# 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.

## Department of Economic Development

### EMERGENCY RULE MAKING

**Empire Zones Reform**

**I.D. No.** EDV-16-09-00005-E
**Filing No.** 346
**Filing Date:** 2009-04-03
**Effective Date:** 2009-04-03

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

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

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

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

***Specific reasons underlying the finding of necessity:*** The Empire Zones Program reforms as enacted by Chapter 63 of the Laws of 2005 were designed to improve the cost-effectiveness and accountability of the program for all New Yorkers. However despite these reforms, the program continues to grow at a rate that is unsustainable and benefits some companies that do not meet their job commitments. In some cases, the tax benefits a company receives exceed the economic return to the State. Prudent financial management of this and all public programs is an imperative at all times but even more important when the State is experiencing fiscal difficulties. Additional regulatory action is needed immediately to protect the integrity of the program, enhance its strategic focus, improve its cost-effectiveness, increase accountability, and mitigate the impact on the General Fund.

One area of particular concern relates to regionally significant projects. Regionally significant projects should be limited to those businesses that would have the most significant economic impact for local communities and the State by restricting eligibility to projects that export a substantial amount of their goods or services to customers outside of New York State. These ''export'' type of projects ensure that net new economic activity will be created in the State versus simply redistributing economic activity between different communities of the State, or providing incentives for projects where such incentives are not necessary to create or retain jobs.

To increase accountability, job creation for regionally significant projects would have to occur in a timely manner. The timeframe for achieving job targets would be reduced from five to three years. This change would make firms more accountable for job creation by reducing the incentive for companies to inflate job numbers knowing they have five years of zone benefits in which to achieve their goals.

Participation would also be limited to companies that provide a greater economic return on the State's investment in order to improve the cost-effectiveness of the Program. A statewide standard would be adopted based on the cost-benefit factors defined in law. Specifically, there would need to be twenty dollars of economic development benefits in the form of wages and capital investments for every one dollar of tax credits a business would receive. For projects where the economic development benefits are justified based on non-quantitative factors, there would need to be at least five dollars of such benefits for every one dollar of tax credits. In addition, the non-quantifiable terms identified in the law for strategic industry cluster or its supply chain would be defined to ensure that only businesses that are truly part of a strategic industry cluster or its supply chain can qualify based on the non-quantifiable factors of the cost-benefit analysis.

In order to hold businesses more accountable for their commitments and realize annual savings in program costs, these regulatory changes need to be adopted immediately. With 82 empire zones statewide, 10-20 applications are being submitted to the State weekly. Once businesses are in the Program, the annual costs are borne by the State for a 10 year period. These changes are expected to immediately reduce the number of eligible applicants by about 30% in order to achieve the objectives of strategic focus, improved cost-effectiveness, greater accountability and ultimately help preserve the program during the immediate fiscal crisis and beyond.

***Subject:*** Empire Zones reform.

***Purpose:*** Allow department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

***Substance of emergency rule:*** The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2005, as well as a comprehensive review of administrative procedures and existing regulations for the purpose of making the program more strategic, cost effective and accountable to taxpayers. The amended laws require the existing Empire Zones to identify revised zone boundaries-that is, placement of zone acreage into ''distinct and separate contiguous areas''-which has not yet been completed. The existing regulations fail to address this requirement, and at the same time, contain several outdated references. The proposed regulations will correct these two items and improve the program's administrative procedures. The Empire Zone regulations contained in 5 NYCRR Parts 10 through 14 are hereby amended as follows:

First, pursuant to Chapter 63 of the Laws of 2000 and Chapter 63 of the Laws of 2005, the emergency rule would reflect the name change

of the program from Economic Development Zones to the Empire Zones and add reference to three new tax benefits: the Qualified Empire Zone Enterprise (''QEZE'') Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

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

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

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

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

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

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

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

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

Tenth, the emergency rule fulfills the requirements of Chapter 63 to subject all businesses applying for zone benefits to meet a ''cost-benefit analysis''. The cost-benefit analysis is to be included in the zone development plan by the applicant municipality. The definition included in the emergency rule establishes a minimum economic development benefit to cost ratio of 20:1 for a project to be eligible for certification. A project that does not meet the 20:1 ratio but can be justified based on non-quantifiable factors must meet a minimum ratio of 5:1. In addition, definitions for strategic industry cluster and supply chain are included in the rule.

Eleventh, the emergency rule clarifies the status of community development projects as a result of the reconfiguration of the zones pursuant to Chapter 63. The current regulations require the community development projects to be located in an Empire Zone in order for investments in those projects to qualify for tax benefits. Drawing distinct and separate contiguous areas around community development projects would severely limit the ability of Empire Zones to include as many eligible businesses as possible into the new distinct

and separate contiguous areas. Community development projects are not necessarily required to be certified. There is a strong public policy preference for these projects and there is an expectation by their sponsors that they continue to offer tax credits to contributors until fundraising for the projects are completed. To that end, all community development projects approved by the Department before April 1, 2005 would be considered to be located within its respective Empire Zone, and a community development project will be considered to be located in the Empire Zone if it can demonstrate that a zone has been working with the project before April 1, 2005 for the purpose of submitting a boundary revision for inclusion in to the Zone that would include job creation.

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

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

The full text of the rule is available at www.empire.state.ny.us

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 1, 2009.

***Text of rule and any required statements and analyses may be obtained from:*** Thomas P. Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

***Regulatory Impact Statement***

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to recent statutory amendments and the remaining revisions conform the regulations to existing statute or clarify administrative procedures of the program. It is the public policy of the State to offer special incentives and assistance that will promote the development of new businesses, the expansion of existing businesses and the development of human resources within areas designated as Empire Zones. The proposed amendments help to further such objectives by enabling the Department of Economic Development to administer the program in a more efficient manner. In addition, these amendments further the Legislative goals and objectives for the Empire Zones program, particularly as they relate to regionally significant projects and the cost-benefit analysis. With these changes, the Department strives to make the Program more strategic, cost-effective and accountable to the taxpayers of the New York state.

NEEDS AND BENEFITS:

The emergency rule is required in order to bring the regulations into accord with statute and to improve the overall administration and effectiveness of the program. There are several benefits that would be derived from this emergency rulemaking. First, the emergency regulations would conform to statutory provisions and thereby eliminate potential confusion to the practitioner. Second, the emergency rule would clarify the application process to ensure timely action and improve efficiency and accountability. Third, the rule seeks to reform the Empire Zones program to make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

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

II. Costs to the regulating agency for the implementation and continued administration of the rule: While there will be additional costs to the Department of Economic Development associated with the emergency rule making, this is a result of the statutory changes which the emergency regulation language tracks or interprets. All existing Empire Zones have to revise their boundaries as a result of the statutory changes, with certain exceptions tied to specific types of business or the timing of certain applications. This has resulted in more paperwork and additional staff time and will continue even more so as regulatory changes add additional scrutiny to the review and evaluation of projects attempting to gain eligibility into the program.

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

IV. Costs to local governments (the Local Zone administration): None. The emergency regulation will not impose any additional costs to the local zone administration beyond any additional costs associated with implementing the statutory requirements which reform the program. In the long term, there may be some cost savings in regards to staff time due to a clarification of program requirements.

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

***Regulatory Flexibility Analysis***

Participation in the Empire Zones Program is entirely at the discretion of each eligible municipality and business enterprise. Neither General Mu-

nicipal Law Article 18-B nor the emergency regulations impose an obligation on any local government or business entity to participate in the program. The emergency regulation does not impose any adverse economic impact, reporting, record-keeping, or other compliance requirements on small businesses and/or local governments. In fact, the emergency regulations may have a positive economic impact on the small businesses and local governments that do participate due to clarifying changes, the added flexibility and a new application process. The administrative structure of the program was designed to offer a streamlined application and approval process by extracting only essential information from the applicants. In addition, the changes to the regulations that track changes in statute and result in a reconfiguration of zones will actually enhance the ability of businesses yet to apply which are located in distressed areas to receive program benefits. Local governments will have the additional short-term burden of taking the legal and administrative steps necessary to reconfigure their zones, but this is a statutorily imposed burden, not solely a regulatory one. Because it is evident from the nature of the emergency rule that it will have either no substantive impact, or a positive impact, on small businesses and local governments, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

***Rural Area Flexibility Analysis***

The program is a statewide program. There are eligible municipalities and businesses in rural areas of New York State. However, participation is entirely at the discretion of eligible applicant municipalities and eligible business enterprises. The program does impose some responsibility on those municipalities and businesses which participate in the program such as submitting applications and reports. The emergency rule will not impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency regulation will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

***Job Impact Statement***

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

# Office of Mental Retardation and Developmental Disabilities

## NOTICE OF WITHDRAWAL

### ICF/DD Efficiency Adjustment

**I.D. No.** MRD-03-09-00019-W

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

***Action taken:*** Notice of proposed rule making, I.D. No. MRD-03-09-00019-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on January 21, 2009.

***Subject:*** ICF/DD efficiency adjustment.

***Reason(s) for withdrawal of the proposed rule:*** As part of the enacted budget agreement this provision is not expected to be included as part of the final Budget for 2009-10.

# Department of Motor Vehicles

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Traffic Violations Bureau Fines

**I.D. No.** MTV-16-09-00006-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 123.4 of Title 15 NYCRR.

***Statutory authority:*** Vehicle and Traffic Law, sections 215(a), 225(3) and 226(1)(b)

***Subject:*** Traffic Violations Bureau fines.

***Purpose:*** To revise Traffic Violations Bureau fines for guilty pleas by mail.

***Text of proposed rule:*** Part 123.4 is amended to read as follows:

123.4 Fine schedule for guilty plea. (a) When a motorist pleads guilty by mail or in person at a bureau hearing office, he or she is required to pay the appropriate fine as follows:

(1) [$75] *$95* for a first red light violation, except that such fine shall be [$150] *$190* in the City of New York where such violation occurred on or after May 15, 2003;

(2) [$150] *$190* for a second red light violation committed within a period of 18 months, except that such fine shall be [$300] *$375* in the City of New York where such violation occurred on or after May 15, 2003;

(3) [$375] *$470* for a third red light violation committed within a period of 18 months, except that such fine shall be [$750] *$940* in the City of New York where such violation occurred on or after May 15, 2003;

(4) [$45] *$60* for all speed offenses where the charge is driving 10 miles per hour or less above the speed limit;

(5) [$90] *$115* for all speeding offenses where the charge is driving at least 11 miles per hour but not more than 30 miles per hour above the speed limit;

(6) [$50] *$65* for operating an uninspected vehicle, unless the violation is based upon a certificate of inspection which has been expired for 60 days or less, in which case the fine shall be [$25] *$35*;

(7) [$30] *$40* for any equipment violation;

(8) [$75] *$95* for operating an unregistered vehicle, or for unlicensed operation, unless the violation is based upon a registration or license which has been expired for 60 days or less, in which case the fine shall be $40; or

(9) [$40] *$50* for any other traffic infraction, except where otherwise specified by statue.

