are not expected to create significant adverse impacts on rural areas. The proposed revisions to Part 231 will streamline the new source review process, thus making it less burdensome to the regulated community located in a rural area. The proposed revisions

to Part 231 will also involve a major restructuring of the rule to allow for easier implementation. Separate Subparts are being added to address NSR and PSD review requirements. The revisions will reduce the required ozone nonattainment emission offset ratio for the existing severe ozone nonattainment area due to reclassification of the area as a moderate ozone nonattainment area based on EPA's new 8-Hour ozone standard. Thus, the required amount of ERCs and associated costs for projects located in this reclassified ozone nonattainment area will be reduced. More flexibility in selecting the time period for baseline emissions is being proposed. Also, the addition of PAL provisions allows for a facility to accept a 10 year facility-wide emission cap for a particular pollutant and then make changes at the facility avoiding NSR applicability provided the facility remains in compliance with its PAL.

The proposed rule requires facilities which undertake significant modifications or accept emission caps to avoid being subject to NSR requirements to retain records, monitor compliance with emission limits and caps and periodically submit compliance reports to the Department. These requirements are being implemented in conjunction with the Title V permitting program. The Federal NSR rule, while requiring monitoring, reporting, and recordkeeping for significant modifications, consistent with current practice, did not impose mandatory recordkeeping, monitoring and reporting for insignificant modifications. However, the Department's current and long-standing implementation of NSR is to require recordkeeping, monitoring and reporting for facilities which take avoidance caps. New York and a consortium of other northeast states sued EPA, challenging the Federal rule's lack of standards for recordkeeping and compliance monitoring for insignificant modifications. A Federal Court, in June 2005, upheld this challenge, determining that EPA's rule lacked enforceability and was deficient. The proposed recordkeeping, monitoring, and reporting requirements, while more extensive for insignificant modifications than EPA's December 31, 2002 NSR rule, are in line with the Department's current practice, are consistent with Title V requirements, and address the deficiencies with the Federal rule. The proposed revisions to Parts 200, 201 and 231 are not expected to create significant adverse impacts on any business located in a rural area.

#### RURAL AREA PARTICIPATION:

The Department has held several "interested parties work group" sessions with the NYS Business Council and representatives of the regulated community, including businesses located in rural areas, State agencies, and environmental organizations to discuss the development of the proposed revisions to Parts 200, 201 and 231. The comments from these sessions were considered while developing the proposed revisions. The Department also provided outreach through Part 231 rule making presentations at the NYS Business Council's 2005 Annual Industry-Environmental Conference held on October 13 & 14, 2005 in Saratoga Springs, NY, and at the Air & Waste Management's Ninth Annual Environmental, Health & Safety Seminar held in Rochester, NY on February 15, 2006. Comments from these presentations were also considered during development of the proposed rule making. Furthermore, public notice and hearings will be held to obtain additional comments on the Department's proposed revisions to Parts 200, 201 and 231. Participation by every affected party will be actively sought through these hearings.

#### Job Impact Statement

##### NATURE OF IMPACT:

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rule making will revise Parts 200 and 201 respectively by adding a definition for Routine Maintenance Repair and Replacement, and modifying the definition for Major Stationary Source. Part 200 will also be revised to reflect that the Department is no longer delegated responsibility for implementation of the federal Prevention of Significant Deterioration program. The existing nonattainment New Source Review program at Part 231 will be re-titled "New Source Review for New and Modified Facilities" and will include new Subparts 231-3 through 231-13. The existing Part 231 regulations (Subparts 231-1 and 231-2) are being retained with only modification of applicability dates. The new Subparts will implement nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration [PSD]). The NNSR requirements are based on New York's existing NNSR program 6 NYCRR Subpart 231-2, with revisions to include selected provisions from the December 31, 2002 Federal NSR reform rule. The PSD requirements are also based in large part on the December 31, 2002 Federal NSR reform rule as codified at 40 CFR 52.21.

The proposed revisions to Part 231 will change the basis of applicability for modifications and emission reduction credits (ERCs) from an

"Emission Unit" basis to an "Emission Source" basis, incorporate various federal requirements, provide clarification of existing requirements, and require comprehensive reporting, monitoring, and recordkeeping that will conform to the requirements of Title V. The revisions are expected to make the regulations less burdensome to the regulated community without compromising air quality. The revisions are not expected to have any measurable impact on employment opportunities in the State.

#### CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED:

The proposed revisions to Parts 200, 201 and existing Subparts 231-1 and 231-2 are minor in nature and will not result in any measurable effect on the categories or numbers of jobs, or employment opportunities in any specific category. Among other things, the proposed revisions to Part 231 (new Subparts 231-3 through 231-13) will include selected Federal NSR reform provisions including: the determination of baseline emissions; emissions calculations; rule applicability; and Plantwide Applicability Limitations (PAL). More flexibility in selecting the time period for baseline emissions is being proposed. The methodology for emissions calculations will be consistent with the Federal NSR rule. The PAL provisions allows for a facility to accept a 10 year facility-wide emission cap for a particular pollutant and then make changes at the facility avoiding NSR applicability provided the facility remains in compliance with its PAL. Additionally, the proposed revisions will provide clarification of existing NSR requirements and require comprehensive monitoring, recordkeeping and reporting in a manner consistent with Title V. These revisions are expected to make the regulations less burdensome to the regulated community without compromising air quality. These proposed revisions, while making the regulation more flexible, do not substantially alter the requirements for subject facilities as compared to those that currently exist. Specifically, the revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. The proposed revisions to Part 231 will also involve a major restructuring of the rule to allow for easier implementation. No measurable effect on the categories or numbers of jobs, or employment opportunities in any specific category is anticipated.

#### REGIONS OF ADVERSE IMPACT:

There are no regions of the State where the proposed revisions would have a disproportionate adverse impact on jobs or employment opportunities. The existing NSR requirements are not being substantially changed from those that currently exist. The proposed rule making will revise Parts 200 and 201 respectively by adding a definition for Routine Maintenance Repair and Replacement, and modifying the definition for Major Stationary Source. Part 200 will also be revised to reflect that the Department is no longer delegated responsibility for implementation of the federal Prevention of Significant Deterioration program. These revisions are minor in nature.

The proposed revisions to Part 231 will change the nonattainment designations for some areas of the State, however, due to the entire State being located within the Ozone Transport Region (OTR) no significant change in the application of major NSR requirements will occur. The proposed revisions to Part 231 will change the basis of applicability for modifications and emission reduction credits (ERCs) from an "Emission Unit" basis to an "Emission Source" basis, incorporate various federal requirements, provide clarification of existing requirements, and require comprehensive reporting, monitoring, and recordkeeping that will conform to the requirements of Title V. The revisions are expected to make the regulations less burdensome to the regulated community without compromising air quality.

