

# 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; 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.

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## Department of Agriculture and Markets

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### ERRATUM

A Notice of Proposed Rule Making, I.D. No. AAM-35-08-00011-P, pertaining to Certification of Seed, published in the August 27, 2008 issue of the *State Register* contained an incorrect hearing date. The correct information is contained in the Hearings Schedule for Proposed Rule Makings. The hearing is as follows:

Experiment Station, Jordan Hall, 2nd Fl., Auditorium, 630 W. North St., Geneva, NY - Oct. 16, 2008, 9:30 a.m.

The Department of State apologizes for any confusion this may have caused.

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## Education Department

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

#### Public Librarian Professional Certificates

I.D. No. EDU-40-08-00021-P

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

**Proposed Action:** Amendment of section 90.7 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 208 (not subdivided), 254 (not subdivided), 272(1)(k)(3) and 279 (not subdivided)

**Subject:** Public librarian professional certificates.

**Purpose:** To require holders of certificates issued on or after January 1, 2010 to complete professional development.

**Text of proposed rule:** Section 90.7 of the Regulations of the Commissioner of Education is amended, effective January 8, 2009 as follows:

§ 90.7 Certificates for librarians in registered public, free association and Indian libraries.

(a) Professional certificates.

(1) Public librarian's professional certificates shall be granted to those who pay the statutory fee [of \$5] pursuant to Education Law section 279 and:

[ (1) (i) have submitted evidence that they hold a graduate library degree from a library school located within New York State which is registered by the State Education Department, or from a library school program which is accredited by the American Library Association; or

[ (2) (ii) hold a conditional certificate and have completed at least six graduate credits in library science from a library school program which has been accredited by the American Library Association or registered by the [department] Department, and two years of satisfactory professional experience in a public library located within the United States.

(2) A public librarian's professional certificate issued before January 1, 2010 shall be continuously valid. A public librarian's professional certificate issued on or after January 1, 2010 shall be continuously valid, provided that the professional development requirements prescribed in subdivisions (c) or (d) of this section are met.

(b) Conditional certificate.

(1) . . .

(2) . . .

(3) The applicant shall pay a statutory fee [of \$5] pursuant to Education Law section 279 for the evaluation of credentials pursuant to this subdivision and the issuance of a conditional certificate.

(c) [Exchange of certificates. Holders of the (1) librarian's graduate library school life certificate, or (2) librarian's professional life certificate shall receive the public librarian's professional certificate upon application.] Professional development requirements for public librarian professional certificate holders employed by a library or library system.

(1) Except as provided in subdivisions (d) and (e) of this section, each holder of a public librarian's professional certificate issued on or after January 1, 2010, who is employed by a library or library system, in order to maintain the continuous validity of such professional certificate, shall complete 60 hours of professional development within each immediately succeeding five-year period thereafter, as measured from the date of initial issuance of the holder's certificate.

(2) Professional development shall consist of instruction and/or activities, as pre-approved by the employing library, employing library system or the State Education Department, relating to:

(i) library science;

(ii) information science;

(iii) computer science;

(iv) management;

(v) public administration;

(vi) public relations;

(vii) human relations;

(viii) human resources;

(ix) education; and/or

(x) any other relevant subject areas.

(3) Applications for pre-approval of professional development programs shall be in a format and submitted pursuant to a timeline prescribed by the employing library, employing library system or the State Education Department, as applicable.

(4) Professional development may be provided in:

(i) formal classes or coursework;

(ii) workshops;

(iii) e-courses;

- (iv) seminars;
- (v) institutes;
- (vi) lectures;
- (vii) State or national library association conference programs;

and/or

(viii) any other program format or content, as pre-approved by the employing library, employing library system or the State Education Department.

(5) Professional development may be provided by:

(i) an institution of higher education registered by the State Education Department or accredited by an accrediting association recognized by the United States Department of Education;

(ii) a government agency;

(iii) a state or national library association;

(iv) a public library system;

(v) a reference and research library resources system;

(vi) a school library system; or

(vii) any other institution or provider as pre-approved by the employing library, employing library system, or the State Education Department.

(6) Up to 12 hours of the required 60 hours in professional development may include:

(i) supervised internship(s) for which no academic credit is awarded;

(ii) instructional activities that include relevant content both created by and delivered by the public librarian professional certificate holder; and/or

(iii) a supervised development project in a relevant content area for which no academic credit is awarded.

(d) Professional development requirements for public librarian professional certificate holders not employed in a library or library system. Each holder of a public librarian professional certificate issued on or after January 1, 2010, who is not employed by a library or library system, in order to maintain the continuous validity of such professional certificate, shall complete professional development in accordance with the requirements of subdivision (c) of this section, provided that the required 60 hours in professional development shall be reduced by ten percent for each year, within the five-year period, that the certificate holder is not employed by a library or library system.

(e) Temporary Certificate.

(1) As used in this subdivision "eligible applicant" shall mean:

(i) a holder of a public librarian's professional certificate who has not completed the professional development requirements pursuant to subdivision (c) or (d) of this section; or

(ii) a holder of a public librarian's professional certificate who is found through audit to have insufficient or unacceptable evidence of completion of the professional development requirements pursuant to subdivisions (c) or (d) of this section.

(2) An eligible applicant may apply at any time to the Commissioner, in a format prescribed by the Commissioner, for a temporary certificate valid for appointment to any level public, free association and Indian librarian position in a library or library system in the same manner as a public librarian's professional certificate. The applicant shall pay the statutory fee pursuant to Education Law section 279 for each temporary certificate.

(3) Such temporary certificate shall be valid for one year from date of issuance or until such time as the valid professional certificate is reinstated pursuant to paragraph (4) of this subdivision, whichever occurs first.

(4) In order to be reinstated as a holder of a valid professional certificate, the holder of a temporary certificate shall submit to the Commissioner evidence of completion of the professional development requirements as set forth in subdivisions (c) or (d) of this section, as applicable, that are lacking from the previous five-year period, as well as completion of one additional hour of professional development per month during the period of temporary certification.

**Text of proposed rule and any required statements and analyses may be obtained from:** Lisa Struffolino, State Education Department, Office of Counsel, State Education Building, Room 148, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Jeffrey W. Cannell, Deputy Commissioner for Cultural Ed, State Education Department Office of State Librarian, Rm 10C34 Cultural Education Center, Albany, NY 12230, (518) 474-5930, email: ppaolucc@mail.nysed.gov

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Education Law section 207 authorizes the Board of Regents and the

Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 208 authorizes the Board of Regents to award and confer suitable certificates, diplomas, and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 254 authorizes the Regents to fix standards of library service.

Education Law section 272(1)(k)(3) authorizes the Commissioner to adopt regulations relating to professional librarian services.

Education Law section 279 authorizes a fee for each public librarian's certificate or school librarian's certificate issued pursuant to Part II of Article 5 of the Education Law.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the Legislative intent of the above statutes that the Commissioner of Education promulgate regulations governing the certification of professional public librarians in the State's public libraries to ensure that librarians are properly prepared to meet the information needs of the population of the State.

##### 3. NEEDS AND BENEFITS:

The proposed amendment is necessary to ensure that the Commissioner's Regulations are in compliance with a Regents policy recommendation to "establish a certification process to promote excellence in New York's library workforce at all stages and levels", published in *Meeting the Needs of All New Yorkers: Library Service in the New Century: Final Report of the Regents Commission on Library Services* (2000). The proposed amendment will ensure that public librarian professional certificate holders certified on or after January 1, 2010 will participate in continuous professional development.

##### 4. COSTS:

(a) Costs to the State: see costs to the State Education Department below.

(b) Costs to local governments: none. The proposed amendment concerns professional development requirements for holders of public librarian professional certificates and does not impose any additional costs on local governments.

(c) Costs to regulated parties: Costs to certificate holders could range from no cost to \$5,000 depending on which provider an individual selects. Individuals that choose to take advantage of the frequent no-cost professional development opportunities provided by the State Library and the State funded network of library systems could achieve the required 60 hours of professional development for no cost. These courses are offered both in person and online. Individuals that choose to enroll in formal credit courses offered by public colleges or universities might expect to pay as much as \$5,000 for 60 credit hours. A typical online course from an approved online provider costs \$120 for 3 credits. These online courses occur over several weeks. Thus an average cost for an individual to meet the 60 hour requirement through online professional development courses would be \$1,200.

(d) Costs to the State Education Department: The annual cost to the State Education Department is estimated at approximately \$55,000. This is comprised of percentages of salaries for those employees who will administer the enhanced certification process as well as website development and physical supplies. However, it is anticipated that a proposed amendment to Education Law § 279 will be sought in the 2009 legislative session that would increase the fees for public librarian certification so as to cover in part the increased program administration costs. Assuming that Education Law § 279 is amended to raise the certificate fees from \$5 to \$50, the projected revenue for professional, conditional, and temporary certificates is estimated to be approximately \$30,000 a year. Therefore the annual cost to the Department will be approximately \$25,000. Only an estimate can be provided because the actual number of certificates will vary from year to year.

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns professional development requirements for holders of public librarian professional certificates and does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district. The proposed amendment is needed to conform the Commissioner's Regulations to Regents policy, as discussed in the Needs and Benefits section above.

##### 6. PAPERWORK:

The proposed amendment will require public librarian professional certificate holders, who are initially certified on or after January 1, 2010, to document participation in approved professional development activities in five-year increments. The State Education Department's New York State Library will randomly audit documentation provided by ten individuals per month beginning in January 2015 in order to ensure compliance with professional development requirements.

##### 7. DUPLICATION:

The proposed amendment duplicates no existing State or federal requirements and is necessary to conform the Commissioner's Regulations to Regents policy.

8. ALTERNATIVES:

The Department considered imposing the professional development requirement on all holders of public librarian professional certificates. This alternative was rejected upon consideration that, because people enter a profession with certain expectations, it would be unfair to retroactively impose continuous professional development requirements for those librarians who are already certified. Upon adoption of the proposed amendment, the Department plans to notify all the Library Schools in New York State to ensure that the continuous professional development requirements are made clear to students embarking on the path towards professional librarian certification.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government.

10. COMPLIANCE STANDARDS:

Since the proposed amendment only affects librarians seeking professional certification as a public librarian beginning January 1, 2010 and thereafter, it is anticipated that new public librarian professional certificate holders as well as those administering the certificates in the State Education Department's State Library will be able to achieve compliance with these changes by that date.

**Regulatory Flexibility Analysis**

The proposed amendment concerns professional development requirements for holders of public librarian professional certificates and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements, or costs on small businesses or local governments. The proposed amendment will ensure that public librarian professional certificate holders, who are issued certificates on or after January 1, 2010, participate in continuous professional development, therefore implementing Regents policy to "establish a certification policy to promote excellence in New York's library workforce". Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

**Rural Area Flexibility Analysis**

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to holders of public librarian professional certificates, who are initially certified on or after January 1, 2010, and who work in any professional position in public, free association, and Indian libraries serving populations of over 7,500 and public library systems and reference and research library resources systems, including those located in the 44 rural counties having less than 200,000 inhabitants and in the 71 towns within urban counties having a population density of 150 persons per square mile or less.

