

RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Youth Facilities

I.D. No. CFS-15-07-00010-P

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

Proposed action: Amendment of Part 171 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 500, 501 and 504 of article 19-G; L. 1997, ch. 436

Subject: Amendment of internal regulations pertaining to the operation of the Office of Children and Family Services (OCFS) residential youth facilities relating to resident mail, telephone and visitors.

Purpose: To permit resident mail, telephone calls and visitors to OCFS residential youth facilities; expands the definitions of persons who may visit, permits unrestricted access by ombudsmen and legal counsel, clarifies mail and phone privileges, expands potential for waivers for correspondence with family members who may be incarcerated or who are otherwise restricted under the current regulations.

Substance of proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us): This proposal amends Title 9 NYCRR subparts 171-1.7 (Visitors), 171-2 (Resident Mail) and 171-4 (Resident Telephone Calls), governing the operations of the Office of Children and

Family Services (OCFS) residential youth facilities and the rights of resident youth to receive visitors, to send and receive mail, and to place and receive telephone calls.

The residents of OCFS facilities have been court ordered into the care and custody of OCFS for purposes of treatment, housing, guidance, education and rehabilitation. Under NYS Executive Law Article 19-G, OCFS is required to operate and maintain facilities for the care and custody of such youth, and is further authorized to promulgate such regulations as are necessary to carry out its statutory functions.

The proposed amendments to the regulation add a definition of “authorized visitor” to section 171-1.7 of 9 NYCRR. The facility staff, in consultation with the resident and the resident’s parents or guardian, must develop an authorized visitors list for each resident. The visitor regulation is amended to permit unrestricted visits by the resident’s legal counsel or law guardian and the Office of the Ombudsman. The regulation is clarified to state that the facility may refuse a visitor under the age of 18 unless the visitor is accompanied by the resident’s parent, legal guardian or other suitable person. Each resident must receive a copy of the facility visitation policy.

The proposed amendments to subpart 171-2 of 9 NYCRR affect the sending and receiving of mail by residents. Language is added to clarify that “privileged mail” is defined and addressed in subpart 171-3 of 9 NYCRR and is not affected by subpart 171-2. The regulation provides that resident mail is private and outgoing mail is not to be read, censored or rejected except in limited and specified circumstances. If the facility director determines that mail must be withheld from a resident for any reason, the amendments require that the resident be notified in writing. The proposed amendments permit delayed notice if the delay is necessary because of an on-going investigation. The proposed amendments add definitions of the terms “inspection” and “immediate family member”. The facility director may waive the prohibition on receipt of correspondence from an incarcerated person where such person is an immediate family member of the resident and a waiver is in the resident’s best interests. The proposal clarifies existing policy and procedure by stating that residents may seal outgoing mail, subject to the exception that a facility director may authorize reading of a resident’s mail under specified circumstances and requires notification to the resident of such action. Finally, the provision for appeal (section 171-2.7) is repealed. A separate appeal provision for this subpart is not necessary. There is an existing resident grievance and appeals process which is used for all resident matters.

The proposed amendment adds subpart 171-4 to 9 NYCRR and affects telephone calls to and from residents of OCFS operated facilities. The proposed amendments permit a resident to make and receive telephone calls from a custodian, guardian, foster parent, or a person who has demonstrated a parental or sibling relationship with the resident, in addition to immediate family members. The proposed amendments permit the facility director to waive the prohibition on telephone calls to or from an incarcerated person, where the incarcerated person is an immediate family member of the resident and a waiver is in the resident’s best interests. The amendments clarify that telephone contacts between youth in OCFS custody at the same facility also are prohibited. The amendments require actual notice to the resident that telephone calls may be monitored with the exception of telephone calls with legal counsel and the Office of the Ombudsman. The proposed amendments clarify that residents are permitted to receive one telephone call a day in addition to any calls from a legal representative or the Office of the Ombudsman, subject to the physical capacity of the telephone equipment of a particular facility to accommodate the resulting volume of calls. The proposed amendments state that residents are permit-

ted to make telephone calls at State expense to the Office of the Ombudsman.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

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:

Sections 500 and 501 of the Executive Law (EL) authorize the Office of Children and Family Services (OCFS), formerly the New York State Division for Youth, to promulgate regulations necessary to carry out the functions of Article 19-G of the Executive Law.

Section 504(1) of Article 19-G of the EL requires the OCFS to operate and maintain facilities for the care, custody, treatment, housing, education, rehabilitation and guidance of youth in OCFS custody.

Chapter 436 of the Laws of 1997 transfers to the OCFS all functions, powers, duties and obligations of the New York State Division for Youth.

2. Legislative objectives:

The proposed amendments are consistent with the legislative and public policy objectives of maintaining family contacts while a youth is in OCFS custody. Residents of OCFS facilities are juvenile delinquents, juvenile offenders and juvenile offenders who have received youthful offender treatment who are placed in or committed to OCFS custody by the courts for the purposes of rehabilitation.

3. Needs and benefits:

These regulations pertain to certain internal operations of OCFS youth facilities, and are not applicable elsewhere. The objective of the proposed amendments to Subpart 171-2 (Resident Mail) of Title 9 of the New York Codes, Rules and Regulations (NYCRR) is to clarify internal procedures for handling resident mail at OCFS facilities. Subpart 171-2 does not apply to child care institutions operated by authorized agencies and licensed by OCFS.

The objective of the proposed amendments to Subpart 171-4 (Resident Telephone Calls) of Title 9 of the NYCRR is to expand access and clarify the internal procedures for telephone calls between residents of OCFS facilities and their families while maintaining the safety, security and good order of OCFS facilities. Subpart 171-4 does not apply to child care institutions operated by authorized agencies and licensed by OCFS.

Section 171-2.2 is amended to state explicitly that resident mail may not be read, censored or rejected except in accordance with the provisions of the Subpart. Youth must be notified in writing when incoming or outgoing correspondence is withheld. The proposed amendment also protects the safety, security and good order of OCFS facilities by permitting the required notification to a resident that his or her mail has been read, censored or rejected to be delayed if notification would interfere with an on-going investigation.

Section 171-2.3 is amended to define additional terms used in Subpart 171-2. The term "inspection" is added and states that "inspection" of mail does not include reading the contents. A definition of "immediate family member" is provided in lieu of listing the applicable family relationships in Sections 171-2.4 (Incoming Mail) and 171-2.5 (Outgoing Mail).

The proposed amendments conform the language in Sections 171-2.4 and 171-2.5 with the language in Subpart 171-4 pertaining to resident telephone usage. Both Subparts set forth the categories of incarcerated persons with whom residents may not have contact in the absence of a determination by the facility director or a court of competent jurisdiction that such contact would be in the best interest of the resident. Section 171-2.4 is reorganized to be clearer. In addition, the amendment to Sections 171-2.4 and 171-2.5 would expand the categories of incarcerated persons for whom a waiver may be granted to include a spouse or child of the resident and a person who has demonstrated a parental or sibling relationship with the resident. Section 171-2.5 is revised to add language to Subdivision (h) stating that writing materials must be made available to residents.

The proposed amendments to Section 171-2.6 pertaining to negative correspondence to correct a reference to the reorganized Section 171-2.4 and specify a timeframe during which the facility director must respond to a resident who has requested that a name be removed from the resident's negative correspondence list. The examples of contraband listed in the current regulation are eliminated, as the list is not comprehensive and may be misleading.

The proposed revision to Section 171-2.7 specifies a timeframe in which the Deputy Commissioner must respond to a resident's appeal of any limitation on the resident's incoming or outgoing mail. In addition, Section 171-2.7 is amended to adopt the resident grievance process as the appeal mechanism for a resident to challenge a decision to limit the resident's incoming or outgoing mail.

The amendments to Subpart 171-4 of Title 9 of the NYCRR expand access and clarify the internal procedures on resident telephone usage while at an OCFS facility.

Section 171-4.2 is amended to incorporate a definition of "immediate family" for the purposes of Subpart 171-4. The definition includes a child of the resident, a relationship that was overlooked in the current regulation. In addition, the proposed amendments add a foster parent, a person who has demonstrated a parental relationship with the resident, and the custodian or guardian of a child of the resident as persons whom the resident may contact by telephone under Subpart 171-4. A new Subdivision (c) of Section 171-4.2 requires that the facility remind residents that telephone calls, other than those to a legal representative or ombudsman, may be monitored by the facility.

The proposed amendments conform the language in Sections 171-4.4 (Incoming calls) and 171-4.5 (Outgoing calls) with parallel provisions in Subpart 171-2 pertaining to resident mail. Both Subparts set forth the categories of incarcerated persons with whom a resident may not have contact in the absence of a determination by the facility director that such contact would be in the best interest of the resident. The amendments to Sections 171-4.4 and 171-4.5 would expand the categories of incarcerated persons for whom a waiver may be granted to include a spouse or child of the resident and a person who has demonstrated a parental or sibling relationship with the resident. Section 171-4.4 is reworded for clarity.

The proposed amendment to Section 171-4.5 clarifies that a resident may call the OCFS Ombudsman at State expense even where the facility has a collect call (only) telephone system for resident use.

Section 171-4.6 pertaining to suspension of telephone privileges is amended to clarify that a violation of rules or procedures by a resident may result in a loss of the resident's privileges with one or more specified person for a specified period of time, or indefinitely.

The proposed amendment to Section 171-4.7 deletes an obsolete provision pertaining to waivers by the Deputy Commissioner and adds a new appeal process for a resident whose telephone privileges have been restricted.

The proposed amendments to Section 171-1.7 (Visitors) clarify the classes of persons who may visit a resident. "Authorized visitor" had not been defined previously and under this proposal would be defined as a visitor whose name is included on a list developed cooperatively upon intake by the facility staff, the resident, and the resident's parent or guardian, taking the resident's best interest into account. This will allow for visits by persons who may have no familial relationship and might otherwise have been excluded from contact, but are recognized as having a positive or therapeutic influence on the youth, while at the same time permitting the facility to exclude as visitors unaccompanied minors, most usually peers from home, who may be negative influences upon the resident. Lastly, the proposal carves out a clear and specific exception for the Ombudsman and legal counsel, giving them unrestricted access to the youth/client.

The amendments to these regulations clarify general "outside" contact procedures for residents of OCFS facilities. Separate procedures for privileged correspondence are set forth in Subpart 171-3, and are not affected by these amendments.

4. Costs:

Implementation and compliance with the proposed amendments are expected to have no substantial costs associated with implementation. Residents presently are permitted visitors, phone calls and mail privileges with restrictions; this rulemaking simply amends the specific limitations and restrictions. It is anticipated that no additional staff will be required to implement these changes or monitor compliance by residents.

5. Local government mandates:

The proposed regulations impose no mandates on local government.

6. Paperwork:

OCFS estimates that the paperwork required to implement the proposed revisions to Subpart 171 will be negligible. A resident whose mail is withheld must be so notified in writing. The appeal process for residents utilizes the existing resident grievance process. The telephone regulations contemplate limitations due to the physical capacity of the phone system in a given facility, but are otherwise unremarkable and require no additional paperwork. The visitor regulations provide that a list of approved visitors

be created upon intake of a new resident; that procedure is currently being followed pursuant to existing regulations, and any alterations to such list as a result of these amendments will not require any new paperwork.

7. Duplication:

The proposed regulation does not duplicate any other existing legal requirements of the State or federal governments.

8. Alternatives:

No significant alternatives to the current proposal were considered.

9. Federal standards:

There are no relevant federal standards pertaining to the proposed amendments.

10. Compliance schedule:

OCFS facilities will be expected to be in compliance with the requirements of the proposed regulation within 30 days of its adoption.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

None. The proposed amendments to Subpart 171-2 of Volume 9 of the New York Codes, Rules and Regulations will not affect small businesses or local governments. The proposed amendments clarify the internal procedures for handling resident mail in Office of Children and Family Services (OCFS) operated facilities. OCFS operates secure, limited-secure and non-secure residential facilities for juvenile delinquents, juvenile offenders and juvenile offenders with youthful offender status.

2. Compliance requirements:

None. The proposed regulation would not affect small businesses or local governments.

3. Professional services:

None. The proposed regulation would not affect small businesses or local governments.

4. Compliance costs:

None. The proposed regulation would not affect small businesses or local governments.

5. Economic and technological feasibility:

None. The proposed regulation would not affect small businesses or local governments.

6. Minimizing adverse impact:

Not applicable. Since the proposed regulation would not affect small businesses or local governments, this issue was not considered.

7. Small business and local government participation:

None. No input was sought from these since the proposed regulation would not affect small businesses or local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Not applicable.

The proposed amendments to Subpart 171-2 of Volume 9 of the New York Codes, Rules and Regulations will affect internal procedures for handling resident mail, telephone calls and visitors in Office of Children and Family Services (OCFS) operated facilities. OCFS operates secure, limited-secure and non-secure residential facilities located in rural, urban and suburban areas for juvenile delinquents, juvenile offenders and juvenile offenders with youthful offender status.

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

Not applicable. The reporting, recordkeeping and other compliance requirements of the proposed amendments to Subpart 171-2 of Volume 9 of the New York Codes, Rules and Regulations are negligible and internal to OCFS. Implementation of the proposed amendments will not require professional services.

3. Costs:

Not applicable. Implementation and compliance with the proposed amendments to Subpart 171-2 will have no measurable cost.

4. Minimizing adverse impact:

None. The proposed amendments to Subpart 171-2 will have no adverse impact on rural areas.

5. Rural area participation:

Not applicable. The proposed amendments to Subpart 171-2 govern the internal procedures for resident mail, telephone calls and visitors at OCFS operated youth facilities.

Job Impact Statement

The proposed amendments to Part 171 of Volume 9 of the New York Code, Rules and Regulations are not expected to have any adverse impact on jobs or employment within the Office of Children and Family Services, which is the only entity affected by the proposal. Therefore, a full job assessment has not been submitted.

Education Department

NOTICE OF ADOPTION

Continuing Education Requirements for Optometrists

I.D. No. EDU-01-07-00012-A

Filing No. 320

Filing date: March 27, 2007

Effective date: April 12, 2007

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

Action taken: Repeal of section 66.5(f) and addition of section 66.6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6507(2)(a); 7101 (not subdivided) and 7101-a(7)

Subject: Continuing education requirements for optometrists certified in the use of therapeutic pharmaceutical agents.

Purpose: To establish and clarify existing continuing education requirements that must be met by licensed optometrists certified to use therapeutic pharmaceutical agents; and provides the commissioner with the flexibility to adjust the continuing education requirements in exceptional situations leading to non-compliance.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-01-07-00012-P, Issue of January 3, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Superintendents' Conference Days

I.D. No. EDU-15-07-00003-P

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

Proposed action: Amendment of section 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3604(8)

Subject: Superintendents' conference days.

Purpose: To extend for two years the provision in commissioner's regulations section 175.5(f) that allows a school district to use up to two of its superintendents' conference days for teacher rating of State assessments.

Text of proposed rule: Pursuant to Education Law sections 101, 207 and 3604

Subdivision (f) of section 175.5 of the Regulations of the Commissioner of Education is amended, effective July 19, 2007, as follows:

(f) Use of superintendents' conference days.

(1) . . .

(2) . . .

(3) . . .

(4) Notwithstanding the provisions of paragraph (1) of this subdivision, during the period commencing on September 29, 2005 and ending on June 30, [2007] 2009, a school district may elect to use up to two of its superintendents' conference days in each school year for teacher rating of State assessments, including but not limited to assessments required under the federal No Child Left Behind Act of 2001 (Public Law section 107-110), which rating activities shall constitute staff development relating to implementation of the new high learning standards and assessments as authorized by section 3604(8) of the Education Law.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head, and authorizes the Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 3604(8) requires the Commissioner to specify in regulations the acceptable use of superintendents' conference days by school districts and boards of cooperative educational services to satisfy a deficiency in the length of public school sessions for the instruction of pupils.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority of the Commissioner to specify the acceptable use of superintendents' conference days.

NEEDS AND BENEFITS:

The proposed amendment extends for two years the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. The rating of students' performance on the State assessments is an effective way for teachers to learn the new learning standards and therefore constitutes permissible staff development activities relating to implementation of the new high learning standards and assessments, as authorized by Education Law section 3604(8). The proposed amendment will continue to provide school districts with additional flexibility and discretion to use this staff development function to fulfill their State test scoring requirements while minimizing impact on student instructional time.