#### MINIMIZING ADVERSE IMPACT:

The proposed revisions to Parts 200, 201 and existing Subparts 231-1 and 231-2, as described above, are not expected to create significant adverse impacts on existing jobs or promote the development of new employment opportunities. The proposed revisions to Part 231 will streamline the new source review process, thus making it less burdensome to the regulated community. The proposed revisions to Part 231 will also involve a major restructuring of the rule to allow for easier implementation. Separate Subparts are being added to address NNSR and PSD review requirements. The revisions will reduce the required ozone nonattainment emission offset ratio for the existing severe ozone nonattainment area due to reclassification of the area as a moderate ozone nonattainment area based on EPA's new 8-Hour ozone standard. Thus, the required amount of ERCs and associated costs for projects located in this reclassified ozone nonattainment area will be reduced. More flexibility in selecting the time period for baseline emissions is being proposed. Also, the addition of PAL provided

sions allows for a facility to accept a 10 year facility-wide emission cap for a particular pollutant and then make changes at the facility avoiding NSR applicability provided the facility remains in compliance with its PAL.

The proposed rule requires facilities which undertake significant modifications or accept emission caps to avoid being subject to NSR requirements to retain records, monitor compliance with emission limits and caps and periodically submit compliance reports to the Department. These requirements are being implemented in conjunction with the Title V permitting program. The Federal NSR rule, while requiring monitoring, reporting, and recordkeeping for significant modifications, consistent with current practice, did not impose mandatory recordkeeping, monitoring and reporting for insignificant modifications. However, the Department's current and long-standing implementation of NSR is to require recordkeeping, monitoring and reporting for facilities which take avoidance caps. New York and a consortium of other northeast states sued EPA, challenging the Federal rule's lack of standards for recordkeeping and compliance monitoring for insignificant modifications. A Federal Court, in June 2005, upheld this challenge, determining that EPA's rule lacked enforceability and was deficient. The proposed recordkeeping, monitoring, and reporting requirements, while more extensive for insignificant modifications than EPA's December 31, 2002 NSR rule, are in line with the Department's current practice, are consistent with Title V requirements, and address the deficiencies with the Federal rule. The proposed revisions to Part 231 are not expected to create significant adverse impacts on existing jobs or promote the development of new employment opportunities.

#### SELF-EMPLOYMENT OPPORTUNITIES:

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

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## Higher Education Services Corporation

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### EMERGENCY RULE MAKING

#### New York State Licensed Social Worker Forgiveness Program

**I.D. No.** ESC-36-06-00007-E

**Filing No.** 1007

**Filing date:** Aug. 17, 2006

**Effective date:** Aug. 17, 2006

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

**Action taken:** Addition of section 2201.8 to Title 8 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** This emergency rule is necessary because compliance with the requirements of the regular rule making process will adversely impact award recipients by delaying the processing of awards.

**Subject:** New York State Licensed Social Worker Loan Forgiveness Program.

**Purpose:** To implement the program.

**Text of emergency rule:** New section 2201.8 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.8 New York State Licensed Social Worker Loan Forgiveness Program*

(a) Definitions.

(1) "Year" means one calendar year beginning January 1st and concluding on December 31st. Service for less than one year may be permitted in the first and last years of participation in the program provided that the awards will be prorated to reflect the actual service provided.

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

(3) "Full-time" means providing social worker services for a minimum of 35 hours in a calendar week.

(4) "Economically disadvantaged" shall be determined by ranking each applicant by their New York State combined net taxable income for the applicant and their spouse so that the applicant with the lowest net taxable income will receive the first award. Awards shall continue to be granted in such order until funding is expended.

(5) "Program" means the New York State Licensed Social Worker Loan Forgiveness Program codified in section 679-a of the education law.

(b) Administrative Requirements. The following administrative requirements shall apply to this program:

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

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

(3) The pool of applicants shall be those who have successfully met the filing deadline and who otherwise meet the eligibility requirements of the program; and

(4) The corporation shall offset a loan forgiveness award if the recipient owes a debt to the corporation or is in default on a student loan guaranteed or owned by the corporation in an amount equal to the debt or defaulted loan, plus any fees, penalties, collection costs, interest or other monies allowable under state and federal law.

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

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

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

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

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

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

(d) Priorities. The priority of an award shall be that set forth in the enabling legislation. In the event that funding is insufficient to make awards within any given priority, recipients shall be chosen by random selection. Random selection shall be conducted by lottery.

(e) Designation of Critical Human Service Areas.

(1) The president of the corporation may appoint one chairperson from among the members of the committee to facilitate meetings.

(2) The committee is established for consultation purposes only, shall have no voting rights, and shall not need a quorum to meet.

(3) The committee may meet by electronic means, including but not limited to, teleconferencing and videoconferencing.

(4) With regard to the designation of critical human service areas by the corporation, the committee shall meet at least once annually to consult with the corporation. Designation of critical human service areas by the corporation shall be published by the corporation and provided on the corporation's website.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 14, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, Higher Education Services Corp., 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: CFisher@hesc.com

### Regulatory Impact Statement

Statutory authority:

New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate proposals and administer the New York State Licensed Social Worker Loan Forgiveness Program is codified in sections 653, 655 and 679-a of the Education Law.

Chapter 57 of the Laws of 2005 created a previous version of the New York State Licensed Social Worker Loan Forgiveness Program on April 12, 2005. This program, codified in section 605 of the education law, was complicated and contained an ostensible triple penalty for anyone who failed to live up to the requirements of the program.

On June 24, 2005, a repealer was introduced in the legislature as part of an omnibus chapter amendment that created a much simpler loan forgiveness program absent penalties and transferred the administration of the program to the HESC by adding new section 679-a to the Education Law. The bill received a message of necessity and was thereafter signed into law on July 3, 2005, in Chapter 161 of the Laws of 2005.

Legislative objectives:

The legislature established the New York State Licensed Social Worker Loan Forgiveness Program to entice licensed social workers to provide social work services in critical human service areas within New York State. Successful applicants can receive \$6,500.00 for each year that these services are provided up to a cumulative amount of \$26,000.00.

Priority in receiving such awards are as follows: 1) applicants who have received an award for service in a previous year and performed social work services in a critical human service area; 2) applicants who have not yet received an award but who performed service in a critical human service area in the previous year, and 3) applicants who are economically disadvantaged as defined by the corporation.

The statute requires HESC to administer the program including defining "economically disadvantaged," determining the manner in which awards will be distributed if funds are insufficient, and designating "critical human service areas" in consultation with a committee comprised of specific state agencies.

Needs and benefits:

According to statute, "critical human service areas" are geographic areas that exhibit social worker shortages in health, mental health, substance abuse, aging, HIV/AIDS, child welfare or communities with multilingual needs. This program will fill the need for more social workers by offering them student loan forgiveness incentives for each year of service performed.