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

The proposed amendment is needed to ensure that the Commissioner's Regulations are in compliance with a Regents policy recommendation to "establish a certification process to promote excellence in New York's library workforce at all stages and levels", published in *Meeting the Needs of All New Yorkers: Library Service in the New Century: Final Report of the Regents Commission on Library Services* (2000).

The proposed amendment will require public librarian professional certificate holders, who are initially certified on or after January 1, 2010, to complete 60 hours of approved professional development every five years, and document their participation. The State Education Department's New York State Library will randomly audit documentation provided by ten individuals per month beginning in January 2015 in order to ensure compliance with professional development requirements.

3. COMPLIANCE COSTS:

Costs to certificate holders could range from no cost to \$5,000 depending on which provider an individual selects. Individuals that choose to take advantage of the frequent no-cost professional development opportunities provided by the State Library and the State funded network of library systems could achieve the required 60 hours of professional development for no cost. These courses are offered both in person and online. Individuals that choose to enroll in formal credit courses offered by public colleges or universities might expect to pay as much as \$5,000 for 60 credit hours. A typical online course from an approved online provider costs \$120 for 3 credits. These online courses occur over several weeks. Thus an average cost for an individual to meet the 60 hour requirement through online professional development courses would be \$1,200.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to ensure that the Commis-

sioner's Regulations are in compliance with Regents policy to ensure that public librarian professional certificate holders participate in continuous professional development. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on regulated parties. In order to ensure uniform, State-wide high standards for certificate holders, the proposed amendment applies to all prospective holders of public librarian professional certificates residing State-wide and, accordingly, it was not possible to provide for a lesser standard or exemption for those residing in rural areas.

5. RURAL AREA PARTICIPATION:

The New York Library Association (NYLA), whose membership includes libraries located in rural areas, in consultation with the New York State Library developed a new proposal to address the Regents policy recommendation. NYLA leaders presented the proposal to the Regents Cultural Education Committee in July 2008 and the Committee directed the State Library to proceed with implementation. Implementation will require amendments to Commissioner's Regulation 90.7 Certificates for librarians in registered public, free association and Indian Libraries.

In September 2007 NYLA leadership began discussing a variety of options to improve the skills of the library workforce in New York State in order to address Regents policy. During the past ten months, the NYLA Continuing Education Committee has worked with NYLA members, the New York State Library and with the statewide library community to develop a new proposal that would equip New York State's new public librarians to meet the changing information needs of New Yorkers and continue to provide first-class library service throughout their professional careers.

NYLA leadership officially adopted the proposal and in July 2008 sought Regents support for implementation. The Board of Regents directed the State Library to begin the process for amending Commissioner's Regulation 90.7

**Job Impact Statement**

The proposed amendment concerns professional development requirements for holders of public librarian professional certificates and will not have an adverse impact on job or employment opportunities. The proposed amendment will ensure that public librarian professional certificate holders, who are issued certificates on or after January 1, 2010, participate in continuous professional development, therefore implementing Regents policy to "establish a certification policy to promote excellence in New York's library workforce". Although the proposed amendment will affect requirements for public librarian professional certificates, it will not affect the number of librarian positions available to certificate holders. Because it is evident from the nature of the proposed amendment that it will have no adverse impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Department of Environmental Conservation

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

**Sanitary Condition of Shellfish Lands**

**I.D. No.** ENV-40-08-00006-EP

**Filing No.** 864

**Filing Date:** 2008-09-15

**Effective Date:** 2008-09-15

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

**Proposed Action:** Amendment of section 41.3 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 13-0307 and 13-0319

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

**Specific reasons underlying the finding of necessity:** Shellfish harvested from areas that do not meet the bacteriological standards for certified shellfish lands have an increased potential to cause illness in shellfish consumers.

Recent bacteriological water quality testing in the areas of Flax Pond in the Town of Brookhaven and Spring Pond in the Town of Southold have shown elevated levels of coliform bacteria. These areas now no longer meet the bacteriological water quality standards specified in 6 NYCRR Part 47. The presence of high levels of coliform bacteria indicate the potential presence of disease causing bacteria and viruses in the water. Shellfish are filter feeders and have the ability to concentrate large amounts of bacteria or viruses from the water into their bodies. This significantly increases the risk of illness to the shellfish consuming public. Shellfish lands that do not meet the bacteriological water quality standards must be closed immediately to keep potentially harmful shellfish from reaching consumers and to prevent recreational harvesters from consuming contaminated shellfish. This emergency closure of shellfish lands is essential to protect the public health.

**Subject:** Sanitary Condition of Shellfish Lands.

**Purpose:** To prohibit the harvest of shellfish from areas that do not meet water quality standards.

**Text of emergency/proposed rule:** 6 NYCRR Part 41, Sanitary Condition of Shellfish Lands, is amended to read as follows:

Section 41.0 through clause 41.3 (b)(7)(xiii)('d') remain unchanged.

New clause 41.3(b)(7)(xiii)('e') is adopted to read as follows:

(*e*) *Spring Pond. During the period January 1 through December 31, both dates inclusive, all that area of Spring Pond including tributaries.*

New clause 41.3(b)(7)(xiii)('f') is adopted to read as follows:

(*f*) *During the period January 1 through December 31, both dates inclusive, all that area in Orient Harbor within 500 feet in all directions of the southeastern end of the easternmost bulkhead at the entrance to Spring Pond.*

Subparagraph 41.3(b)(7)(xiv) through subparagraph 41.3(b)(9)(ii) remain unchanged.

Subparagraph 41.3(b)(9)(iii) is repealed.

New subparagraph 41.3(b)(9)(iii) is adopted to read as follows:

*During the period January 1 through December 31, both dates inclusive, all that area of Flax Pond, including tributaries, lying southerly of a line extending easterly from the northernmost point of the western jetty to the northernmost point of the eastern jetty at the inlet.*

Subparagraph 41.3(b)(9)(iv) through the end of Part 41 remain unchanged.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 13, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Melissa Albino, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733, (631) 444-0491, email: maalbino@gw.dec.state.ny.us

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

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

**Additional matter required by statute:** Pursuant to the State Environmental Quality Review Act, a Negative Declaration and a short Environmental Assessment Form is on file with the Department of Environmental Conservation. A Coastal Assessment Form was prepared.

#### Regulatory Impact Statement

Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is Environmental Conservation Law (ECL) section 13-0307. Subdivision 1 of section 13-0307 of the ECL requires the department to periodically conduct examinations of shellfish lands within the marine district to ascertain the sanitary condition of said lands. Subdivision 2 of this section requires that the department certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified.

The statutory authority for promulgating regulations with respect to the harvest of shellfish is section 13-0319 of the ECL.

Legislative objectives:

There are two purposes of the legislation: to protect public health and to ensure that shellfish lands are appropriately classified as certified or uncertified for the harvest of shellfish. This legislation requires the department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in Part 47 of Title 6 NYCRR, promulgated pursuant to section 13-0319 of the ECL. Shellfish lands which meet these criteria must be designated as certified. Shellfish lands which do not meet criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

Needs and benefits:

To protect public health and to comply with ECL 13-0307, the Bureau of Marine Resources' shellfish sanitation program conducts and maintains

sanitary surveys of shellfish growing areas (SGA) in the marine district of New York State. Maintenance of these surveys includes the regular collection and bacteriological examination of water samples to monitor the sanitary condition of shellfish growing areas and shoreline surveys to document actual and potential pollution sources.

Annually, water quality evaluation reports are prepared by the staff of the shellfish sanitation program for each SGA which contains certified shellfish lands. These reports present the results of statistical analyses of water quality data gathered by the program, and annual updates to the shoreline pollution source surveys. Each report includes a summary and recommendations for the appropriate classification of that particular shellfish growing area. The report summary may state that all or portions of an SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of, an SGA should be designated as certified for the harvest of shellfish based on criteria in 6 NYCRR Part 47. These reports are on file at the Bureau of Marine Resources office in East Setauket, New York.

The most recent Annual Review of Central Long Island Sound, dated April 2008, indicates that water quality in the certified portion of Flax Pond no longer meets bacteriological criteria for certified shellfish lands, as specified in 6 NYCRR Part 47, year round. It recommends that all of Flax Pond be designated as uncertified year round and the harvesting of shellfish will no longer be permitted.

Additionally, the most recent Annual Review of Orient Harbor, dated February 2008, indicates that water quality in Spring Pond no longer meets bacteriological criteria for certified shellfish lands, as specified in 6 NYCRR Part 47, year round. It recommends that all of Spring Pond, including a radial closure around the mouth, be designated as uncertified year round and the harvesting of shellfish will no longer be permitted.

Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non-capital expenses, in order to comply with these proposed regulations.

The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are designated as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of December 31, 2007, the department had issued 1,727 New York State shellfish digger's permits. However, the actual number of those individuals who harvest shellfish commercially full-time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish diggers permits for that type of recreational harvest is unknown. The department's records do not differentiate between full-time and part-time commercial or recreational shellfishing.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. Harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to designate areas as certified or uncertified are not dependent on the resources in a particular area. They are based solely on public health concerns and legal mandates.

There is no cost to the department. Administration and enforcement of the proposed amendment are covered by existing programs.

Local government mandates:

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

Paperwork:

No new paperwork is required.

Duplication:

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

Alternatives:

There are no significant alternatives. By law (ECL section 13-0307), when the department has determined that a certified shellfish land fails to meet the sanitary criteria for certified shellfish lands, the department shall designate the land as uncertified and close the area to shellfish harvesting.

Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards

among members. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary - each state adopts its own standards. The United States Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non-conformity with NSSP guidelines can result in sanctions being taken by FDA and the NSSP, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non-conforming state's shellfish product from interstate commerce.

Compliance schedule:

Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes to SGA classification by mail either prior to, or concurrent with, the adoption of new regulations.

Compliance with new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties in order to comply, except that harvesters must observe the new closure lines. Therefore, immediate compliance can be readily achieved.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. ENV-25-08-00001-P, Issue of June 18, 2008.

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

Amendments to Part 41 will not impose an adverse impact on rural areas. Only the State's marine district will be directly affected by regulatory initiatives to open or close shellfish lands. The Department of Environmental Conservation has determined that there are no rural areas within the marine district, and no shellfish lands within the marine district are located adjacent to any rural areas of the state. The proposed regulations will not impose reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by amendments of Part 41 "Sanitary Condition of Shellfish Lands" of Title 6 NYCRR, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not required.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. ENV-25-08-00001-P, Issue of June 18, 2008.

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## Department of Motor Vehicles

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### EMERGENCY RULE MAKING

#### **Renewal of Driver's Licenses and Enhanced Driver's Licenses**

**I.D. No.** MTV-40-08-00005-E

**Filing No.** 863

**Filing Date:** 2008-09-15

**Effective Date:** 2008-09-15

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

**Action taken:** Amendment of section 3.3 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 502(6)(a) and (b)

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

**Specific reasons underlying the finding of necessity:** Securing the State's borders.

**Subject:** Renewal of driver's licenses and enhanced driver's licenses.

**Purpose:** Establishes renewal cycles for driver's licenses and enhanced driver's licenses.

**Text of emergency rule:** Subdivision (b) of section 3.3 is amended to read as follows:

(b) Renewal of a license *and enhanced driver license*. A valid driver license may be renewed if the applicant is qualified for renewal of the license by making application on a form provided for such purpose to a

motor vehicle office from [six months] *one year* prior to two years after the date of expiration of the prior license, paying the appropriate fees, passing a vision test and having his or her photo image taken. Thereafter, the renewed standard license document shall be mailed to the licensee. *Notwithstanding any inconsistent provision of this subdivision, a licensee making application for an enhanced driver license issued pursuant to section 503(2)(f-1) of the Vehicle and Traffic Law may renew more than one year prior to the expiration of their driver license, but in no event earlier than six months from the issuance of the driver license being renewed. The enhanced driver license document shall be mailed to the licensee.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 13, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Carrie L. Stone, Counsel's Office, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871.