COSTS:

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

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility on school districts or other local governments.

PAPERWORK:

The proposed amendment imposes no new or additional paperwork requirements.

DUPLICATION:

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

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

The proposed amendment continues to provide flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment extends for two years the regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. Since the proposed amendment does not impose any requirements on school districts, there are no compliance issues or schedules.

Regulatory Flexibility Analysis

SMALL BUSINESSES:

The proposed amendment relates to school districts' use of superintendents' conference days and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. The proposed amendment extends for two years the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local governments:

EFFECT OF RULE:

The proposed amendment applies to all public school districts and boards of cooperative educational services (BOCES) in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional reporting, record keeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment extends for two years the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on regulated parties.

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on local governments. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment extends for two years the regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment extends for two years the provision in section 175.5(f) of the Commissioner's Regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. The pro-

posed amendment does not impose any additional professional services requirements on regulated parties.

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on local governments. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment extends for two years the regulation that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment to extend the regulation for two years were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to the use of superintendents' conference days by school districts and boards of cooperative educational services and will not have an adverse impact on jobs or employment activities. The proposed amendment extends for two years the provision in section 175.5(f) of the Commissioner's Regulations that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF WITHDRAWAL

Nonattainment Area

I.D. No. ENV-43-06-00008-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. ENV-43-06-00008-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 25, 2006.

Subject: The Department of Environmental Conservation (Department) proposes to amend 6 NYCRR Part 200, General Provisions by modifying the definition of "Nonattainment Area" at 6 NYCRR 200.1(av).

Reason(s) for withdrawal of the proposed rule: The proposed rule is being withdrawn to remove references to the 8-hour ozone non-attainment designations as a result of the United States Court of Appeals For the District of Columbia Circuit decision dated December 22, 2006.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Nonattainment Area

I.D. No. ENV-15-07-00007-P

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

Proposed action: This is a consensus rule making to amend section 200.1(av) of Title 6 NYCRR.

Statutory authority: New York State Environmental Conservation Law, the promulgation of the proposed amendments to Part 200 are authorized by sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0305 and 19-0311

Subject: The Department of Environmental Conservation (Department) proposes to amend 6 NYCRR Part 200, General Provisions by modifying the definition of "Nonattainment Area" at 6 NYCRR 200.1(av).

Purpose: To incorporate the new Federal PM_{2.5} designations and geographic boundaries (70 FR 943-1019). Failure to do so will result in regulation implementation difficulties; and clarify that the annual national ambient air quality standards for PM₁₀ has been revoked by EPA.

Public hearing(s) will be held at: 2:00 p.m., May 15, 2007 at Department of Environmental Conservation, Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; 2:00 p.m., May 16, 2007 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; and 2:00 p.m., May 17, 2007 at Department of Environmental Conservation, 625 Broadway, Rm. 129, Albany, NY.

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

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

Text of proposed rule: Subdivision (a) of section 200.1 through Subdivision (au) of section 200.1 remains unchanged.

All of Subdivision (av) of section 200.1 is repealed, a new Subdivision (av) of section 200.1(av) is adopted as follows:

(av) "Nonattainment area". Any area of the State not meeting a National Ambient Air Quality Standard (NAAQS) for a specific air contaminant. Nonattainment areas in New York State are as follows:

- (1) Reserved.
- (2) Areas designated as "Nonattainment" for the Fine Particulate (PM_{2.5}) NAAQS.
 - (i) The New York - N. New Jersey - Long Island, NY-NJ-CT-PA area consisting of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk and Westchester Counties.
- (3) Areas designated as "Nonattainment" for the 1-Hour Ozone NAAQS.

- (i) Nonattainment areas classified as "Severe".
 - (a) The area consisting of the New York City Metropolitan Area and the Lower Orange County Metropolitan Area.
 - (ii) Nonattainment areas classified as "Moderate".
 - (a) The Lower Hudson Valley area consisting of Putnam and Dutchess Counties, and all of Orange County except the Lower Orange County Metropolitan Area.

- (iii) Nonattainment areas classified as "Marginal".
 - (a) The Capital District area consisting of Saratoga, Montgomery, Schenectady, Albany, Rensselaer and Greene Counties.
 - (b) The portion of Essex County surrounding Whiteface Mountain above an elevation of 4,500 feet.
 - (c) The area consisting of all of Jefferson County.
 - (d) The Niagara Frontier area consisting of Niagara and Erie Counties.

- (4) Areas designated as "Nonattainment" for the PM₁₀ NAAQS (Annual NAAQS revoked by EPA effective December 17, 2006).

- (i) The area consisting of all of New York County.
- Subdivision (aw) of section 200.1 through Section 200.16 remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: Robert D. Bielawa, P.E., Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8396, e-mail: airsips@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 required by statute.

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.

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

Consensus Rule Making Determination

The proposed amendments to 6 NYCRR Part 200, "General Provisions", consist of an addition to the definition of "Nonattainment Area" to incorporate the new federal PM_{2.5} designations and geographic boundaries, and the addition of a clarification that the particulate matter (PM₁₀) National Ambient Air Quality Standard (NAAQS) has been revoked by the United States Environmental Protection Agency.

The current "Nonattainment Area" definition, 6 NYCRR 200.1(av), only includes the 1-hour ozone standard and the PM₁₀ standard. Aside from being renumbered, the nonattainment area definitions for these standards will remain as is, with an added clarification that the annual PM₁₀ standard was revoked by EPA. 6 NYCRR 200.1(av) also needs to be amended to include the new PM_{2.5} NAAQS nonattainment designations (70 FR 943-1019) and their respective geographic boundaries in order to avoid regulatory implementation difficulties that will arise when Department regulations reference outdated and undefined nonattainment areas.

No person is likely to object to the amendments to Part 200 as written because it is merely an administrative amendment to conform to federal requirements.

Job Impact Statement

Nature of Impact:

The New York State Department of Environmental Conservation (Department) proposes to amend 6 NYCRR Part 200, "General Provisions", to incorporate the new federal fine particulate (PM_{2.5}) designations and geographic boundaries (70 FR 943-1019). The Department also proposes to amend 6 NYCRR Part 200, "General Provisions", to clarify that the annual particulate matter (PM₁₀) National Ambient Air Quality Standard (NAAQS) has been revoked by the United States Environmental Protection Agency (EPA).

The amendments to Part 200 consist solely of a change to the numbering and definition of "Nonattainment Area" at 6 NYCRR 200.1(av), and will not have any impact on jobs and employment opportunities. Failure to amend Part 200 will result in discrepancies between state and federal definitions, which may cause regulation implementation difficulties.

Categories and numbers affected:

There are no categories of jobs or employment opportunities affected by the amendment to Part 200.

Regions of adverse impact:

There are no adverse impacts associated with the amendment to Part 200.

Minimizing adverse impact:

There are no adverse impacts associated with the amendment to Part 200.

Self-employment opportunities:

Not applicable.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Federal NESHAP Rules and Emission Guidelines

I.D. No. ENV-15-07-00008-P

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

Proposed action: This is a consensus rule making to amend Part 200 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 19-0319 and 70-0109

Subject: Incorporation by reference of Federal NESHAP rules, and emission guidelines for other solid waste incinerators and for larger municipal waste combustors.

Purpose: To incorporate by reference: 1) The Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations, 2) Amendments to the guidelines for existing large municipal waste combustors and 3) New guidelines for existing other solid waste incinerators.

Public hearing(s) will be held at: 2:00 p.m., May 15, 2007 at Department of Environmental Conservation, Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; 2:00 p.m., May 16, 2007, at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; 2:00 p.m., May 17, 2007 at Department of Environmental Conservation, 625 Broadway, Rm. 129, Albany, NY.

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

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

Text of proposed rule: See Appendix in back of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: Edward Pellegrini, P.E., Department of Environmental Conservation Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8403, e-mail: neshaps@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 required by statute.

Additional matter required by statute: Pursuant to Article 8 of the State Environment 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.

Consensus Rule Making Determination

6 NYCRR Subpart 200.10 incorporates by reference the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) which appear in 40 CFR Part 63. The proposed rulemaking will update 6 NYCRR 200.10 to incorporate the new and amended NESHAP regulations which appeared in the July 1, 2005 Code of Federal Regulations.

The proposed rulemaking will also update Subpart 200.10 Table 2 "Delegated Federal New Source Performance Standards of 40 CFR 60" to incorporate two recently adopted federal regulations which New York State will implement and enforce. They include the new Guidelines for Existing Other Solid Waste Incinerators that were published in the Federal Register on December 16, 2005 and the amendments to the Guidelines for Existing Large Municipal Waste Combustors that were published in the Federal Register on May 10, 2006.

In addition to the amendments to Subpart 200.10, 6 NYCRR 200.9 will be updated to reflect the new and modified references in Subpart 200.10.

The proposed rulemaking adopts Federal standards only and does not impose additional requirements on regulated entities. Consequently, no person is likely to object to this rulemaking.

Job Impact Statement

1. Nature of impact:

This proposed rulemaking will have no impact on numbers of jobs or employment opportunities in the State. The purpose of the rulemaking is to add three recently adopted federal regulations to the Table listing Delegated Federal New Source Performance Standards of 40 CFR 60 in Section 200.10 and update the Table of National Emission Standards for Hazardous Air Pollutants to cite to the 2005 Code of Federal Regulations. The proposed rulemaking adopts Federal standards only and does not impose additional requirements on regulated entities.

2. Categories and numbers affected:

This proposed rulemaking will not affect specific categories of jobs nor will it affect the number of jobs or employment opportunities.

3. Regions of adverse impact:

This proposed rulemaking will not affect any region of the state specifically.

4. Minimizing adverse impact:

Since this proposed rulemaking will not affect the number of jobs or employment opportunities, there have been no steps taken to minimize the impact on existing jobs.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

New York State Clean Air Interstate Rule

I.D. No. ENV-15-07-00009-P

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

Proposed action: Amendment of Parts 200, 243, 244 and 245 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311; and Energy Law, sections 3-101 and 3-103

Subject: New York State Clean Air Interstate Rule (CAIR). These regulations apply statewide to fossil fuel-fired electric generating units greater than 15 MWe (Ozone Season Program, 243) and 25 MWe (annual pro-

grams, 244 and 245), portland cement kilns, and industrial boilers greater than 250 mmBtu/hr (Ozone Season Program, 243).

Purpose: To establish cap-and-trade program designed to mitigate interstate transport of NO_x and SO₂ to help reduce ozone and fine particulate formation in CAIR states located in the eastern U.S. On May 12, 2005, the United States Environment Protection Agency (EPA) issued a final administrative action in which it made findings that numerous states, including New York State, had failed to submit State Implementation Plan (SIP) provisions that EPA determined are required under Federal Clean Air Act (CAA) § 110(a)(2)(D) to address interstate pollutant transport with respect to the national ambient air quality standards (NAAQS) for ozone, and particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). This will assist eastern states in attaining ozone and PM_{2.5} NAAQS. New York State was identified by EPA as a State that must address emissions of NO_x and SO₂ because it contributes to nonattainment of both the ozone and PM_{2.5} NAAQS in downwind states.

Public hearing(s) will be held at: 2:00 p.m., May 15, 2007 at Department of Environmental Conference, Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; 2:00 p.m., May 16, 2007 at Department of Environmental Conference Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; and 2:00 p.m., May 17, 2007 at Department of Environmental Conference, 625 Broadway, Public Assembly Rm. 129, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dec.state.ny.us): 796 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program

- 6 NYCRR Part 244, CAIR NO_x Annual Trading Program
- 6 NYCRR Part 245, CAIR SO₂ Trading Program
- 6 NYCRR Part 200, General Provisions

Part 243 establishes the Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program, Part 244 establishes the CAIR NO_x Annual Trading Program and Part 245 establishes the CAIR SO₂ Annual Trading Program. These programs are designed to reduce ozone and particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}) in New York State and downwind states by limiting emissions of NO_x and SO₂ year-round from fossil fuel-fired electricity generating units (EGUs) and limiting NO_x during the ozone season (May 1 through September 30) from fossil fuel-fired electricity generating units, Portland cement kilns, and fossil fuel-fired non-electricity generating units.

Parts 243, 244, and 245 establish emission budgets for NO_x and SO₂, respectively. Parts 243, 244, and 245 establish trading programs by creating and allocating allowances that are limited authorizations to emit up to one ton of NO_x or SO₂ in the respective control periods or any control period thereafter. Affected units are required to hold allowances for compliance deduction, at the respective allowance transfer deadlines, the tonnage equivalent to the emissions at the unit for the control period immediately preceding such deadline.

Part 243 applies to units that serve an electrical generator with a nameplate capacity equal to or greater than 15 megawatts of electrical output and sells any amount of electricity, Portland cement kilns which have a maximum design heat input equal to or greater than 250 mmBtu/hr., and fossil fuel-fired non-electricity generating units, which have a maximum design heat input equal to or greater than 250 mmBtu/hr. For Part 243, the first control period commences on May 1, 2009 and concludes on September 30, 2009. Subsequent control periods begin on May 1 and conclude on September 30 of that calendar year.

Parts 244 and 245 apply to units that serve an electrical generator with a nameplate capacity equal to or greater than 25 megawatts of electrical output and sells any amount of electricity. The control period for Part 244 runs from January 1 to December 31 starting in 2009. The control period for Part 245 runs from January 1 to December 31 starting in 2010.

Parts 243 and 244 require each CAIR NO_x unit to have a CAIR authorized account representative (AAR) who shall be responsible for, among other things, complying with the CAIR NO_x permit requirements, the monitoring requirements, the allowance provisions, and the record-keeping and reporting requirements. Similarly for Part 245, each CAIR SO₂ unit needs to have a CAIR AAR designated to perform these duties.

The owner and/or operator of the unit may also designate an alternate CAIR designated representative to perform the above duties.

For Parts 243, 244, and 245, the CAIR AAR shall submit a complete CAIR permit application to the New York State Department of Environmental Conservation (Department) by 12 months before the date on which the applicable CAIR NO_x or CAIR SO₂ unit commences operation.

The Statewide CAIR NO_x Ozone Season Trading Program (Part 243) Budget is 31,091 tons for the control periods 2009 through 2014 and 27,652 tons for 2015 and beyond. The Statewide CAIR NO_x Trading Program (Part 244) Budget is 45,617 tons for the control periods 2009 through 2014 and 38,014 tons for 2015 and beyond.

By April 1, 2007, the Department will make the CAIR NO_x Ozone Season allowance allocations (Part 243) for the 2009 and 2010 control periods. By April 1 of each subsequent year, the Department will make the CAIR NO_x Ozone Season allowance allocations for the control period that commences in the year three years after the deadline for submission. By April 1, 2007, the Department will make the CAIR NO_x allowance allocations (Part 244) for the 2009 and 2010 control periods. By January 1 of each subsequent year, the Department will make the CAIR NO_x allowance allocations for the control period that commences in the year three years after the deadline for submission.

The Department will determine the number of CAIR NO_x allowances to be allocated to each CAIR NO_x unit by: (1) multiplying the greatest heat input (EGUs and non-EGUs) experienced by the unit or clinker production (Portland cement kilns) for any single control period among the three most recent control periods, for which data is available by the applicable pound per input unit rate (first round calculation); (2) determining the allocation factor by dividing 85 percent of the Statewide CAIR NO_x budget by the sum of all the above first round calculations (second round calculation); (3) multiplying the allocation factor by each unit's first round calculation result (third round calculation); and, (4) allocating the lesser of the unit's control period potential to emit or the third round calculation plus the unit's proportional share of any additional allowances remaining in the 85 percent portion of the Statewide CAIR NO_x budget.

The Statewide CAIR SO₂ trading program budget is 135,139 tons for the 2010 through 2014 control periods and 94,597 tons for 2015 and beyond. SO₂ allowances have already been allocated and received by sources under title IV of CAA Section 403. Pre-2010 title IV SO₂ allowances can be used for compliance with CAIR. SO₂ reductions are achieved by requiring sources to retire more than one allowance for each ton of SO₂ emitted. The emission value of an SO₂ allowance is independent of the year in which it is used, but is based upon its vintage. Each sulfur dioxide allowance of vintage 2009 and earlier offsets one ton of SO₂ emissions. Vintages 2010 through 2014 offset 0.5 tons of emissions, this equates to a 50 percent emission reduction. Vintages 2015 and beyond offset 0.35 tons of emissions, this equates to a 65 percent emission reduction.