This regulation shall take effect on July 1, 2009, and shall apply to violations committed on or after that date.

***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.

***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 and control the exercise of the powers of the Department. Section 225 of the VTL provides that the Commissioner may promulgate such regulations as are necessary to effectuate the purposes of Article 2-A of the VTL. Section 226(1)(b) of the VTL provides that the Commissioner may establish a schedule of penalties for violations of the VTL and that such schedule shall be printed on the summons that is issued to the motorist. The motorist

may plead guilty, by mail or in person, and pay the fine set forth in such schedule.

2. Legislative objectives: Chapter 1074 of the Laws of 1969 created Article 2-A of the Vehicle and Traffic Law establishing the Traffic Violation Bureau (TVB). TVBs, located in New York City, Rochester, Buffalo and part of Suffolk County, provide for the fair and efficient adjudication of traffic offenses, other than misdemeanors and felonies. Prior to the creation of the TVBs, the overburdened criminal courts heard such offenses. To enhance TVB efficiencies, the Legislature provided that the commissioner could establish a schedule of fines that would appear on the summons issued to the motorist. Thus, if a motorist chose to plead guilty, by mail or in person, he or she could do so by transmitting the appropriate fine by mail or in person (this process is not permitted outside of TVB courts where a fine cannot be imposed until after a guilty plea or finding). This proposed rule raises the fines paid by motorists who plead guilty, by mail or in person, by 25%, rounded up to the nearest 5 dollars. The Legislature afforded the Commissioner discretion in setting the fine schedule, acknowledging the need to take inflationary factors into account and to enhance highway safety by providing a strong monetary deterrent to the commission of further violations of the VTL.

3. Needs and benefits: The proposed regulation, which increases the fines for guilty pleas in TVBs, by mail or in person, by about 25%, is necessary to account for inflation, as well as to maintain a meaningful deterrent against violations of the Vehicle and Traffic Law. The fine schedule established in Part 123.4 reflects the statutory scheme in the VTL. Where a fine is established for a specific offense, such as for red light violations (VTL Section 1800(b)) or for speeding violations (VTL Section 1180), Part 123.4 assesses the minimum statutory fine when entering a guilty plea by mail or in person. Such fines have not been raised since 2003 when the statutory fines were increased. In addition, Part 123.4 provides for a $40 fine for other traffic infractions ($30 for equipment violations) for which a fine is not specified in the regulation, such as seat belt or cell phone violations. These fines were established in 1991 and clearly do not make any adjustments for inflation over the past 18 years. Seat belt and cell phone violations, which are assessed the $40 fine, comprise a significant number of TVB violations, and an increase in the fine may serve as a deterrent to such offenses. In the 2007-08 fiscal year, there were about 253,000 seat belt violations and 210,000 cell phone violations returnable to all TVBs. In comparison, there were about 109,700 speeding violations and 89,000 unlicensed operation violations. In addition, during this period, there were about 97,000 window tinting violations, which currently is assessed only a $30 fine. Clearly, the current fines for such violations have not served as adequate deterrents. All highway users will benefit from an increase in the fine schedule because it should provide a deterrent effect against future violations of the VTL.

4. Costs: a. To regulated parties: Motorists would be required to pay the increased fines if they chose to plead guilty by mail or in person.

b. Local governments: Vehicle and Traffic Law section 227(5) provides that fine revenue collected pursuant to Traffic Violation Bureau adjudications is returned to the locality where such offense occurred, i.e., to New York City, Buffalo, Rochester and part of Suffolk County. DMV is reimbursed for its administrative costs. DMV estimates that based upon a 25% fine increase, the localities will see an annual increase in fine revenue as follows:

NYC - $14 million dollars;

Buffalo - $460,000 dollars;

Rochester - $840,000 dollars;

Suffolk County - $2 million dollars;

Cost to DMV: DMV will need to revise the traffic ticket to reflect the revised fine schedule. This will cost the Department approximately $60,000.

c. Source: DMV's Traffic Violation Division provided this information.

5. Local government mandates: This regulation does not impose any mandates upon local government.

6. Paperwork: DMV will need to revise the TVB traffic ticket to reflect the revised fine schedule.

7. Duplication: This regulation does not duplicate any State or Federal rules or laws.

8. Alternatives: DMV considered not raising the fines. However, DMV determined it was necessary to raise the fines by 25%, to accommodate both inflationary factors and the Department's commitment to highway safety.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government.

10. Compliance schedule: Upon printing and distribution of the new ticket with the revised fine schedule. The regulation shall take effect on July 1, 2009, and shall apply to violations committed on or after that date.

***Regulatory Flexibility Analysis***

A Regulatory Flexibility Analysis for Small Business and Local Governments is not submitted because this rule will not have a disproportionate or adverse impact on small businesses or local governments.

***Rural Area Flexibility Analysis***

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

***Job Impact Statement***

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

# Power Authority of the State of New York

## NOTICE OF WITHDRAWAL

**Rates for the Sale of Power and Energy**

**I.D. No.** PAS-06-09-00001-W

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

***Action taken:*** Notice of proposed rule making, I.D. No. PAS-06-09-00001-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on February 11, 2009.

***Subject:*** Rates for the sale of power and energy.

***Reason(s) for withdrawal of the proposed rule:*** Overall economic conditions and adverse consequences of cost increase on affected customers.

# Public Service Commission

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Major Gas Rate Filing**

**I.D. No.** PSC-16-09-00008-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 proposal filed by St. Lawrence Gas Company to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service—P.S.C. No. 3.

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

***Subject:*** Major gas rate filing.

***Purpose:*** To consider a proposal to increase annual gas revenues by approximately $2.17 million or 4.3%.

***Public hearing(s) will be held at:*** 10:30 a.m., June 24, 2009 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY*

*On occasion there are requests to reschedule or postpone evidentiary

hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.state.ny.us) under Case 08-G-1392.

***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 Commission is considering a proposal filed by St. Lawrence Gas Company (St. Lawrence) to increase its annual gas operating revenues by approximately $2,167,800 or 4.31% (increase to delivery rates would be approximately 17.9%). The statutory suspension period for the proposed filing runs through December 31, 2009. The Commission may adopt in whole or in part or reject terms set forth in St. Lawrence's proposal.

***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-G-1392SP1)

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

### The Appropriate Disposition of Funds Collected for Energy Efficiency Programs between RG&E and NYSERDA

**I.D. No.** PSC-16-09-00007-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 the petition of Rochester Gas and Electric Corporation (RG&E) to adjust its System Benefit Charge payments to the New York State Energy Research and Development Authority (NYSERDA).

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

***Subject:*** The appropriate disposition of funds collected for Energy Efficiency programs between RG&E and NYSERDA.

***Purpose:*** To consider whether to allow RG&E to retain $1,497,734 to pay for its own program rather than forward the funds to NYSERDA.

***Substance of proposed rule:*** Under the Commission's SBC III Order, Rochester Gas and Electric Corporation (RG&E) was allowed $3,031,500 in funding for its utility run energy efficiency contracts. The $3 million amount was based on historical cost information provided by RG&E The historical cost data was an inaccurate reflection of future costs by approximately $1,497,734.

RG&E has petitioned the Commission for authority to retain the already collected $1,497,734 rather than forwarding such amount to the New York State Energy Research and Development Authority. RG&E bases its petition on the fact that such money is necessary to cover its actual costs of its utility run energy efficiency programs.

The Commission may approve, reject or modify, in whole or in part, RG&E'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.

(05-M-0090SP5)

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

### Petition for the Submetering of Electricity

**I.D. No.** PSC-16-09-00009-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 Bay City Metering Co., Inc. on behalf of Devonshire Associates LLC to submeter electricity at 28 East 10th Street, in 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 Bay City Metering for Devonshire Assocs. to submeter electricity at 28 E. 10th St, in NY, 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 Bay City Metering Company, Inc. on behalf of Devonshire Associates LLC c/o Cheshire Group to submeter electricity at 28 East 10th Street, 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. 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.

(09-E-0017SP1)

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

### Petition for the Submetering of Electricity

**I.D. No.** PSC-16-09-00010-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 AMPS, on behalf of Park Imperial Condominium, to submeter electricity at 230 West 56th Street, in 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 AMPS on behalf of Park Imperial to submeter electricity at 230 W. 56th Street, in New York, New York.

***Substance of proposed rule:*** The Public Service Commission is consider-

ing whether to grant, deny or modify, in whole or part, the petition filed by American Metering & Planning Services, Inc. on behalf of Park Imperial Condominium to submeter electricity at 230 West 56th Street, 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. 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.

(09-E-0005SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Petition for the Submetering of Electricity at Commercial Property

**I.D. No.** PSC-16-09-00011-P

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

***Proposed Action:*** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Corning Property Management Corp., to submeter electricity at One Museum Way, in Corning, New York.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 65(1), 66(1) and 67(1)

***Subject:*** Petition for the submetering of electricity at commercial property.

***Purpose:*** To consider the request of Corning Property Management Corp., to submeter electricity at One Museum Way, in Corning, 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 Corning Property Management Corporation, a subsidiary of Corning Inc., to submeter electricity at One Museum Way, commercial property, in Corning, New York, located in the territory of New York State Electric & Gas Corporation.

***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.

(09-E-0103SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Net Metering - Public Service Law (PSL) Section 66-l

**I.D. No.** PSC-16-09-00012-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 proposed filing by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 19—Electricity.

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

***Subject:*** Net Metering - Public Service Law (PSL) Section 66-l.

***Purpose:*** To approve amendments filed to effectuate revisions to PSL Section 66-l.

***Substance of proposed rule:*** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Rochester Gas and Electric Corporation (RG&E) to conform its tariff to reflect amendments made to Section 66-l of the Public Service Law (PSL), which became effective on January 1, 2009. PSL Section 66-l provides for net metering for residential, farm service and non-residential wind net metering. RG&E is also including revisions to expand eligibility for General Information Section 13, Electric Hybrid Generating System Option to non-residential customers installing qualifying types of generators. A customer that installs two types of qualifying generation pursuant to General Information Sections 12, 14, 15, or 16 are eligible as a "hybrid" customer taking service under Section 13. The proposed filing has an effective date of July 1, 2009.

***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.

(09-E-0297SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Lightened Regulation and Financing of an Electric Generation Facility

**I.D. No.** PSC-16-09-00013-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 petition dated March 10, 2009 from Astoria Generating Company, L.P. requesting that its proposed 100 MW generation facility in Brooklyn, New York be subject to lightened regulation and that its financing be approved.