#### **Regulatory Impact Statement**

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate the control and exercise of the powers of the Department. VTL section 508(1) provides that the Commissioner shall appoint agents to act on his behalf to issue drivers licenses and authorizes him or her to prescribe internal procedures to be followed by such agents with respect to such matters. VTL section 508(4) authorizes the Commissioner to promulgate regulations with respect to the administration of the provisions of Article 19, Licensing of Drivers. VTL section 503(1) provides that a driver's license shall be valid from the date of issuance until the date of expiration determined by the Commissioner. VTL section 503(2)(c) establishes the fees for the renewal of driver licenses for each six month interval or a portion thereof. VTL section 502(6)(a) provides for the renewal of driver licenses and VTL section 502(6)(b) provides the time for renewal of driver licenses.

2. Legislative objectives: The Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, established several measures to enhance the security of the United States. One proposal was the Western Hemisphere Travel Initiative (WHTI), as set forth by the Department of Homeland Security (DHS) in the June 26, 2007 and April 3, 2008 issues of the Federal Register. A key component of WHTI is the issuance of an enhanced driver's license (EDL) that will enable US citizens to more easily enter the United States at land and sea crossings. On October 26, 2007, the Department of Motor Vehicles (DMV) entered into a Memorandum of Agreement with DHS for the issuance of EDL's. Pursuant to that agreement, DMV intends to begin the issuance of EDLs on September 16, 2008.

3. Needs and benefits: DMV currently issues 8-year renewals of driver licenses. DMV's current practice allows renewals of driver licenses for another 8-year period up to 1-year prior to the date of expiration of the license. However, if a licensee applies for an EDL prior to the current "window" for renewal ("off-cycle"), the EDL must be processed as an "amendment" of the current license under Vehicle and Traffic Law, Section 505(4), and a \$30.00 EDL fee will be applied in addition to a \$10.00 amendment fee. There is no provision of law that authorizes a proration of the \$30.00 fee, based upon the remaining validity of the current license. Therefore, at the time of the next renewal, the licensee will have to pay another \$30.00 EDL fee in addition to the standard renewal fees.

The proposed regulation would amend 15 NYCRR Part 3.3(b) to provide that licensees making application for an EDL may opt to renew the license more than one year prior the expiration of their driver license, effectively "re-setting" their 8-year renewal term. By permitting this "off-cycle" renewal, licensees will receive an EDL valid for a full 8 years for the \$30.00 fee and will receive a proration of the license renewal fees based on the number of years left in their current renewal cycle. New Yorkers will be more apt to see the EDL as the travel document of choice if the cost of obtaining one compares favorably with the cost of obtaining alternative documents, such as a passport or PASS card.

The proposed regulation also amends the time to renew a state (i.e., non-EDL) driver license from six months to one year prior to the date of its expiration. This change simply reflects the current DMV policy and procedure regarding renewal of a state driver license.

Lastly, the proposed regulation provides that an application for an EDL may not be made until at least six months from the issuance of the current driver license. Credits for purposes of calculating fees in license renewal cycles are calculated in 6-month intervals. In order to properly calculate credits for an EDL applicant, at least one 6-month cycle from the beginning of a license period needs to be completed.

4. Cost: To the State: For purposes of this emergency regulation, DMV's expenditure of resources for IT staff and management to implement EDL "off-cycle" renewals is approximately \$130,000.00.

5. Cost to local governments: County clerks, as agents of the Commissioner under VTL section 205, will be issuing EDLs. However, there will be no costs to the counties to process "off-cycle" renewals.

6. Paperwork: There are no new paperwork requirements associated with this rulemaking.

7. Duplication: This proposed regulation does not duplicate or conflict with any current State or Federal rule.

8. Alternatives: The proposed regulation is necessary in order to offer consumers the option of obtaining "off-cycle" license renewals when applying for EDLs. Although the Department weighed the costs and benefits of this proposal, a "no action alternative" was deemed insupportable in light of the undue burden such an alternative would have imposed on EDL applicants.

9. Federal standards: This rule does not exceed or conflict with any federal law or regulation.

10. Compliance schedule: Upon adoption of the regulation.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this rule because it has no adverse consequences for small businesses or local government.

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

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development in the state.

### **NOTICE OF ADOPTION**

#### **It Is Necessary for the Issuance of the Enhanced Driver's License, Which Shall Increase the Security of New York State's Border**

**I.D. No.** MTV-31-08-00015-A

**Filing No.** 867

**Filing Date:** 2008-09-16

**Effective Date:** 2008-10-01

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

**Action taken:** Amendment of section 3.3 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 508(1) and (4)

**Subject:** It is necessary for the issuance of the Enhanced Driver's License, which shall increase the security of New York State's border.

**Purpose:** Authorizes the fingerprinting of certain employees who are involved in the issuance of Enhanced Driver's Licenses.

**Text or summary was published** in the July 30, 2008 issue of the Register, I.D. No. MTV-31-08-00015-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Carrie L. Stone, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871.

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

The agency received no public comment.

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

#### **Display of Registration Numbers on Snowmobiles**

**I.D. No.** MTV-40-08-00003-P

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

**Proposed Action:** This is a consensus rule making to amend section 107.11 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 2223

**Subject:** Display of registration numbers on snowmobiles.

**Purpose:** To establish the manner in which snowmobile registration stickers are displayed.

**Text of proposed rule:** Part 107 is amended by adding new section 107.11 to read as follows:

*107.11 Display of registration sticker*

(a) "Cowling" shall mean the forward portion of the snowmobile usually surrounding the motor and clutch assembly.

(b) *The New York registration shall be displayed by affixing the registration sticker issued by the Commissioner on the cowling of the snowmobile on both the right and left side of the cowling below the windshield on a vertical plane so as to provide an unobstructed view of the registration numbers by a person viewing the snowmobile from either side. For an illustration of this, please refer to the diagram below and depicted on the back side of the registration stickers provided.*

See Appendix in this issue of the Register.

**Text of proposed rule and any required statements and analyses may be obtained from:** Carrie L. Stone, Department of Motor Vehicles, Counsel's Office, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871.

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

**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.**

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

Section 2223 of the Vehicle and Traffic Law states that the registration numbers assigned to a snowmobile shall be displayed on the vehicle at all times in such manner as the commissioner may, by regulation, prescribe. This section authorizes the Department to establish the rules and regulations to prescribe the manner in which in which the registration numbers provided by the Department will be displayed. This proposal sets forth these rules and regulations. This regulation follows, and is consistent with, the statutory requirements of Section 2223. The proposed procedures are minor in nature and would have no adverse impact on the parties.

This is submitted as a consensus rule because the DMV consulted with the Office of Parks, Recreation and Historic Preservation and the New York State Snowmobile Association, and they had no objection to this rule. In addition, the rule merely establishes procedures in order to implement the mandates of the law.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

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## **Public Service Commission**

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

#### **The Disposition, Pursuant to PSL Section 113(2) of Property Tax Refunds from the Town of Mount Pleasant, New York**

**I.D. No.** PSC-40-08-00015-P

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

**Proposed Action:** The Commission is considering whether to approve or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) regarding the allocation of property tax refunds from the Town of Mount Pleasant, New York.

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

**Subject:** The disposition, pursuant to PSL Section 113(2) of property tax refunds from the Town of Mount Pleasant, New York.

**Purpose:** The disposition, pursuant to PSL Section 113(2) of property tax refunds from the Town of Mount Pleasant, New York.

**Public hearing(s) will be held at:** 11:00 a.m., Oct. 15, 2008\* at Public Service Commission, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY; Various times, October 16-17, 2008; Oct. 20-24, 2008; and Oct. 27-30, 2008, as necessary at Public Service Commission, Three Empire State Plaza, 19th Fl. Board Rm., Albany, NY.

\*On occasion, there will be requests to postpone or reschedule and scheduling changes will be available on the DPS website ([www.dps.state.ny.us](http://www.dps.state.ny.us)) for Case 08-M-0618.

**Interpreter Service:** Interpreter services will be made available to hearing impaired 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.

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

**Substance of proposed rule:** The Public Service Commission (Commission) is considering whether to approve or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) regarding the allocation of certain property tax refunds in the amount of \$434,000 from the Town of Mount Pleasant, New York. Con Edison proposes that 14% of the refunds, or about \$59,000, be allocated to the Company in accordance with the Commission's 2005 Rate Order. The remaining balance of approximately \$362,000 would be deferred for the benefit of Con Edison customers.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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.

(08-M-0618SA1)

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

**Modification of the RPS Tier Allocations, Annual Targets, Schedule of Collections and Administration Entity**

**I.D. No.** PSC-40-08-00007-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Renewable Portfolio Standard (RPS) program to increase the target level of photovoltaics & other on-peak resources in high-cost areas.

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

**Subject:** Modification of the RPS tier allocations, annual targets, schedule of collections and administration entity.

**Purpose:** To consider increased on-peak renewable resources in high-cost areas and potential utility administration of such resources.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Renewable Portfolio Standard (RPS) program to increase the target level of photovoltaics & other on-peak resources in high-cost areas. The nature of siting opportunities for most of the renewable resources encouraged to date in the RPS program is that they have been located primarily in upstate New York outside of the higher-cost load pocket areas of the New York City metropolitan area. The Commission is considering whether the RPS tier allocations should be modified, or a new tier should be created, to increase the target level of photovoltaics & other on-peak resources in high-cost areas. The Commission is also considering whether the annual targets and schedule of collections should be modified to account for such changes to the RPS program. The RPS program is currently administered on a statewide basis by the New York State Energy Research and Development Authority (NYSERDA). The Commission is considering whether a targeted program to increase the level of photovoltaics & other on-peak renewable resources in the higher-cost load pocket areas in the New York City metropolitan area, including the targeting of particular network locations in need of load relief, would be better administered directly by the local electric utility. In addition, the Commission is considering whether the higher acquisition cost of photovoltaics & other on-peak renewable resources might be better financed directly by the utility as a ratebase addition or in some other manner.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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

(03-E-0188SA18)

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

**Interconnection of the Networks between Citizens and Finger Lakes for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-40-08-00008-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Citizens Telecommunications Company of NY (Citizens) for approval of an Interconnection Agreement and Amendment One with Finger Lakes Technologies Group executed on August 1, 2008.

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

**Subject:** Interconnection of the networks between Citizens and Finger Lakes for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Citizens and Finger Lakes.

**Substance of proposed rule:** Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications and Finger Lakes Technologies Group have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications and Finger Lakes Technologies Group will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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.