For Parts 243 and 244, new units will be allocated from set-aside accounts which consist of five percent of the Statewide CAIR NO_x budgets. The CAIR AAR of the new unit may submit a written request to the Department to reserve for the new unit allowances in an amount no greater than the unit's control period potential to emit (CPPTE). For Part 243, the request must be made prior to May 1 of the control period for which the request is being made or prior to the date the unit commences operation, whichever is later. For Part 244, the request must be made prior to January 1 of the control period for which the request is being made or prior to the date the unit commences operation, whichever is later. For both Parts 243 and 244, the unit must have all of its required permits for the Department to consider these requests.

If more than one project requests allowances from the new unit set-aside and the number requested exceeds the number in the set-aside account, the Department will reserve allowances in the order in which approvable requests were submitted. Requests will be considered to be simultaneous if received in the same calendar quarter. Should approvable requests in excess of the set-aside be submitted in the same quarter, the Department will reserve allowances to each project in an amount proportional to the allowances requested. Unused set-aside allowances will flow back to the CAIR NO_x units in proportion to their original allocation.

The CAIR NO_x Trading Program Budgets are designed to allocate 10 percent of the emissions allowances to the Energy Efficiency and Renewable Energy Technology Account (the EERET Account). The EERET Account will be administered by the New York State Energy Research and Development Authority (NYSERDA) and the allowances in the account will be sold or distributed in order to help achieve the emissions reduction goals of the CAIR NO_x Trading Programs by promoting or rewarding

investments in energy efficiency and renewable technologies, and/or innovative abatement technologies.

The EERET Account ensures that the value of the allowances is used to further the aims of the emissions reduction program through cost-effective energy efficiency and clean energy technologies, while simultaneously helping to reduce the cost of the CAIR NO_x Trading Programs to consumers.¹

The Department designates NYSERDA as its agent in administering the EERET Account. NYSERDA would be required to promptly sell or distribute the allowances as part of a fair, open and transparent process. The proceeds of the allowance sales will be used to fund energy efficiency projects, renewable energy, or clean energy technology. NYSERDA currently administers similar energy efficiency and clean energy technology programs, and the addition of the EERET Account should be easily accomplished. If for any reason the EERET allowances are not sold or distributed by NYSERDA, the allowances would flow back to the Department and be redistributed to the affected units (similar to the flowback method for the new unit set-aside allocations).

The EERET represents a change from the current practice under Parts 204, 237 and 238 of awarding allowances for avoided emissions attributable to the implementation of energy efficiency/renewable energy (EE/RE) projects. The Department's experience is that few sponsors of EE/RE projects have sought the award of EE/RE allowances. This is due to the difficulty in demonstrating enough avoided emissions, even when aggregating projects, to qualify for a single EE/RE allowance. It requires a savings of approximately 1,333 MWh of electricity (at the current 1.5 lbs/MWh reward rate) to yield one NO_x allowance. The value of one NO_x allowance is approximately \$2,000. The EE/RE allowances have not served as an incentive to undertake EE/RE projects to the extent originally anticipated by the Department. As the nominal NO_x rate decreases with this regulation, the reward rate would likely also be decreased. This will make applying for these allowances even less desirable.

In addition, providers of renewable and other clean energy technologies have been somewhat reluctant to apply for NO_x allowances under the structure of Parts 204, 237 and 238. This is largely because the crediting of NO_x allowances for low or zero emissions technologies would effectively assign the avoided NO_x allowances to this generation and, if these allowances are sold and used for compliance, this could reduce or eliminate the ability to sell the "green attributes" of this power. In order to more effectively provide economic incentives for energy efficiency and clean energy technologies, the Department believes that using the receipts of the allowance sales to provide financial incentives could result in an expansion in these types of projects.

The Department will establish one NO_x and one SO₂ compliance account for each CAIR NO_x and CAIR SO₂ source. Allocations will be made into compliance accounts and deductions of allowances for compliance purposes will be made from compliance accounts. Allowances may be held without discount until deducted for compliance. The CAIR AAR may specify the allowances by serial number to be deducted for compliance purposes in the compliance certification report or utilize the first in, first out protocols in the regulation. In order to meet the unit's budget emissions limitation for the control period immediately preceding, CAIR NO_x Ozone Season allowances must be submitted for recordation in a source's compliance account by midnight of November 30, CAIR NO_x Annual allowances must be submitted for recordation in a source's compliance account by midnight of March 1, and CAIR SO₂ allowances must be submitted for recordation by midnight of March 1. After making the deductions for compliance, if a unit has excess emissions, the Department will deduct from the source's compliance account, allocated for a subsequent control period, allowances equal to three times the unit's excess emissions.

Parts 243, 244, and 245 rely on the provisions of Part 75 for emissions monitoring and reporting. Units that are in compliance with Title IV of the Clean Air Act and 6 NYCRR Parts 204, 237, and 238 provisions for emissions monitoring and reporting should be in compliance with Parts 243, 244, and 245.

Units that are not CAIR NO_x or SO₂ units may qualify to opt-in the programs. A unit may become a CAIR NO_x opt-in unit or CAIR SO₂ opt-in unit if it conforms to all of the permitting, monitoring, recordkeeping and reporting requirements of a CAIR NO_x or SO₂ unit. Opt-in units receive CAIR NO_x Ozone Season allowance allocations by May 31 for each control period based on the lesser of its baseline heat input or heat input for the previous control period multiplied by the lesser of its baseline NO_x emission rate or the most stringent applicable NO_x emission limitation.

Opt-in units receive CAIR NO_x Annual or CAIR SO₂ allowance allocations by January 1. Opt-in units may withdraw from the program.

Part 200 cites the portions of federal statute and regulations that are incorporated by reference into Parts 243, 244, and 245.

¹ Analyses conducted by NYSERDA for the Department demonstrate that investments in energy efficiency have the effect of reducing electricity demand and the overall cost of the Program. <http://www.rggi.org/documents.htm>.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Miliani, Department of Environmental Conservation Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8396, e-mail: CAIR@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 required by statute.

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

6 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program

6 NYCRR Part 244, CAIR NO_x Annual Trading Program

6 NYCRR Part 245, CAIR SO₂ Trading Program

On April 25, 2005, the United States Environmental Protection Agency (EPA) issued a final administrative action in which it made findings that numerous states, including New York State, had failed to submit State Implementation Plan (SIP) provisions that EPA determined are required under federal Clean Air Act (CAA) Section 110(a)(2)(D) to address interstate pollutant transport with respect to the national ambient air quality standards (NAAQS) for ozone, and particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). 'Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM_{2.5}', 70 FR 21147-151 (April 25, 2005) (the Finding). CAA Section 110(a)(1) requires states to submit new SIP provisions to account for a new or revised NAAQS within three years after the promulgation of such standard, or any shorter period that EPA might mandate. The Finding started a two-year clock for the promulgation of a Federal Implementation Plan (FIP) under CAA Section 110(c)(1). For any state, including New York State, that fails to receive EPA approval for submitted SIP provisions within the two-year period, EPA will impose a FIP to implement adequate pollutant transport measures.

In a final administrative action announced on May 12, 2005, EPA identified 23 states and the District of Columbia as containing sources of ozone season¹ emissions of nitrogen oxides (NO_x) that contribute to attainment or maintenance problems in downwind states with respect to the ozone NAAQS. In addition, EPA identified 25 States and the District of Columbia as containing sources of annual NO_x and sulfur dioxide (SO₂) emissions that cause attainment or maintenance difficulties in downwind states with respect to the PM_{2.5} NAAQS. 'Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule', 70 FR 25162-405 (May 12, 2005) (CAIR). New York State was listed as a state that must address emissions of NO_x and SO₂ because it contributes to nonattainment of both the ozone and PM_{2.5} NAAQS in downwind states. CAIR specified exact tonnages of NO_x and SO₂ that New York State must reduce in order to satisfy its obligations under CAA Section 110(a)(2)(D). CAIR established budgets for electricity generating units (EGUs) in New York State and other CAIR states for emissions of NO_x and SO₂.

EPA determined the level of emissions reductions in CAIR based on an assumed imposition of highly cost-effective emissions controls on EGUs in the states subject to CAIR. For a State such as New York that contributes to downwind nonattainment of both the ozone and PM_{2.5} NAAQS, CAIR provides three model rules that the State may adopt so that it can participate in interstate emissions cap-and-trade programs. As a general matter, these cap-and-trade programs were designed by EPA to apply to EGUs. The model rules, codified at 40 CFR Part 96, place State-wide caps on the annual and ozone season emissions of NO_x and annual emissions of SO₂ from EGUs collectively. The ozone season NO_x program, found at 40 CFR 96 Sections 301-388, addresses EGU emissions reductions needed for attainment of the ozone NAAQS. The annual NO_x program and the annual SO₂ program, found at 40 CFR 96 Sections 101-188 and 40 CFR 96

Sections 201-288, respectively, address EGU emissions reductions needed for attainment of the PM_{2.5} NAAQS. While a subject state retains the discretion to reduce emissions by the requisite amounts in any manner that it sees fit, adoption of the model rules would produce SIP revisions that EPA will find readily approvable to address the SIP deficiencies identified in the Finding.

The proposed rules constitute New York State's adoption of the three emissions cap-and-trade rules of CAIR. Part 243 establishes the CAIR NO_x Ozone Season Trading Program; Part 244 establishes the CAIR NO_x Annual Trading Program; and Part 245 establishes the CAIR SO₂ Trading Program. Certain revisions to Part 200 are necessary in order to facilitate the administration of these programs. These include the addition of references to Table 1 of Section 200.9 Referenced Material.

The New York State Legislature has accorded the New York State Department of Environmental Conservation (Department) with the primary authority to formulate and implement the SIP. The provisions of State law, taken together, clearly empower the Department to promulgate and implement the proposed rules as SIP provisions. The statutory authority to promulgate Parts 243, 244, and 245 in the State derives primarily from the Department's obligation to prevent and control air pollution, as set out in the Environmental Conservation Law (ECL) at Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311. The promulgation of the CAIR rules is also consistent with the Department's obligations under Energy Law 3-101 and Energy Law 3-103. The legislative objectives underlying the above statutory authority are essentially directed toward promoting the safety, health and welfare of the public, protecting the State's natural environment, and also helping to assure a safe, dependable and economical supply of energy to the people of the State.

New York State contains nonattainment areas for primary and secondary ozone and PM_{2.5} NAAQS.² As such, the air quality in these areas is not, allowing for an adequate margin of safety, sufficient to protect public health, and is not sufficient to protect the public welfare from any known or anticipated adverse effects associated with the presence of the relevant air pollutants.³

CAIR and its supporting record, including the rule making records generated during the 1997 promulgations of the ozone and PM_{2.5} NAAQS, contain ample descriptions of the health and environmental rationales for controlling emissions of NO_x and SO₂ from EGUs. (70 FR 25170, 25306-08).

By action dated July 18, 1997, EPA revised the NAAQS for particulate matter to add new standards for fine particles (PM_{2.5}) (62 FR 38652). EPA established health- and welfare-based (primary and secondary) annual and 24-hour standards for PM_{2.5}. Individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease, and children. The secondary standards are designed to protect against major environmental effects caused by PM such as visibility impairment—including Class I areas which contain national parks and wilderness areas across the country—soiling, and materials damage.

By action dated July 18, 1997, EPA promulgated identical revised primary and secondary ozone standards that specified an eight-hour ozone standard of 0.08 parts per million (ppm) (62 FR 38652). In general, the revised eight-hour standards are more protective of public health and the environment and more stringent than the pre-existing one-hour ozone standards that they replaced. EPA published the eight-hour ozone nonattainment designations that became effective on June 15, 2004. On December 22, 2006, the U.S. Circuit Court of Appeals for the District of Columbia vacated EPA's eight-hour ozone NAAQS Implementation Rule. The schedule for demonstrating attainment with the eight-hour Ozone NAAQS will change, although the standard remains in effect and the State will have to demonstrate compliance with it. Implementation of the CAIR programs remain an essential component of New York State's SIP to achieve attainment of the eight-hour ozone NAAQS.

EPA undertook extensive computer modeling which shows that CAIR will assist New York State's efforts towards reaching attainment of the eight-hour ozone and PM_{2.5} NAAQS.⁴ Measured from 2003 levels in New York State, EPA estimates that CAIR will result in SO₂ emission reductions of about 213,000 tons or 84 percent and NO_x emission reductions of about 32,000 tons or 48 percent. At the end of 2004, EPA had designated 30 New York counties as being components of ozone nonattainment areas. EPA's CAIR modeling shows that CAIR, in conjunction with existing CAA programs as well as New York State's clean air programs, are predicted to bring 19 of these counties into attainment by 2010. EPA's modeling also shows that even after the full implementation of CAIR in 2015, nine counties would remain in nonattainment of the ozone NAAQS.

However, EPA expects that CAIR will further reduce ground-level ozone levels in these nine counties. The Department is currently working to establish or revise additional SIP programs to bring all areas into attainment.

EPA allows states to add the portion of the NO_x SIP Call trading budget attributed to non-EGUs and small EGUs to the State's CAIR NO_x Ozone Season Trading Budget. New York State has chosen to include all of the affected sources currently covered by Part 204, NO_x Budget Trading Program in the CAIR NO_x Ozone Season Trading Program (Part 243). The NO_x budgets for small EGUs, non-EGUs, and Portland cement kilns will be added to New York's ozone season EGU budget established under CAIR to form the sector budgets under Part 243, CAIR NO_x Ozone Season Trading Program. Small EGUs include fossil fuel-fired units serving a generator with a nameplate capacity of 15 MWe to 25 MWe. Non-EGUs include fossil fuel-fired large non-EGUs with a heat input rating of 250 MMBtu/hr or greater. Portland cement kilns consist of fossil fuel-fired cement kilns with heat input rating of 250 MMBtu/hr or greater.

The NO_x ozone season Portland Cement Kiln Unit Sector Budget has been revised as part of the CAIR rulemakings. The current Part 204 Portland Cement Kiln Unit Sector Budget is 8,085 tons per ozone season. The budget for these units has been revised to 6,271 tons per ozone season, representing a reduction of 1,814 tons of NO_x per ozone season starting in 2009.

The CAIR NO_x Trading Program budgets are designed to allocate 10 percent of the emissions allowances to the Energy Efficiency and Renewable Energy Technology Account (the EERET Account). The EERET Account will be administered by the New York State Energy Research and Development Authority (NYSERDA) and the allowances in the account will be sold in order to help achieve the emissions reduction goals of the CAIR NO_x Trading Programs by promoting or rewarding investments in energy efficiency and renewable technologies, and/or innovative abatement technologies.

ICF International has conducted electricity system modeling analysis to estimate the incremental cost of implementing CAIR and the Clean Air Mercury Rule (CAMR) in New York. The analysis compared a reference or business-as-usual case (absent either CAIR or CAMR) to each of three policy cases: New York's proposed approach for implementing both CAIR and CAMR, CAIR only, and CAMR only. CAIR and CAMR policies (implemented together) 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 month⁵), this translates into a monthly retail bill increase of \$0.86.

Considering only this rulemaking and none of the other requirements that are resulting in reductions in NO_x and SO₂ emissions at these facilities (NSR/PSD settlements, mercury control and BART and other potential haze requirements), the annual NO_x program will cost the EGUs \$17.2 million a year from 2009 to 2014 and \$30.2 million in 2015 and beyond. This is estimated by using the average cost of NO_x control that EPA identified in the CAIR regulatory support documents multiplied by the total emission reductions required under CAIR (sum of allowances under Parts 204 and 237 minus the CAIR annual NO_x allowances). Using the same formula to estimate the cost of control, the ozone season NO_x program will cost the EGUs \$9.2 million starting in 2009 and \$24.6 million starting in 2015. It should be noted that no additional costs are expected for the non-EGU owners since there is no change to the number of allowances to be distributed to them under Part 243. In addition, the Portland cement kiln owners will not experience an increase in cost as a result of Part 243 because, as noted above, the reduction in allowances distributed to this sector under Part 243 is reflective of actual emissions of these units plus a margin for growth. The costs to EGUs associated with SO₂ control under Part 245 is expected to be \$0 in 2009 and \$25.7 million in 2015 (sum of allowances Part 238 minus the CAIR SO₂ budget multiplied by the average cost of control estimated by EPA).