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

***Subject:*** Lightened regulation and financing of an electric generation facility.

***Purpose:*** Consideration of lightened regulation and financing of an electric generation facility.

***Substance of proposed rule:*** The Public Service Commission is considering a petition dated March 10, 2009 from Astoria Generating Company, L.P. requesting that its proposed 100 MW simple cycle combustion turbine and generator facility to be installed at its existing generation site in Sunset Park, Brooklyn, New York be subject to lightened regulation, and that a financing in the amount of no more than $130 million supporting construction and operation of the facility be approved. 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. 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.

(09-E-0250SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Petition for the Submetering of Electricity

**I.D. No.** PSC-16-09-00014-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 Madison Park Owner, LLC, to submeter electricity at 15 East 26th Street, in 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 Madison Park Owner, LLC, to submeter electricity at 15 East 26th Street, in 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 Madison Park Owner, LLC to submeter electricity at 15 East 26th Street, 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. 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.

(09-E-0265SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Net Metering - Public Service Law (PSL) Section 66-l

**I.D. No.** PSC-16-09-00015-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 a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 207 — Electricity.

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

***Subject:*** Net Metering - Public Service Law (PSL) Section 66-l.

***Purpose:*** To approve amendments filed to effectuate revisions to PSL Section 66-l.

***Substance of proposed rule:*** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to conform its tariff to reflect amendments made to Section 66-l of the Public Service Law (PSL), which became effective on January 1, 2009. PSL Section 66-l provides for net metering for residential, farm service and non-residential wind net metering. The proposed filing has an effective date of July 1, 2009.

***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.

(09-E-0284SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Net Metering - Public Service Law (PSL) Section 66-l

**I.D. No.** PSC-16-09-00016-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 a proposed filing by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 120 — Electricity.

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

***Subject:*** Net Metering - Public Service Law (PSL) Section 66-l.

***Purpose:*** To approve amendments filed to effectuate revisions to PSL Section 66-l.

***Substance of proposed rule:*** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by New York State Electric & Gas Corporation (NYSEG) to conform its tariff to reflect amendments made to Section 66-l of the Public Service Law (PSL), which became effective on January 1, 2009. PSL Section 66-l provides for net metering for residential, farm service and non-residential wind net metering. NYSEG is also including revisions to expand eligibility for General Information Section 24, Electric Hybrid Generating System Option to non-residential customers installing qualifying types of generators. A customer that installs two types of qualifying generation pursuant to General Information Sections 22, 23, 26, or 27 are eligible as a "hybrid" customer taking service under Section 24. The proposed filing has an effective date of July 1, 2009.

***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.

(09-E-0296SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Net Metering - Public Service Law (PSL) Section 66-l

**I.D. No.** PSC-16-09-00017-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 proposed filing by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 15 — Electricity.

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

***Subject:*** Net Metering - Public Service Law (PSL) Section 66-l.

***Purpose:*** To approve amendments filed to effectuate revisions to PSL Section 66-l.

***Substance of proposed rule:*** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Central Hudson Gas & Electric Corporation (Central Hudson) to conform its tariff to reflect amendments made to Section 66-l of the Public Service Law (PSL), which became effective on January 1, 2009. PSL Section 66-l provides for net metering for residential, farm service and non-residential wind net metering. The wind generation load threshold on Central Hudson's system has also been expanded to 3.6 MW, or 0.3% of its electric demand of 1201 MW for 2005. The proposed filing has an effective date of July 1, 2009.

***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.

(09-E-0298SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Provision of Electric Service by the Village of Frankfort

**I.D. No.** PSC-16-09-00018-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 the Village of Frankfort for approval to provide electric service beyond its existing franchise area.

***Statutory authority:*** Public Service Law, sections 4(1), 66(10), 68 and 70

***Subject:*** Provision of electric service by the Village of Frankfort.

***Purpose:*** To consider petition by the Village of Frankfort to provide electric service beyond its existing franchise area.

***Substance of proposed rule:*** The Commission is considering whether to approve or reject, in whole or in part, a petition filed pursuant to Public Service Law Sections 68 and 70 by the Village of Frankfort for approval to provide electric service beyond its existing franchise area to a vacant area of land known as the ''Pumpkin Patch" in the Town of Frankfort. The Village cites the importance of providing electric service to this area for economic development.

***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.

(09-E-0299SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Electric Utility Projects That May Qualify for Partial Funding Under the Federal American Recovery and Reinvestment Act of 2009

**I.D. No.** PSC-16-09-00019-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, reject or modify, in whole or in part, the filings of several electric utilities seeking recovery of potential costs associated with utility projects that may qualify for partial federal funding.

***Statutory authority:*** Public Service Law, sections 4, 5, 6, 65 and 66

***Subject:*** Electric utility projects that may qualify for partial funding under the federal American Recovery and Reinvestment Act of 2009.

***Purpose:*** To determine the extent of costs associated with electric utility projects that may be recovered from ratepayers.

***Substance of proposed rule:*** The Public Service Commission (Commission) is considering whether to accept, reject or modify, in whole or in party, the filings of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, Central Hudson Gas and Electric Corporation, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, seeking Commission approval of recovery of certain costs associated with utility projects that may be eligible for a grant (covering up to 50 percent of the project costs) from the United States Department of Energy (DOE) under its Electricity Delivery and Energy Reliability (EDER) Program, which is funded by the American Recovery and Reinvestment Act of 2009. Among the issues to be considered are the cost and benefits associated with each proposed utility project, the proposed project's impact on the reliability of New York's electric system, and the likelihood that the utility may receive a grant from DOE under the EDER program. The Commission may also consider other matters related to the submission of utility project filings.

***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.

(09-E-0310SP1)

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

### Whether SUNY's Core Accounts Should be Exempt from the Mandatory Assignment of Local Distribution Company (LDC) Capacity

**I.D. No.** PSC-16-09-00020-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, a petition by The State University of New York (SUNY) requesting exemption from mandatory assignment of LDC pipeline capacity for SUNY's core accounts.

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

***Subject:*** Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity.

***Purpose:*** Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity.

***Substance of proposed rule:*** By petition filed March 20, 2009, The State University of New York (SUNY) seeks an exemption for its core accounts from the mandatory assignment of local distribution company (LDC) gas pipeline capacity set forth by the New York State Public Service Commission (Commission) in its "Order on Capacity Release Programs" issued August 30, 2007 in Case 07-G-0299. Specifically, the petitioner requests that the Commission issue a Declaratory Ruling establishing that, upon demonstration by SUNY and/or its marketer(s) that natural gas procured by SUNY will be delivered on a primary firm point-to-point non-recallable basis to the LDC city gate, or that such load is backed by an alternative fuel option, such supply is not subject to the mandatory capacity release requirements set forth by the Commission in its "Order on Capacity Release Programs". The Commission is considering whether to grant, deny or modify, in whole or in part, the requested exemption from the mandatory assignment of LDC capacity for SUNY's core 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. 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.

(09-G-0257SP1)

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

### Issuance of Securities and Other Forms of Indebtedness

**I.D. No.** PSC-16-09-00021-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 the petition of Central Hudson Gas & Electric Corporation to enter into multi-year credit agreements in amounts not to exceed $175 million in the aggregate, and issue long-term debt in an amount not to exceed $250 million.

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

***Subject:*** Issuance of securities and other forms of indebtedness.

***Purpose:*** To authorize the issuance of securities and other forms of indebtedness.

***Substance of proposed rule:*** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by Central Hudson Gas & Electric Corporation (the company) for the approval to enter into multi-year credit agreements totaling $175 million and to issue and sell long-term debt, commencing immediately and from time to time through December 31, 2012, in an amount not to exceed $250 million.

The company will use the proceeds of the long-term debt for the payment of $60 million on maturing debt, the refinancing of $116 million of auction rate securities, the funding of future construction expenditures, funding programs to remediate former gas plants and for pension funding.

The company believes it needs a credit facility of $175 million for construction forecasts, working capital needs and financing requirements.

***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.

(09-M-0308SP1)

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

### Issuance of Securities and to Enter into Derivative Contracts

**I.D. No.** PSC-16-09-00022-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 of Rochester Gas and Electric Corporation authorizing the issuance of long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments.

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

***Subject:*** Issuance of securities and to enter into derivative contracts.

***Purpose:*** To permit Rochester Gas and Electric Corporation to finance transactions for purposes authorized under PSL Section 69.

***Substance of proposed rule:*** The Public Service Commission is considering whether to approve or deny in whole or in part a petition of Rochester Gas and Electric Corporation authorizing the issuance of long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments to manage interest rate risk.

***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.

(09-M-0309SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Temporary Annual Assessment

**I.D. No.** PSC-16-09-00023-P

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

***Proposed Action:*** Implementation of a chapter of the Laws of 2009 establishing a Temporary Annual Assessment, pursuant to Public Service Law, section 18-a(6).

***Statutory authority:*** Public Service Law, sections 66(1), 80(1), (10), 89-c(1) and (10)

***Subject:*** Temporary Annual Assessment.

***Purpose:*** To establish annual temporary assessment.

***Substance of proposed rule:*** The Public Service Commission is considering the adoption of a rule implementing a chapter of the laws of 2009 establishing a Temporary Annual Assessment, pursuant to Public Service Law § 18-a(6). That section imposes upon public utility companies an Assessment equal to two per centum of the utility's gross intrastate operating revenues, less the amount assessed to pay the costs and expenses of the Commission and the Department of Public Service, as a credit to the state general fund. The revenues subject to the Assessment include revenues derived from sales of electricity and natural gas commodities by third parties. The issues under consideration include accounting treatments; billing mechanisms for recovering the Assessment from rate payers; processes for estimating revenues associated with provision of electricity and natural gas commodities by third parties; and any other related issues.

***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.

(09-M-0311SP1)

# Racing and Wagering Board

## NOTICE OF ADOPTION

### Allowing Audible Alert on Electronic Bingo Aids When a Winning Pattern Has Been Obtained

**I.D. No.** RWB-52-08-00013-A

**Filing No.** 332

**Filing Date:** 2009-04-01

**Effective Date:** 2009-04-22

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

***Action taken:*** Amendment of section 5823.2 of Title 9 NYCRR.

***Statutory authority:*** Executive Law, section 435(1)(a)

***Subject:*** Allowing audible alert on electronic bingo aids when a winning pattern has been obtained.

***Purpose:*** To amend the Board's bingo rules to allow audible alerts on electronic bingo aids and to correct a typographical error.

***Text or summary was published*** in the December 24, 2008 issue of the Register, I.D. No. RWB-52-08-00013-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** John Googas, NYS Racing and Wagering Board, 1 Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, email: info@racing.state.ny.us

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

### State Lottery Drawings

**I.D. No.** RWB-01-09-00002-A

**Filing No.** 333

**Filing Date:** 2009-04-01

**Effective Date:** 2009-04-22

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

***Action taken:*** Repeal of Parts 5000 and 5001 of Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1); and Tax Law, section 1604(a)

***Subject:*** State Lottery drawings.

***Purpose:*** This rulemaking is designed to remove obsolete and statutorily nullified rules regarding the State Lottery.