(08-C-1024SA1)

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

**Disposition of Tax Refund**

**I.D. No.** PSC-40-08-00009-P

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

**Proposed Action:** The PSC is considering a petition filed by Verizon New York Inc. to retain \$5.7 million, the regulated, intrastate New York portion of an approximately \$9.4 million property tax refund it received from the Town of Oyster Bay on June 25, 2008.

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

**Subject:** Disposition of tax refund.

**Purpose:** To determine how much of a tax refund should be retained by Verizon New York Inc.

**Substance of proposed rule:** On August 21, 2008, Verizon New York Inc. (Verizon) filed a petition proposing the disposition of that portion of a tax refund allocable to its regulated, intrastate New York operations. The tax refund of approximately \$9,381,000 was the result of the settlement of claims related to Verizon's real property assessments in The Town of Oyster Bay. Verizon requests permission to retain that portion of the tax refund allocable to its regulated, intrastate New York operations, of approximately \$5,712,000. The Commission may approve or reject, in whole or in part, Verizon's request.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brillling@dps.state.ny.us

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

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

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.

(08-C-0999SA1)

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

**Loans from Regulated Company to its Parent**

**I.D. No.** PSC-40-08-00010-P

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

**Proposed Action:** The Commission is considering a request by Margaretville Telephone Company for approval of a cash management program which will result in the transfer of funds, or loans, between itself and its parent.

**Statutory authority:** Public Service Law, section 106

**Subject:** Loans from regulated company to its parent.

**Purpose:** To determine if the cash management program resulting in loans to the parent should be approved.

**Substance of proposed rule:** By petition dated August 29, 2008, American Broadband Communications, LLC, *et. al.*, sought approval for the acquisition of Margaretville Telephone Company. In conjunction with the acquisition, the participants seek to establish a cash management program which will result in the transfer of cash between the regulated company and its parent. The Commission is considering whether to grant or deny, in whole or in part, approval of the program to allow transfers (effectively loans) between the regulated company and its parent.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brillling@dps.state.ny.us

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

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

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.

(08-C-1045SA1)

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

**Approval of a Transfer of Ownership Interests in Generation Facilities**

**I.D. No.** PSC-40-08-00011-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 a petition from Equus Power I, L.P. and Pinelawn Power LLC requesting approval of a transfer of ownership interests in generation facilities.

**Statutory authority:** Public Service Law, section 70

**Subject:** Approval of a transfer of ownership interests in generation facilities.

**Purpose:** Consideration of approval of a transfer of ownership interests in generation facilities.

**Substance of proposed rule:** The Public Service Commission is considering a petition from Equus Power I, L.P. (Equus) and Pinelawn Power LLC (Pinelawn) requesting approval of a transfer of ownership interests in an approximately 47 MW gas-fired generation facility owned by Equus and located in Freeport, NY and an approximately 79.9 MW dual-fueled generation facility owned by Pinelawn and located in the Town of Babylon, NY. J-POWER USA Generation, L.P. will acquire, indirectly, indirect ownership interests in Equus from Harbinger Independent Power Fund LLC and Freeport Power LLC and direct ownership interests in Pinelawn from Harbinger Pinelawn LLC and DJ Power LLC. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brillling@dps.state.ny.us

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

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

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.

(08-E-1069SA1)

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

**Petition for the Submetering of Electricity**

**I.D. No.** PSC-40-08-00012-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by East Coast 5, LLC, to submeter electricity at 46-30 Center Boulevard, Long Island City, New York.

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

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

**Purpose:** To consider the request of East Coast 5, LLC, to submeter electricity at 46-30 Center Boulevard, Long Island City, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Banner Avenue, LLC, to submeter electricity at 2750 East 12th Street, in Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany,

New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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.

(08-E-1073SA1)

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

**Individual Service Agreements**

**I.D. No.** PSC-40-08-00013-P

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

**Proposed Action:** The Commission is considering a tariff filing by Village of Frankfort to establish a new Service Classification No. 7 — Individual Service Agreements.

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

**Subject:** Individual Service Agreements.

**Purpose:** To establish a new service classification for individual service agreements.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by the Village of Frankfort to establish a new Service Classification No. 7 — Individual Service Agreements.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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.

(08-E-1074SA1)

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

**Petition for the Submetering of Electricity**

**I.D. No.** PSC-40-08-00014-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Trump Parc East Condominium, to submeter electricity at 100 Central Park South, New York, New York.

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

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

**Purpose:** To consider the request of Trump Parc East Condominium, to submeter electricity at 100 Central Park South, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by

Trump Parc East Condominium, to submeter electricity at 100 Central Park South, in New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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.

(08-E-1076SA1)

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

**Modification of the RPS Base Forecast, Goals, Tier Allocations, Annual Targets and Schedule of Collections**

**I.D. No.** PSC-40-08-00016-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Renewable Portfolio Standard (RPS) program, including base forecast, goals, tier allocations, annual targets and schedule of collections.

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

**Subject:** Modification of the RPS base forecast, goals, tier allocations, annual targets and schedule of collections.

**Purpose:** To re-calibrate the RPS program in light of experience and current circumstances.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Renewable Portfolio Standard (RPS) program, including base forecast, goals, tier allocations, annual targets and schedule of collections. The base forecast of electricity usage in New York State against which the RPS goals are applied is currently the forecast contained in the 2002 New York State Energy Plan. The Commission is considering updating the base forecast using a 2007 forecast of electricity usage in New York State developed in Case 07-M-0548, the Energy Efficiency Portfolio Standard (EEPS) proceeding. The Commission is also considering updating the base forecast using a post-EEPS forecast of electricity usage in New York State, also developed in the EEPS proceeding, incorporating successful deployment of the targeted levels of energy efficiency planned in the EEPS case into the forecast. The current goal of the RPS program is to increase New York's usage of renewable resources to generate electricity to 25% by 2013. The Commission is considering whether to increase the goal to 30% by 2015 or to otherwise adjust the goal. The RPS program targets are currently divided into tiers. If the Commission modifies the base forecast or the goal, the Commission will consider whether the targets by tier should be adjusted proportionally or on some other basis. The Commission is also considering whether the annual targets should be modified to account for such changes to the RPS program. The Commission is also considering whether the schedule of collections should be modified to account for such changes to the RPS program, to specify collection levels beyond 2013 necessary to fund contracts extending beyond 2013, and to fund maintenance resources and administrative costs not yet accounted for in the current schedule of collections.

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New

York 12223-1350, (518) 474-6530, email:  
jaclyn\_brilling@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-0188SA19)

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

**Deferred Accounting Treatment and Rate Recovery of Unrecovered Property Tax Expenses**

**I.D. No.** PSC-40-08-00017-P

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

**Proposed Action:** The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. to defer and recover extraordinary property tax expenses.

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

**Subject:** Deferred accounting treatment and rate recovery of unrecovered property tax expenses.

**Purpose:** To defer and recover previously unrecovered extraordinary property tax expenses.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Consolidated Edison Company of New York, Inc. to defer and recover \$61.831 million of extraordinary property tax expenses. The Commission shall consider all other related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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. (08-M-0901SA1)

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

**Water Rates and Charges**

**I.D. No.** PSC-40-08-00018-P

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

**Proposed Action:** On 9/10/08, Dwight Arthur & Betty Lemonik made a filing to increase its revenues by approximately \$1,672.40 or 207.85% and impose a surcharge in the amount of \$2,630.10 for the replacement of failing critical infrastructure.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1), and (10)

**Subject:** Water rates and charges.

**Purpose:** For approval of Dwight Arthur and Betty Lemonik request to increase their rates and impose a surcharge.

**Substance of proposed rule:** On September 10, 2008, Dwight Arthur & Betty Lemonik (Dwight Arthur or the company) filed, in Case 08-W-1077, to become effective on January 1, 2009, tariff amendments (Leaf No. 12,

Revision 1) to its electronic tariff schedule P.S.C. No. 2 - Water containing new rates designed to increase its revenues by \$1,672.40 or 207.85% which would produce total annual revenues of \$ 2,477.00. The company also filed a Capital Improvement Surcharge Statement in the amount of \$1,315.05 per customer for the replacement of failing critical infrastructure. Rates and surcharges are based on two users, one of which is the owner. Bills for water service are rendered semi-annually on April 1 and October 1 of each year. With respect to the surcharge, the owner is suggesting that the customer make either a single payment of \$1,315.05 or three equal payments of \$478.11 (includes 8.9% interest) payable at 6 months, 12 months, and 18 months from the approved date.

Dwight Arthur provides unmetered water service to two customers in the town of Carmel, Putnam County. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under File Room - Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's request.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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. (08-W-1077SA1)

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

**Inter-carrier Telephone Service Quality Standards and Metrics**

**I.D. No.** PSC-40-08-00019-P

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

**Proposed Action:** The PSC is considering modifications to existing inter-carrier telephone service quality measures and standards as proposed by the Carrier Working Group and recommended by Staff.

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

**Subject:** Inter-carrier telephone service quality standards and metrics.

**Purpose:** To review recommendations from the Carrier Working Group and incorporate appropriate modifications to the existing Guidelines.

**Substance of proposed rule:** The specific modifications to the Inter-Carrier Service Quality Guidelines being considered by the Commission in this action include: administrative changes (i.e., non-process changes of a clerical nature or that correct minor errors) and process changes to the Billing domain (i.e. BI-9 metric which measures billing completeness) and the Operator Services and Directory Assistance domain (i.e. OD-1 which measures speed of answer).

**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:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn\_brilling@dps.state.ny.us

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

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

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.

(97-C-0139SA30)

## Department of State

### EMERGENCY RULE MAKING

#### Document Destruction Contractors

**I.D. No.** DOS-40-08-00001-E

**Filing No.** 861

**Filing Date:** 2008-09-10

**Effective Date:** 2008-10-01

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

**Action taken:** Addition of Part 199 of Title 19 NYCRR.

**Statutory authority:** General Business Law, art. 39-G, section 899-bbb(12)(a)

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

**Specific reasons underlying the finding of necessity:** The legislature adopted statutory authority, with effective date of October 1, 2008, for a new licensing category, regarding contractors engaged in the business of document destruction. The new law requires businesses that offer document destruction services to register with the Department of State, and enables the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the article. This new law is necessary for the protection of the public, to prevent the unlawful taking of personal identification information from documents disposed of by the public; the bill would limit the amount of documents containing sensitive personal information subject to misappropriation by ensuring the availability of qualified and reputable document destruction contractors. The law will work in concert with recently implemented federal disposal rules (16 CFR Part 682), and New York's newly adopted Disposal Law (Chapter 65 of the Laws of 2006), which require businesses to take appropriate steps when disposing of personal information. In order to comply with these mandates, many businesses hire contractors that specialize in the destruction of records containing personal information. The new licensing category enacted by the NYS Legislature will ensure that information required to be destroyed under the federal Disposal Rule and New York's Disposal Law pursuant to a document destructions contract is disposed of properly by a contractor registered with the State of New York.

**Subject:** Document destruction contractors.

**Purpose:** To provide guidance on the process of applying for and registering as a document destruction contractor.

**Text of emergency rule:** Part 199 is added to 19 NYCRR to be entitled and read as follows:

#### 19 NYCRR PART 199 Document Destruction Contractors

##### Section 199.1.Fingerprinting: principals and officers

(a) Applicants for registration as document destruction contractors must be fingerprinted, and the fingerprints must be taken by one of the following:

(1) an employee of the Department of State, Division of Licensing Services at designated locations and at appointed times, or at such other location designated by the Division of Licensing Services;

(2) a local police officer, a State police officer, a sheriff or deputy sheriff;

(3) a principal or officer of a document destruction contractor business; or

(4) a previously fingerprinted employee of security guard training school approved by the Division of Criminal Justice Services [Division].