There will be costs associated with Local Governments. The Jamestown Board of Public Utilities (JBPU), a municipally owned public utility, owns and operates the S. A. Carlson Generating Station (SACGS). The emissions monitoring at SACGS currently meets the monitoring provisions of CAIR. Therefore, no additional monitoring, recordkeeping or reporting costs will be incurred as a result of this program.

The JBPU will need to either limit emissions at the SACGS to no more than its allowance allocations under Parts 243, 244, and 245 or purchase allowances equal to the number of tons emitted in excess of the number of allowances initially allocated to it. Given the highly variable nature of control equipment cost, the Department limited the analysis of control costs to the purchase of allowances to comply with the program. The

Department estimated allocations for SACGS and subtracted those allocations from 2006 facility emissions. The estimated cost for purchasing allowances was determined to be approximately \$1.4 million annually for the period from 2010 through 2014 and \$2.4 million in 2015 and beyond.

There will be costs associated with the administration of CAIR. The Department will need to review monitoring plans submitted to comply with the requirements of Parts 243, 244, and 245. However, since these plans have been used to comply with current Parts 204, 237, and 238 these costs will not amount to an increase above what is already contemplated. The administrative aspects of the regulation and central office support for permitting and compliance activities will need to increase beyond what is currently required to implement existing regulations, but not significantly. The Department estimates that three to four additional person years will be required to implement these programs at a cost of \$110,000 per person year or \$440,000 annually.

The owners and operators of each source subject to CAIR and each unit at the source shall keep each of the following documents for a period of five years from the date the document is created: the account certificate of representation form; all emissions monitoring information; copies of all reports and other submissions and all records made or required under CAIR; and copies of all documents used to complete a permit application and any other submission under CAIR or to demonstrate compliance with CAIR.

The Department considered various alternatives when developing CAIR. These include: No action, where EPA would implement a FIP to establish the federal cap-and-trade programs under 40 CFR Part 97; command-and-control; and auction versus free allocation. Free allocation can be based on heat input or energy output.

There are two ways in which the Department may allocate allowances: Sell them through an auction or give them away as has been done in the past. The Department has opted to continue to allocate the majority of allowances to affected sources based on historical operation. A precedent from other proven allowance trading programs has been established for this type of allowance allocation.⁶ The Department chose this option in order to meet the Federal deadlines of CAIR and to avoid FIP implications. CAIR is on a strict timeline that does not afford the Department the time to create the necessary structure and work out the details to include and implement a full auction as part of the allocation process. Based on the Department's experience with the EERET account under this program, the Department will consider expanding this type of approach in CAIR at some point in the future.

SO₂ allowances have already been allocated and received by sources under title IV of CAA Section 403. Pre-2010 Title IV SO₂ allowances can be used for compliance with CAIR. SO₂ reductions are achieved by requiring sources to retire more than one allowance for each ton of SO₂ emitted. The emission value of an SO₂ allowance is independent of the year in which it is used, but is based upon its vintage. Each sulfur dioxide allowance of vintage 2009 and earlier offsets one ton of SO₂ emissions. Vintages 2010 through 2014 offset 0.5 tons of emissions, this equates to a 50 percent emission reduction. Vintages 2015 and beyond offset 0.35 tons of emissions, this equates to a 65 percent emission reduction. The Department is proposing to adopt the Federal model rule for SO₂ at this time. However, the Department may, in the future, adopt an alternative approach. In the interim, Part 238 will remain in place.

The Department considered utilizing an electricity output based allocation methodology. Advocates for use of an output based methodology agree that this type of approach rewards the most efficient generation. The Department agrees with that assertion, but has not chosen to allocate on an output basis because of the lack of available generation data, as well as deficiencies in the standardization of generation data. It is not likely that the required data will become available in time to finalize New York State's CAIR regulations. Because of the additional burden the output based methodology would place on the Department and on the affected sources, the Department has chosen not to allocate allowances in this manner at this time. The Department includes a Control Period Potential To Emit (CPSTE) component in its allowance allocation methodology which limits the amount of allowances an affected facility can receive based on the maximum capacity of a unit to emit under its physical and operational design during a control period. If the CPSTE is used in an output based allocation system, there is likely little difference in the actual allowances distributed to facilities.

The Department chose a fuel neutral approach in the allocation methodology for NO_x allowances. The Department substantially adopted the methodology used in allocating NO_x allowances under Parts 204 and 237. As with Parts 204 and 237, the Department believes that a fuel neutral

allocation methodology is appropriate because of the relatively small differences in uncontrolled NO_x emission rates (as compared to SO₂) resulting from use of different types of fossil fuel.

The Department considered and rejected an energy efficiency and renewable energy generator set-aside under the program. Instead, the Department is proposing to create the EERET Account. The inclusion of the EERET Account will not cause the retail price of electricity to increase because generators incorporate the same dollar value of the allowances in their bids to supply electricity whether the allowances are obtained at no cost or purchased on the open market.

¹ Ozone season, for the purpose of this rulemaking, is defined as the time period from May 1 through September 30.

² The classifications for the ozone and PM_{2.5} nonattainment areas may be found at 40 CFR § 81.333. A graphical representation of the ozone nonattainment areas may be found at <http://www.epa.gov/oar/oaqps/greenbk/ny8.html>. A graphical representation of the PM_{2.5} nonattainment areas may be found at <http://www.epa.gov/oar/oaqps/greenbk/mappm25.html>.

³ CAA § 109(b); 40 CFR § 50.2(b).

⁴ <http://www.epa.gov/interstateairquality/ny.html>.

⁵ Typical customer usage numbers from the Energy Information Administration (EIA). Electricity rates from December 2005 Patterns & Trends report.

⁶ MIT Joint Program on the Science and Policy of Global Change. "Emissions Trading to Reduce Greenhouse Gas Emissions in the United States: The McCain-Lieberman Proposal." Sergy Paltsev, John M. Reilly, Henry D. Jacoby, A. Denny Ellerman and Kok Hou Tay. Report No. 97, June 2003.

Regulatory Flexibility Analysis

6 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program

6 NYCRR Part 244, CAIR NO_x Annual Trading Program

6 NYCRR Part 245, CAIR SO₂ Trading Program

The Department of Environmental Conservation (Department) proposes to adopt 6 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program, 6 NYCRR Part 244, CAIR NO_x Annual Trading Program, and 6 NYCRR Part 245, CAIR SO₂ Trading Program.

The proposed New York State Clean Air Interstate Rules (CAIR) will establish cap-and-trade programs designed to mitigate interstate transport of NO_x and SO₂ to help reduce ozone and fine particulate formation in CAIR states located in the eastern United States. On April 25, 2005, the United States Environmental Protection Agency (EPA) issued a final administrative action in which it made findings that numerous states, including New York State, had failed to submit State Implementation Plan (SIP) provisions that EPA determined are required under the federal Clean Air Act (CAA) Section 110(a)(2)(D) to address interstate pollutant transport with respect to the national ambient air quality standards (NAAQS) for ozone, and particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). This will assist eastern states in attaining ozone and PM_{2.5} NAAQS. New York State was identified by EPA as a state that must address emissions of NO_x and SO₂ because it contributes to nonattainment of both the ozone and PM_{2.5} NAAQS in downwind states.

1. Effects on Small Businesses and Local Governments.

No small businesses will be directly affected by the adoption of new Parts 243, 244, and 245. One local government will be affected by the adoption of these programs. The Jamestown Board of Public Utilities (JBPU), a municipally owned utility, owns and operates the S. A. Carlson Generating Station (SACGS). The emissions monitoring at SACGS currently meets the monitoring provisions of CAIR. Therefore, no additional monitoring costs will be incurred as a result of implementation of CAIR. The costs associated with CAIR will be dictated by how JBPU decides to comply with the provisions of the regulation.

It should be noted that the CAIR rules will apply to JBPU even if New York State does not adopt this rule because EPA has established a Federal Implementation Plan (FIP) that would implement CAIR in states that do not adopt an approvable rule.

2. Compliance Requirements.

The JBPU, as owner and operator of the SACGS, will need to comply with the provisions of CAIR, as described below.

Part 243 will require affected sources and units to comply with the emission limitation of the program beginning with the 2009 ozone season control period. In order to meet the necessary permit requirements, the authorized account representative of each CAIR NO_x unit shall submit to the Department a complete CAIR NO_x permit application for the source

covering each CAIR NO_x Ozone Season unit at the source at least 12 months before the later of May 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences operation.

Each year, the owners and operators of each source subject to Part 243 and each unit at the source shall hold a number of NO_x allowances available for compliance deductions, as of the NO_x allowance transfer deadline (Midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than the total tons of NO_x emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2009 or date the unit commences operation (for SACGS this date is January 1, 2009).

Part 244 will require affected sources and units to comply with the emission limitation of the program beginning January 1, 2009. In order to meet the necessary permit requirements, the authorized account representative of each CAIR NO_x unit shall submit to the Department a complete CAIR NO_x permit application for the source covering each CAIR NO_x unit at the source at least 12 months before the later of January 1, 2009 or the date on which the CAIR NO_x unit commences operation (for SACGS this date is January 1, 2009).

Each year, the owners and operators of each source subject to Part 244 and unit at the source shall hold a number of NO_x allowances available for compliance deductions, as of the NO_x allowance transfer deadline (midnight of March 1, or if March 1 is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than the total tons of NO_x emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2009 or date the unit commences operation.

Part 245 will require affected sources and units to comply with the emission limitation of the program beginning January 1, 2010. In order to meet the necessary permit requirements, the authorized account representative of each CAIR SO₂ unit shall submit to the Department a complete CAIR SO₂ permit application for the source covering each CAIR SO₂ unit at the source at least 12 months before the later of January 1, 2010 or the date on which the CAIR SO₂ unit commences operation.

Each year, the owners and operators of each source subject to Part 245 and unit at the source shall hold a number of SO₂ allowances available for compliance deductions, as of the SO₂ allowance transfer deadline (midnight of March 1, or if March 1 is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than the total tons of SO₂ emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2010 or date the unit commences operation (for SACGS this date is January 1, 2010).

3. Professional Services.

The one local government affected by CAIR, the JBPU, may need to hire outside professional consultants to comply with new Parts 243, 244, and 245. This work would likely be associated with any analyses needed to determine the optimal manner in which to comply with the regulations. If it is determined that capital investments are needed to comply, design and construction management services will likely need to be procured.

4. Compliance Costs.

The JBPU will need to either limit emissions at the SACGS to no more than its allowance allocations under Parts 243, 244, and 245 or purchase allowances equal to the number of tons emitted in excess of the number of allowances initially allocated to it. Given the highly variable nature of control equipment cost, the Department limited the analysis of control costs to the purchase of allowances to comply with the program and assumed that costs of allowances will be the sum of the EPA estimated marginal cost for the ozone season NO_x program (\$2,400 per ton of NO_x in 2009 and \$3,000 per ton of NO_x in 2015) multiplied by the difference in allocation from Part 204 to Part 243; the EPA estimated marginal costs for the annual NO_x program in the non-ozone season (\$1,400 per ton of NO_x in 2009 and \$1,600 per ton in 2015), multiplied by the difference in allocation for Part 237 and Part 244 minus the difference in allocation for ozone season program; and the EPA estimated marginal cost for the annual SO₂ program (\$700 per ton SO₂ in 2010 and \$1,000 per ton in 2015) multiplied by the sum of the Title IV allowances allocated minus the product of the number of tons emitted times the CAIR SO₂ retirement ratio (2 in 2010 and 2.85 in 2015). The cost of purchasing allowances to comply with the program is the maximum cost to the facility. Installing controls to reduce emissions may be a less expensive alternative. The Department estimated allocations for SACGS and subtracted those allocations from 2006 facility emissions. The estimated cost for purchasing allowances was determined to be approximately \$1.4 million annually for the period from 2010 through 2014 and \$2.4 million in 2015 and beyond. It should be noted that

these costs will occur at this facility even if this rule is not adopted because EPA would implement this program through the FIP if New York State does not adopt these rules.

5. Economic and Technological Feasibility.

The JBPU has the option to do any combination of the following to comply with CAIR: control NO_x and SO₂ emissions from the facility, increase operation of the lower emitting natural gas-fired turbine, or purchase allowances. There are NO_x and SO₂ control technology options available to the SACGS. The Department has not determined that any or all of these options are technologically or economically infeasible to apply to SACGS.

6. Minimizing Adverse Impact.

The promulgation of new Parts 243, 244, and 245 do not directly affect small businesses. One local government is affected by CAIR - the JBPU. CAIR constitutes an emissions allowance based cap-and-trade program. Cap-and-trade systems are the most cost effective means for implementing emission reductions from large stationary sources. By implementing CAIR in such a manner, the Department has attempted to minimize the adverse economic impacts of the program on the JBPU.

Under 6 NYCRR Part 204, NO_x Budget Trading Program, the SACGS was given a specific allocation for each year as opposed to being included in the formulaic allocation procedures. This is different than how SACGS will be allocated under CAIR. To determine the allocation procedures for Part 204, the Department convened a series of allocation workshops which resulted in an agreed upon allowance allocation procedure with all of the affected parties. This agreed upon procedure treated SACGS differently than the remainder of the sources through the allocation of a specific number of allowances prior to the remaining sources being allocated through the formulae. The Department felt it was proper to allocate SACGS differently because the allocation was based on a broad consensus among the affected parties. In the CAIR rule making, the Department did not convene such an allocation process because the intervening deregulation of the electricity generating industry put sources into a more competitive position and the prospect of an agreed upon allocation procedure was deemed to be remote. Instead, the Department devised an allocation procedure that it deemed fair and equitable to all affected sources. This procedure does not include a separate allocation mechanism for any one particular source. In other words, all affected electric generators are treated the same.

7. Small Business and Local Government.

The Department will directly notify interested parties on the requirements of Parts 243, 244, and 245, including the City of Jamestown. The public, including small business and local governments, will be able to comment on the proposed rule during the comment period required by SAPA 202 and ECL Section 19.0303.

Rural Area Flexibility Analysis

6 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program

6 NYCRR Part 244, CAIR NO_x Annual Trading Program

6 NYCRR Part 245, CAIR SO₂ Trading Program

The Department of Environmental Conservation (the Department) is proposing to promulgate 6 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program, 6 NYCRR Part 244, CAIR NO_x Annual Trading Program, and 6 NYCRR Part 245, CAIR SO₂ Trading Program.

The proposed New York State Clean Air Interstate Rules (CAIR) will establish cap-and-trade programs designed to mitigate interstate transport of NO_x and SO₂ to help reduce ozone and fine particulate formation in CAIR states located in the eastern U.S. On April 25, 2005, the United States Environmental Protection Agency (EPA) issued a final administrative action in which it made findings that numerous states, including New York State, had failed to submit State Implementation Plan (SIP) provisions that EPA determined are required under the federal Clean Air Act (CAA) Section 110(a)(2)(D) to address interstate pollutant transport with respect to the national ambient air quality standards (NAAQS) for ozone, and particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). This will assist eastern states in attaining ozone and PM_{2.5} NAAQS. New York State was identified by EPA as a state that must address emissions of NO_x and SO₂ because it contributes to nonattainment of both the ozone and PM_{2.5} NAAQS in downwind states.

1. Types And Estimated Number Of Rural Areas Affected:

The promulgation of Parts 243, 244, and 245, apply to affected sources statewide. All public and private businesses subject to the regulations, regardless of location, including those in rural areas, will be affected. These requirements are not envisioned to affect local governments, except in the case of Jamestown Board of Public Utilities (JBPU) which owns and operates an affected facility, or citizens of rural areas.

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

Part 243 will require affected sources and units to comply with the emission limitation of the program beginning with the 2009 ozone season control period. In order to meet the necessary permit requirements, the authorized account representative of each CAIR NO_x unit shall submit to the Department a complete CAIR NO_x permit application for the source covering each CAIR NO_x Ozone Season unit at the source at least 12 months before the later of May 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences operation.