The statute requires HESC to designate critical human service areas. HESC will need to collaborate with other state agencies possessing expertise in the health and human services industry to ensure fair and effective designations.

The proposal addresses administrative concerns by providing an annual application deadline, defining the terms "year," "student loan debt," "full time," and "economically disadvantaged" applicants, and by providing a structure for implementing the program.

Costs:

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

b. There are no application fees, processing fees, or other costs to the applicants of this program.

c. There are no costs to the collaborating state agencies possessing health and human services expertise because the expertise will be provided by state employees already on the state payroll during the regular workweek within the scope of their present duties.

d. The cost of this program to the State in the first year, FY 2005-06, shall not exceed \$1,000,000.00. Future costs to the State shall not exceed the annual appropriation for the program. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (b) above is derived from statute which limits the total awards under the program to amounts appropriated by the legislature, and appropriations bill S553-E (2005) which appropriated \$1,000,000.00 for the 2005-06 fiscal year.

Local government mandates:

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

Paperwork:

This proposal will require potential recipients of the New York State Licensed Social Worker Loan Forgiveness Program to submit an annual application and supporting documentation to establish their eligibility for this program. No additional paperwork will be required. The applications will become electronic in the foreseeable future.

Duplication:

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

Alternatives:

In preparing this proposal, HESC met with the New York State and New York City chapters of the National Association of Social Workers (NASW). This proposal is a reflection of those meetings.

As noted above, HESC is required to define “economically disadvantaged,” (the third statutory priority in distributing awards). The New York State Licensed Social Worker Loan Forgiveness Program was passed in an omnibus bill, therefore there is no memo to clarify the meaning of “economically disadvantaged.” While in other New York State a program, “economically disadvantaged” is a term of art indicating financial hardship, NASW indicated that for the purposes of this proposal, “economically disadvantaged” was included to ensure that the financial need of an applicant would be considered. Accordingly, HESC’s proposal ranks applicants using the combined net taxable income for the applicant and their spouse. In the event the third statutory priority for awards is reached, applicants with the lowest combined net taxable income will be given preference over those with the highest.

Further, information from NASW indicates that “full time” for the social work industry in New York typically means 35 hours per week. The proposal reflects this.

The proposal’s definitions for “disqualifications” and “student loan debt,” are based on those of similar federal programs such as the U.S. Department of Education’s Perkins Loan Forgiveness Program and the U.S. Health and Human Services Nursing Education Loan Repayment Program, as well as the New York State Nursing Faculty Loan Forgiveness Incentive Program.

“Year” has been defined by the proposal as a calendar year inasmuch as this program does not take place in an academic setting, therefore using “academic year” as the definition for “year” would be inappropriate. Based upon input from NASW, the definition of “year” will allow for pro-rated awards.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Efforts were made to align this proposal with programs in similar federal subject areas.

Compliance schedule:

The agency will be able to comply with the proposal immediately upon its adoption.

#### **Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.8 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a statutory student loan forgiveness program funded by New York State and administered by a State agency.

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

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.8 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, and that there will be no costs for the implementation of, or continuing compliance with, this rule except for programmatic administration costs.

The program will have a positive impact on rural areas deemed “critical human service areas” by attracting social workers to those areas. The program implements the New York State Licensed Social Worker Loan Forgiveness program.

For 2006, 24 of the 28 counties deemed critical human service areas are rural counties or contain rural areas as defined in section 481(7) of the Executive Law. They are: Allegany, Cattaraugus, Chautauqua, Chemung, Chenango, Clinton, Cortland, Jefferson, Lewis, Franklin, Fulton, Herkimer, Oswego, Steuben, St. Lawrence, Sullivan, Tompkins and Yates counties. The remaining 6 counties have rural areas in the form of townships with population densities of less than 150 people per square mile. They are Broome, Erie, Monroe, Niagara, Oneida and Onondaga counties.

#### **Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of

New York State Higher Education Services Corporation’s Notice of Emergency Adoption and Proposed Rule Making seeking to add a new section 2201.8 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will have a positive impact or no impact on jobs and employment opportunities. The proposal implements a statutory student loan forgiveness program funded by New York State and administered by a State agency. Licensed social workers will likely be attracted to jobs in critical human service areas by this program.

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## Insurance Department

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### EMERGENCY RULE MAKING

#### **Healthy New York Program**

**I.D. No.** INS-36-06-00006-E

**Filing No.** 1005

**Filing date:** Aug. 16, 2006

**Effective date:** Aug. 16, 2006

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

**Action taken:** Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2, 362-5.3 and 362-5.5 of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327

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

**Specific reasons underlying the finding of necessity:** It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program’s commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After several years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

**Subject:** Amendments to the Healthy New York Program to reduce cost, lessen complexity, and add a second benefit package.

**Purpose:** To reduce Healthy New York premium rates by adjusting the stop loss reimbursement corridors to enable more uninsured businesses and individuals to afford health insurance; lessen complexity in eligibility determination; eliminate the well-child copayment; create a second benefit package; allow members to select a benefit package at annual recertification or when the premium rate changes; establish clear rules with respect to determining employment eligibility; clarify employer contribution requirements for part-time workers, qualify Healthy New York as coverage eligible for a Federal tax credit - generally improving the Healthy New York Program based upon feedback of affected parties; change the loss ratio standard for Healthy New York contracts from small group to individual; require reports from the insurers pertaining to stop loss reimbursement or loss ratio to be certified.

**Substance of emergency rule:** The Second Amendment to Regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection also provides that once enrolled in the program, any change in the selection of a benefit package may occur at the time of annual recertification or at anytime the premium rate changes. Notice of this option must be included with any notice of rate change.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions through January 31, 2005 as those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. De-minimus contributions shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund to include claims paid on behalf of a covered member in excess of \$5,000 and less than \$75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the." This corrects a technical error.

Subsection 362-5.3(e) is amended to change the loss ratio standard for Healthy New York contracts from small group to individual.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

Subsection 362-5.5(a) is amended to require that reports pertaining to stop loss reimbursement or loss ratio be certified by an officer of the company that such report is accurate and complete.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 13, 2006.

**Text of emergency 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

#### **Regulatory Impact Statement**

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers

are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the premium rate changes. Any notice of rate change must include notice of this option to change benefit packages. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the recertification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. Through January 31, 2005, de-minimus contributions are those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York. This amendment changes the loss ratio standard for Healthy New York contracts from small group to individual and requires that insurer's reports pertaining to stop loss reimbursement or loss ratio be certified.

4. Costs: The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees. This amendment requires that insurers certify all reports pertaining to stop loss reimbursement and loss ratio but does not require any additional reports.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. Increase of the loss ratio standard for Healthy New York contracts



will increase the percentage of premium dollar that is received in claims by members. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. Federal standards: The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. Compliance schedule: This rule making will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. Compliance requirements: Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. Professional services: The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. Compliance costs: The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule making process.