(b) Each fingerprint card shall be signed and authenticated by the individual who took the fingerprints and shall state the individual's name along with his/her title of office or employment status.

(c) All fingerprints shall be taken on a form and in a manner approved by the Division of Criminal Justice Services.

##### Section 199.2 Investigation

Within five business days after receipt of an application, the Department of State [Department] shall transmit to the Division two sets of fingerprints and the fees required pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the Division's full search and retain procedures.

The results will be used to ascertain whether or not the applicant has been charged with or convicted of a serious offense and may cause to be conducted an investigation to verify the information contained in the application; provided, however, that the Department shall cause such investigation to be conducted for applicants whose application has not been submitted and verified pursuant to section eight hundred ninety-nine-bbb of General Business Law article 39-G. The Department, in consultation with the Division, may waive such background checks, investigations and fees if in its opinion, the applicant has been subject to previous background checks and investigation requirements which meet or exceed the requirements of this section. The Department, in consultation with the Division, may not be required to conduct background checks or investigations for applicants who are also employed as security guards or peace officers.

##### Section 199.3 Supervisory responsibility

A registrant/licensee has an affirmative duty to provide supervision of all employees and for all business activities. Such supervision shall consist of regular, frequent and consistent personal guidance, instruction, oversight and superintendence by the qualifying registration/license holder with respect to the general business conducted by the firm and all matters relating thereto.

##### Section 199.4 Business and employee records

(a) Each business licensed under this Part shall keep and maintain for a period of three years records of all transactions performed by the business.

(b) All records must be retained for longer periods, in the event there is any litigation pending concerning such records and/or employee. Litigation shall include investigation or administrative action by the Department of State, initiated by complaint from the general public or by the department.

(c) A business which is registered to conduct activities as a document destruction contractor must maintain employee and business records at a central location within New York State. This is applicable to all company and personnel records pertaining exclusively to the conduct of business in this State.

(d) Each registrant/licensee shall prepare and retain a statement of services and charges which has been agreed upon between the registrant/licensee and the consumer, a copy of which must be presented to the consumer. The consumer must be presented with a copy of any document signed by the registrant/licensee and consumer. Any agreement signed by a representative of the registrant/licensee and the consumer for services to be performed must be retained by the registrant/licensee in the business records of the firm.

(e) In conjunction with any transaction, each registrant/licensee shall identify any and all employees who conduct activities constituting document destruction services.

##### Section 199.5 Employee and employer responsibility

(a) Any person who is or has been an employee of a registered document destruction contractor shall not divulge to anyone other than his employer, except as may be required by law, any information acquired by him/her during such employment in respect to any of the work to which he/she shall have been assigned by such employer.

(b) It is the duty and obligation of an employer of any individual believed to have violated this section to divulge all known facts and circumstances to the Secretary of State or such person in the Department of State who may be designated.

##### Section 199.6 License revocation and suspension

Any person, firm, company, partnership, corporation or organization licensed under Article 39-G of the General Business Law which has its registration/license revoked or suspended by the Department of State shall be ineligible to employ other persons in any capacity to conduct document destruction services for the period of the revocation or suspension.

##### Section 199.7 Criminal convictions

Any applicant, principal or qualifier convicted of any felony or misdemeanor may be denied licensure or subjected to license revocation and suspension. Department of State discretion shall be exercised pursuant to the standards articulated in Article 23-A of the Correction Law.

##### Section 199.8 Notice of criminal conviction

Any registrant/licensee who is convicted of a crime as defined in the Penal Law in this State or an offense which would constitute a crime if committed in New York in any other state or Federal or foreign jurisdiction, shall give notice of such conviction to the Department of State, Division of Licensing Services, at its Albany Office, by certified mail, return receipt requested, within 10 days from date of conviction. Such notice shall be given notwithstanding pendency of appeal.

##### Section 199.9 Advertising

All advertising placed by an individual or a business registered/licensed under this article must contain the following statement: "registered with the N.Y.S. Department of State."

##### Section 199.10 Statement of licensure

All documents or receipts issued by an individual or business licensed pursuant to this article must contain the unique identification number issued to such individual or business and the phrase "registered with the N.Y.S. Department of State."

#### Section 199.11 Contracts and agreements

(a) Consumers conducting business with an individual or firm licensed under this article shall receive a copy of any signed contract and/or agreement.

(b) All contracts and agreements used by an individual or firm licensed under this article shall include the following statement under the name of the business: "This business is registered with the New York Department of State, Division of Licensing Services."

#### Section 199.12 Enforcement

All principals, qualifiers and/or employees of the registered document destruction contractor shall be subject to the enforcement provisions contained in Article 39-G of the General Business Law. Service of process pursuant to said article, including but not limited to service of a notice of hearing to be conducted pursuant to the provisions of said article, shall be by certified mail sent to the last known registered or business address of the applicant or registered document destruction contractor.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 8, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Linda Cleary, NYS Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 22001, Albany, NY 12231, (518) 473-2728, email: Linda.Cleary@dos.state.ny.us

#### Regulatory Impact Statement

##### 1. Statutory authority:

General Business Law Article 39-G, section 899-bbb (12)(a) authorizes the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the article, which article contains new licensing/registration requirements for the discipline entitled "document destruction contractors".

##### 2. Legislative objectives:

General Business Law, Article 39-G, requires the Department of State to license and regulate document destruction contractors. The statute requires registrants/licenses to meet certain requirements in order to qualify and maintain registration as a document destruction contractor. The statutory intent behind Article 39-G is consumer protection.

##### 3. Needs and benefits:

The proposed rule making will protect consumers and meet the legislative intent in enacting Article 39-G. By setting forth specific regulations clarifying the procedures to be followed in obtaining approval from the Department of State to register and maintain registration as a document destruction contractor, registrants/licenses and prospective employees, as well as the public will be protected by ensuring that licensed document destruction contractors conduct their business in accordance with the principles set forth in General Business Law Article 39-G.

##### 4. Costs:

###### a. Costs to regulated parties:

The rule making will not impose any new costs on document destruction contractors, beyond those imposed with their compliance with the statutory requirements of General Business Law Article 39-G. It is believed that there will be costs to the regulated public associated with obtaining the requisite NYS background check, estimated to be \$75. Regarding costs for fingerprints of principals, officers, or employees of the document destruction contractor, these are estimated to be approximately \$12 to \$30 for each set of fingerprints prepared and obtained pursuant to these rules and the statute. The regulated public will likely incur costs associated with record retention for those licensees who do not possess sufficient on-site storage for records. The cost of storage facilities varies depending on various factors such as location and size. It is estimated that the starting price for an off-site storage unit is approximately \$40.00 per month. It is not anticipated that the regulated public will incur any other costs.

###### b. Costs to the Department of State:

The Department of State does not anticipate any additional costs to the agency to implement and continue to administer the rules' requirements. The Department of State currently licenses and regulates in excess of twenty-eight different occupations. The Department did not hire additional staff to assist with the implementation and administration of the new document destruction contractor licensing requirements. As a result, existing staff will absorb the functions necessary to support the program and the regulations established by this rulemaking.

##### 5. Local government mandates:

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

##### 6. Paperwork:

The rules clarifies the already mandated statutory requirement that all applications for licensure be accompanied by two sets of fingerprint cards for all principals and officers; prospective registrants/licenses are already required to satisfactorily complete applications for registration, with accompanying documentation. The rule delineates and specifies the paperwork and record keeping requirements imposed on licensees by General Business Law Article 39-G. The statute mandates, in part, that document destruction contractors be subject to investigation and to supply documentation upon request, and this rule clarifies the requirements for document retention. The rule also requires that advertisements and certain business records contain the license number and/or a statement that the licensee is licensed by the Department of State.

##### 7. Duplication:

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

##### 8. Alternatives:

The Department of State considered not proposing any regulations; however, since subpart 12 of § 899-bbb requires that the Secretary of State shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the legislation, it was deemed appropriate and necessary that the Department of State propose regulations to clarify the legislation. It was decided that not having any regulations would disadvantage both the regulated public and the Department of State insofar as certain vague statutory provisions would remain undefined and result in confusion and difficulties with enforcement. As a result, the Department of State is only proposing those regulations deemed necessary at this point in time, and has determined to hold in abeyance the possible need to file additional regulations to clarify and/or define other statutory issues.

##### 9. Federal standards:

There are no federal standards regulating the registration of document destruction contractors, although there are federal standards regulating the disposal of personal information implemented in a federal Disposal Rule (16 CPF Part 682), and New York has a Disposal Law (Chapter 65 of the Laws of 2006), which comports with the federal requirements. The proposed rulemaking does not exceed any existing federal standard.

##### 10. Compliance schedule:

The rule making will be effective as of the date of adoption. Prospective registrants/licenses are already required to register pursuant to the statutory provisions of Article 39-G on or before October 1, 2008, are on notice of the Secretary's power to enact regulations in concert therewith, and will therefore be able to comply with this rule as of its effective date.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule:

The proposed rulemaking create a framework for the successful process of businesses registering for approval to act as document destruction contractors, and to employ qualified workers to conduct services related thereto, as well as to allow for the continued qualifications for renewal of same, and the responsibilities of the companies for document preparation and retention, for ensuring the qualifications of workers, and for the standards by which such businesses shall operate.

The rule does not apply to local governments.

##### 2. Compliance requirements:

The business of document destruction is now being regulated under the auspices of the Department of State (DOS), and any companies or persons meeting the criteria for registration must do so. The proposed rules are intended to amplify the legislation, and to clarify specifics as to the requirements for registration. Further, pursuant to the statute, the Department is required to publish and makes available a list of registered document destruction contractors who have properly qualified and registered with the Department. By statute, the list of registered document destruction contractors is to be made available to any interested parties by way of online viewing on the Department's website, and also by permitting an interested party to obtain a copy thereof, at a cost to be determined by the Department, which the rules now clarify to be a minimal amount. The proposed rules provide the mechanism for compliance.

##### 3. Professional services:

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

##### 4. Compliance costs:

Registrant licensees will not incur any significant compliance costs associated with these rules, although there will be compliance costs associated with obtaining the requisite fingerprints of the principals, officers and/or qualifiers for the registrant contractors, and for producing the proper identification cards. The rules do not mandate that any businesses will incur significant expense beyond the expenses made necessary in order to comply with the statutory requirements.

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

Small businesses will not incur any additional costs or require technical expertise as a result of the implementation of these rules, beyond the requirements already placed upon small businesses which are required to comply with the statute.

6. Minimizing adverse economic impact:  
 DOS did not identify any alternatives which would provide relief for registrant contractors, at the same time, be less restrictive and less burdensome on them in terms of compliance.

7. Small business and local government participation:  
 No comment has been received to the enacted legislation, and no comment has yet been received from the anticipated registrant pool, or the public. Simultaneously with the adopting of the rulemaking as an emergency adoption, the proposed rulemaking has been posted on the Department's website, in an attempt to alert any interested parties, and to seek public comment.