Each year, the owners and operators of each source subject to Part 243 and each unit at the source shall hold a number of NO_x allowances available for compliance deductions, as of the NO_x allowance transfer deadline (midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than the total tons of NO_x emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2009 or date the unit commences operation.

Part 244 will require affected sources and units to comply with the emission limitation of the program beginning on January 1, 2009. In order to meet the necessary permit requirements, the authorized account representative of each CAIR NO_x unit shall submit to the Department a complete CAIR NO_x Budget permit application for the source covering each CAIR NO_x unit at the source at least 12 months before the later of January 1, 2009 or the date on which the CAIR NO_x unit commences operation.

Each year, the owners and operators of each source subject to Part 244 and unit at the source shall hold a number of NO_x allowances available for compliance deductions, as of the NO_x allowance transfer deadline (midnight of March 1, or if March 1 is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than the total tons of NO_x emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2009 or date the unit commences operation.

Part 245 will require affected sources and units to comply with the emission limitation of the program beginning on January 1, 2010. In order to meet the necessary permit requirements, the authorized account representative of each CAIR SO₂ unit shall submit to the Department a complete CAIR SO₂ permit application for the source covering each CAIR SO₂ unit at the source at least 12 months before the later of January 1, 2010 or the date on which the CAIR SO₂ unit commences operation.

Each year, the owners and operators of each source subject to Part 245 and unit at the source shall hold a number of SO₂ allowances available for compliance deductions, as of the SO₂ allowance transfer deadline (midnight of March 1, or if March 1 is not a business day, midnight of the first business day thereafter), in the source's compliance account that is not less than the total tons of SO₂ emissions for the control period. A unit is subject to this requirement starting on the later of January 1, 2010 or date the unit commences operation.

3. Costs:

In the past, with a regulated electric utility industry, the capital cost of the emission control equipment required by the new regulation would have been added to the utility's rate base and recovered through increased electricity rates. In a competitive electricity market as exists now in New York State, there is no guaranteed recoupment of such expenditures.

The Department sought input from the New York State Energy Research and Development Authority (NYSERDA) and the New York Department of Public Service (DPS) with respect to the costs associated with compliance of CAIR and any impacts to the reliability of New York's energy supply. The Department in cooperation with NYSERDA, has conducted an electricity system modeling analysis to estimate the incremental cost of implementing CAIR and a mercury reduction 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 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.

4. Minimizing Adverse Impact:

The objective of Parts 243, 244, and 245 is to reduce NO_x and SO₂ emissions statewide. The Rural Area Flexibility Analysis (RAFA) under section 202-bb(2)(b) of the State Administrative Procedures Act (SAPA) 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 Parts 243, 244, and 245 will not have an adverse impact on rural areas. Parts 243, 244, and 245 affect 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 Parts 243, 244, and 245, which may 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. As a matter of federal law, the Department is constrained to adopt requirements to control emissions no less stringent than defined by CAIR, which includes emission caps based on the New York State NO_x and SO₂ budgets and federal reporting requirements.

The promulgation of new Parts 243, 244, and 245, apply to affected sources statewide, including those located in rural areas. Since the regulations apply equally to affected facilities statewide, rural areas are not impacted any differently than other areas in the State. The Department is implementing the CAIR through a cap and trade program. Allowance based cap and trade systems are the most cost effective means for implementing emission reductions from large stationary sources, therefore the Department has attempted to minimize the adverse economic impacts of the program to all sources on a statewide basis.

5. Rural Area Participation:

The SAPA 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 Parts 243, 244, and 245 in upstate areas and will notify interested parties of this proposed rulemaking.

Department staff have held stakeholder meetings with affected parties and various representative coalitions and consultants to the electric and cement industry. Copies of the draft regulations were made available to all affected parties prior to initiating the promulgation of the regulations and interested parties afforded informal opportunities for public comment.

Job Impact Statement

- 6 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program
- 6 NYCRR Part 244, CAIR NO_x Annual Trading Program
- 6 NYCRR Part 245, CAIR SO₂ Trading Program

1. Nature of Impact:

The Department of Environmental Conservation (Department) proposes to adopt the Clean Air Interstate Rules (CAIR) by promulgating 6 NYCRR Part 243, CAIR NO_x Ozone Season Trading Program, 6 NYCRR Part 244, CAIR NO_x Annual Trading Program, 6 NYCRR Part 245, CAIR SO₂ Trading Program and to revise 6 NYCRR Part 200, General Provisions. The proposed rules and revisions are not expected to have a substantial adverse impact on jobs or employment opportunities in New York State.

2. Categories and Numbers Affected:

The promulgation of Parts 243, 244, and 245 is expected to increase employment for a time period, up to two or more years at each facility that chooses to install controls in order to comply with the requirements of CAIR, 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 rules related to monitoring, recordkeeping and reporting requirements as the affected emission sources are already satisfying these requirements under current New York cap-and-trade programs.

CAIR will have some positive impact on employment. Many generating companies will need to purchase control equipment and construct the facilities to house this equipment. Total capital expenditures include the costs for emissions control equipment, construction materials, labor and design. Each of these activities should have positive impacts on employment in New York. However, because of the lack of detailed information provided to the Department regarding these costs and because the compli-

ance options that are available to facilities, it is impossible to estimate the actual number of jobs that will be created by this capital expenditure.

CAIR will also have a positive impact on the travel and tourism industry. Mitigation of the effects of acid rain will aid in keeping New York State as a preferred vacation destination. In addition to reducing acid deposition, these regulations will also assist in the reduction of primary and secondary formation of fine particulate matter that plays a prominent role in regional haze. Because of regional haze, rural and urban vistas of New York are often obscured which reduces the desirability of travel in and around the State. While it is not possible to quantify the economic or the employment impact of these regulations, it is comprehensible that their implementation will make New York State a more attractive vacation destination.

3. Regions of Adverse Impact:

None.

4. Minimizing Adverse Impact:

The Department is implementing the CAIR emissions limits through a cap-and-trade program. Allowance based cap-and-trade systems are the most cost effective means for implementing emission reductions from large stationary sources. By implementing CAIR through an allowance based cap-and-trade system, the Department has attempted to minimize the adverse economic impacts including the adverse employment impacts of the program.

Minimizing adverse impacts to generators and obtaining maximum NO_x and SO₂ reductions is accomplished by dividing the regulations into two phases. 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. In addition to the two-phase system, alignment of compliance dates with other rules being promulgated for the control (i.e., mercury, CO₂) may reduce the need for further scheduled outages for electric generating 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 NYSERDA, has conducted an electricity system modeling analysis to estimate the incremental cost of implementing CAIR and a mercury reduction 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 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 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.¹

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.

¹ NYSDEC, NYSERDA, and ICF International, Modeling Results for CAIR and Mercury. May 18, 2006

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

General and Academic Performance Awards

I.D. No. ESC-15-07-00001-P

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

Proposed action: Amendment of section 2206.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 652(2), 653(9), 655(4) and 665(3)

Subject: Prepayment methods of general and academic performance awards administered by HESC.

Purpose: To update and improve the existing regulation to more accurately reflect the prepayment method.

Text of proposed rule: Section 2206.3 of the Title 8 of the NYCRR and is amended to read as follows:

Section 2206.3 Methods of payment.

(a) Institutions of higher education, except during the initial year a school offers approved programs, shall select, from the payment methods described below, the method by which the institution chooses to receive award payments for the benefit of eligible students during each academic year. During the initial year a school offers approved programs, such school shall not be eligible for the prepayment method of payment.

(b) Prepayment method.

(1) Awards may be prepaid to institutions, for the benefit of eligible students who have submitted applications for awards, by means of a single check or *electronic funds transfer* in an amount representing a percentage of the total amount of awards which would be payable if the institution certified to the corporation the eligibility of every student appearing on the roster of applicants provided to the institution. Except as provided herein, prepayments shall be made no sooner than 30 days before the start of any term, and shall be made only for rosters or applicants for the summer term issued prior to [October] *September* 30th, for the fall term issued prior to [December] *November* 30th, for the winter term issued prior to [March 31st] *February 28th* and for the spring term issued prior to [May] *April* 30th of the academic year. Payments relating to rosters issued after these dates shall be made by the lump sum payment method. The percentage to be utilized by the corporation for each institution for each term of the academic year shall be determined by the president and, except as provided in subdivision [e] (d) of this section, shall be the percentage as determined by the following calculation:

(i) certified value of institution's rosters for the corresponding term of the prior academic year which have been submitted to the corporation by a date to be established by the president, divided by:

(ii) value of all rosters for the corresponding term of the prior academic year submitted to the institution for certification at least 60 days prior to the date to be established by the president in accordance with subparagraph (i) of this paragraph.

(2) The prepayment to be made based upon the resultant percentage shall be determined by reference to the table below:

| When historical certification rate is | TAP prepayment percentage is |
|---------------------------------------|------------------------------|
| Greater than or equal to | but less than |
| 93% | 100% |
| 88% | 93% |
| 83% | 88% |
| 78% | 83% |
| 73% | 78% |
| 68% | 73% |
| 63% | 68% |
| 58% | 63% |
| 53% | 58% |
| 48% | 53% |
| 43% | 48% |
| 38% | 43% |
| | 90% |
| | 85% |
| | 80% |
| | 75% |
| | 70% |
| | 65% |
| | 60% |
| | 55% |
| | 50% |
| | 45% |
| | 40% |
| | 35% |

| | | |
|----------|-----|-----|
| 33% | 38% | 30% |
| 28% | 33% | 25% |
| 23% | 28% | 20% |
| 18% | 23% | 15% |
| [0%] 13% | 18% | 10% |
| 0% | 13% | 0% |

(3) In the event that a new program is created in an existing institution and a separate payment plan is to be used for that new program, the prepayment percentage shall be the same percentage utilized for the existing institution or 75 percent whichever is lower. Should the existing institution include more than one program with different prepayment percentages, the prepayment for the new program shall be the percentage for that program within the institution most closely associated with the new program or 75 percent, whichever is lower.

(4) The *term* prepayment [percentage] *percentages* for each institution shall be recalculated for each new academic year or when deemed necessary by the president pursuant to the provisions of this subdivision.

After the institution's certification of eligibility, additional payments, if any, shall be made to the institution, for the benefit of eligible students, or refunds of overpaid amounts shall be made by the institution to the corporation.

[(c) Individual check method. Awards may be paid to institutions, for the benefit of eligible students who have submitted applications for awards and been certified as eligible by the institution, by means of individual checks in amounts reflecting each student's award eligibility for a term of study, made payable to each student whose name appears on a roster provided to the institution. Institutions selecting this method of payment assume responsibility for the appropriate endorsement and release of each check. If an institution receives a check on behalf of a student whose eligibility for an award has not been certified or whose certification of eligibility has been rescinded by the institution, the institution shall return the check to the corporation.]

[d] (c) Lump sum payment method. Awards may be paid to institutions, for the benefit of eligible students, by means of a single check or *electronic funds transfer in an amount* representing the value of awards to students whose eligibility has been certified to the corporation by the institution. A single check will be issued, payable to the institution, after the corporation has received and reviewed the roster of applicants whose eligibility has been certified by the institution for a term.

[e] (d) Disqualification from prepayment. The president, for good cause, may disqualify an institution from participating in the prepayment method set forth in subdivision (b) of this section or where the institution has a history of delinquency in refunding excess prepayments, reduce an institution's prepayment percentage to a rate lower than that determined by the method set forth in that subdivision. Good cause shall include revision of the institution's academic calendar or revision of the institution's programs of study where such revision has an effect upon the calculation of the prepayment percentage, a finding of insufficient administrative practices at the institution, the assertion of a claim of refund from the institution pursuant to Part 2007 of this Subchapter, suspension of the license of any school pursuant to section [5001(4)(c)] 5001(5)(c) of the Education Law, the placement of any school on probation pursuant to section [5001(5)] 5001(6) of the Education Law (for the duration of the probationary period), the providing of notice by any school of its intent to close or cease operation as required by section [5001(7)] 5001(8), of the Education Law, the establishment of a trust fund by any school if required by the commissioner pursuant to section 5008 of the Education Law, or other good cause established to the satisfaction of the president. A disqualified institution shall be afforded an opportunity for a hearing within 30 days after such disqualification provided that a written request therefor is served on the corporation within 10 days of notice of such disqualification.

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

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

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

Regulatory Impact Statement

Statutory authority:

Education Law sections 653(9) and 655(4) authorize the New York State Higher Education Corporation (HESC), through its Board of Trustees, to promulgate regulations to facilitate the administration of student financial aid programs.

Legislative objectives:

The New York State Legislature has enacted many higher education grant and scholarship programs to help students pay for college, the largest of which is New York's Tuition Assistance Program (TAP). HESC administers these financial aid programs, transferring funds from state accounts to higher education institutions for disbursement to their students. HESC is also responsible for providing schools with direction to ensure the appropriate receipt and handling of state funds. This proposed amendment represents HESC's pursuit to streamline the procedures used to deliver financial aid to best serve New York's students.

Periodically during an academic term, HESC provides schools with rosters listing their students who have applied for financial aid. Schools are responsible for certifying the actual eligibility of listed students. At approximately the same time rosters are provided, HESC prepays a percentage of the total awards listed on each roster, to the school's account. The amount of prepayment is based on each school's historical certification rate. Only rosters generated prior to a specified date during an academic term are prepaid. After this point in time, rosters are paid only upon certification. Section 2206.3 of the Codes Rules and Regulations of New York State outlines the methodology for these prepayments, as authorized by paragraph (c) of section 665(3) of the Education Law. The three amendments contained in this proposal facilitate the orderly administration of award payment, assuring the appropriate receipt and handling of state funds.

Needs and benefits:

First, this proposed regulation adds "electronic funds transfer" to, and deletes "individual check method" from, the list of available methods of payment identified in Section 2206.3 of Title 8 of the NYCRR. These amendments are necessary to modify the regulation to reflect current business practices. HESC no longer makes payments using the "individual check method." Rather, the majority of award payments are made with electronic funds transfers (EFT).

Second, this proposed regulation moves up (by one month) the last date rosters may be prepaid to institutions. The current dates provided in the regulation are very late in the term. As a result, schools receive inflated prepayment amounts until the end of the semester, because students sometimes apply for financial aid for terms that they are ultimately certified as ineligible. By moving the deadline date for prepayment forward, schools will be motivated to have students apply for financial aid earlier, and encouraged to certify students sooner. This amendment will result in greater administrative efficiency and save money by prompting an earlier final accounting of correct aid due to schools.

Finally, this proposed amendment disallows prepayment to schools with low historical certification rates. Currently, section 2206.3 of Title 8 of the Codes, Rules and Regulations of the State of New York authorizes prepayment to schools with historical certification rates less than thirteen percent (13%). As a result, prepayments are made to schools where less than 13% of students appearing on rosters were certified as eligible for their awards, in the prior year. This causes inflated prepayments. This proposed amendment will encourage schools to have only those students actually planning to attend their institution apply for financial aid. Rather than having these schools earn interest on inaccurate prepayments, the state will retain these funds.

One of the main reasons HESC elects to prepay schools is to provide funds to defer tuition, by crediting student accounts. Unfortunately, late term prepayments and prepayments made to schools with low certification rates are not used for this purpose. Rather, typically schools hold onto these funds earning interest. After the prepayment deadline, schools are paid only when they certify their rosters. With the availability of EFT and weekly certification, schools need not wait long for payment based on certification.

Costs:

a. It is anticipated that there will be no actual monetary costs to regulated parties for the implementation of or continuing compliance with this rule. This proposed rulemaking impacts when prepayments are made, and what schools are prepaid. These amendments have no impact on the total amount of aid schools are entitled to or ultimately receive. Schools may minimize any impact of this regulation by making an effort to encourage students to apply for financial aid earlier, enrolling only students likely to attend, and certifying their rosters sooner.

As an example, for the most recent year surveyed, the following late term prepayments were made: October (summer term) - \$1,174,691; December (fall term) - \$20,494,208; March (winter term) - \$1,065,082; May (spring term) - \$4,379,916. By moving up the prepayment deadline, these amounts will be reduced, allowing the state to retain these funds longer and earn interest on them. As a result, moving the prepayment deadline for-

ward should encourage faster certification of eligible students, especially on rosters generated later in the term since schools will only be paid upon certification. This will reduce the number of rosters containing ineligible students that will be prepaid and allow the state to retain interest on those funds that would have been disbursed as inaccurate prepayments. Additionally, this proposed amendment should also encourage schools to have their students apply for financial aid sooner so they appear on rosters eligible for prepayment. While schools may perceive a reduced period for prepayment as a cause for reduced cash flow this perception is incorrect. Under this proposed regulation, schools will receive the same amount of funding they are entitled to, but will simply be required to provide more accurate accounting sooner. This proposed amendment advances HESC's continued pursuit of increased administrative efficiencies and the accurate receipt and handling of state funds.