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

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also

requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. This amendment does require that a notice of rate change include a notice of the right to change benefit packages. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule making process.

#### **Job Impact Statement**

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

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

#### **Prohibition Against Geographical Redlining and Discriminating in Certain Property/Casualty Policies**

**I.D. No.** INS-36-06-00008-P

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

**Proposed action:** Amendment of Part 218 (Regulation 90) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 307, 308, 3429, 3429-a, 3430, 3433 and art. 34

**Subject:** Prohibition against geographical redlining and discriminating in certain property/casualty policies.

**Purpose:** To require all notices of refusal to issue, cancel (except where cancellation is for nonpayment of premium) or nonrenew a policy to include specific language. The required language advises the applicant/insured to contact the insurance company with any questions regarding the termination and informs the applicant/insured that redlining based upon geographic location of the risk is prohibited and that the applicant/insured can file a complaint with the department. The rule also specifies that agents and/or brokers may also file complaints regarding geographical redlining with the department. The rule also updates the regulation by removing dates that are no longer applicable

**Text of proposed rule:** The Title of Part 218 is hereby amended as follows:

**PROHIBITION [OF] AGAINST GEOGRAPHICAL REDLINING [IN WRITING PRIVATE PASSENGER AUTOMOBILE AND FIRE OR FIRE AND EXTENDED COVERAGE INSURANCE POLICIES] AND DISCRIMINATING IN CERTAIN PROPERTY/CASUALTY POLICIES**

Section 218.1 is hereby amended as follows:

218.1 Preamble

The purpose of this Part is to make fire or fire and extended coverage insurance, [and] private passenger automobile insurance, and homeowners



insurance readily available in the voluntary market by [prohibiting] *implementing statutory prohibitions against* companies [from] engaging in redlining practices through [refusal] *refusing* to issue or renew[,] or [from] *cancelling fire or fire and extended coverage insurance, and private passenger automobile insurance policies based solely on the geographic location of the risk; or by terminating or cancelling contracts or accounts of agents or brokers with respect to such policies based solely on their geographic location or the geographic location of the risks or properties for which coverage is being provided by such producers; or through refusing to issue or renew or cancelling homeowners insurance and fire or fire and extended coverage insurance policies based solely on the applicant for insurance or insured residing in an area serviced by a volunteer fire department.*

Section 218.2 is hereby amended as follows:

#### 218.2 Applicability

This Part shall be applicable [on and after October 1, 1979] only to:

(a) applicants for, and policies of, fire or fire and extended coverage insurance covering properties located in this state;

(b) applicants for, and policies of, automobile insurance covering risks in this state which are subject to section 3425 of the Insurance Law;[and]

(c) *applicants for, and policies of, homeowners insurance, as such term is defined in section 2351(a) of the Insurance Law, to the extent that an insurance company refused to issue, refused to renew or cancelled insurance coverage because a person lives in an area serviced by a volunteer fire department, except for Section 218.7 of this Part; and*

(d) contracts and accounts of agents and brokers writing insurance subject to this Part.

Section 218.5 is hereby amended as follows:

#### 218.5 Complaints

(a) The following notice shall be clearly and prominently set out in boldface type on the front (except that the company name, company representative, company address and company phone number may be stamped, or typed in the appropriate place in the notice), so that it draws the reader's attention on all notices of refusal to issue, cancellation or nonrenewal, except where the cancellation is for nonpayment of premium; and on all notices of termination of agents' and brokers' contracts or accounts, which are subject to this Part [mailed or delivered on and after January 1, 1988]:

If you have any questions in regard to this termination, please contact this company's representative at (company phone number, name of company representative, company address).

The New York Insurance Law prohibits insurers from engaging in redlining practices based upon geographic location of the risk or the producer. If you have any reason to believe that we have acted in violation of such law, you may file your complaint with the Department either on its website at [www.ins.state.ny.us/complhow.htm](http://www.ins.state.ny.us/complhow.htm) or by writing to the State of New York Insurance Department, Consumer Services Bureau, at either 25 Beaver Street, New York, NY 10004 or One Commerce Plaza, Albany, 12257.

(b) Insureds, applicants, agents and/or brokers may file geographical redlining complaints with the superintendent when action taken by an insurer or its representative is believed to be in violation of provisions of section 3429, 3429-a, or 3433 of the Insurance Law.

Section 218.6(c) is hereby amended as follows:

(c) Any insurer found by the superintendent to be in violation of sections 3429, 3429-a, 3431(a), or 3433 of the Insurance Law shall be considered to be engaged in unfair methods of competition and unfair or deceptive acts or practices, and shall be subject to the provisions of article 24 of the Insurance Law.

Section 218.7 is hereby amended as follows:

#### 218.7 Reports to superintendent

(a) In order to effectuate this [regulation] Part insurers shall[, no later than January 1, 1980,] maintain records by U.S. postal ZIP code of their agents and brokers in this state and maintain records by U.S. Postal Zip code of all agents and brokers in this state whose contracts or accounts have been terminated[on or after August 1, 1979 by U.S. postal ZIP code].

(b) In order to effectuate this [regulation] Part insurers shall also maintain by U.S. postal ZIP code a record of:

(1) all policies subject to this [regulation] Part issued, renewed, cancelled (other than for nonpayment of premium) or nonrenewed [on and after April 1, 1980]; and

(2) all applications for insurance subject to this [regulation] Part on which the insurer [on and after April 1, 1980] refuses to issue an insurance policy. For private passenger automobile insurance the ZIP code used may be that of the address to which premium notices are mailed. For policies

with a term of other than one year or no fixed expiration date, renewed means the annual anniversary date.

(c) The information required to be maintained by subdivisions (a) and (b) of this section shall be kept current and made available to the Insurance Department upon its request.

(d) Reports [for the nine-month period ending December 31, 1980 and] for each full calendar year[thereafter,] containing the information required to be maintained in subdivisions (a) and (b) of this section, shall be filed with the Insurance Department annually on May 1 after the close of the preceding calendar year. Such reports shall be made in a format to be prescribed by the superintendent and every such report shall be public record.

(e)(i) Waiver of reporting requirements. [The filing requirements for reports of policies of fire or fire and extended coverage covering properties located in this State, due on or after May 1, 1984, and before July 1, 1996, is hereby waived if the total direct premium written for all such policies during the preceding calendar year totaled less than \$350,000.] The filing requirements for reports of policies of fire or fire and extended coverage concerning properties located in this State[, due on and after July 1, 1996,] is hereby waived if total direct premiums written for all such policies during the preceding year totaled less than \$500,000.

(ii) The filing requirement for reports of policies of automobile insurance covering risks in this state[, due on and after May 1, 1984,] is hereby waived if the total direct private passenger automobile liability premiums written for all such policies during the calendar year totaled less than \$500,000.