**Rural Area Flexibility Analysis**

These rules do not impose any adverse impact on rural areas. The rules complement the statutory adoption of the new licensing category of document destruction contractors, such that the procedures for obtaining and renewing registration in this area of business employment will be clear and readily apparent to the public. The Department of State has not received any objection to these procedures from approved providers.

**Job Impact Statement**

The proposed rule will not have a substantial adverse affect on jobs and employment opportunities for licensed document destruction contractors insofar as Article 39-G of the General Business Law already requires that such qualifying companies register with the Secretary of State. This rule making merely codifies the procedure to obtain Department of State approval to offer and provide services as a registered document destruction contractor.

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## State University of New York

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**NOTICE OF ADOPTION**

**Proposed Amendment to Policies of the Board of Trustees Relating to the Student Assembly President Serving as a Trustee**

**I.D. No.** SUN-22-08-00011-A

**Filing No.** 868

**Filing Date:** 2008-09-16

**Effective Date:** 2008-10-01

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

**Action taken:** Amendment of section 341.2 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b)

**Subject:** Proposed amendment to Policies of the Board of Trustees relating to the Student Assembly President serving as a trustee.

**Purpose:** Conform the Policies of the Board of Trustees on seating the Student Assembly President as a trustee with the Education Law.

**Text or summary was published** in the May 28, 2008 issue of the Register, I.D. No. SUN-22-08-00011-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Joseph Storch, Assistant Counsel, State University of New York, University Plaza, S-321, Albany, NY 12246, (518) 443-5400, email: Joseph.Storch@SUNY.edu

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Amend the Trustee's Student Activity Fee Policy Relating to the Use of Advisory Referenda**

**I.D. No.** SUN-23-08-00001-A

**Filing No.** 869

**Filing Date:** 2008-09-16

**Effective Date:** 2008-10-01

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

**Action taken:** Amendment of section 302.14 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b) and (h)

**Subject:** Amend the Trustee's Student Activity Fee Policy relating to the use of advisory referenda.

**Purpose:** To preclude use of advisory referenda in connection with allocating the activity fee by student government.

**Text or summary was published** in the June 4, 2008 issue of the Register, I.D. No. SUN-23-08-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Seth Gilbertson, State University of New York, State University Plaza, S-327, Albany, NY 12246, (518) 320-1172, email: Seth.Gilbertson@SUNY.edu

**Assessment of Public Comment**

The agency received no public comment.

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

**Appointment, Promotion, Vacation and Sick Leave Accruals of Professional Staff Employees of the State University of New York**

**I.D. No.** SUN-40-08-00020-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 sections 335.8(a), 335.14, 336.7, 337.2, 337.7, 337.10 and 355.15(g), (h); and add sections 326.1(p) and 335.14(f) to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 353, 355 and 355-a

**Subject:** Appointment, promotion, vacation and sick leave accruals of professional staff employees of the State University of New York.

**Purpose:** To conform rules of the State University to agreements reached during collective bargaining.

**Substance of proposed rule (Full text is posted at the following State website:www.suny.edu):** The rule conforms the Policies of the Board of Trustees of the State University of New York to agreements reached as the result of collective bargaining between the State of New York and the collective bargaining agent for professional staff of the State University, the United University Professions. The rule addresses the appointment, promotion, vacation and sick leave accruals of professional staff of the State University.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michael D. Morgan, Senior System Counsel, State University of New York, University Plaza, S-319, Albany, NY 12246, (518) 443-5886, email: Michael.Morgan@SUNY.edu

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

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

**Consensus Rule Making Determination**

No person is likely to object to the adoption of the rule as written because the rule conforms rules that constitute the Policies of the Board of Trustees of the State University of New York to agreements reached as the result of collective bargaining between the State of New York and the collective bargaining agent for professional staff of the State University, the United University Professions.

**Job Impact Statement**

As is apparent from its nature and purpose, the rule will not have a substantial adverse impact on jobs and employment opportunities. The rule conforms the Policies of the Board of Trustees of the State University of New York to agreements reached as the result of collective bargaining between the State of New York and the collective bargaining agent for professional staff of the State University, the United University Professions. The rule addresses the appointment, promotion, vacation and sick leave accruals of professional staff of the State University.

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## Susquehanna River Basin Commission

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**INFORMATION NOTICE**

**Notice of Proposed Rule Making and Public Hearing**

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) by requiring review and approval of any natural gas well development project targeting the Marcellus, Utica or other shale formations and involving the withdrawal or consumptive use of waters of the Susquehanna River Basin, adding a provision providing for a specific approval by rule process for consumptive water use associated with such projects and modifying the definition of project. In addition, two editorial changes are made to the existing approval by rule provision related to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

DATES: Public hearings will be held on October 21 and October 22, 2008, beginning at 7:00 p.m. regarding this proposed rulemaking action. The locations of the hearings are listed in the "Addresses" section of this notice. The deadline for submission of written comments on the proposed rulemaking is October 31, 2008.

ADDRESSES: The October 21, 2008, public hearing will be held at Lycoming College, Academic Center, Lecture Hall Room D001, Mulberry Street, Williamsport, PA 17701; the October 22, 2008, public hearing will be held at Binghamton University, State University of New York, Lecture Hall Complex, Lecture Hall 1, Route 434 (Vestal Parkway East), Binghamton, NY 13903. Written comments may be submitted by mail to Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391 or by e-mail to rcairo@srbc.net.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, 717-238-0423; Fax: 717-238-2436; e-mail: rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's web site at www.srbc.net.

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose of Amendments:

As a result of advances in hydraulic fracturing, and higher natural gas prices, natural gas well development activity in the Susquehanna River Basin has increased dramatically in the past year, resulting in a large number of project applications being filed with the Commission seeking approval for the withdrawal and consumptive use of water for that activity. The Commission is hereby proposing a rulemaking action to handle the large and immediate influx of project applications, and to avoid adverse, cumulative adverse or interstate effects to the water resources of the basin.

The proposed rule modifies the definition of "project" for purposes of natural gas well development, requires review and approval of any natural gas well development project involving the withdrawal or consumptive use of water, and adds a specific approval by rule process associated with the consumptive use of water by such projects. The Commission's current approval by rule process is available for use only if the sole source of water is a public water supply system. Under the contemplated rule change, the approval by rule process would allow for the consumptive use of wastewater, acid mine water and other sources of water for natural gas well development projects. The proposal would not change the current process used to review groundwater or surface water withdrawals.

In addition, two editorial changes are made to the existing approval by rule provision relating to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

List of Subjects in 18 CFR Parts 806: Administrative practice and procedure, Water resources.

For the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR part 806 as follows:

#### PART 806—REVIEW AND APPROVAL OF PROJECTS

##### Subpart A -- General Provisions

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.3, revise the definition of "project" to read as follows:

#### § 806.3 Definitions.

\*\*\*\*\*

Project. Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of

evaluation. For purposes of natural gas well development activity, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

\*\*\*\*\*

3. In § 806.4, amend paragraph (a) to add paragraph (a) (8) to read as follows:

Sec. 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation or those authorized under Sec. 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

\*\*\*\*\*

(8) Any natural gas well development project in the basin targeting the Marcellus, Utica or other shale formations for exploration or production of natural gas involving a withdrawal or consumptive use of waters of the basin, regardless of the quantity of such withdrawal or consumptive use. The project sponsor shall submit the appropriate application(s) in accordance with subpart B and the project shall be subject to the applicable standards set forth in subpart C.

4. In § 806.22, revise paragraph (e) (1), and insert a new paragraph (f) to read as follows:

§ 806.22 Standards for consumptive uses of water.

\*\*\*\*\*

(e) \*\*\*

(1) Except with respect to projects involving natural gas well development subject to the provision of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved under this paragraph (e) in accordance with the following, unless the Commission determines that the project cannot be adequately regulated under this approval by rule:

(i) \*\*\*

(ii) Within 10 days after submittal of an NOI under (i), the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

\*\*\*\*\*

(f) Approval by rule for consumptive use related to natural gas well development.

(1) Any project involving the development of natural gas wells subject to review and approval under Sec. 806.4, 806.5, or 806.6 of this part shall be subject to review and approval under this paragraph (f) regardless of the source or sources of water being used consumptively.

(i) Notification of Intent: No fewer than 60 days prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under (i), the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and location and the sources, quantities and peak day use of water to be used consumptively by the project. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in Sec. 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water and fluids, including additives, flowback and brines, utilized by the project.

(3) The standard conditions set forth in Sec. 806.21 above shall apply to projects approved by rule, as well as any special conditions incorporated into such approvals.

(4) The project sponsor shall comply with mitigation in accordance with Sec. 806.22 (b)(2) or (b)(3).

(5) Any produced flowback fluids or brines utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of Sec. 806.22(b).

(6) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(7) The project sponsor shall demonstrate to the satisfaction of the Commission that all flowback and produced fluids, including brines, have been treated and disposed of in accordance with applicable state and federal law.

(8) The Commission will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved.

(9) Approval by rule shall be effective upon written notification from the Commission to the project sponsor, shall expire five years from the date of such notification, and rescind any previous consumptive use approvals to the extent applicable to the project.

(10) Water withdrawals approved by the Commission pursuant to § 806.4(a)(2) after the date of issuance of the approval by rule may be utilized as a source for the consumptive use authorized for the project provided such withdrawal source is approved for such use and is registered with the Commission at least 10 days prior thereto on a form and in a manner as prescribed by the Commission.

(11) Approvals issued under this paragraph (f) shall not be transferable under Sec. 806.6.

## Office of Temporary and Disability Assistance

### NOTICE OF ADOPTION

#### Home Energy Assistance Program

**I.D. No.** TDA-28-08-00002-A  
**Filing No.** 866  
**Filing Date:** 2008-09-16  
**Effective Date:** 2008-10-01

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

**Action taken:** Amendment of section 393.4(c)(3), (5); renumbering of section 393.4(c)(4) to 393.4(c)(5) and addition of new section 393.4(c)(4) to Title 18 NYCRR.

**Statutory authority:** United States Code, title 42, ch. 94, section 8624; Social Services Law, section 97

**Subject:** Home Energy Assistance Program.

**Purpose:** Establish a new Home Energy Assistance Program benefit level for low-income households in certain living arrangements.

**Text or summary was published** in the July 9, 2008 issue of the Register, I.D. No. TDA-28-08-00002-P.

**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, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

#### Assessment of Public Comment

During the public comment period on the proposed rule to make specific living arrangements eligible for a \$1 Home Energy Assistance Program (HEAP) benefit, the Office of Temporary and Disability Assistance (OTDA) received numerous comments, almost all of which were very supportive of this proposal.

Comment: Approximately 200 comments were received urging the OTDA to adopt this proposed rule because in conjunction with the proposed amendments to 18 NYCRR § 387.16, it would result in an increase in food stamp (FS) benefits for FS eligible individuals living in group homes.

Response: The OTDA agrees with these comments in support of the proposed rule.

Comment: One commenter supported the change to maximize FS benefits but expressed concern about the administrative burden on the local districts and the HEAP alternative certifiers in processing \$1 HEAP benefits for households not in receipt of FS benefits.