***Text or summary was published*** in the January 7, 2009 issue of the Register, I.D. No. RWB-01-09-00002-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.state.ny.us

***Assessment of Public Comment***

The agency received no public comment.

# Department of State

## EMERGENCY RULE MAKING

### Continuing Education for Licensed Home Inspectors

**I.D. No.** DOS-16-09-00003-E

**Filing No.** 345

**Filing Date:** 2009-04-03

**Effective Date:** 2009-04-03

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

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

***Statutory authority:*** Real Property Law, section 444-f

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

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

requirement, thus necessitating the adoption of this rule on an emergency basis.

***Subject:*** Continuing education for licensed home inspectors.

***Purpose:*** Establish standards for continuing education for licensed home inspectors.

***Text of emergency rule:*** Subpart 197-3 is added to 19 NYCRR Part 197 to read as follows:

*SUBPART 197-3. HOME INSPECTION CONTINUING EDUCATION COURSES*

*Section 197-3.1 General requirements.*

*(a) Renewals. For all home inspection licenses that expire prior to December 31, 2008, no renewal license shall be issued unless said licensee has completed 6 hours of approved continuing education within the two-year period immediately preceding such renewal. For all home inspection licenses that expire on or after December 31, 2008, no renewal license shall be issued unless said licensee has completed 24 hours of approved continuing education within the two-year period immediately preceding such renewal.*

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

*Section 197-3.2 Approved entities.*

*Continuing education home inspection courses (herein referred to as ''sponsors'') may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by the Commissioner of Education; public or private schools; and home inspection related professional societies and organizations. Types of instruction which shall not be acceptable as meeting continuing education requirements include such courses as:*

*(a) offerings in basic computer skills training, instructional navigation of the Internet, instructional use of generic computer software or industry specific report writing software, instruction in personal motivation, business marketing, salesmanship, radon and pests, and any other instruction that is unrelated to home inspection.*

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

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

*(a) name, address and telephone number of the applicant;*

*(b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;*

*(c) title of each course to be offered;*

*(d) location of each course offered;*

*(e) duration and time of each course offered;*

*(f) procedure for taking attendance;*

*(g) a detailed outline of the subject matter of each course or seminar. The outline shall contain the amount of time each segment of the course or seminar lasts, as well as the teaching techniques used in each segment. Each course or seminar will contain at least one hour of instruction, and at most 24 hours of instruction; and*

*(h) description of materials to be distributed to the participants.*

*Section 197-3.4 Program Approval.*

*Sponsors of courses of study may file applications for approval within 30 days of the completion of that course. The sponsor conducting the program may not guarantee to licensees that approval will be granted. Advertisements of such courses of study must indicate that such approval is not guaranteed.*

*Section 197-3.5 Successful completion of course.*

*(a) Any course for continuing education shall be accepted for credit on the basis of attendance only. For those courses that have received pre-instruction approval from the Department of State, the course administrator must submit to the Department of State within 15 days of completion of the class, the names of all individuals who successfully complete the approved course together with the unique identification number assigned by the Department of State to all such individuals. For those courses that have received post-instruction approval from the Department of State pursuant to 19 NYCRR 197-3.4, the course administrator must submit this information to the Department of State within 15 days of having been granted post-instruction approval by the Department of State.*

*(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificates must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the person authorized to sign certificates. For those courses that have received post-instruction approval from the Department of State pursuant to 19 NYCRR 197-3.4, the course administrator shall provide this course certificate to qualified course attendees within 30 days of having received Department of State course approval.*

*Section 197-3.6 Equivalency Credit.*

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

*(b) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the Department of State, may file a request to the Department to have such course count as credit toward their New York continuing education requirement. All applications for such consideration must be submitted with official documentation of satisfactory completion and the official descriptions of the course of study as prescribed by the Department of State. Upon receipt of such a request, the Department of State will review and evaluate the out-of state course to determine if all or a portion of the course may be credited toward the applicant's New York continuing education requirement. Within 30 days of receipt of a request, the Department of State will approve or deny the request for New York continuing education credit.*

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

*Section 197-3.7 Extension of time to complete courses.*

*The Department of State may grant an extension to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such an extension shall submit a written request, together with the evidence demonstrating such hardship. Within 30 days of receipt of a request, the Department of State will notify the licensee whether their request for an extension has been granted or denied.*

*Section 197-3.8 Computation of instruction time.*

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

*Section 197-3.9 Attendance and Record Retention.*

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

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

*(1) the approval number issued by the Department of State for the course;*

*(2) title and description of the course;*

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

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

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

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

*Section 197-3.11 Auditing.*

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

*Section 197-3.12 Change in approved course of study.*

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

*Section 197-3.13 Suspensions and denials of school approval.*

*The Department of State may deny, suspend or revoke the approval of a home inspection school, if it is determined that it is not in compliance with the law and rules. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his or her designee pursuant to Real Property Law section 444-i.*

*Section 197-3.14 Open to public.*

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

*Section 197-3.15 Facilities.*

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

*Section 197-3.16 Faculty.*

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

*(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.*

*Section 197-3.17 Continuing education credit.*

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

*Section 197-3.18 Registration period.*

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

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 1, 2009.

***Text of rule and any required statements and analyses may be obtained from:*** Whitney A. Clark, Esq., Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 22001, Albany NY 12231, (518) 473-2728

***Regulatory Impact Statement***

1. Statutory authority:

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

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

2. Legislative objectives:

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

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

3. Needs and benefits:

Real Property Law § 444-f(1) requires all home inspectors seeking renewal of their licenses to have successfully completed a course of continuing education approved by the Secretary of State, in consultation with the home inspection council. Created by statute, the home inspection council is an advisory board that advises the Secretary of State on the need for certain regulatory action, including continuing education. The home inspection council has advised the Secretary of State that this rule making is necessary to ensure that all home inspectors who apply for renewal of their licenses will have had the opportunity to meet the statutory continuing education requirement.

The rule making will pro rate the continuing education requirement for certain licensees. Licensees whose licenses expire prior to December 31, 2008 will have to complete six hours of approved continuing education. Those whose licenses expire on or after December 31, 2008 will be required to complete the full 24 hours of continuing education.

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

4. Costs:

a. Costs to regulated parties:

Licensees seeking renewal will be required to pay the cost of attending and completing an approved course of study for the required number of hours. The Department has conferred with several education providers throughout the State and estimates that course providers will charge an average of $480 for 24 hours of continuing education courses. Based on a review of continuing education fees currently being charged by course providers, the Department of State determined that each continuing education unit costs a student approximately $20.00 per credit; or $480 for 24 hours of continuing education.

b. Costs to the Department of State:

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

c. Costs to State and local governments:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

During regular meetings, the state home inspection council reviewed and considered various proposals for compliance with the statutory mandate for continuing education standards, ultimately recommending approval of the number of hours, courses of study, and methods of ensuring compliance adopted by this rule. The home inspection council considered waiving the continuing education requirement completely, or reducing the requirement to a de minimus amount. The Department, in consultation with the council determined that six hours of continuing education was appropriate for those whose licenses expire prior to December 31, 2008, insofar as it provides an accommodation to those licensees, while providing protections to consumers by guaranteeing that all licensed home inspectors complete an appropriate amount of continuing education.

9. Federal standards:

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

10. Compliance schedule:

Applicants for renewal of a home inspector's license have two years in which to comply with the continuing education requirement, with a prorated reduction for renewal of licenses expiring less than two years from the effective date of this rule. The Department of State maintains a list on its website of approved continuing education providers, with their

relevant contact information to assist licensees to locate approved continuing education courses. Therefore, regulated parties will be on notice of, and have adequate time to comply with, the requirements imposed by the proposed rule making.

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

***Regulatory Flexibility Analysis***

1. Effect of rule:

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

The rule does not apply to local governments.

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

It is anticipated that small businesses will incur only the costs of any fees required for attending and completing an approved course of continuing education. It is estimated that the cost of completing 24 hours of continuing education will be $480 per licensee.

5. Economic and technological feasibility:

With the exception of the cost associated with taking the required continuing education courses as set forth under the compliance costs section of this statement, it is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

6. Minimizing adverse economic impact:

With the exception of the cost associated with taking the required continuing education courses as set forth under the compliance costs section of this statement, it is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule.

7. Small business and local government participation:

The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule. Members of the home inspection council are diverse and include owners of small businesses. The subject matter of the proposed rule was further discussed at meetings of the home inspection council which were open to public comment.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

This rule applies equally to all licensed home inspectors in all areas of the state-urban, suburban and rural. The rule does not apply to public entities located in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Reporting and record-keeping requirements include the obligation of all applicants seeking renewal of their licenses to maintain course completion certificates as proof of completing the required continuing education. Applicants for renewal of a home inspector's license in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

Other than the estimated cost of $480 per licensee to complete 24 hours of continuing education, it is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any costs of compliance as a result of this rule.

4. Minimizing adverse impact:

Other than the estimated cost of $480 per licensee to complete 24 hours of continuing education, it is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance.

5. Rural area participation:

The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule. Members of the home inspection council represent geographically diverse areas including rural areas of New York State. In addition, the subject matter of the proposed rule was discussed during open meetings of the home inspection council and which were open to public comment.

***Job Impact Statement***

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

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

### Campus Fire Safety

**I.D. No.** DOS-16-09-00002-P

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

***Proposed Action:*** Amendment of Part 500 of Title 19 NYCRR.

***Statutory authority:*** Executive Law, section 156-e

***Subject:*** Campus fire safety.

***Purpose:*** To clarify procedures and add a new fire reporting requirement.

***Substance of proposed rule (Full text is posted at the following State website: www.dos.state.ny.us):*** PART 500 CAMPUS FIRE SAFETY

Section 500.1 Authority, intent, purpose and scope. The amendments to this section make minor technical corrections to this section and includes ''other applicable safety standards'' as part of the Office of Fire Prevention and Control's inspection authority to be consistent with Executive Law § 156-e.

Section 500.2 Inspections and reports. The amendments to this section make minor technical corrections to this section; and includes ''other applicable safety standards'' and ''other building construction and all records related thereto'' as part of the Office of Fire Prevention and Control's inspection authority to be consistent with Executive Law § 156-e.

Section 500.3 Report of Inspection/Notice of Violation. The amendments to this section make minor technical corrections and clarifications to this section; and includes ''other applicable safety standards'' as part of the Office of Fire Prevention and Control's inspection authority to be consistent with Executive Law § 156-e.

Section 500.4 Order to Comply. This section deals with the office of Fire Prevention and Control's authority to issue an order to comply in situations that present threats to public health and safety.