**Text of proposed 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](mailto:mbarry@ins.state.ny.us)

**Data, views or arguments may be submitted to:** Buffy Cheung, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: [bcheung@ins.state.ny.us](mailto:bcheung@ins.state.ny.us)

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

#### Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 308, 3429, 3429-a, 3430, 3433, and Article 34 of the Insurance Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Section 308 requires licensees to respond in writing to written inquiries or requests for reports, statements or data made by the Superintendent. Sections 3429-a requires the Superintendent to prescribe regulations establishing procedures regarding notification of insureds regarding specific reasons for cancellation, nonrenewal and refusal to issue a homeowner's policy, or a policy including fire or fire and extended coverage due to the risk residing in an area serviced by a volunteer fire department. Section 3430 provides that an insured so aggrieved may file a complaint with the Superintendent and provides enforcement provisions. Article 34 governs property and casualty insurance contracts generally.

2. Legislative objectives: The Legislature, in enacting Chapter 259 of the Laws of 2005, wanted to prohibit insurance companies from canceling, refusing to issue or renew, a homeowner's insurance policy including fire insurance or fire and extended coverage insurance based solely on the insured residing in an area that is serviced by a volunteer fire department unless the action is based on sound underwriting and actuarial principles. The Superintendent was directed to establish procedures with respect to the notification to insureds of the insurer's specific reason or reasons for refusal to issue or renew or for cancelling such policy.

3. Needs and benefits: The rule is needed to clarify and implement the statute related to the prohibition on insurance companies against cancelling or refusing to issue or renew, a homeowner's insurance policy or a policy including fire insurance or fire and extended coverage insurance based solely on the insured residing in an area that is serviced by a volunteer fire department unless the action is based on sound underwriting and actuarial principles.

The current rule already requires, for the insurance coverages stated in the rule, all notices of refusal to issue, cancel (except where cancellation is for nonpayment of premium) or nonrenew a policy to include specific language. The revision to the rule will make this requirement applicable when insurance companies cancel or refuse to issue or renew, a homeowner's insurance policy or a policy including fire insurance or fire and extended coverage insurance based solely on the insured residing in an area that is serviced by a volunteer fire department. The required language advises the applicant/insured to contact the insurance company with any

questions regarding the termination and informs the applicant/insured that redlining based upon geographic location of the risk is prohibited and that the applicant/insured can file a complaint with the Department. The rule also specifies that agents and/or brokers may also file complaints regarding geographical redlining with the Department. The rule also updates the regulation by removing dates that are no longer applicable. The rule is necessary to ensure that applicants for insurance and insureds are aware that geographic redlining based on the applicant or insured residing in an area serviced by a volunteer fire department is prohibited and the actions the applicant or insured may take if he or she believes the insurance company violated the law.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. The rule requires specific language to be included in the cancellation, refusing to issue or renew notices for a homeowner's insurance, fire insurance or fire and extended coverage insurance when it is due solely to the applicant/insured residing in an area that is serviced by a volunteer fire department and on notices of termination of agents' and brokers' contracts or accounts due to the aforementioned reason. There will be costs associated with the insurance companies adding the required language onto the homeowners notices when an insurance company refused to issue, refused to renew or cancelled insurance coverage because a person lives in an area serviced by a volunteer fire department. However, these costs should be minimal as the insurance company is already issuing the cancellation, refusal to issue or renewal notices and the rule only requires that the insurance company or agent and broker add additional language. Moreover, the notice is required by the statute and this rule merely implements the statutory requirement.

5. Local government mandates: None.

6. Paperwork: The insurance company will incur additional paperwork associated with adding the required language to the notices. However, the paperwork should be minimal as the insurance company or agent and broker is adding the required language to notices already being issued by the company. Moreover, the notice is required by the statute.

7. Duplication: None.

8. Alternatives: New Section 3429-a and the amended Section 3430 of the Insurance Law refer to a homeowner's insurance policy including fire insurance or fire and extended coverage insurance. The Department interpreted this phrase as used in both sections to mean homeowner's insurance, fire insurance, and fire and extended coverage insurance since all homeowners policies include fire and fire and extended coverage and hence the reference to fire insurance and fire and extended coverage insurance indicates that the intent of the legislation was to apply to such policies as well.

The Department also considered adding a reporting requirement regarding homeowner's policies where the risk resides in a geographical area serviced by a volunteer fire department. However, since the Department has received only one complaint regarding this issue, it was determined that adding a reporting requirement at this time would add considerable cost for minimal benefit. The Department will continue to monitor the situation to see if a reporting requirement is warranted in the future.

9. Federal standards: None.

10. Compliance schedule: It is expected that insurance companies will be able to comply with the amendment to the regulation as soon as it is promulgated.

#### **Regulatory Flexibility Analysis**

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State.

The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and believes that none of them would fall within the definition of "small business" contained in Section 102(8) of the State Administrative Procedure Act, because there are none which are independently owned and have under 100 employees.

The Insurance Department finds that this rule will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

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

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas. This rule

applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State.

#### **Job Impact Statement**

This rule should not have any adverse impact on jobs and employment opportunities in this state since it merely implements the provisions of Section 3429(a) and amended Section 3430 the Insurance Law. The rule requires, for the insurance coverages stated in the rule, all notices of refusal to issue, cancel (except where cancellation is for nonpayment of premium) or nonrenew a policy to include specific language. The required language advises the applicant/insured to contact the insurance company with any questions regarding the termination and informs the applicant/insured that redlining based upon geographic location of the risk is prohibited and that the applicant/insured can file a complaint with the Department. The rule also specifies that agents and/or brokers may also file complaints regarding geographical redlining with the Department. The rule also updates the regulation by removing dates that are no longer applicable.

## Department of Labor

### NOTICE OF ADOPTION

#### **Public Employees Occupational Safety and Health Standards**

**I.D. No.** LAB-24-06-00001-A

**Filing No.** 1009

**Filing date:** Aug. 17, 2006

**Effective date:** Sept. 6, 2006

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

**Action taken:** Amendment of section 800.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 27-a(4)(a)

**Subject:** Public employees occupational safety and health standards.

**Purpose:** To incorporate by reference into New York State Occupational Safety and Health Standards, those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Feb. 28, 2006 and June 23, 2006.

**Substance of final rule:** The proposed rule amends Section 800.3 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York, which sets forth those standards of the Occupational Safety and Health Administration which are incorporated by reference into state regulations. It is amended so as to incorporate those standards revised as of January 18, 2006.

The material incorporated by reference in Part 800.3 contains the following parts of Title 29 of the Code of Federal Regulations, revised as of the dates following the title of each part:

Part 1910 - General Industry Standards; July 1, 1988 edition

Part 1915 - Shipyard Employment Standards; July 1, 1988 edition

Part 1917 - Marine Terminal Standards edition; July 1, 1988 edition

Part 1918 - Longshoring Standards; July 1, 1988 edition

Part 1926 - Construction Standards; July 1, 1988 edition

Part 1928 - Agricultural Standards; July 1, 1988 edition

Certain revisions to these standards, published in the Federal Register through January 18, 2006, have been adopted previously.