Specifically, the commenter was concerned with the following issues:

- The administrative burden imposed on HEAP certifiers if a large number of HEAP applications are received.
- The requirement for the HEAP unit to conduct a full certification for each \$1.00 HEAP case.
- The requirement for the HEAP unit to issue \$1 HEAP benefits to FS households that are determined eligible for FS benefits after the HEAP season has opened.
- The impact that this rule will have on regular HEAP processing and the possible insufficiency of HEAP administrative funds.

Response: The OTDA recognizes the commenter's concerns regarding the HEAP processing issues. The OTDA has implemented systems support to lessen the administrative burden and has provided training to local certifiers on processing the \$1 HEAP benefits for households not in receipt of assistance.

The OTDA does not expect a significant number of applicants in this new \$1 HEAP category. Consequently, the impact on local certifiers is not expected to be significant and should not create any disruption in the overall processing of HEAP. Although these applicants must file for benefits in the same manner as any other household, the small volume expected should be manageable. The OTDA will review the process after this current HEAP season to determine if any modifications need to be made.

If a household does not receive FS benefits and applies for a \$1 HEAP benefit, a full certification process for HEAP will need to be done. However, as noted above, the OTDA does not anticipate that the number of applications will be significant.

If a household is found eligible for FS benefits and the \$1 HEAP benefit after the HEAP season has opened, the \$1.00 HEAP benefit will need to be authorized; however, it is up to each district to determine which unit within that district will do this.

HEAP administrative funds are limited by the federal Low-Income Home Energy Assistance Program statute to 10% of the total federal allocation. The OTDA bases local district allocations on the number of applications processed, weighted by category. Since funds are limited, the OTDA cannot guarantee full reimbursement of all administrative costs associated with HEAP, but makes every attempt to provide as much funding as possible, given the amounts available.

### NOTICE OF ADOPTION

#### Food Stamp Program

**I.D. No.** TDA-28-08-00003-A  
**Filing No.** 865  
**Filing Date:** 2008-09-16  
**Effective Date:** 2008-10-01

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

**Action taken:** Amendment of section 387.16(e) and (f) and addition of section 387.16(e)(1), (2) and (f)(1), (2) to Title 18 NYCRR.

**Statutory authority:** United States Code, title 7, ch. 51, sections 2011 and 2013; Social Services Law, sections 95 and 95-a

**Subject:** Food Stamp Program.

**Purpose:** Establish a new food stamp budgeting methodology for certain residents in group living arrangements.

**Text or summary was published** in the July 9, 2008 issue of the Register, I.D. No. TDA-28-08-00003-P.

**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, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

#### Assessment of Public Comment

During the public comment period on the proposed rule to establish a new food stamp budgeting methodology for certain residents in group living arrangements, the Office of Temporary and Disability Assistance (OTDA) received numerous comments, almost all of which were very supportive of this proposal.

Comment: Approximately 200 comments were received urging the

OTDA to adopt this proposed rule because, in conjunction with the proposed amendments to 18 NYCRR § 393.4, it would result in an increase in food stamp benefits for food stamp eligible individuals living in group homes.

Response: The OTDA agrees with these comments in support of the proposed rule.

Comment: One commenter expressed concern that the change to the food stamp budgeting methodology that would result from enactment of the amendments would be too complicated for social services districts (districts) to follow correctly, would be difficult for staff to learn and potentially could result in budgeting errors.

Response: The OTDA disagrees with this comment. The commenter's concern is misplaced as it is premised on substantial worker involvement. However, the OTDA has taken steps to minimize worker decisions and manual calculations. The OTDA has made substantial changes to the Welfare Management System (WMS) computer system to automate the changes as much as possible. The proposed amendments will require the districts to gather some additional information and to enter some new data into WMS in order to generate updated food stamp budgets for the affected applicants and recipients. Once the new entries are made, WMS will apply the new budgeting methodology, and the updated food stamp budgets will then be generated. The OTDA anticipates that the resulting changes in food stamp budgeting methodologies will have a minimal impact on the districts' operations and workload.

In addition, the OTDA plans to issue an Administrative Directive to the districts explaining the regulatory changes and providing contact information in case the districts should have any questions.

Comment: One commenter who supported the proposed rule set forth concerns regarding the provisions available in food pantries and the availability of transportation.

Response: Issues concerning the provisions available in food pantries and the availability of transportation are outside the scope of the proposed regulatory amendments.

Comment: One commenter "fully endorsed" the principles underlying the proposed rule, including the equitable treatment of group home residents and the use of standard, but individualized, budget computations to calculate the monthly food stamp benefits of group home residents.

However, this commenter also provided a number of criticisms. First the commenter provided information regarding communications in the *Graves* litigation and asserted that the OTDA did not provide him and his co-counsel in the *Graves* litigation an opportunity to review or discuss the content of the proposed amendments prior to their publication.

Response: Issues concerning communications, review and discussions in the *Graves* litigation are not relevant to the substantive issues of the proposed regulatory amendments.

Comment: Second the commenter expressed concern about the alleged complicated language and lack of clarity in the proposed amendments. The commenter suggested the use of more simply worded regulations without repeated statutory or regulatory references. The commenter asserted that if the State-prescribed notices of proposed action merely cite to these regulations, then the notices would defeat the federal government's goal of explaining in easily understandable language the reasons for the proposed actions.

Response: The proposed regulations were drafted as clearly as possible to address all possible group home scenarios. The proposed regulations need to address various types of facilities, multiple income sources and the potential presence of persons residing in the facilities but not receiving care. The State-prescribed notices which will reflect the implementation and ongoing use of the proposed regulations will not merely cite to the new regulations. Instead the State-prescribed notices will in easily understandable language describe the action being taken, explain the basis for the action, set forth the effective date and meet all other notice requirements prescribed by statutes and regulations.

Comment: Third the commenter expressed concern regarding the use of the terms "countable income" and "all earned income" in the proposed rule. The commenter asserted that these terms should be defined. However, the commenter did note that he and his co-counsel did "...not wish to delay the adoption of these vital regulatory amendments and additions."

Response: The OTDA maintains that these two terms are easily understood. Countable income and earned income, as used in the proposed amendments, simply refer to food stamp income after all income exclusions and income deductions have been budgeted. For purposes of determining a food stamp budget, 18 NYCRR § 387.11 sets forth income exclusions, and 18 NYCRR § 387.12 sets forth income deductions. The OTDA agrees that the adoption of the proposed rule should not be delayed.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Automated Finger Imaging System

I.D. No. TDA-40-08-00002-P

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

**Proposed Action:** Amendment of section 387.9(c)(1) and (2); and addition of section 387.9(c)(3) to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 131(1) and 95; and 7 U.S.C. section 2020(a)

**Subject:** Automated Finger Imaging System.

**Purpose:** To authorize OTDA to waive the finger imaging requirements for certain groups of individuals and households applying for or receiving food stamp benefits.

**Text of proposed rule:** Paragraphs (1) and (2) of subdivision (c) of section 387.9 are amended to read as follows:

(1) As part of participation in the automated finger imaging system authorized in Part 384 of this Title, social services districts must, in accordance with the operational plan approved by the office *and except as provided in paragraph (3) of this subdivision*, conduct finger imaging of all members of a household 18 years of age or older and the head of a household applying for or receiving [food stamps under the] food stamp [program] benefits, for the purpose of preventing the duplicate receipt of [duplicate] food stamp benefits.

(2) [No] *Except as provided in paragraph (3) of this subdivision*, no household can receive food stamp benefits if any member of the household, 18 years of age or older, or the head of household refuses to allow his or her finger images to be obtained for use in the automated finger imaging system to prevent and detect duplicate participation in the food stamp program. Any such household's application for food stamps must be denied, or, if the household is participating in the food stamp program, its food stamp benefits must be discontinued.

A new paragraph (3) is added to subdivision (c) of section 387.9 to read as follows:

(3) *The office may exempt certain groups of individuals and households applying for or receiving food stamps from participating in the finger imaging system upon the Commissioner's determination that existing or alternative measures are effective in preventing the duplicate receipt of food stamp benefits for such groups and the exemption would further a purpose of the food stamp program.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

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

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

### Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions, rules and regulations of the former Department of Social Services concerning the public assistance programs and the food stamp (FS) program were transferred to OTDA.

Section 131(1) of the SSL requires social services districts, insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Section 2020(a) of 7 U.S.C. provides that the State agency of each State participating in the FS program shall assume responsibility for the certification of applicant households and for the issuance of coupons and the control and accountability thereof.

Section 95 of the SSL requires OTDA to promulgate regulations to carry out the provisions of the SSL concerning the FS program.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that FS benefits are provided to eligible households. Current policy set forth by the U.S. Department of Agriculture mandates that States have in place a system for ensuring that a person does not participate in the FS program in more than

one jurisdiction in any month. According to this same federal policy, preventing the duplicate receipt of benefits is the only purpose for which finger imaging may be used within the FS program. New York State utilizes the Automated Finger Imaging System (AFIS) to prevent such duplicate receipt of benefits within the State. AFIS does nothing to prevent interstate duplication.

### 3. Needs and benefits:

New York State has had a longstanding requirement, not dictated by federal or State law, that applicants for FS benefits be finger imaged. Section 387.9(c) of 18 NYCRR sets forth, in pertinent part, that, as part of participation in the automated finger imaging system authorized in Part 384 of 18 NYCRR, social services districts must, in accordance with the operational plan approved by OTDA, conduct finger imaging of members of a household 18 years of age or older and the head of a household applying for or receiving FS benefits.

The purpose of finger imaging in the FS program is to prevent an individual from receiving FS benefits as part of more than one household at the same time. While OTDA shares with the local districts a commitment to maintain and promote access to the FS program for eligible households in New York State, for some groups of FS households, the finger imaging requirement may pose a hardship and the probability of duplicate benefits are low. As such, and as one means of promoting FS program access, OTDA encouraged districts to exempt certain groups from the AFIS requirements for FS eligibility. Individuals who are elderly, are temporarily or permanently disabled or incapacitated, are homebound, reside in a group home, are employed or engaged in training during district office hours, have transportation hardships, are ages 18 through 21 who are not heads of households or their spouses, or are members of households for whom in-office interviews are waived can be exempted, all in accordance with the district's previously approved AFIS Plan of Operation.

This proposed regulation would reserve for OTDA the authority to exempt categories of applicants and recipients from the requirement to participate in finger imaging. OTDA could exercise this authority if the Commissioner determines that there are other effective measures to prevent the duplicate receipt of FS benefits by such categories of recipients and the exemption would further a purpose of the FS program. The regulation would allow the Commissioner to exercise for the State the authority social services district commissioners already exercise in developing their finger imaging plans.

An example of furthering a purpose of the FS program would be increasing participation in the program by an underrepresented category of potential recipients. Of course, this purpose would also be balanced against the ability to avoid duplicate benefits. This regulation gives the Commissioner the authority to perform that analysis.

This proposed amendment does not impact the requirements of the public assistance programs or the medicaid program.

### 4. Costs:

The proposed amendment would authorize OTDA to waive the finger imaging requirements for certain groups of individuals and households applying for or receiving FS benefits upon the Commissioner's determination that existing or alternative measures are effective in preventing the duplicate receipt of FS benefits for such groups and the waiver would further a purpose of the FS program. A waiver of the finger imaging requirements in these instances would most likely have a minimal impact on administrative costs on both the State and local levels.