Institutions with historical certification rates less than thirteen percent (13%) may perceive an effect on their cash flow because they will now become ineligible for prepayments. For the most recent year surveyed, HESC prepaid \$1,157,069.17 to fifty-six (56) such schools. A large percentage of these prepayment funds were overpayments for students who were ultimately not certified. While schools with historical certification rates under 13% will no longer be eligible for prepayment, they will still receive all aid they are rightfully due for students they actually certify as eligible. With the advent of EFT and weekly certification, schools need not wait long to receive payment for students they have certified as eligible. Furthermore, these schools may re-establish their eligibility for prepayments in following years by increasing their term certification rates to 13%.

b. It is anticipated that there will be no costs to HESC, state or local governments for the implementation of, or continuing compliance with, this amended rule. This amendment merely implements an existing State financial aid program and it does not result in any costs not already mandated by statute.

Given the complexities involved in HESC's prepayment transactions, it is difficult to project the cost savings anticipated by these amendments. HESC expects to realize increased administrative efficiency and a cost savings to the state in the form of additional interest income.

Presently, schools are not required to certify rosters until 60 days from the date of the roster or 30 days from the end of the term, whichever is later. However, eligible students must be credited their prepayments within 7 days of receipt. Shortening the Fall and Winter prepayment periods by one month results in no prepayments for ineligible students late in the Fall and Winter terms, reducing state expenditures for these students this fiscal year. However, if schools certify their rosters prior to the end of the fiscal year, no cost savings will be realized.

For the most recent year surveyed, prepayments totaling \$27,113,897 were made. Moving prepayment dates forward by one month will reduce amounts prepaid and allow the state to earn interest on these retained funds. Additionally, moving the fall term prepayment dates forward (December 31 to November 30) will minimize the "co-mingling" of fall and spring requests for payment attributable to late financial aid applications from students. This will further decrease the amount of erroneous prepayment. While this effect should be realized for all prepaid terms, HESC expects it will be more pronounced in December for this reason.

The section of this proposed amendment disallowing pre-payments to schools with historical certification rates less than thirteen percent (13%) will also result in a cost savings to New York. For the most recent year surveyed, HESC prepaid \$1,157,069.17 to these schools. Eliminating these prepayments provides the state an opportunity to earn interest on these monies. This may have a carry over effect into next year since it is unlikely these schools will be able to increase their certification rates to 13% or more this year. In any event, this amendment should compel schools to be more selective about who they have applying for financial aid to their institutions. The more students ultimately certified as eligible for payment for a given term, the higher the schools prepayment percentage will be the same term the following year and the less inflated these prepayments will be. This also presents an opportunity for the state to earn interest on prepayments that would otherwise have been made to these schools.

Prepayments provide funds to defer student tuition and credit student accounts. It is clear the later term prepayments and prepayments made to schools with low certification rates are not used for this purpose. Since the advent of electronic funds transfer and weekly certification, schools do not wait long for payments upon actual certification. This proposed amendment will lower prepayments made by HESC, resulting in a more business-like and appropriate cash flow for both the state and the schools.

c. The sources for the cost data in (b) above are HESC's transaction records. These records include the dollar amounts of prepayments made based on student rosters generated during the months of October, December, March and May in the most recent academic year surveyed.

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:

No additional paperwork will be required. However, schools may be compelled to certify and return their rosters sooner. In any event, except for a few unique programs, most rosters are certified electronically; particularly TAP rosters.

Duplication:

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

Federal standards:

This amendment does not appear to exceed any minimum standards of the Federal Government.

Alternatives:

An alternative would be to leave the regulation intact. However, this would not remove the outdated language authorizing payments by the individual check method or insert the language authorizing payments by EFT and would negate the potential savings and administrative efficiencies to be realized.

Compliance schedule:

HESC does not expect regulated parties to respond to the new prepayment schedules this fiscal year. However, it is possible that this amendment will compel institutions to certify their rosters earlier. In any event, the affects of these amendments will depend on an institutions ability to certify their payment rosters within these new parameters.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to amend section 2206.3 of 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 proposed amendment that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this proposed amendment will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it merely revised regulatory language to more accurately reflect the prepayment method for General and Academic Performance Awards which will result in cost savings and improved administrative efficiencies.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to amend section 2206.3 of 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 proposed amendment that it will not impose an adverse impact on rural areas. This agency finds that this proposed rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas because it merely revised regulatory language to more accurately reflect the prepayment method for General and Academic Performance Awards which will result in cost savings and improved administrative efficiencies.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to amend section 2206.3 of 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 proposed amendment that it will not have any negative impact on jobs or employment opportunities. This agency finds that this proposed amendment will not have any impact on jobs or employment opportunities because it merely revised regulatory language to more accurately reflect the prepayment method for General and Academic Performance Awards which will result in cost savings and improved administrative efficiencies.

Department of Motor Vehicles

NOTICE OF ADOPTION

Repair Shops

I.D. No. MTV-05-07-00002-A

Filing No. 318

Filing date: March 27, 2007

Effective date: April 11, 2007

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

Action taken: Amendment of Part 82 of Title 15 NYCRR

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 398-g(2)

Subject: Repair shops.

Purpose: To make minor revisions to the repair shop regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-05-07-00002-P, Issue of January 31, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rear Object Detection Systems

I.D. No. MTV-15-07-00005-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 58 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(10)(f)

Subject: Rear object detection systems.

Purpose: To require all garbage trucks operated in Westchester County purchased on or after Jan. 1, 2008 to be equipped with mirrors or other rear detection devices as mandated by L. 2006, ch. 686.

Text of proposed rule: 58.8 Rear Object detection systems. (a) Notwithstanding any other provision in this part, every single-unit motor vehicle registered in this state, operated for commercial purposes and having a cube style or enclosed walk-in delivery bay, where such delivery bay has a length of eight feet six inches or more, but not exceeding a length of eighteen feet, or every *sani-van* and motor vehicle commonly classified as a garbage truck purchased on or after January 1, 2008 and registered in New York State, which is operated in and engages in the collection of garbage or refuse in the county of Westchester shall be equipped with a cross-view back-up mirror system, rear video system, or rear object detection system. The provisions of this section shall not apply to motor vehicles commonly classified as rolloff vehicles that are used for the express purpose of transporting waste containers such as open boxes or compactors.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 375(10)(f) authorizes the Commissioner of Motor Vehicles to

promulgate regulations to provide specifications for mirrors and rear object detection devices that are to be installed on *sani-vans* and garbage trucks that operate in Westchester County.

2. Legislative objectives: This proposal is consistent with the legislative objective, as set forth in Chapter 686 of the Laws of 2006, of requiring all *sani-vans* and garbage trucks that operate in Westchester County to be equipped with a mirror or other rear object detection device. By specifying the particular devices that are required on these motor vehicles, the regulation will meet the legislative objective of reducing the number of deaths and injuries incurred by sanitation workers.

3. Needs and benefits: As the sponsor's Memorandum in Support for Chapter 686 of the Laws of 2006 explains, several sanitation workers in Westchester County have been injured or killed in the performance of their duties because they were situated in a location near the vehicle where they could not be easily viewed by the driver. This regulation is needed to improve the safety conditions for these sanitation workers. Injuries and deaths will be reduced if all *sani-vans* and garbage trucks are equipped with mirrors, rear video systems, or other rear object detection devices. The mandated devices will allow the driver of the vehicle to more readily observe a worker who is behind such vehicle. Thus, this proposal will have a significant benefit for sanitation workers by reducing the number who are injured or killed by the vehicle on which they are performing their duties.

4. Costs: There are no costs to state agencies.

In terms of local governments, the Westchester County Solid Waste Commission estimates that of the 44 municipalities in Westchester County, approximately 25-30 provide hauling services for residents of those municipalities. These municipalities include the cities of Mount Vernon, New Rochelle, Peekskill, Rye, White Plains, and Yonkers. The regulation will also impact the approximately 135 trash haulers in Westchester County. The Department's Office of Vehicle Safety surveyed various websites to ascertain retail costs for the various devices. Vehicle Safety also spoke with representatives of three refuse haulers in Westchester County, whose names will remain anonymous so as not to impair their competitive position. The survey and interviews revealed the following costs:

Cross view mirrors: Cost between \$50 and \$120 including installation.

Closed Circuit Television: Wide range in cost of \$400 to \$4,000 including installation.

Rear object detection device: Cost between \$325 to \$700 including installation.

All representatives indicated that it was common for companies to install these devices on their vehicles because the driver is afforded a more expansive view of objects behind the vehicle.

The regulation does not require retrofitting. It only applies to vehicles purchased on or after January 1, 2008.

5. Local government mandates: All municipally owned *sani-vans* and garbage trucks, purchased on or after January 1, 2008, must be equipped with one of the designated rear detection devices.

6. Paperwork: The proposal does not require any new paperwork or reporting requirements.

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

8. Alternatives: No significant alternatives were considered. A no action alternative was not considered.

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

10. Compliance schedule: The regulations will apply to all *sani-vans* and garbage trucks purchased on or after January 1, 2008.

Regulatory Flexibility Analysis

1. Effect of rule: The Westchester County Solid Waste Commission estimates that of the 135 garbage haulers in Westchester County, approximately 90% are small businesses. The Commission also estimates that of the 44 municipalities in Westchester County, approximately 25-30 provide hauling services for residents of those municipalities. These municipalities include the cities of Mount Vernon, New Rochelle, Peekskill, Rye, White Plains, and Yonkers.

2. Compliance requirements: There are no reporting or recordkeeping requirements associated with this rule. However, the small businesses and local governments will need to purchase and install mirrors or other rear detection devices for all *sani-vans* or garbage trucks purchased on or after January 1, 2008.

3. Professional services: Small businesses and local governments may need to avail themselves of professional services provided by companies that can install the mirrors or rear detection devices.

4. Compliance costs: The Department estimates the following costs for purchase and installation of the devices.

Cross view mirrors: Cost between \$50 and \$120 including installation.

Closed Circuit Television: Wide range in cost of \$400 to \$4,000 including installation.

Rear object detection device: Cost between \$325 to \$700 including installation.

The small businesses and local governments will be responsible for maintaining the equipment in good working order. The costs will be the same for small businesses and local governments.

5. Economic and technological feasibility: The devices described above may be purchased from many sources. The small businesses and local governments may need to hire professionals to install and maintain the devices.

6. Minimizing adverse impact: This rule is submitted as the result of Chapter 686 of the Laws of 2006. Since the law does not exempt small businesses or local governments from the statutory requirements, the agency could not exempt such businesses or governments. The costs of the devices vary greatly, as do the types of devices an entity may purchase. Thus, the small businesses and local governments will have a variety of options to choose from in order to minimize any adverse impact.

7. Small business and local government participation: The Department consulted with the Westchester County Solid Waste Commission and three businesses about the rule's impact on small businesses and local governments. In addition, we sent a written survey to about 30 businesses to gauge the impact of the rule on those businesses. Not one of the 30 businesses responded to our survey. Thus, we gave a variety of entities the opportunity to comment on the proposed rule.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposed rule because it has no adverse or disproportionate impact on rural areas of New York State.

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Temporary Indicia of Registration and Inspection

I.D. No. MTV-15-07-00006-P

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

Proposed action: This is a consensus rule making to amend Part 21 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 306(b) and 403

Subject: Temporary indicia of registration and inspection.

Purpose: To permit motorists to use temporary indicia of registration and inspection stickers for a period not to exceed 15 days when a registration or inspection sticker is lost, stolen, destroyed or mutilated; and makes certain other minor changes to the language to make the text gender-neutral and clearer.

Text of proposed rule: The heading of Part 21 is amended to read as follows:

Part 21

Temporary Indicia of Registration and Inspection

Statutory authority: Vehicle and Traffic Law, §§ 215(a), 306(b) and 403-a

Section 21.1 is amended to read as follows:

21.1 Introduction. [Section] Sections 306(b) and 403-a of the Vehicle and Traffic Law [permits] permit the Commissioner of Motor Vehicles to provide by regulation for the use of temporary registration number plates, registration validating [sticker] stickers and inspection [sticker] stickers to replace lost, stolen, destroyed or mutilated plates or stickers. [Previously, there was no provision in the Vehicle and Traffic Law to permit a person, who had discovered a plate missing or whose validating sticker and/or inspection sticker was missing or mutilated, to legally operate his motor vehicle. In some cases, the driver was practically forced to operate the vehicle illegally since the alternative was to park it.] Hereinafter in this Part, "lost, stolen or destroyed" plates or stickers shall be referred to collectively as "missing" plates or stickers. This Part sets forth the general rules governing the contents and use of such temporary indicia of registration and inspection.

Section 21.2 is amended to read as follows:

21.2 *Temporary indicia of [Registration] registration.* (a) *Missing or mutilated registration plate(s).* When [a motorist discovers that either] one or both [of his] registration number plates [or both of them] are missing or mutilated, [he] a motorist may operate or park [his] the motor vehicle or trailer upon the public highways before applying for, or while waiting for the issuance of, a duplicate of such missing or mutilated [item] plate(s), if [he] the motorist places a temporary substitute plate [or plates] of cardboard or [similar] other durable material of the approximate size of the missing [plate or plates] plate(s) in the [space] space(s) normally occupied by [the] each missing or mutilated [item or items] registration plate, and provided all the requirements of section 21.5 of this Part are met. [Such] Temporary substitute [plate or] plates shall be provided by the motorist and shall be valid for a period not to exceed 15 days from the date of loss or mutilation, but not beyond the expiration date of the registration. The [content of such] temporary [plate or plates] plate(s) shall [be] set forth, in a manner so as to be legible at a distance of at least 50 feet: the words "New York", the registration plate number and the date of loss or mutilation [, all legibly written].

(b) *Missing or mutilated registration sticker.* When a [windshield is replaced,] registration validating sticker is missing or mutilated, a motorist may operate or park [his] the motor vehicle upon the public highways, before applying for, or while waiting for the issuance of, a duplicate of [his] such missing or mutilated [validating] registration sticker, if [he] the motorist attaches a piece of paper of a size not to obstruct the driver's vision in the inside lower left hand corner of [his] the windshield, and provided all the requirements of section 21.5 of this Part are met. Such [piece of paper] temporary substitute registration sticker shall be provided by the motorist and shall be valid for a period not to exceed 15 days from the date of loss or mutilation, but not beyond the expiration date of the registration. The [content of such piece of paper] temporary substitute registration sticker shall [be] set forth, in a legible manner, the name of the registrant, the year, make and color of the vehicle, the date of expiration of the validating sticker and the date of loss or mutilation.

Section 21.3 is amended to read as follows:

21.3 *Temporary indicia of [Inspection] inspection.* *Missing or mutilated inspection sticker.* When [a windshield is replaced,] an inspection sticker is missing or mutilated, a motorist may operate or park [his] the motor vehicle upon the public highways, before applying for, or while waiting for the issuance of, a duplicate of [his] such missing or mutilated inspection sticker, if [he] the motorist attaches a piece of paper of a size not to obstruct the driver's vision in the inside lower left hand corner of [his] the windshield, and provided all the requirements of section 21.5 of this Part are met. Such piece of paper, which shall serve as a temporary substitute inspection sticker, shall be provided by the motorist and shall be valid for a period not to exceed 15 days from the date of loss, but not beyond the expiration date of the inspection. The [content of such piece of paper] temporary substitute inspection sticker shall [be] set forth, in a legible manner, the name of the registrant, the year, make and color of the vehicle, the date of expiration of the inspection sticker, the inspection sticker number [(obtained from the inspection sticker on the replaced windshield)], and the date of loss or mutilation.