Since the standards were last updated, the Department of Labor has obtained one additional standard:

1. Updating OSHA Standards Based on National Consensus Standards; General, Incorporation by Reference; Occupational Exposure to Hexavalent Chromium; Final Rule 71 Federal Register, 10299-10348 and 36008-36010.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 1910.1000, Table Z-1 and Z-2, 1915.1000, Table Z, 1926.44, Appendix A.

**Text of rule and any required statements and analyses may be obtained from:** Diane Wallace Wehner, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Rm. 509, Albany, NY 12240, (518) 457-4380, e-mail: [diane.wehner@labor.state.ny.us](mailto:diane.wehner@labor.state.ny.us)

**Job Impact Statement**

As the action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

**Assessment of Public Comment**

The agency received no public comment.

## Public Service Commission

### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

<b>I.D. No.</b>	<b>Publication Date of Proposal</b>
PSC-41-00-00019-W	October 11, 2000
PSC-44-00-00018-W	November 1, 2000
PSC-51-00-00006-W	December 20, 2000
PSC-23-01-00031-W	June 6, 2001
PSC-23-01-00032-W	June 6, 2001
PSC-25-02-00021-W	June 19, 2002
PSC-27-02-00015-W	July 3, 2002
PSC-48-02-00011-W	November 27, 2002
PSC-05-03-00011-W	February 5, 2003
PSC-23-03-00008-W	June 11, 2003
PSC-32-03-00009-W	August 13, 2003
PSC-35-03-00019-W	September 3, 2003
PSC-37-03-00018-W	September 17, 2003
PSC-39-03-00011-W	October 1, 2003
PSC-46-03-00013-W	November 19, 2003
PSC-47-03-00008-W	November 26, 2003
PSC-47-03-00009-W	November 26, 2003
PSC-47-03-00010-W	November 26, 2003
PSC-47-03-00011-W	November 26, 2003
PSC-47-03-00012-W	November 26, 2003
PSC-47-03-00013-W	November 26, 2003
PSC-47-03-00014-W	November 26, 2003
PSC-47-03-00015-W	November 26, 2003
PSC-47-03-00016-W	November 26, 2003
PSC-47-03-00017-W	November 26, 2003
PSC-47-03-00018-W	November 26, 2003
PSC-47-03-00019-W	November 26, 2003
PSC-49-03-00006-W	December 10, 2003
PSC-52-03-00021-W	December 31, 2003
PSC-03-04-00006-W	January 21, 2004
PSC-03-04-00007-W	January 21, 2004
PSC-03-04-00008-W	January 21, 2004
PSC-03-04-00009-W	January 21, 2004
PSC-03-04-00010-W	January 21, 2004
PSC-06-04-00007-W	February 11, 2004
PSC-07-04-00013-W	February 18, 2004
PSC-07-04-00014-W	February 18, 2004
PSC-07-04-00015-W	February 18, 2004
PSC-07-04-00016-W	February 18, 2004
PSC-07-04-00017-W	February 18, 2004
PSC-10-04-00010-W	March 10, 2004
PSC-10-04-00011-W	March 10, 2004
PSC-10-04-00012-W	March 10, 2004
PSC-10-04-00013-W	March 10, 2004
PSC-11-04-00031-W	March 17, 2004
PSC-11-04-00032-W	March 17, 2004
PSC-11-04-00033-W	March 17, 2004
PSC-12-04-00006-W	March 17, 2004
PSC-12-04-00007-W	March 24, 2004
PSC-12-04-00008-W	March 24, 2004
PSC-12-04-00009-W	March 24, 2004
PSC-12-04-00010-W	March 24, 2004
PSC-13-04-00013-W	March 31, 2004
PSC-13-04-00014-W	March 31, 2004
PSC-13-04-00015-W	March 31, 2004
PSC-13-04-00016-W	March 31, 2004

PSC-15-04-00012-W	April 14, 2004
PSC-15-04-00013-W	April 14, 2004
PSC-15-04-00014-W	April 14, 2004
PSC-15-04-00015-W	April 14, 2004
PSC-15-04-00017-W	April 14, 2004
PSC-15-04-00018-W	April 14, 2004
PSC-15-04-00020-W	April 14, 2004
PSC-16-04-00015-W	April 21, 2004
PSC-17-04-00018-W	April 28, 2004
PSC-27-04-00011-W	July 7, 2004
PSC-27-04-00012-W	July 7, 2004
PSC-27-04-00013-W	July 7, 2004
PSC-27-04-00014-W	July 7, 2004
PSC-27-04-00015-W	July 7, 2004
PSC-27-04-00016-W	July 7, 2004
PSC-28-04-00007-W	July 14, 2004
PSC-30-04-00003-W	July 28, 2004
PSC-33-04-00012-W	August 18, 2004
PSC-33-04-00013-W	August 18, 2004
PSC-34-04-00017-W	August 25, 2004
PSC-34-04-00027-W	August 25, 2004
PSC-34-04-00029-W	August 25, 2004
PSC-35-04-00021-W	September 1, 2004
PSC-36-04-00009-W	September 8, 2004
PSC-37-04-00009-W	September 15, 2004
PSC-37-04-00011-W	September 15, 2004
PSC-37-04-00012-W	September 15, 2004
PSC-37-04-00013-W	September 15, 2004
PSC-37-04-00014-W	September 15, 2004
PSC-37-04-00019-W	September 15, 2004
PSC-42-04-00015-W	October 20, 2004
PSC-43-04-00009-W	October 27, 2004
PSC-43-04-00017-W	October 27, 2004
PSC-45-04-00012-W	November 10, 2004
PSC-50-04-00008-W	December 15, 2004
PSC-52-04-00011-W	December 29, 2004
PSC-03-05-00023-W	January 19, 2005
PSC-03-05-00031-W	January 19, 2005
PSC-18-05-00014-W	May 4, 2005
PSC-20-05-00027-W	May 18, 2005
PSC-23-05-00012-W	June 8, 2005
PSC-23-05-00013-W	June 8, 2005
PSC-26-05-00007-W	June 29, 2005
PSC-26-05-00009-W	June 29, 2005
PSC-28-05-00010-W	July 13, 2005
PSC-28-05-00011-W	July 13, 2005
PSC-28-05-00012-W	July 13, 2005
PSC-28-05-00013-W	July 13, 2005
PSC-28-05-00014-W	July 13, 2005
PSC-28-05-00015-W	July 13, 2005
PSC-28-05-00017-W	July 13, 2005
PSC-28-05-00018-W	July 13, 2005
PSC-28-05-00019-W	July 13, 2005
PSC-28-05-00020-W	July 13, 2005
PSC-29-05-00023-W	July 20, 2005
PSC-30-05-00008-W	July 27, 2005
PSC-30-05-00009-W	July 27, 2005
PSC-40-05-00005-W	October 5, 2005
PSC-40-05-00006-W	October 5, 2005
PSC-40-05-00007-W	October 5, 2005
PSC-41-05-00015-W	October 12, 2005
PSC-41-05-00018-W	October 12, 2005
PSC-41-05-00019-W	October 12, 2005
PSC-41-05-00020-W	October 12, 2005
PSC-41-05-00021-W	October 12, 2005
PSC-41-05-00022-W	October 12, 2005
PSC-48-05-00009-W	November 30, 2005
PSC-48-05-00013-W	November 30, 2005
PSC-51-05-00009-W	December 21, 2005
PSC-51-05-00010-W	December 21, 2005
PSC-04-06-00027-W	January 25, 2006
PSC-07-06-00008-W	February 15, 2006
PSC-07-06-00014-W	February 15, 2006
PSC-10-06-00004-W	March 8, 2006
PSC-10-06-00005-W	March 8, 2006