Section 500.5 Penalties. The amendments to this section contain a minor technical correction to include the title ''monetary penalties;'' and deal with the time within which a compromise may be requested and how any compromise money shall be used.

Section 500.6 Methods of Abatement. The amendments to this section make minor technical corrections to this section and includes ''other applicable safety standards'' as part of the Office of Fire Prevention and Control's inspection authority to be consistent with Executive Law § 156-e.

Section 500.7 Compliance Plans. This section deals with the ability of a college or university to submit a compromise plan and addresses the responsibility of the college or university under such plan.

Section 500.8 Certificate of Compliance. The amendments to this section make minor technical corrections to this section and includes ''other applicable safety standards'' as part of the Office of Fire Prevention and Control's inspection authority to be consistent with Executive Law § 156-e. This section also repeals the old title of section 500.8, revocation of a certificate of compliance, but keeps the content of the rule.

Section 500.9 Imminent Threat to Public Health or Safety. This section deals with the Office of Fire Prevention and Control's authority to take corrective action when an imminent threat to health and safety exists.

Section 500.10 Reporting of Fires. This section deals with the responsibility of a college or university to report, to the Office of Fire Prevention and Control, any fire that occurs on its property.

Section 500.11 Delegation of inspection authority to local governments. This rule does not make any changes to this section.

***Text of proposed rule and any required statements and analyses may be obtained from:*** David Treacy, Esq., Department of State, 99 Washington Avenue, Albany, New York 12231, (518) 474-6740

***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

Chapter 81 of the Laws of 2002 amended Education Law § 807-b and added a new Executive Law § 156-e. These provisions direct the Department of State, Office of Fire Prevention and Control (OFPC) to conduct fire inspections at least annually of all public and independent college buildings outside of the City of New York to ensure compliance with the State Uniform Fire Prevention and Building Code (UFPBC) and its fire safety standards. Education Law § 807-b(3) authorizes OFPC to adopt rules establishing minimum standards for the content and frequency of inspections. Executive Law 156-e(1) provides that OFPC shall annually inspect public and independent college buildings for compliance with the Uniform Fire Prevention and Building Code and other fire prevention and building codes. Executive Law 156-e(2) authorizes OFPC to adopt rules regarding the issuance of violations, compliance with orders, and provides time for compliance, re-inspection procedures, and issuance of certificates of compliance. The statutes also authorize OFPC to take appropriate actions to ensure that violations are promptly remedied.

Executive Law § 91 authorizes the Secretary of State to promulgate rules to regulate and control the exercise of powers of the Department of State and the performance of its officers, agents and employees. Executive Law § 155 provides that the Office of Fire Prevention and Control is created within the Department of State. Executive Law § 156 (19) authorizes OFPC to adopt, amend or rescind rules that may be necessary or convenient to the performance of functions, powers and duties set forth in Article 6-C of the Executive Law.

2. Legislative Objectives

The governing statutes constitute a legislative commitment to provide protection to all college students and staff from the perils of fire. Compliance with the UFPBC and its fire safety standards are viewed as a critical component in providing this protection. To carry out this critical public safety objective, the legislation has recognized that OFPC is best positioned both to assume inspection responsibility and to undertake effective enforcement. This rule fulfills the legislative objectives.

3. Needs and Benefits

This amended rule is necessary to enable OFPC to perform its functions in a more effective manner. This rule reflects the experience and knowledge gained by OFPC since the initial promulgation of rules following the enactment of Chapter 81 of the Laws of 2002. The purpose of this rule is to clarify the procedures and steps that colleges must follow in order to comply with Chapter 81 of the Laws of 2002. The establishment of improved uniform procedures will enhance compliance with the UFPBC by providing colleges with a better framework to be utilized during the inspection process. This amended rule further implements OFPC's goal of improving compliance with the UFPBC. The rule also provides for necessary enforcement mechanisms, including the imposition of fines and, when the violations warrant, the issuance of cease and desist orders, or orders to vacate.

This amended rule establishes that certain circumstances identified during an inspection would allow for a timelier issuance of an order to comply. For instance, under the previous text if an inspection of a student center revealed that a large outdoor grill had been placed inside a student center, OFPC would typically issue a notice of violation because the only other clear remedy immediately available to an inspector would be to take the most unusual step of ordering the building closed until abatement is achieved. If a re-inspection at a later date revealed that the grill still remained inside the center, an inspector would then issue an order to comply. In the meantime, the identified extremely dangerous situation may persist on campus. The amended text would allow OFPC to issue an order to comply in the first instance upon the identification of a severe or serious violation or the cumulative effect of numerous significant violations, thereby allowing OFPC to more effectively perform its functions.

This rule clarifies that any penalty monies that are part of a compromise or settlement must be used by the college to improve fire and life safety activities or equipment. A compromise, under the amended rule, may be requested no later than 60 days after OFPC verification of violation abatement; this provision clarifies the appropriate period to request a compromise and provides a reasonable duration to do so.

Compliance plans are more clearly defined in this rule. The modified text regarding compliance plans has been separated from text related to abatement of violations in order to avoid confusion over the purpose of compliance plans. The text clarifies that a compliance plan is not a form of abatement; a compliance plan lays out the corrective action that a college plans to undertake in order to achieve abatement. This amended rule also combines the text of two previous sections - regarding certificates of compliance and revocation of such certificates - into one section.

This rule changes the name of a section previously titled ''Order to vacate'' to ''Imminent threat to public health and safety'' to highlight the standard or condition that may call for a building to be vacated. The text of the section is also modified to clarify OFPC's authority to issue either a ''cease and desist order'' or an order to close a building, if an order to comply has not been followed and there is a finding of imminent threat to public health or safety. Clarifying OFPC's authority to issue either a cease and desist order or an order to vacate in appropriate circumstances would bring OFPC in line with the industry norm by providing a measure of flexibility that is afforded to similar offices in other states. Some situations more appropriately call for the issuance of a cease and desist order rather than taking the most drastic step of closing a building.

The amended rule also adds a section to require colleges to report to OFPC within 24 hours basic information regarding all fires that take place on college property. This would allow OFPC to promptly evaluate whether damaged buildings may be safely re-occupied and/or to inspect the condition of alternative buildings that may be utilized until repairs are completed.

4. Costs

Currently, regulated parties are required to comply with the provisions of the UFPBC. This amended rule will not change this requirement or add charges attendant to compliance with the UFBC. Colleges will not incur additional costs as a result of amending this rule, which does not impose additional fees related to inspections or re-inspections, or the submission of reports. No charges are associated with the requirement in this rule for colleges to promptly transmit to OFPC information that is similar to the fire safety information which colleges must report annually to the Secretary of the United States Department of Education pursuant to the federal Higher Education Opportunity Act (P.L. 110-135, Laws of 2008 (signed 8/14/08)).

This amended rule will not impose any additional costs to the State, and local governments will incur no costs with the exception of those governments that voluntarily request OFPC delegation of inspection duties. This amended rule does not alter the powers, limitations or process related to OFPC delegation of such duties. A delegation may occur only if a local government specifically requests OFPC to delegate inspection responsibility to the local government. Furthermore, an application to OFPC requesting such delegation will still have to include a resolution by the local governing body indicating that such responsibility is accepted with no expectation of financial reimbursement from the State. Since any local government assumption of responsibility to perform the inspections will remain completely voluntary, any local programmatic costs associated with fulfilling such responsibility will be voluntarily incurred by the local government.

5. Local Government Mandates

This rule places no mandate upon local governments.

6. Paperwork

The majority of paperwork required by this rule will be completed by OFPC, which will continue to produce an inspection report for each building, issue orders and complete all paperwork necessary to obtain compliance with the UFPBC. Reporting requirements for colleges are limited to the reporting of fires on a one-page report, and the voluntary submission of a compliance plan, which would document a college's planned course of action for abating any fire safety violations in compliance with the UFBC. Any paperwork requirements for local governments will result from voluntary participation in the inspection process.

7. Duplication

This proposed regulation does not duplicate any other state or federal law or regulation. Only OFPC or a delegated local government may conduct inspections, and only OFPC will have enforcement authority, pursuant to the law.

8. Alternatives

The OFPC considered alternatives, but no alternatives were sufficient to accomplish the fire safety goals of compliance with the UFPBC. For instance, the Department of State considered utilizing the same reporting requirements found in federal legislation (P.L. 110-135, Laws of 2008). However, based on limitations of the federal reporting process, especially the requirement for colleges to submit reports only on an annual basis and the requirement for colleges to report fire safety information pertaining only to campus housing facilities, this alternative was not adopted. Rather, this rule's reporting requirement would provide OFPC with a real-time report of fires on all property under the jurisdiction of colleges, providing OFPC with the ability to more effectively evaluate conditions related to safe reoccupancy.

The Office of Fire Prevention and Control has reached out to the regulated parties to outline and explain the new and amended requirements of this rule, including SESHA Environmental Health and Safety Association of New York, SUNY Association of Physical Plant Administrators and New York Association of Higher Education Facilities Officers. The only feedback that OFPC received was a question regarding the federal reporting requirement and compliance with this rule. It was explained that this rule would expand upon the federal requirement to report fires in residence halls by also requiring the reporting of fires on all college property.

9. Federal Standards

The federal standard regarding the reporting of fires requires colleges to submit an annual report regarding fires in residence halls to the Secretary of the United States Department of Education (P.L. 110-135, Laws of 2008).

This amended rule would complement the federal standard. This rule is similar to the federal rule in that they both require colleges to transmit reports pertaining to fire safety concerns on college campuses. This rule, however, would require colleges to promptly send reports to OFPC after each incident of fire, rather than on just an annual basis. This rule would also have colleges send OFPC reports on incidents of fire on all property under the jurisdiction of the college, rather than reporting only fires that are related to on-campus housing facilities. These additional state requirements would allow OFPC to more effectively evaluate potential safety concerns on college property and to perform such function in a timely manner.

10. Compliance Schedule

Regulated parties can immediately comply with the rule.

***Regulatory Flexibility Analysis***

1. Effect of Rule

The only businesses affected by this rule will be the colleges and universities located outside of the City of New York. According to information provided by the State Education Department, there are only 15 colleges that employ fewer than 101 people and qualify as small businesses under SAPA. This amended rule will not affect these colleges, except as noted below, because under existing law they are required to have annual inspections to determine whether they are in compliance with the Uniform Fire Prevention and Building Code (UFPBC).

This amended rule will not impact local governments because a request for statutory delegation of authority to conduct inspections by the local government is voluntary. No requirements are imposed upon local governments.

2. Compliance Requirements

Affected colleges and universities will be required to continue to correct violations identified as a result of the UFPBC inspections. The rule provides colleges with the ability to develop compliance plans to address each violation.