Section 21.4 is amended to read as follows:

21.4 Combined temporary indicia of registration and inspection. *Missing or mutilated registration and inspection stickers.* When [a windshield is replaced and] both [the] a registration validating sticker and an inspection sticker are missing or mutilated, a motorist may attach a single piece of paper of a size not to obstruct the driver's vision to the inside lower left hand corner of [his] the windshield [combining the contents specified by section] in accordance with the combined requirements of sections 21.2(b) and 21.3 of this Part. Such piece of paper, which shall serve as a combination temporary substitute registration and inspection sticker, shall be provided by the motorist and shall be valid for a period not to exceed 15 days from the date of loss or mutilation, but not beyond the expiration date of the registration or inspection, whichever occurs first.

Section 21.5 is amended to read as follows:

21.5 Accompanying documents. (a) *When temporary indicia of registration are in use.* A motorist must carry [his] the registration certificate [with him] when [he operates or parks] operating a motor vehicle or trailer [with] bearing any temporary indicia of registration as provided in this Part. [In addition, a]

(b) *When temporary indicia of inspection are in use.* A motorist must carry [the windshield repair shop bill of sale with him] one of the following documents when [the] operating a motor vehicle bearing a temporary

indicia of [registration or] inspection [consists of a piece of paper attached to the lower left hand corner of his windshield] *as provided in this Part:*

(i) the remains of the original inspection certificate showing the date of expiration, the sticker serial number and the mileage;

(ii) the inspection receipt;

(iii) a verification document (other than the inspection receipt) from the inspection station that issued the original certificate consisting of a statement on the station's letterhead indicating the original certificate serial number, vehicle description, plate number, date issued and mileage at the time of inspection, as described in Part 79 of this Title; or

(vi) an appropriate report from the computerized vehicle inspection system (CVIS, as described in Part 79 of this Title) containing the vehicle inspection information.

(c) In the case of a parked vehicle, presentation of the required documents in court before or on the return date or any adjourned date shall meet the requirements of this Part.

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

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

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

Consensus Rule Making Determination

The proposed amendment is necessary to permit motorists to use temporary indicia of registration and inspection stickers for a period not to exceed 15 days when a registration or inspection sticker is lost, stolen, destroyed or mutilated. Currently, Part 21 only permits the use of temporary sticker indicia when a sticker is lost, stolen, destroyed or mutilated and the vehicle's windshield is replaced. That rule is considered to be unduly restrictive, since there are many motorists who have a legitimate need to use temporary indicia of registration or inspection when a sticker is lost, stolen, destroyed or mutilated in a situation in which the windshield is not replaced. Certain other minor changes to the language of Part 21 are proposed to make the text gender-neutral and clearer.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it would not have an adverse impact on job development in New York State.

Public Service Commission

NOTICE OF ADOPTION

Enhanced Powerful Opportunities Program by Central Hudson Gas & Electric Corporation

I.D. No. PSC-39-06-00013-A

Filing date: March 22, 2007

Effective date: March 22, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order approving Central Hudson Gas & Electric Corporation's request to implement the Enhanced Powerful Opportunities Program provided for in the Rate Plan adopted by the commission on July 24, 2006.

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

Subject: The Enhanced Powerful Opportunities Program.

Purpose: To approve the implementation of a new low-income program.

Substance of final rule: The Public Service Commission adopted an order approving Central Hudson Gas & Electric Corporation's request to implement the Enhanced Powerful Opportunities Program provided for in the Rate Plan adopted by the Commission on July 24, 2006.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-0934SA2)

NOTICE OF ADOPTION

Enhanced Powerful Opportunities Program by Central Hudson Gas & Electric Corporation

I.D. No. PSC-39-06-00017-A

Filing date: March 22, 2007

Effective date: March 22, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order approving Central Hudson Gas & Electric Corporation's request to implement the Enhanced Powerful Opportunities Program provided for in the Rate Plan adopted by the commission on July 24, 2006.

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

Subject: The Enhanced Powerful Opportunities Program.

Purpose: To approve the implementation of a new low-income program

Substance of final rule: The Public Service Commission adopted an order approving Central Hudson Gas & Electric Corporation's request to implement the Enhanced Powerful Opportunities Program that was provided for in the Rate Plan adopted by the Commission on July 24, 2006.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-G-0935SA2)

NOTICE OF ADOPTION

Property Tax Refunds by Orange and Rockland Utilities, Inc.

I.D. No. PCS-52-06-00014-A

Filing date: March 21, 2007

Effective date: March 21, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order approving the terms of a joint proposal between Orange and Rockland Utilities, Inc. and Department of Public Service staff to account for property tax refunds and tax benefits in account 254, other regulatory liabilities.

Statutory authority: Public Service Law, sections 2, 5, 65 and 113(2)

Subject: Disposition of property tax refunds and benefits of prospective assessment reductions, and other related matters.

Purpose: To approve the manner in which property tax refunds and benefits from tax assessment reductions should be passed on to customers and shared with O&R, and to consider other related matters.

Substance of final rule: The Public Service Commission approved the terms of the December 4, 2006, Joint Proposal between Orange and Rockland utilities, Inc. and New York State Department of Public Service Staff to account for property tax refunds and tax benefits in Account 254, Other Regulatory Liabilities, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-E-0379SA1)

NOTICE OF ADOPTION

Lightened Regulation as a Gas Corporation by Nornew Energy Supply, Inc.

I.D. No. PSC-52-06-00017-A
Filing date: March 27, 2007
Effective date: March 27, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order approving Nornew Energy Supply, Inc.'s (Nornew) request for lightened regulation as a gas corporation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Nornew's request for lightened regulation as a gas corporation.
Purpose: To approve the request in connection with its provision of competitive retail gas service.

Substance of final rule: The Commission adopted an order approving Nornew Energy Supply, Inc.'s request for lightened regulation as a gas corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-1484SA1)

NOTICE OF ADOPTION

Customer Contribution for Unusual Expenditures to Supply Service by Niagara Mohawk Power Corporation

I.D. No. PSC-02-07-00006-A
Filing date: March 22, 2007
Effective date: March 22, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order allowing Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, PSC No. 207

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

Subject: Customer contribution for unusual expenditures to supply service.

Purpose: To establish when it may be necessary for customers to contribute to the cost of facilities to supply service because of location or character of customer's installation.

Substance of final rule: The Public Service Commission adopted an order approving Niagara Mohawk Power Corporation's tariff filing to modify Rule No. 4 - Customer Use of Service to more clearly define the circumstances under which the company may require the customer to make a reasonable contribution toward the cost of installing facilities that require unusual expenditures to provide service because of the location or character of the installation.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-E-1548SA1)

NOTICE OF ADOPTION

Proration of Bills by National Fuel Gas Distribution Corporation

I.D. No. PSC-02-07-00007-A
Filing date: March 21, 2007
Effective date: March 21, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order rejecting National Fuel Gas Distribution Corporation's (NFG) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service P.S.C. No. 8.

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

Subject: Proration of bills.

Purpose: To reject NFG's request to revise the methodology for the proration of customer bills.

Substance of final rule: The Public Service Commission adopted an order rejecting National Fuel Gas Distribution Corporation's (NFG) tariff filing to revise the methodology for the proration of customer bills, and directed NFG to file a supplement cancelling the leaf shown in the appendix, on not less than one day's notice, to become effective on March 22, 2007.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-1553SA1)

NOTICE OF ADOPTION

Charges for Municipal Undergrounding by Orange and Rockland Utilities, Inc.

I.D. No. PSC-03-07-00008-A
Filing date: March 26, 2007
Effective date: March 26, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order approving Orange and Rockland Utilities, Inc. (O&R) request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 2.

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

Subject: Charges for municipal undergrounding.

Purpose: To revise tariff provisions for municipal undergrounding to allow O&R greater flexibility in the determination of and timing of the surcharge used to recover the costs of undergrounding.

Substance of final rule: The Public Service Commission adopted an order approving Orange and Rockland Utilities Inc.'s (O&R) tariff filing to revise its General Information Section 18A - Charges for Municipal Undergrounding and directed O&R to file a supplement cancelling the Statement of Municipal Surcharges for the Village of New Square.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-E-1571SA1)

NOTICE OF ADOPTION

Purchase of Accounts Receivable by Central Hudson Gas & Electric Corporation

I.D. No. PSC-03-07-00009-A

Filing date: March 21, 2007

Effective date: March 21, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order allowing Central Hudson Gas & Electric Corporation to cancel its tariff filing to revise the purchase of accounts receivable discount rate.

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

Subject: Purchase of accounts receivable.

Purpose: To allow Central Hudson Gas & Electric Corporation to cancel its tariff filing to revise the purchase of accounts receivable discount rate.

Substance of final rule: The Public Service Commission adopted an order allowing Central Hudson Gas & Electric Corporation to cancel its tariff filing to revise the Purchase of Accounts Receivable discount rate.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-E-1573SA1)

NOTICE OF ADOPTION

Purchase of Accounts Receivable by Central Hudson Gas & Electric Corporation

I.D. No. PSC-03-07-00010-A

Filing date: March 21, 2007

Effective date: March 21, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order allowing Central Hudson Gas & Electric Corporation to cancel its tariff filing to revise its purchase of accounts receivable discount rate.

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

Subject: Purchase of accounts receivable.

Purpose: To allow Central Hudson Gas & Electric Corporation to cancel its tariff filing to revise the purchase of accounts receivable discount rate.

Substance of final rule: The Public Service Commission adopted an order allowing Central Hudson Gas & Electric Corporation to cancel its tariff filing to revise the Purchase of Accounts Receivable discount rate.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-1574SA1)

NOTICE OF ADOPTION

Property Tax Refunds Received by the Long Island Water Company

I.D. No. PSC-03-07-00011-A

Filing date: March 21, 2007

Effective date: March 21, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order requiring customer refunds and adopted the terms and provisions of a joint proposal by Long Island Water Corporation and Department of Public Service staff regarding property tax refunds of \$7,386,087.89 received from Nassau County.

Statutory authority: Public Service Law, section 113(2)

Subject: Property tax refunds received by the Long Island Water Company.

Purpose: To approve the portion of the property tax refunds to be distributed to customers and the portion of the refunds to be retained by shareholders.

Substance of final rule: The Commission adopted an order approving the terms and provisions of a December 29, 2006 Joint Proposal by Long Island Water Corporation and Department of Public Service Staff regarding property tax refunds of \$7,386,087.89 received from Nassau County, that authorizes Long Island Water Corporation to use \$3,064,191 of the tax refund to offset Revenue Adjustment Clause liabilities related to the twelve month periods ending March 31, 2005 and 2006, and directed Long Island Water Corporation to refund the remainder of the tax refund, and accumulated interest to water customers, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0069SA2)

NOTICE OF ADOPTION

Uniform System of Accounts by the City of Jamestown Board of Public Utilities

I.D. No. PSC-04-07-00010-A

Filing date: March 22, 2007

Effective date: March 22, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order approving the City of Jamestown Board of Public Utilities' request to recover the first year amortization expense of \$153,989 from the dismantling fund.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (5), (9) and (12)

Subject: Uniform system of accounts; request for recovery of deferral amortization.

Purpose: To allow the City of Jamestown Board of Public Utilities to recover a deferral amortization.

Substance of final rule: The Public Service Commission adopted an order approving the City of Jamestown Board of Public Utilities' request to recover the first year amortization expense of \$153,989 from the dismantling fund, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-E-1485SA2)

NOTICE OF ADOPTION

Uniform System of Accounts by the City of Jamestown Board of Public Utilities

I.D. No. PSC-04-07-00013-A
Filing date: March 22, 2007
Effective date: March 22, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order approving the City of Jamestown Board of Public Utilities' request for permission to defer \$769,945 of expenses related to a gas turbine major maintenance overhaul and to amortize that deferral over a five year period beginning Dec. 31, 2006.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (5), (9) and (12)

Subject: Request for accounting authorization to defer expenses — uniform system of accounts.

Purpose: To allow the City of Jamestown Board of Public Utilities to defer expenses beyond the end of the current fiscal year.

Substance of final rule: The Public Service Commission adopted an order approving the City of Jamestown Board of Public Utilities' request for permission to defer \$769,945 of expenses related to a gas turbine major maintenance overhaul and to amortize that deferral over a five year period beginning December 31, 2006, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-1577SA1)

NOTICE OF ADOPTION

Residential Time-of-Use Service by Central Hudson Gas & Electric Corporation

I.D. No. PSC-04-07-00014-A
Filing date: March 22, 2007
Effective date: March 22, 2007

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

Action taken: The commission, on March 21, 2007, adopted an order allowing Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 15.

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

Subject: Residential time-of-use service.

Purpose: To eliminate the daylight saving time qualification contained in the time-of-use period definitions.

Substance of final rule: The Public Service Commission adopted an order approving Central Hudson Gas and Electric Corporation's tariff filing to eliminate the Daylight Savings Time qualification contained in its time-of-use period definitions for Service Classification No. 6 Residential Time-Of-Use Service.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-0012SA1)

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

Utility Tariffs and Interruptible Customer Fuel Inventory Requirements

I.D. No. PSC-15-07-00011-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 and how to modify the tariffs of local distribution companies and/or change the requirements for natural gas pipeline capacity intended to serve the customers of marketers and energy service companies (ESCOs).

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

Subject: Utility tariffs and interruptible customer fuel inventory requirements.

Purpose: To determine whether to change the requirements for natural gas pipeline capacity intended to serve the customers of marketers and ESCOs.

Substance of proposed rule: The Public Service Commission is considering whether and how to modify the tariffs of local distribution companies and/or change the requirements for natural gas pipeline capacity intended to serve the customers of marketers and energy service companies (ESCOs). Staff of the Department of Public Service reviewed options for capacity planning and developed a white paper, which contains a Straw Proposal. The Straw Proposal calls for all New York State local distribution companies to adopt mandatory capacity assignment with modifications to allow for grandfathering of existing levels of marketer capacity used to serve core customers. The white paper can be obtained from the website of the Department of Public Service at www.dps.state.ny.us, Commission Documents and searching for Case 07-G-0299.

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

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

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

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

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

(07-G-0299SA1)

Office of Real Property Services

NOTICE OF ADOPTION

Annual Reports of Railroad Companies

I.D. No. RPS-40-06-00007-A

Filing No. 316

Filing date: March 26, 2007

Effective date: April 11, 2007

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

Action taken: Amendment of Subpart 200-2, sections 200-6.1, 200-6.5 and 200-6.6, and repeal of Subparts 200-7 and 200-8 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l), 489-q and 489-nn

Subject: Annual reports of railroad companies.

Purpose: To revise the filing schedule for annual reports as well as other minor changes in the program area.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-40-06-00007-P, Issue of October 4, 2006.

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

Text of rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Annual Reports of Special Franchise Owners

I.D. No. RPS-40-06-00008-A

Filing No. 317

Filing date: March 26, 2007

Effective date: April 11, 2007

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

Action taken: Amendment of Subpart 197-2 and sections 197-4.2(a), (b) and 197-4.3(a) of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l) and 604

Subject: Annual reports of special franchise owners.

Purpose: To revise the filing schedule for annual reports as well as other minor changes in the program area.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-40-06-00008-P, Issue of October 4, 2006.

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

Text of rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Public Access to Agency Records

I.D. No. RPS-15-07-00004-P

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

Proposed action: This is a consensus rule making to renumber sections 185-1.1(a)(61)-(64) to 185-1.1(a)(60)-(63); add section 181-1.1(a)(64); amend sections 185-2.2(b)(4), 185-2.4(a) and (d), 185-2.5, 185-2.6(a)(2) and 185-2.8(d)-(e) of Title 9 NYCRR.

Statutory authority: Public Officers Law, section 87(1)(b); and Real Property Tax Law, section 202(1)(l)

Subject: Public access to agency records.

Purpose: To update and conform the agency's rules to statutory amendments made to the Freedom of Information Law and to make technical corrections thereto.

Public hearing(s) will be held at: 10:00 a.m., June 5, 2007 at 16 Sheridan Ave., Albany, NY.