PSC-10-06-00006-W	March 8, 2006
PSC-10-06-00007-W	March 8, 2006
PSC-10-06-00008-W	March 8, 2006
PSC-10-06-00009-W	March 8, 2006
PSC-10-06-00010-W	March 8, 2006
PSC-11-06-00014-W	March 15, 2006
PSC-17-06-00007-W	March 26, 2006
PSC-22-06-00014-W	May 31, 2006

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

#### Rate Plan Order by the New York State Energy Research and Development Authority

**I.D. No.** PCS-36-06-00001-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 request by the New York State Energy Research and Development authority (NYSERDA) for a modification to the Rate Plan Order adopted by the commission for Consolidated Edison Company of New York, Inc.'s (Con Edison) electric business on March 24, 2005. The commission may accept, reject, or modify, in whole or in part NYSERDA's request to change the manner of expenditures of Con Edison and system benefits charge funds for demand management initiatives in Con Edison's service territory, and it may consider other, related issues.

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

**Subject:** Consideration of a request for modification of a rate order and other related issues.

**Purpose:** To consider whether to modify the manner in which funds for demand management initiatives in Con Edison's service territory are expended and other related issues.

**Substance of proposed rule:** The New York State Energy Research and Development Authority (NYSERDA) filed a request for modification of the Public Service Commission's Order, issued March 24, 2005, which set electric rates for Consolidated Edison Company of New York, Inc. (Con Edison). In the Order, the Commission authorized the expenditure of funds for demand management initiatives in Con Edison's service territory that are incremental to expenditures from the System Benefits Charge (SBC) program; the Commission also set forth parameters for the expenditure of these funds, including threshold target levels for achievements from the SBC program. NYSERDA advised the Commission that it will be unable to achieve the target level contemplated in the Order for load reductions under the SBC-III program. In recognition of this fact, and asserting that the demand management initiatives contemplated in the Order and under the SBC program should nevertheless both continue on a joint basis, NYSERDA requests that the Commission modify the Order to allow it to proportionally finance demand management initiatives in Con Edison's service territory from the Con Edison and SBC funds. The Commission may accept, reject, or modify, in whole or in part, NYSERDA's request, and it may also 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. Brilling, 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-E-0572SA9)

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

#### Billing Service Credit by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-36-06-00002-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, modify or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2 to become effective Nov. 1, 2006.

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

**Subject:** Billing service credit.

**Purpose:** To limit the applicability of its billing services credit to correspond with the implementation of a billing and payment processing charge for gas service.

**Substance of proposed rule:** The commission is considering Orange and Rockland Utilities, Inc.'s (O&R) request to modify its electric tariff, P.S.C. No. 2, to limit the applicability of its Billing Services Credit to correspond with the implementation of a billing and payment processing charge for gas service. This billing and payment processing charge shall apply to single service gas full service bills and dual service (electric and gas) full service bills. The billing and payment processing charge shall also apply to single and dual service retail access bills for customers whose ESCOs choose the Two Separate Bills billing option. The billing and payment processing charge shall not apply to retail access bills in which either electric or gas service is billed by O&R under the Utility Single Bill billing option. The Commission may approve, reject or modify, in whole or in part, O&R'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. Brilling, 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-E-0985SA1)

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

#### Transfer of Ownership Interests by Alliance Energy, New York LLC and RPL Holdings LLC

**I.D. No.** PSC-36-06-00003-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 from Alliance Energy, New York LLC and RPL Holdings LLC requesting approval of the transfer of ownership interests in an approximately 85 MW electric and steam generating facility located in Massena, NY.

**Statutory authority:** Public Service Law, section 70

**Subject:** Transfer of ownership interests in an electric and steam generating facility.

**Purpose:** To approve the transfer.

**Substance of proposed rule:** The Public Service Commission is considering a petition from Alliance Energy, New York LLC and RPL Holdings LLC requesting approval of the transfer of ownership interests in an approximately 85 MW electric and steam generating facility located in Massena, New York. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, 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-M-0948SA1)

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

**Exemption from Certain Legal Provisions by Fortuna Energy Inc. and FUSI GP Inc.**

**I.D. No.** PSC-36-06-00004-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part a petition of Fortuna Energy Inc. (Fortuna) and its affiliate, FUSI GP Inc. (FUSI) for an exemption for FUSI from the provisions of art. 4 of the Public Service Law, other than those affecting matters of public safety and the provisions of sections 65 and 68.

**Statutory authority:** Public Service Law, sections 4(1) and 66(13)

**Subject:** Request by Fortuna and FUSI for exemption from certain legal provisions.

**Purpose:** To consider the request for exemption from most regulation under art. 4 of the Public Service Law, except for safety requirements and certain other generally applicable provisions.

**Substance of proposed rule:** In a Joint Petition filed March 30, 2006 by Fortuna Energy Inc. (Fortuna) and Inergy Stagecoach II, LLC (Inergy) in Case 06-T-0385 (as supplemented on August 4, 2006), Fortuna and Inergy proposed (in a licensing proceeding) the transfer of certain Certificates of Environmental Compatibility and Public Need for natural gas pipelines, granted pursuant to Article VII of the Public Service Law (PSL), from Inergy to Fortuna. Because some of those facilities would permit Pennsylvania-sourced natural gas to enter New York, which circumstance could cause Fortuna not to qualify for the PSL Section 66-g(3) exemption under which Fortuna currently operates, Fortuna and Inergy propose that the Certificates be transferred to an affiliate of Fortuna, FUSI, which is involved in oil and gas exploration principally in the western United States. In the rule making aspect of this proceeding, Fortuna and FUSI seek an exemption, pursuant to PSL Section 66(13), whereby FUSI, which would take ownership of the gas pipelines to which the Certificates pertain, would, if the Commission determines it to be in the public interest, be exempt from the provisions of Article 4 of the PSL, except those affecting matters of public safety and the provisions of Sections 65 and 68.