This rule requires colleges to timely transmit to the Office of Fire Prevention and Control (OFPC) information that is similar to the fire safety information which colleges must report to the Secretary of the United States Department of Education pursuant to the federal Higher Education Opportunity Act (P.L. 110-135, Laws of 2008 (signed 8/14/08)). This amended rule would complement the federal standard and allow colleges to easily comply with both reporting standards.

3. Professional Services

In some instances, colleges and universities may choose to utilize the services of a professional engineer or licensed architect in the development of compliance plans. The need for professional assistance historically has been minimal because the violations have involved the maintenance of buildings rather than structure or design.

4. Compliance Costs

No additional costs are associated with college compliance with this amended rule. Currently, regulated parties are required to comply with the provisions of the Uniform Fire Prevention and Building Code (UFPBC). This amended rule will not change this requirement or add charges attendant to compliance with the UFBC. Colleges will not incur additional costs as a result of the amendments proposed by this rule, which does not impose additional fees related to inspections or re-inspections, or the submission of reports. No charges are associated with the requirement in this rule for colleges to promptly transmit to OFPC information that is similar to the fire safety information which colleges must report annually to the Secretary of the United States Department of Education pursuant to the federal Higher Education Opportunity Act (P.L. 110-135, Laws of 2008 (signed 8/14/08)).

This amended rule will not impose any costs on local governments, with the exception of those governments that voluntarily request OFPC delegation of inspection duties. This rule does not alter the powers, limitations or process related to OFPC delegation of such duties. A delegation may occur only if a local government specifically requests OFPC to delegate inspection responsibility to the local government. Furthermore, an application to OFPC requesting such delegation will still have to include a resolution by the local governing body indicating that such responsibility is accepted with no expectation of financial reimbursement from the State. Since any local government assumption of responsibility to perform the inspections will remain completely voluntary, any local programmatic costs associated with fulfilling such responsibility will be voluntarily incurred by the local government.

5. Economic and Technological Feasibility

Economic impact on colleges will be driven solely by the level of current compliance with the UFPBC and its standards. Nothing in this rule increases the current cost requirements placed on colleges, but rather, the rule is designed to assure compliance with the UFPBC. Colleges that properly address noncompliant conditions in a reasonable time frame will not incur any economic impact.

The allowance of compliance plans as outlined in Part 500 permits colleges to incorporate technological changes and advancements when addressing noncompliant items.

6. Minimizing Adverse Impact

This rule will have no adverse economic impact on small business or local governments. The purpose of this rule is to clarify the procedures and steps that colleges must follow in order to comply with the law and the UFPBC.

7. Small Business and Local Government Participation

Representatives of the Commission on Independent Colleges and Universities were members of the Governor's Task Force on Campus Fire Safety. This Task Force recommended to the Governor that OFPC be given the statutory authority to conduct fire safety inspections of colleges and universities.

The Office of Fire Prevention and Control has reached out to the regulated parties to outline and explain the new and amended requirements of this rule, including SESHA Environmental Health and Safety Association of New York, SUNY Association of Physical Plant Administrators and New York Association of Higher Education Facilities Officers. The only feedback received by OFPC was a question regarding the federal reporting requirement and compliance with this rule. It was explained that this rule expands upon the federal reporting requirement to require that all fires on college property, not just in residence halls, be reported.

In addition, the proposed rule will be available for public comment for a period of at least 45 days.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas

Approximately 167 colleges and universities will continue to be inspected under Section 807-b of the Education Law and Section 156-e of the Executive Law. While many of these colleges and universities are in rural areas, the regulations will not negatively impact rural areas.

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

Reporting requirements for colleges are limited to the reporting of fires on college or university property. Local governments within rural areas have no additional reporting or record keeping requirements under this rule unless they voluntarily choose to conduct required inspections under the delegation portion of the rule. There is no requirement for a rural college or university to obtain professional services. In some instances, colleges and universities may choose to utilize the services of a professional engineer or licensed architect in the development of compliance plans, but the need for professional assistance historically has been minimal based on the nature of the violations being related to maintenance rather than structure or design.

3. Costs

The rule will not impose any additional costs on public and private entities located in rural areas. Currently, regulated parties are required to comply with the provisions of the Uniform Fire Prevention and Building Code (UFPBC). This amended rule will not change this requirement or add charges attendant to compliance with the UFBC. Colleges will not incur additional costs as a result of amendments proposed by this rule, which does not impose additional fees related to inspections or re-inspections, or the submission of reports. No charges are associated with the requirement in this rule for colleges to promptly report to OFPC information that is similar to the fire safety information which colleges must report annually to the Secretary of the United States Department of Education pursuant to the federal Higher Education Opportunity Act (P.L. 110-135, Laws of 2008 (signed 8/14/08)). This amended rule would complement the federal reporting standard and allow colleges to easily comply with both reporting standards.

This amended rule will not impose any costs on local governments, with the exception of those governments that voluntarily request OFPC delegation of inspection duties. This rule does not alter the powers, limitations or process related to OFPC delegation of such duties. A delegation may occur only if a local government specifically requests OFPC to delegate inspection responsibility to the local government. Furthermore, an application to OFPC requesting such delegation will still have to include a resolution by the local governing body indicating that such responsibility is accepted with no expectation of financial reimbursement from the State. Since any local government assumption of responsibility to perform the inspections would remain completely voluntary, any local programmatic costs associated with fulfilling such responsibility will be voluntarily incurred by the local government.

4. Minimizing adverse impact

This rule will have no adverse economic impact on rural areas. The purpose of this rule is to clarify the procedures and steps that colleges must follow in order to comply with the law and the UFPBC. Colleges that properly address noncompliant conditions in a reasonable time frame will not incur any economic impact.

5. Rural area participation

The Office of Fire Prevention and Control (OFPC) has reached out to the regulated parties to outline and explain the new and amended requirements of this rule, including SESHA Environmental Health and Safety Association of New York, SUNY Association of Physical Plant Administrators and New York Association of Higher Education Facilities Officers. The only feedback that OFPC received was a question regarding the federal reporting requirement and compliance with this rule. It was explained that this rule expands upon the federal reporting requirement to require that all fires on college property, not just in residence halls, be reported.

In addition, the proposed rule will be available for public comment for a period of at least 45 days.

***Job Impact Statement***

It is apparent from the nature and purpose of this rule that it will not have any substantial adverse impact on jobs and employment opportunities. In fact, this rule may result in the employment of health and safety officers by the college or university.

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

### Continuing Education for Licensed Home Inspectors

**I.D. No.** DOS-16-09-00004-P

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

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

***Statutory authority:*** Real Property Law, section 444-f

***Subject:*** Continuing education for licensed home inspectors.

***Purpose:*** Establish standards of continuing education for licensed home inspectors.

***Text of proposed rule:*** Subpart 197-3 is added to 19 NYCRR Part 197 to read as follows:

*SUBPART 197-3. HOME INSPECTION CONTINUING EDUCATION COURSES*

*Section 197-3.1 General requirements.*

*(a) Renewals. For all home inspection licenses that expire prior to December 31, 2008, no renewal license shall be issued unless said licensee has completed 6 hours of approved continuing education within the two-year period immediately preceding such renewal. For all home inspection licenses that expire on or after December 31, 2008, no renewal license shall be issued unless said licensee has completed 24 hours of approved continuing education within the two-year period immediately preceding such renewal.*

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

*Section 197-3.2 Approved entities.*

*Continuing education home inspection courses (herein referred to as ''sponsors'') may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by the Commissioner of Education; public or private schools; and home inspection related professional societies and organizations. Types of instruction which shall not be acceptable as meeting continuing education requirements include such courses as:*

*(a) offerings in basic computer skills training, instructional navigation of the Internet, instructional use of generic computer software or industry specific report writing software, instruction in personal motivation, business marketing, salesmanship, radon and pests, and any other instruction that is unrelated to home inspection.*

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

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

*(a) name, address and telephone number of the applicant;*

*(b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;*

*(c) title of each course to be offered;*

*(d) location of each course offered;*

*(e) duration and time of each course offered;*

*(f) procedure for taking attendance;*

*(g) a detailed outline of the subject matter of each course or seminar. The outline shall contain the amount of time each segment of the course or seminar lasts, as well as the teaching techniques used in each segment. Each course or seminar will contain at least one hour of instruction, and at most 24 hours of instruction; and*

*(h) description of materials to be distributed to the participants.*

*Section 197-3.4 Program approval.*

*Sponsors of courses of study may file applications for approval within 30 days of the completion of that course. The sponsor conducting the program may not guarantee to licensees that approval will be granted. Advertisements of such courses of study must indicate that such approval is not guaranteed.*

*Section 197-3.5 Successful completion of course.*

*(a) Any course for continuing education shall be accepted for credit on the basis of attendance only. For those courses that have received pre-instruction approval from the Department of State, the course administrator must submit to the Department of State within 15 days of completion of the class, the names of all individuals who successfully complete the approved course together with the unique identification number assigned by the Department of State to all such individuals. For those courses that have received post-instruction approval from the Department of State pursuant to 19 NYCRR 197-3.4, the course administrator must submit this information to the Department of State within 15 days of having been granted post-instruction approval by the Department of State.*

*(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificates must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the person authorized to sign certificates. For those courses that have received post-instruction approval from the Department of State pursuant to 19 NYCRR 197-3.4, the course administrator shall provide this course certificate to qualified course attendees within 30 days of having received Department of State course approval.*

*Section 197-3.6 Equivalency credit.*

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

*(b) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the Department of State, may file a request to the Department to have such course count as credit toward their New York continuing education requirement. All applications for such consideration must be submitted with official documentation of satisfactory completion and the official descriptions of the course of study as prescribed by the Department of State. Upon receipt of such a request, the Department of State will review and evaluate the out-of state course to determine if all or a portion of the course may be credited toward the applicant's New York continuing education requirement. Within 30 days of receipt of a request, the Department of State will approve or deny the request for New York continuing education credit.*

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

*Section 197-3.7 Extension of time to complete courses.*

*The Department of State may grant an extension to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such an extension shall submit a written request, together with the evidence demonstrating such hardship. Within 30 days of receipt of a request, the Department of State will notify the licensee whether their request for an extension has been granted or denied.*

*Section 197-3.8 Computation of instruction time.*

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

*Section 197-3.9 Attendance and record retention.*

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

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

*(1) the approval number issued by the Department of State for the course;*

*(2) title and description of the course;*

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

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

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

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

*Section 197-3.11 Auditing.*

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

*Section 197-3.12 Change in approved course of study.*

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

*Section 197-3.13 Suspensions and denials of school approval.*

*The Department of State may deny, suspend or revoke the approval of a home inspection school, if it is determined that it is not in compliance with the law and rules. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his or her designee pursuant to Real Property Law section 444-i.*

*Section 197-3.14 Open to public.*

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

*Section 197-3.15 Facilities.*

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

*Section 197-3.16 Faculty.*

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

*(b) An instructor who does not qualify under subdivision (a) of this*

*section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.*

*Section 197-3.17 Continuing education credit.*

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

*Section 197-3.18 Registration period.*

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

***Text of proposed rule and any required statements and analyses may be obtained from:*** Whitney Clark, NYS Department of State, Division of Licensing Services, Alfred E Smith Office Building, 80 South Swan Street, Albany, NY 12231, (518) 473-2728, email: whitney.clark@dos.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.