### 5. Local government mandates:

The proposed amendment would not impose new mandates on the social services districts. Instead the amendment would allow for the waiver of an existing mandate, the finger imaging requirement.

### 6. Paperwork:

No new forms or other paperwork is anticipated as a result of the proposed amendment.

### 7. Duplication:

The proposed amendment does not duplicate, overlap or conflict with State or federal requirements.

### 8. Alternatives:

An alternative would be to retain the existing regulation at section 387.9 of 18 NYCRR concerning the requirement for finger imaging of all members of a household 18 years of age or older and the head of household applying for or receiving FS benefits. This alternative was rejected because the current regulation does not reflect existing policy that encourages waivers in instances where existing measures are effective in preventing the duplicate receipt of FS benefits.

The issue of finger imaging has been discussed by OTDA and the advocate community in various forms. The advocate community has urged OTDA to assume a greater role in defining the circumstances under which and the purpose for which finger imaging may be waived or required. Some members of the advocate community have requested that finger imaging be eliminated altogether. The advocate community has asserted, in part, that finger imaging requirements may be an impediment to

recipients' employment goals because recipients may have to take time off from work to travel to the districts to complete the finger imaging requirement.

While this proposed regulation would not eliminate finger imaging all together, it would allow OTDA to assume a greater role in defining when finger imaging is not necessary and in providing the appropriate waivers to groups of applicants and recipients. Pursuant to the proposed regulations, the Commissioner would assess the needs of groups of applicants and recipients, evaluate whether alternative measures could prevent the duplicate receipt of FS benefits by these groups and then determine whether exemptions for these groups would further a purpose of the FS program. This process would allow OTDA to assess the districts' means of preventing the duplicate receipt of FS benefits and to ensure that a goal of the FS program would be furthered by the proposed waivers.

### 9. Federal standards:

The proposed amendment does not exceed federal minimum standards for the same subject.

### 10. Compliance schedule:

Social services districts will be able to implement the proposed amendment when it becomes effective.

### *Regulatory Flexibility Analysis*

#### 1. Effect of rule:

The proposed amendment would not affect small businesses, but it would have an impact on the 58 social services districts in the State.

#### 2. Compliance requirements:

The proposed regulation would not impose any new mandates on social services districts. Instead the proposed amendment would authorize the Office of Temporary and Disability Assistance (OTDA) to waive the existing finger imaging requirements for certain groups of individuals and households applying for or receiving food stamp (FS) benefits. No new forms or other paperwork is anticipated as a result of the proposed amendment.

#### 3. Professional services:

The social services districts would not need any new kinds of professional services to comply with the proposed amendment.

#### 4. Compliance costs:

The proposed amendment would not impose any initial capital costs or continuing compliance costs on social services districts. The proposed amendment would authorize OTDA to waive the finger imaging requirements for certain groups of individuals and households applying for or receiving FS benefits upon the Commissioner's determination that existing or alternative measures are effective in preventing the duplicate receipt of FS benefits for such groups and the waiver would further a purpose of the FS program. This proposed amendment does not impact the requirements of the public assistance programs or the medicaid program. A waiver of the finger imaging requirements in these instances would most likely have a minimal impact on administrative costs on the local level.

#### 5. Economic and technological feasibility:

The social services districts have the economic and technological means to comply with the proposed amendment.

#### 6. Minimizing adverse impact:

The proposed amendment would not have an adverse economic impact on social services districts. The social services districts would be able to comply with the proposed amendment when it becomes effective.

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

Each local social services district currently submits an Automated Finger Imaging System (AFIS) Plan of Operation for compliance with the AFIS program to the OTDA Bureau of Audit and Quality Improvement. Districts indicate in their plans which groups they choose to exempt from the finger imaging requirements. Districts provide justification and population estimates for each of the exempt groups they include in their plan submittals. Due to hardships, districts often exempt from the finger imaging requirements persons who are elderly, disabled, homebound, or institutionalized; persons employed during the district office's hours of operation; and persons who have transportation difficulties. In addition, in nearly all districts the requirement to submit to finger imaging is currently waived for any member of a household for whom the face-to-face interview has been waived. There is one district that waives AFIS for some, but not all groups of persons for whom the face-to-face interview is waived.

These waivers of the finger imaging requirements, which have been encouraged by OTDA, have proven to be an effective administrative tool for the districts. This amendment would allow the local districts to continue their current practices since OTDA's waivers will be based, in part, upon the district's existing measures to prevent the duplicate receipt of FS benefits.

### *Rural Area Flexibility Analysis*

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

The proposed amendment would affect the 44 rural social services districts in the State.

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

The proposed regulation would not impose any new mandates on social services districts in rural areas. Instead the proposed amendment would authorize the Office of Temporary and Disability Assistance (OTDA) to waive the existing finger imaging requirement for certain groups of individuals and households applying for or receiving food stamp (FS) benefits. No new forms or other paperwork is anticipated as a result of the proposed amendment. In addition, the social services districts in rural areas would not need any new kinds of professional services to comply with the amendments.

3. Costs:

The proposed amendment would not impose any initial or additional capital costs on social services districts in rural areas. The proposed amendment would authorize OTDA to waive the finger imaging requirements for certain groups of individuals and households applying for or receiving FS benefits upon the Commissioner's determination that existing or alternative measures are effective in preventing the duplicate receipt of FS benefits for such groups and the waiver would further a purpose of the FS program. A waiver of the finger imaging requirements in these instances would most likely have a minimal impact on administrative costs on both the State and local levels.

This proposed amendment does not impact the requirements of the public assistance programs or the medicaid program.

4. Minimizing adverse impact:

The proposed amendment would not have an adverse economic impact on social services districts in rural areas. These social services districts would be able to comply with the proposed amendment when it becomes effective.

5. Rural area participation:

Each local social services district, including the rural districts, currently submits an Automated Finger Imaging System (AFIS) Plan of Operation for compliance with the AFIS program to the OTDA Bureau of Audit and Quality Improvement. Districts indicate in their plans which groups they choose to exempt from the finger imaging requirements. Districts provide justification and population estimates for each of the exempt groups they include in their plan submittals. Due to hardships, districts often exempt from the finger imaging requirements persons who are elderly, disabled, homebound, or institutionalized; persons employed during the district office's hours of operation; and persons who have transportation difficulties. In addition, in all rural districts, the requirement to submit to finger imaging is currently waived for any member of a household for whom the face-to-face interview has been waived.

These waivers of the finger imaging requirements, which have been encouraged by OTDA, have proven to be an effective administrative tool for the rural districts. This amendment would allow the rural districts to continue their current practices since OTDA's waivers will be based, in part, upon the district's existing measures to prevent the duplicate receipt of FS benefits.

#### **Job Impact Statement**

A job impact statement has not been prepared for the proposed regulatory amendment. It is evident from the subject matter of the amendment that the jobs of the workers applying the impacted regulation would not be affected in any real way. Thus, the change would not have any impact on jobs and employment opportunities in the State.

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## Urban Development Corporation

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### EMERGENCY RULE MAKING

#### **Economic Development and Job Creation Throughout New York State**

**I.D. No.** UDC-40-08-00004-E

**Filing No.** 862

**Filing Date:** 2008-09-12

**Effective Date:** 2008-09-12

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

**Action taken:** Addition of Part 4245 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, L. 1968, ch. 174; L. 1994, ch. 169; L. 2001, ch. 471

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

**Specific reasons underlying the finding of necessity:** Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of the rule.

**Subject:** Economic development and job creation throughout New York State.

**Purpose:** To provide the framework for administration of the Restore New York's Communities initiative.

**Substance of emergency rule:** The Restore New York's Communities Initiative (the "Program") was created pursuant to Chapter 109 of the Laws of 2006 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State's citizen's and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-n of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act ("SAPA"). The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars for real property in need of rehabilitation or reconstruction on the property assessment list.

The proposed new Rule sets for the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 10, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, Urban Development Corporation, 633 Third Ave., 37th FL., New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

#### **Regulatory Impact Statement**

1. Statutory Authority:

Chapter 109, Laws of 2006 (Unconsolidated Laws, section 6266-n. Another Unconsolidated Laws section 6266-n was added by another act) authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities. Section 5(4) of the New York State Urban Development Corporation (UDC) Act (Unconsolidated Laws, section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to revitalize urban areas and stabilize neighborhoods to attract industry and people to urban areas thereby improving municipal finances, giving municipal governments the wherewithal to grow their tax and resource base and attract individuals, families, industry and commercial enterprises, and lessen distressed municipalities' reliance on state aid, achieving stable and diverse economies and vibrant communities.

3. Need and Benefits:

The Program's legislation assists the revitalization of urban areas and stabilization of neighborhoods throughout the State by providing the following types of assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars per residential real property in need of rehabilitation or reconstruction on the property assessment list.

c) Demolition and Deconstruction Grants and Rehabilitation and Reconstruction Grants for commercial properties. The Corporation shall determine the cost of demolition/deconstruction and rehabilitation/reconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly. The Corporation shall also consider geographic differences in the establishment of maximum grant awards.

The proposed new Rule sets forth the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in section 16-n of the UDC Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

1. Evaluation Criteria – The Corporation will review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the revitalization of urban areas and the stabilization of neighborhoods within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

#### 4. Costs:

The funding source is appropriation funds (2006-07 Supplemental Bill (S8470/A12044) page 227, lines 8-14). \$150,000,000 is available for 2008. Discussions regarding funds were conducted by Ray Richardson on behalf of the Corporation and Andrew Kennedy on behalf of the Division of Budget.

#### 5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

#### 6. Paperwork:

As instructed by the legislation, a Request for Proposal was developed for this program.

#### 7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

#### 8. Federal Standards:

There are no applicable federal government standards which apply.

#### 9. Alternatives:

The Corporation considered the alternative of not promulgating this rule. However, this rulemaking was necessary in order to complete aspects of the Program that were not addressed by the enacting legislation.

#### 10. Compliance Schedule:

No significant time will be needed for compliance.

### **Regulatory Flexibility Analysis**

#### 1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

The proposed new Rule sets forth the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The Program promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. Therefore, the effect of the Rule on small business and local government will be beneficial.

#### 2. Compliance Requirement:

No affirmative acts will be needed to comply.

#### 3. Professional Services:

No professional services will be needed to comply.

#### 4. Compliance Costs:

No initial costs will be needed to comply with the proposed Rule.

#### 5. Economic Feasibility:

The Rule makes the Program assistance feasible for local governments, by expressly stating that municipalities are eligible for certain types of Program assistance while permitting local governments access to all other types of Program assistance for which they may be eligible. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts.

#### 6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

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

Program funds are available only to municipalities. Comments were received from applicants under the Program including Albany, Syracuse, Yonkers, Buffalo, Utica, Watervliet, Rochester, Binghamton, Elmira, Wappingers Falls and Amherst. The response was overwhelmingly positive. There were some requests to reduce the requirements of the application process. However, given that the Rule's application requirements are prescribed by the enabling legislation, the corporation has determined that this is not possible.

There were also requests to expand the types of property covered and the types of entities eligible for assistance. However these are legislative matters beyond the scope of the corporation's powers.

### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

### **Job Impact Statement**

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.