**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. Brilling, 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-G-0944SA1)

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

**Water Rates and Charges by the Birch Hill Water Supply Corporation**

**I.D. No.** PSC-36-06-00005-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, a request filed by the Birch Hill Water Supply Corporation to make a change in the rates and charges contained in its tariff schedule P.S.C. No. 3—Water, to become effective Jan. 1, 2007.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

**Subject:** Water rates and charges.

**Purpose:** To continue Birch Hill Water Supply Corporation's escrow account to cover the cost of redeveloping two abandoned wells.

**Substance of proposed rule:** On August 14, 2006, the Birch Hill Water Supply Corporation (Birch Hill) filed to become effective January 1, 2007, Escrow Account Statement No. 3 to its tariff schedule P.S.C. No. 3—Water. The proposed filing would continue the \$55 per quarter, per customer surcharge for an additional seven billing periods. The maximum balance allowed, excluding accrued interest, would be \$26,180 and would recover the cost of redeveloping two abandoned wells. 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. Brilling, 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-0992SA1)

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

**Submetering of Electricity by Orsid Realty Corporation on behalf of Master Apts., Inc.**

**I.D. No.** PSC-36-06-00013-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 whether to grant, deny or modify, in whole or part, the petition filed by Orsid Realty Corporation, on behalf of Master Apts., Inc., to submeter electricity at 310 Riverside Dr., New York, NY.

**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 consider the request of Orsid Realty Corporation, on behalf of Master Apts., Inc., to submeter electricity at 310 Riverside Dr., New York, NY.

**Substance of proposed rule:** The Public Services Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Orsid Realty Corporation, on behalf of Master Apts., Inc., to submeter electricity at 310 Riverside Drive, New York, New York.

**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. Brilling, 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-E-0995SA1)

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

#### Submetering of Electricity by Owner's Corporation

**I.D. No.** PSC-36-06-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Owner's Corporation to submeter electricity at 210, 220, 230 Pelham Rd., New Rochelle, NY.

**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 consider the request of Owner's Corporation to submeter electricity at 210, 220, 230 Pelham Rd., New Rochelle, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Owner's Corporation to submeter electricity at 210, 220, 230 Pelham Road, New Rochelle, New York.

**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. Brilling, 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-E-1004SA1)

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

#### Accounting Treatment for Pensions and Accounting Other Post Retirement Benefits

**I.D. No.** PSC-36-06-00015-P

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

**Proposed action:** The commission is considering whether to approve, modify, or reject, in whole or in part, staff's recommendations concerning the accounting treatment necessary to bring Long Island Water Corporation's books and records into compliance with the commission statement of policy concerning pensions and other post retirement benefits.

**Statutory authority:** Public Service Law, section 89-c (4)

**Subject:** To determine the accounting treatment for pensions and other post retirement benefits improperly accounted for during the period between Jan. 1, 1993 and Dec. 31, 2003.

**Purpose:** To resolve the accounting treatment for pensions and accounting other post retirement benefits.

**Substance of proposed rule:** The Commission is considering Department of Public Service Staff's recommendations concerning the accounting treatment necessary to bring Long Island Water Corporation's books and records into compliance with the Commission's Statement of Policy concerning pensions and other post retirement benefits.

Staff proposes that the company be required to record: (1) a regulatory liability estimated to be roughly \$900,000 reflecting the over-recovery of pension and other post retirement expense between January 1, 1993 and December 31, 2003; (2) a pension internal reserve credit account balance of \$1,528,061 and in a separate sub-account accrued interest of \$583,094 as of December 31, 2003; and (3) an other post retirement benefit internal

reserve credit account balance of \$3,386,108 and in a separate sub-account accrued interest of \$1,374,610 as of December 31, 2003. The Commission may approve, modify, or reject, in whole or in part the recommendations of Staff.

**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. Brilling, 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-W-0339SA1)

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

#### Provision of Water Service by Northrop Grumman Corporation, et al.

**I.D. No.** PSC-36-06-00016-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 allow Northrop Grumman Corporation and Northrop Grumman Systems Corporation to provide oxygenated water to Occidental Petroleum Corporation (Occidental), in connection with Occidental's remediation of the groundwater plume associated with the Hooker Chemical/Ruco Polymer Superfund Site located in Hicksville, NY.

**Statutory authority:** Public Service Law, sections 89-a, 89-b, and 89-c

**Subject:** Provision of water service.

**Purpose:** To determine whether the provision of water service to Occidental should be allowed.

**Substance of proposed rule:** The Public Services Commission is considering whether to allow Northrop Grumman Corporation and Northrop Grumman Systems Corporation to provide oxygenated water to Occidental Petroleum Corporation in connection with Occidental's remediation of the groundwater plume associated with the Hooker Chemical/Ruco Polymer Superfund Site located in Hicksville, New York. The Commission may grant, deny or modify, in whole or in part, the relief requested.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, 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-0964SA1)

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

#### Itron 60W Water Meter Module by New York Water Service Corporation

**I.D. No.** PSC-36-06-00017-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, a request filed by New York Water Service Corporation for the approval of the Itron 60W Water Meter Module meter reading device.

**Statutory authority:** Public Service Law, section 89(d)(1)

**Subject:** Approval of new types of water meters, and auxiliary devices.

**Purpose:** To permit water utilities in New York State to use the Itron 60W water meter module.

**Substance of proposed rule:** The Commission will consider a request from New York Water Service Corporation, for the approval to use the Itron 60W Water Meter Module. The Itron 60W is an Automatic Meter Reading device that can be read from a fixed network or a utility vehicle, eliminating the need to gain access to private property to read meters. The cost of the 60W will range from \$120.00 to \$135.00 depending configuration and the number of units purchase.

**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. Brilling, 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-0986SA1)

## Department of Taxation and Finance

### NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Taxation and Finance publishes a new notice of proposed rule making in the *NYS Register*.

#### Electronic Funds Transfer Program

I.D. No.	Proposed	Expiration Date
TAF-35-05-00002-P	August 17, 2005	August 17, 2006

## Department of Transportation

### NOTICE OF WITHDRAWAL

#### Payment of Moving and Related Expenses to Displaced Persons Vacating Property

**I.D. No.** TRN-26-06-00004-W

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

**Action taken:** Notice of proposed rule making, I.D. No. TRN-26-06-00004-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on June 28, 2006.

**Subject:** Payment of moving and related expenses to displaced persons vacating property acquired by the Commissioner of Transportation by eminent domain.

**Reason(s) for withdrawal of the proposed rule:** Comments received objecting to adoption of the proposed rule on a consensus basis.