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

***Regulatory Impact Statement***

1. Statutory authority:

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

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

2. Legislative objectives:

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

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

3. Needs and benefits:

Real Property Law § 444-f (1) requires all home inspectors seeking renewal of their licenses to have successfully completed a course of continuing education approved by the Secretary of State, in consultation with the home inspection council. Created by statute, the home inspection council is an advisory board that advises the Secretary of State on the need for certain regulatory action, including continuing education. The home inspection council has advised the Secretary of State that this rule making is necessary to ensure that all home inspectors who apply for renewal of their licenses will have had the opportunity to meet the statutory continuing education requirement.

The rule making will pro rate the continuing education requirement for certain licensees. Licensees whose licenses expire prior to December 31, 2008 will have to complete six hours of approved continuing education. Those whose licenses expire on or after December 31, 2008 will be required to complete the full 24 hours of continuing education.

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

4. Costs:

a. Costs to regulated parties:

Licensees seeking renewal will be required to pay the cost of attending and completing an approved course of study for the required number of hours. The Department has conferred with several education providers throughout the State and estimates that course providers will charge an average of $480 for 24 hours of continuing education courses. Based on a review of continuing education fees currently being charged by course providers, the Department of State determined that each continuing education unit costs a student approximately $20.00 per credit; or $480 for 24 hours of continuing education.

b. Costs to the Department of State:

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

c. Costs to State and local governments:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

During regular meetings, the state home inspection council reviewed and considered various proposals for compliance with the statutory mandate for continuing education standards, ultimately recommending approval of the number of hours, courses of study, and methods of ensuring compliance adopted by this rule. The home inspection council considered waiving the continuing education requirement completely, or reducing the requirement to a de minimus amount. The Department, in consultation with the council determined that six hours of continuing education was appropriate for those whose licenses expire prior to December 31, 2008, insofar as it provides an accommodation to those licensees, while providing protections to consumers by guaranteeing that all licensed home inspectors complete an appropriate amount of continuing education.

9. Federal standards:

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

10. Compliance schedule:

Applicants for renewal of a home inspector's license have two years in which to comply with the continuing education requirement, with a prorated reduction for renewal of licenses expiring less than two years from the effective date of this rule. The Department of State maintains a list on its website of approved continuing education providers, with their relevant contact information to assist licensees to locate approved continuing education courses. Therefore, regulated parties will be on notice of, and have adequate time to comply with, the requirements imposed by the proposed rule making.

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

***Regulatory Flexibility Analysis***

1. Effect of rule:

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

The rule does not apply to local governments.

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

It is anticipated that small businesses will incur only the costs of any fees required for attending and completing an approved course of continuing education. It is estimated that the cost of completing 24 hours of continuing education will be $480 per licensee.

5. Economic and technological feasibility:

With the exception of the cost associated with taking the required continuing education courses as set forth under the compliance costs section of this statement, it is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

6. Minimizing adverse impact:

With the exception of the cost associated with taking the required continuing education courses as set forth under the compliance costs section of this statement, it is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule.

7. Small business and local government participation:

The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule. Members of the home inspection council are diverse and include owners of small businesses. The subject matter of the proposed rule was further discussed at meetings of the home inspection council which were open to public comment.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

This rule applies equally to all licensed home inspectors in all areas of the state-urban, suburban and rural. The rule does not apply to public entities located in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Reporting and recordkeeping requirements include the obligation of all applicants seeking renewal of their licenses to maintain course completion certificates as proof of completing the required continuing education. Applicants for renewal of a home inspector's license in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

Other than the estimated cost of $480 per licensee to complete 24 hours of continuing education, it is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any costs of compliance as a result of this rule.

4. Minimizing adverse impact:

Other than the estimated cost of $480 per licensee to complete 24 hours of continuing education, it is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance.

5. Rural area participation:

The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule. Members of the home inspection council represent geographically diverse areas including rural areas of New York State. In addition, the subject matter of the proposed rule was discussed during open meetings of the home inspection council and which were open to public comment.

***Job Impact Statement***

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

# Office of Temporary and Disability Assistance

## EMERGENCY RULE MAKING

**Utility Service**

**I.D. No.** TDA-07-09-00014-E
**Filing No.** 343
**Filing Date:** 2009-04-02
**Effective Date:** 2009-04-02

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

***Action taken:*** Amendment of section 352.5(e) of Title 18 NYCRR.

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

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

***Specific reasons underlying the finding of necessity:*** This rule is being proposed on an emergency basis because of the threat to the health and safety of households if they suffer utility shutoffs in the cold weather period as a result of high energy costs. It is crucial that the rule remain in place as the heating season continues.

***Subject:*** Utility Service.

***Purpose:*** To suspend the enforcement of utility repayment agreements during periods of cold weather in order to provide districts with the flexibility to assist households during the current period of historically high energy costs.

***Text of emergency rule:*** Subdivision (e) of section 352.5 is amended to read as follows:

(e) Payment essential to continue or restore utility service for an applicant for family assistance, safety net assistance, veteran assistance or emergency public assistance. A payment must be made for utilities previously provided to an applicant for family assistance, safety net assistance, veteran assistance or emergency public assistance if such payment is essential to continue or restore utility service. Payment essential to continue or restore utility service may be provided to an applicant whose utility bill

includes costs for service for the applicant's own residential unit and for space outside that unit. Payment may only be made when it is documented that the applicant is the tenant of record and the customer of record, as defined in subdivision (a) of this section, and alternative payment or housing accommodations cannot be made and the applicant is without liquid resources to continue or restore utility service. Payment must not exceed the cost of utilities provided to the applicant during the four most recently completed monthly billing periods or two most recently completed bimonthly billing periods for which a bill has been issued immediately preceding the date of application for such assistance. Payment is limited to the applicant's proportionate share of the cost of service for the most recently completed four monthly or two most recently completed bimonthly billing periods for which a bill has been issued immediately preceding the date of application for such assistance when the applicant's utility bill includes costs for service for the applicant's own residential unit and for space outside that unit. Payment must not exceed the balance due on the account. In a shared meter situation subject to the provisions of section 52 of the Public Service Law, the proportionate share is to be determined by the utility company's apportionment of retroactive charges upon completion of a shared meter investigation and determination. As a condition of receiving such assistance, an applicant not in receipt of recurring public assistance or supplemental security income whose gross monthly household income on the date of application exceeds the public assistance standard of need for the same size household must sign an agreement to repay the assistance within one year of the date of the payment. A household consists of all persons who occupy a housing unit. A house, an apartment or other group of rooms, or a single room is regarded as a housing unit when it is occupied or intended for occupancy as separate living quarters. A household includes related family members and all unrelated persons, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone, or a group of unrelated persons sharing a housing unit as partners, also constitutes a household. The public assistance standard of need is determined by applying the following statewide standards of need in accordance with office regulations: the pre-add allowance as set forth in Schedule SA-2a of section 352.3 of this Part; the shelter allowance as paid, but not to exceed the maximum allowance set forth in section 352.3 of this Part; the fuel allowance set forth in Schedule SA-6a, SA-6b or SA-6c of section 352.5 of this Part, if the applicant is the tenant of record and customer of record for the residential heating bill; the home energy and supplemental home energy payments (HEA and SHEA) as set forth in schedule SA-2b or SA-2c of section 352.1 of this Part; and, if applicable, the additional cost of meals for persons unable to prepare meals at home as set forth in schedule SA-5 of section 352.7 of this Part. The repayment agreement must set forth a schedule of payments that will assure repayment within one year of the date of payment. Subsequent assistance to continue or restore utility service must not be provided unless any prior utility arrearage payments have been repaid or are being repaid in accordance with the schedule of payments contained in each prior repayment agreement as of the date of application for such subsequent assistance*, or unless the enforcement of such prior repayment agreement(s) is suspended by the local social services district during a period of cold weather, defined, for these purposes, as the time period from November 1st of each year and ending April 15th of the following year*. Repayment agreements under this subdivision may be enforced in any manner available to a creditor, in addition to any other remedy the district may have pursuant to the Social Services Law.

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. TDA-07-09-00014-EP, Issue of February 18, 2009. The emergency rule will expire May 31, 2009.

***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

***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 of the former Department of Social Services concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of 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 131-s of the SSL governs payments made for utility services for applicants and recipients of public assistance benefits, supplemental security income benefits or additional State payments. Subdivision (1) of the section requires applicants whose gross household income exceeds the public assistance standard of need for the same size household to sign a repayment agreement to repay the assistance within one year of the date of payment as a condition of receiving assistance in accordance with regulations established by OTDA.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that adequate provision is made for those persons unable to provide for themselves so that whenever possible, such persons can be restored to a condition of self-support and self-care.

3. Needs and benefits:

Section 131-s of the Social Services Law and the current regulation, 18 NYCRR § 352.5(e), permit social services districts to make payments to continue utility service or to restore such service. Certain households, whose gross income exceeds the public assistance standard of need, must sign a repayment agreement in order to have their utility arrears paid. Pursuant to 18 NYCRR § 352.5(e), households who have not or are not repaying their repayment agreements are not eligible to sign a new repayment agreement and receive new utility arrears payments.

This proposed amendment to 18 NYCRR § 352.5(e) would permit districts to suspend the enforcement of repayment agreements during a period of cold weather, defined as the time period from November 1st of each year and ending April 15th of the following year. The goal of the amendment is to provide social services districts with the flexibility to assist households during the current period of historically high energy costs. Districts would have the flexibility to provide utility arrears and to enter into new repayment agreements even though a prior such agreement has not been repaid or is not being repaid. The suspension of enforcement of the agreement during the period of cold weather would not end the obligation to repay but simply permit the district to meet a current utility emergency.

The regulation is being proposed on an emergency basis because of the threat to the health and safety of households if they suffer utility shutoffs in the cold weather period as a result of high energy costs. It is crucial that the regulation remain in place throughout the heating season.

The proposed regulation defines the period of cold weather as the time period from November 1st of each year and ending April 15th of the following year. This definition is the same time period that is referenced in the Public Service Regulations at 16 NYCRR § 11.5(c)(2), which is part of the Home Energy Fair Practices Act and Energy Consumer Protection Act.