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

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

Text of proposed rule: Paragraphs (61) through (64) of subdivision (a) of section 185-1.1 are renumbered to be paragraphs (60) through (63) respectively and a new paragraph (64) is adopted to read as follows:

(64) *Critical infrastructure means systems, assets, places or things, whether physical or virtual to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy.*

Paragraph (4) of subdivision (b) of section 185-2.2 is amended to read as follows:

(4) upon request for copies of records, make a copy available upon payment or offer to pay established fees, and, whenever possible, respond via electronic mail, unless a response in another medium is requested;

Subdivisions (a) and (d) of section 185-2.4 are amended to read as follows:

(a) [A written request for records may be required. However, written requests need not be required for records that have been customarily available without written request.] *Requests for board records may be submitted in writing by means of delivery by the United States Postal Service, private delivery service, or by facsimile transmission. Requests may also be submitted via electronic mail to <foil@orps.state.ny.us>.*

(d) Where the board does not provide or deny access to a record sought within five business days of receipt of a request, a written acknowledgment of receipt of the request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when the request will be granted or denied shall be furnished. *If the board determines to grant a request in whole or in part, and if circumstances prevent disclosure within 20 business days from the date of the acknowledgment of receipt of the request, the board shall state, in writing, both the reason for its inability to grant the request within 20 business days and date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.* This notice shall include, where appropriate, a statement that access to the record will be determined in accordance with the procedure prescribed in subdivision 5 of section 89 of the Public Officers Law regarding trade secrets and critical infrastructure.

Section 185-2.5 is amended to read as follows:

185-2.5 Trade secrets and critical infrastructure.

(a) Access to records or portions of reports constituting trade secrets, as that term is used in paragraph (d) of subdivision 2 of section 87 of the Public Officers Law, and critical infrastructure shall be determined in accordance with the provisions of subdivision 5 of section 89 of such law. Persons submitting records to the board, which records are alleged to constitute or include trade secrets, critical infrastructure, or both, shall identify, in writing, those records or portions of records alleged to be trade secrets, critical infrastructure, or both, and state reasons why such records should be excepted from public disclosure.

(b) Records or portions of records constituting trade secrets, critical infrastructure, or both, shall be filed or maintained separately from the records in the bureau in which they are kept. Records or portions of records constituting trade secrets, critical infrastructure, or both, shall be made available for inspection and study by the members of the board, the executive director and his or her designees.

Paragraph (2) of subdivision (a) of section 185-2.6 is amended to read as follows:

(2) The subject matter list shall be updated periodically and the date of the most recent updating shall appear on the first page. The updating of the subject matter list shall not be less than [semiannual] annual.

Subdivisions (d) and (e) of section 185-2.8 are amended to read as follows:

(d) Photocopies of all appeals upon receipt of an appeal shall be forwarded to the Committee on [Public Access to Records] Open Government.

(e) The counsel to the board or his or her designee shall inform the requester and the Committee on Open Government in writing of his or her determinations within [seven] 10 business days of receipt of an appeal.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen J. Harrison, Associate Attorney, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Data, views or arguments may be submitted to: Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Public comment will be received until: June 12, 2007.

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

Consensus Rule Making Determination

The State Board of Real Property Services' rules regarding public access to its records under the requirements of Article 6 of the Public Officers Law (Freedom of Information Law) were last amended in 1998. Article 6 of the Public Officers Law has been amended several times since such date. This rule making is intended to conform the Board's rules to statutory changes and to make technical corrections thereto. Therefore, no person is likely to object to the rules as written.

Job Impact Statement

These amendments concern procedures relative to accessing records of the State Board of Real Property Services pursuant to the Freedom of Information Law. The proposed rules should have no effect, positive or negative, on job opportunities.

Section 197-3.1 General requirements.

(a) *Renewals.* No renewal license shall be issued to any home inspector for any license period commencing on or after December 31, 2007 unless such licensee completes 24 hours of approved continuing education within the two-year period immediately preceding such renewal, except those licenses expiring on or after December 31, 2007, but before December 31, 2008, shall be required to complete 6 hours of approved continuing education prior to application for renewal.

(b) *Course approval.* No offering of a course of study in the home inspection field for the purpose of compliance with the continuing education requirements of subdivision (a) of this section shall be acceptable for credit unless such course of study has been approved by the department under the provisions of this Part.

Section 197-3.2 Approved entities.

Continuing education home inspection courses may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by the Commissioner of Education; public or private schools; and home inspection related professional societies and organizations. The following types of instruction shall not be acceptable as meeting continuing education requirements:

(a) offerings in basic computer skills training, instructional navigation of the web, instructional use of generic computer software or industry specific report writing software, personal motivation, business marketing, salesmanship, radon and pests.

Section 197-3.3 Request for approval of course of study.

The following applies to courses to be presented in a class-room setting where the instructor is present with the class. Requests for approval of courses of study in the home inspection field to be given to satisfy the requirements for continuing education under the provisions of this Part shall be made 60 days before the proposed course is to be given. The request shall include the following:

- (a) name, address and telephone number of the applicant;
- (b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;
- (c) title of each course to be offered;
- (d) location of each course offered;
- (e) duration and time of each course offered;
- (f) procedure for taking attendance;
- (g) a detailed outline of the subject matter of each course or seminar containing at least one hour of instruction up to 24 hours of instruction, together with the time sequence of each segment thereof and teaching techniques used in each segment; and
- (h) description of materials to be distributed to the participants.

Section 197-3.4 Program Approval.

A sponsor of a course which is conducted on one day may file an application for approval within 30 days of the completion of the course. The sponsor must advise registrants that approval is not guaranteed.

Section 197-3.5 Successful completion of course.

(a) Any course for continuing education shall be accepted for credit on the basis of attendance only. The course administrator must submit to the department within 15 days of completion of the class, the names and unique identification numbers of all individuals who successfully complete the approved course.

(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificates must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the person authorized to sign certificates.

Section 197-3.6 Equivalency Credit.

(a) A licensee who teaches an approved home inspection course pursuant to Subpart 197-2 of this Part or an approved course offered for continuing education shall be credited with two hours for each hour of actual teaching performed. Records of such teaching shall be maintained by the person or organization presenting the course and certified on forms prescribed by the department. The records of such teaching shall be deemed records of attendance for all purposes of these rules. Credit shall not be awarded for teaching the same course more than once in a license cycle. Instructors must submit evidence of such teaching experience with an equivalency application.

(b) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the department,

Department of State

EMERGENCY RULE MAKING

Outline Requirements for Continuing Education Courses for Licensed Home Inspectors

I.D. No. DOS-15-07-00002-E

Filing No. 315

Filing date: March 23, 2007

Effective date: March 23, 2007

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

Action taken: Addition of Subpart 197-3 to Title 19 NYCRR.

Statutory authority: Real Property Law, section 444-f

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

Specific reasons underlying the finding of necessity: This rule adopted on an emergency basis to preserve and enhance the public welfare. Article 12-B of the Real Property Law (Home Inspection Professional Licensing Act, which became effective Dec. 31, 2005), requires that no person shall conduct a home inspection for compensation unless that person is licensed as a home inspector in accordance with requirements set forth in the statute, including specific standards for education and experience. Further, section 444f(1) of article 12-B, requires that applicants for renewal of a license as a home inspector must complete a course of continuing education approved by the Secretary of State. Accordingly, to ensure that prospective applicants continue to meet the educational standards required for their profession, this rule has been adopted on an emergency basis. As such, it is similar to those required by other regulatory statutes, and provides a greater measure of assurance to the general public that home inspectors are qualified for licensure.

Subject: Outline requirements for continuing education courses for licensed home inspectors.

Purpose: To establish standards for continuing education courses for licensed home inspectors.

Text of emergency rule: An Amendment to 19 NYCRR Part 197 is adopted to read as follows:

SUBPART 197-3. HOME INSPECTION CONTINUING EDUCATION COURSES

may file a request to the department for review and evaluation. All applicants for such consideration must be submitted with official documentation of satisfactory completion and the official descriptions of the course of study.

(c) All applications for and evidence of equivalency credit must be submitted to the department for consideration at least 30 days prior to the expiration of the license.

Section 197-3.7 Extension of time to complete courses.

The department may grant a waiver to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such a waiver shall submit a written request, together with the evidence demonstrating such hardship. The licensee will be notified if their extension has been granted.

Section 197-3.8 Computation of instruction time.

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 60 minutes.

Section 197-3.9 Attendance and Record Retention.

(a) No licensed person shall receive credit for any course presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course pursuant to section 197-3.3(g) of this Part, and no licensed person shall be absent from the class room except for a reasonable and unavoidable cause.

(b) The person or organization conducting the course shall certify to the department the name of each licensed person who successfully completed the course of study and his or her license unique identification number, and shall maintain its attendance records and a copy of such report for three years and, in addition, shall maintain the following records concerning the course:

(1) the approval number issued by the department for the course;

(2) title and description of the course;

(3) the dates and hours the course was given; and

(4) the names and Unique Identification numbers of the persons who took the course and whether they completed it successfully.

Section 197-3.10 Policies concerning course cancellation and tuition refund.

Any educational institution or other organization requesting from the Department of State approval for home inspection courses must have a policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

Section 197-3.11 Auditing.

A duly authorized designee of the department may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

Section 197-3.12 Change in approved course of study.

There shall be no change or alteration in any approved course of study without prior written notice to, and approval, by the department.

Section 197-3.13 Suspensions and denials of school approval.

The department may deny, suspend or revoke the approval of a home inspection school, if it is determined that they are not in compliance with the law and rules. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his designee.

Section 197-3.14 Open to public.

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any home inspection professional society or organization.

Section 197-3.15 Facilities.

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course.

Section 197-3.16 Faculty.

(a) Each instructor for an approved home inspection course of study must be approved by the Department of State. To be approved, an instructor must submit an application along with a resume reflecting three years of experience as a home inspector during which time the applicant has completed at least 250 home inspections.

(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection.

Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.

Section 197-3.17 Continuing education credit.

No continuing education course will be considered for continuing education credit more than once within the two year cycle of renewal.

Section 197-3.18 Registration period.

Each registration or renewal period for approved programs or courses shall be for 12 months or a part thereof, said period to commence on January 1 or date thereafter and to continue until December 31.

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 June 20, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Kenneth L. Golden, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

Regulatory Impact Statement

1. Statutory authority:

Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law, enacted as Chapter 461 of the Laws of 2004, and amended by the Laws of 2005, ch. 225, provides that no person shall perform a home inspection for compensation unless that person is licensed as a home inspector. The statute sets forth minimum standards of education and experience required to obtain a license as a home inspector. These include the successful completion of an extensive course of study of not less than one hundred forty hours, including at least forty hours of field-based inspections in the presence of a licensed home inspector, professional engineer or architect; performance of not less than one hundred home inspections under the direct supervision of a home inspector, professional engineer or architect; and passing a standardized written examination.

Real Property Law, § 444-f (1) provides that licenses for home inspectors shall be valid for two years, and are subject to renewal only after successful completion of a course of continuing education approved by the Secretary of State in consultation with the home inspection council. This rule fulfills that obligation by outlining the continuing education requirements for home inspectors, and setting appropriate standards for approval of home inspection courses. Accordingly, the Secretary of State has expressed authority to adopt this rule.

2. Legislative objectives:

In enacting Article 12-B of the Real Property Law, the legislature emphasized the significant role played by home inspectors, and the reliance consumers place upon their reports in purchasing homes, especially when encouraged to do so by mortgage lenders. Recognizing that not all persons providing this service may be reliable, this legislation was enacted to provide additional assurance to consumers that those individuals performing such inspections are qualified to do so. The statute sets minimum standards for their profession, which include an extensive course of study of not less than one hundred forty hours, including at least forty hours of field based inspections in the presence of a licensed home inspector, professional engineer or architect; the performance of not less than one hundred home inspections under the direct supervision of a home inspector, professional engineer or architect; and passing a standardized written examination. In addition, all applicants for renewal of a license must have successfully completed a course of continuing education approved by the Secretary of State.

Thus, Article 12-B was designed to "protect the public," especially from those who present themselves as qualified professionals, but without the necessary education and experience.¹ This rule re-enforces the stated objectives of the Legislature when it enacted Article 12-B, by providing appropriate standards for maintaining the skills required by professional home inspectors.

3. Needs and benefits:

Real Property Law § 444-f(1) requires all home inspectors seeking renewal of their licenses to have successfully completed a course of continuing education approved by the Secretary of State, in consultation with the home inspection council. By adopting this rule, the Department of State helps to ensure that all home inspectors who apply for renewal of their licenses will have had the opportunity to meet this statutory requirement.

In addition, consumers benefit from the assurance that persons hired to inspect the homes they purchase continue to meet the qualifications and experience needed to render professional service.

4. Costs:

a. Costs to regulated parties:

Licensees seeking renewal will be required to pay the cost of attending and completing an approved course of study for the required number of

hours. Those costs have not been determined, but are not anticipated to exceed those charged by educational institutions providing instruction and training for continuing education in comparable professions.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation will be minimal, and administration of this rule will be accomplished using existing resources.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The rule requires that each applicant seeking renewal of a home inspector's license obtain and retain certificates as evidence of the successful completion of the required number of hours of continuing education.

7. Duplication:

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

8. Alternatives:

During regular meetings, the state home inspection council reviewed and considered various proposals for compliance with the statutory mandate for continuing education standards, ultimately recommending approval of the number of hours, courses of study, and methods of ensuring compliance adopted by this rule.

9. Federal standards:

There are currently no federal standards requiring continuing education courses for licensed home inspectors.

10. Compliance schedule:

Applicants for renewal of a home inspector's license have two years in which to comply with the continuing education requirement, with a pro-rated reduction for renewal of licenses expiring less than two years from the effective date of this rule.

The Department of State anticipates that the Division of Licensing Services will be able to comply immediately with this rule.

¹ McKinney's Session Laws of New York, 2005, p. 1951

Regulatory Flexibility Analysis

1. Effect of rule:

The rule affects all licensed home inspectors (individuals, firms, companies, partnerships, limited liability companies, or corporations) who seek renewal of a home inspector's license. Each such applicant will be required to expend the time and incur the costs of attending the required number of hours needed for successful completion of an approved course of continuing education, and obtain the certificate as evidence of successful completion of that requirement. However, it is not anticipated that this requirement will place an undue financial burden, or impose a hardship for those applicants seeking to maintain their qualifications for providing professional services to consumers.

The rule does not apply to local governments.

2. Compliance requirements:

Applicants seeking renewal of their licenses will be required to attend and complete an approved course of study of continuing education, and obtain certificates as proof of the successful completion.

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

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

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

4. Compliance costs:

It is anticipated that small businesses will incur only the costs of any fees required for attending and completing an approved course of continuing education.

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

5. Economic and technological feasibility:

It is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

The rule does not affect local governments.

6. Minimizing adverse economic impact:

It is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule, which would require the adoption of alternative practices.

The rule does not affect local governments.

7. Small business and local government participation:

Since the impact on small businesses will be minimal, and the rule will not affect local governments, the Department did not solicit public comment prior to the adoption of this rule. The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies equally to all licensed home inspectors in all areas of the state—urban, suburban and rural.

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

Reporting and recordkeeping requirements are set forth fully in Section 2 of the Regulatory Flexibility Analysis for Small Business and Local Governments.

Applicants for renewal of a home inspector's license in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance as a result of this rule.

4. Minimizing adverse impact:

It is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance requiring the adoption of alternative practices, as a result of this rule.

5. Rural area participation:

Since the impact on small businesses will be minimal and will apply equally throughout all areas of the state, whether urban, suburban or rural, the Department did not solicit comment prior to adoption of this rule. The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. As a result of enactment of Article 12-B of the Real Property Law, which became effective December 31, 2005, any person performing a home inspection for compensation in this state must obtain a license. Licenses are valid for two years, and may be renewed only upon successful completion of an approved course of continuing education. Inasmuch as this rule affects only those licensed home inspectors who seek renewal of license, it promotes employment opportunities by ensuring that only those qualified to provide this service, will be licensed.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Congregate Care Level 3 Enhanced Residential Care

I.D. No. TDA-37-06-00011-A

Filing No. 319

Filing date: March 27, 2007

Effective date: April 11, 2007

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

Action taken: Amendment of section 352.8(b)(4), (i), (ii), (5), (c)(1)(ii) and (d) and addition of section 352.8(b)(4)(iii) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 131-o and 209

Subject: Congregate care level 3 enhanced residential care.

Purpose: To authorize the provision of an allowance for temporary assistance recipients residing in congregate care level 3 facilities.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-37-06-00011-P, Issue of Sept. 13, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@OTDA.state.ny.us

Assessment of Public Comment

The agency received no public comment.