4. Costs:

The proposed amendment simply would provide the social services districts the option of suspending enforcement of prior repayment agreements during the period of cold weather. The amendment would not negate the obligation to repay. Due to this option, it is anticipated that there will be an increase in the number of utility assistance payments provided to certain households, whose gross income exceeds the public assistance standard of need. However, this additional fiscal impact would be remedied, in part, by the reinstitution of repayment agreements once the designated period of cold weather ends. Pursuant to regulatory requirements, a person who has a suspended repayment agreement during the period of cold weather would still be required to repay the full amount of the assistance owed once this period ends.

In addition, costs incurred due to the payment of additional utility assistance would be offset to the extent that temporary housing assistance is not needed for households that would otherwise experience heat or utility shut-offs during cold weather. It is anticipated that fewer persons will need to be re-housed due to heat and utility emergencies.

As a result of these considerations, the fiscal impact of this regulatory change is expected to be minimal, since repayment of assistance could merely be delayed and there is offsetting cost-avoidance.

5. Local government mandates:

Districts would be permitted to suspend the enforcement of prior repayment agreements during the defined period of cold weather. The amendment would not impose any other programs, services, duties or responsibilities upon the social districts. Districts are now required to review a household's current gross income prior to issuing a denial of the current applications for public assistance.

6. Paperwork:

There would be no additional forms required to support this process.

7. Duplication:

The proposed amendment would not duplicate, overlap or conflict with any existing State or Federal regulations.

8. Alternatives:

The alternative is to amend section 131-s of the SSL altering the repayment agreement requirement. However, this proposed regulatory amendment is a better option because it would be more timely. The proposed regulatory amendment would allow the social services districts to meet the immediate energy needs of applicants this winter.

9. Federal standards:

The proposed amendment would not conflict with federal standards for public assistance.

10. Compliance schedule:

Districts would be able to implement the proposed amendment when it becomes effective.

***Regulatory Flexibility Analysis***

1. Effect of rule:

This proposed amendment would impact local governments, specifically social services districts, but not small businesses.

2. Compliance requirements:

This proposed amendment to 18 NYCRR § 352.5(e) would permit social services districts to suspend the enforcement of repayment agreements during a period of cold weather, defined as the time period from November 1st of each year and ending April 15th of the following year. The goal of the amendment is to provide social services districts with the flexibility to assist households during the current period of historically high energy costs. Districts would have the flexibility to provide utility arrears and to enter into new repayment agreements even though a prior such agreement has not been repaid or is not being repaid. The suspension of enforcement of the agreement during the period of cold weather would not end the obligation to repay but simply permit the district to meet a current utility emergency. The proposed amendment would better enable the districts to help protect the health and safety of households if they suffer utility shutoffs in the cold weather period as a result of high energy costs. The proposed regulations define the period of cold weather using the same time period as the Public Service Regulations at 16 NYCRR § 11.5(c)(2), which is part of the Home Energy Fair Practices Act and Energy Consumer Protection Act.

3. Professional services:

The proposed amendment would not require small businesses or local governments to hire additional professional services.

4. Compliance costs:

The fiscal impact of this regulatory change upon the social services districts which utilize this option is expected to be minimal. Pursuant to this amendment, the repayment of utility assistance could merely be delayed, and it is anticipated that payments of temporary housing assistance would decrease.

The proposed amendment would not require additional compliance costs for small businesses.

5. Economic and technological feasibility:

All small businesses and local governments have the economic and technological ability to comply with this proposed rule.

6. Minimizing adverse impact:

It is anticipated that the fiscal impact of this regulatory change would be minimal. This proposed amendment would allow the districts to meet the immediate energy needs of applicants this winter, during the period of cold weather from November 1st through April 15th.

There would be no adverse economic impact on small businesses.

7. Small business and local government participation:

Several local districts, Orange, Onondaga, Oneida, Suffolk, Schenectady, Cortland, Clinton, Essex, Hamilton, Montgomery, Saratoga, Warren, Washington, Delaware, Columbia, Ulster, Madison, Otsego, Seneca, Oswego, Jefferson and Wayne, were informed of the proposal, and no objections to the proposal were expressed.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

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

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

No additional recordkeeping is required.

3. Costs:

The fiscal impact of this regulatory change upon the rural districts which utilize this option is expected to be minimal. Pursuant to this amendment, the repayment of utility assistance could merely be delayed, and it is anticipated that payments of temporary housing assistance would decrease.

4. Minimizing adverse impact:

The proposed amendment would be beneficial to social services districts in rural areas. This proposed amendment would allow the districts to meet the immediate energy needs of applicants this winter during the period of cold weather, defined as beginning November 1st of each year and ending April 15th of the following year.

5. Rural area participation:

This proposal was discussed at a meeting with Clinton, Essex, Hamilton, Montgomery, Saratoga, Warren and Washington counties with no objections noted. Additionally, this proposal was presented during a telephone conference with commissioners or their appointed representatives from Delaware, Columbia, Ulster, Madison, Otsego, Seneca, Oswego, Jefferson and Wayne with no comment offered in support or in opposition. In 2006, OTDA offered a similar emergency waiver option in response to rising natural gas prices. Twelve local social services districts elected to implement this waiver option. We believe that no comments were offered on this proposed regulatory change during the telephone conference because the local districts were familiar and comfortable with the proposal from this past offering. Additionally, local districts often ask NYS OTDA for greater flexibility in dealing with emergent needs and being more responsive to changing economic stresses on income. This change will give these districts another tool to help families in cold weather months.

***Job Impact Statement***

A Job Impact Statement is not required for the proposed amendment. It is apparent from the nature and the purpose of the proposed amendment that it would not have an adverse impact on jobs and employment opportunities. The proposed amendment would not affect in any real way the jobs of the workers in the social services districts.

***Assessment of Public Comment***

The Office of Temporary and Disability Assistance received one comment in response to its Notice of Emergency Rule Making published on November 26, 2008 in the New York State Register.

Comment: The commentator wrote that the amendment to suspend repayment agreements during the cold weather period should be mandatory and applied on a consistent, statewide basis.

Response: We disagree with the comment. The Office of Temporary and Disability Assistance (OTDA) has established policies and procedures which provide statewide protection for individuals and families who default on previous repayment agreements when the households demonstrate that their income has fallen below the public assistance standard for their household size and they are eligible for public assistance. While these circumstances exist, the enforcement of the terms of previous repayment agreements is suspended. In anticipation that certain areas of the State would not only experience high costs for energy this winter, but also varying levels of unemployment, OTDA determined to provide social services districts with an additional option which permits the districts to extend this suspension of enforcement to all households within a local district based on need and known availability of local resources.

Currently, 19 out of 58 districts have chosen the option offered by this amendment to 18 NYCRR § 352.5(e). The districts choosing this option represent a broad range of sizes and geographic locations. They have elected to suspend the enforcement of utility repayment agreements based upon recognized local needs, not State mandate. The following districts have chosen this option: Albany, Allegany, Broome, Cattaraugus, Chautauqua, Cayuga, Clinton, Genesee, Jefferson, Madison, Nassau, Oneida, Orange, Oswego, Rockland, Schoharie, Suffolk, Tioga, and Ulster.

## NOTICE OF ADOPTION

### State-Confirmed Human Trafficking Victims

**I.D. No.** TDA-17-08-00032-A

**Filing No.** 348

**Filing Date:** 2009-04-03

**Effective Date:** 2009-04-22

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

***Action taken:*** Addition of Part 765 to Title 18 NYCRR.

***Statutory authority:*** Social Services Law, art. 10-D

***Subject:*** State-confirmed human trafficking victims.

***Purpose:*** To govern the process and protocols for confirming an individual as a human trafficking victim in New York State.

***Text of final rule:*** A new Subchapter K is added to Title 18 NYCRR to read as follows:

*Subchapter K Victims of Human Trafficking*

A new Part 765 is added to Subchapter K of Title 18 NYCRR to read as follows:

*Part 765 Confirmation as a State-confirmed Human Trafficking Victim*

*§ 765.1 Scope. The provisions of this Part shall govern the process and protocols for the Office of Temporary and Disability Assistance in assessing, and the social services districts in identifying, an individual as a State-confirmed human trafficking victim in New York State. In conjunction with the Division of Criminal Justice Services and Part 6174 of 9 NYCRR, this part shall also include defining the participant parties, the victim, the nature of the consultative role in the confirmation and appeal processes, and the process for required notifications, referrals and assistance to the prescribed parties.*

*§ 765.2 Definitions. When used in this Part:*

*(a) The term ''Office'' shall mean the Office of Temporary and Disability Assistance.*

*(b) The term ''Division'' shall mean the Division of Criminal Justice Services.*

*(c) The term ''human trafficking victim'' shall mean a victim of sex trafficking, as defined in section 230.34 of the Penal Law, or a victim of labor trafficking, as defined in section 135.35 of the Penal Law.*

*(d) The term ''subject of referral'' shall mean a human trafficking victim referred by a statutory referral source under section 483-CC(A) of the Social Services Law to the Division and the Office for assessment as a State-confirmed human trafficking victim.*

*(e) The term ''statutory referral source'' shall mean the law enforcement agency or district attorney's office that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, refers such human trafficking victim to the Division and the Office for assessment as a State-confirmed human trafficking victim.*

*(f) The term ''State-confirmed human trafficking victim'' shall mean a human trafficking victim referred by a statutory referral source who appears to meet the criteria for certification as a victim of a severe form of trafficking in persons pursuant to the federal Trafficking Victims Protection Act set forth in section 7105 of 2 U.S.C. (United States Code Annotated, Title 22, § 7105; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, Minnesota 55123. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, New York 12243-0001) or appears to be otherwise eligible for any federal, state, or local benefits and services, in the judgment of the Division, in consultation with the Office and statutory referral source.*

*(g) The term ''case management provider'' shall mean an entity under contract with the Office pursuant to section 483-BB(B) of the Social Services Law to provide services to certain State-confirmed human trafficking victims.*

*§ 765.3 Minors. If a subject of referral is under the age of 18 at the time of referral to the Division and the Office, the following actions must be taken regardless of whether the subject of referral is deemed a State-confirmed human trafficking victim:*

*(a) the Office shall, as soon as practicable, notify the social services district in the county where the subject of referral was found; and*

*(b) the social services district shall provide to such minor any services to which the minor is entitled under applicable law.*

*§ 765.4 Consultation. Within three business days of receipt of a referral by a statutory referral source, the Office shall notify the Division in writing of its assessment regarding whether a subject of referral is a State-confirmed human trafficking victim.*

*§ 765.5 Notice of Confirmation. Within three business days of receipt of written notice from the Division, the Office shall notify the subject of referral and statutory referral source in writing that, in the judgment of the Division, in consultation with the Office and statutory referral source, the subject of referral is a State-confirmed human trafficking victim. Such notice shall include a written referral for services from a case management provider or from any other available source.*

*§ 765.6 Referrals for Assistance. When providing a written referral for services from a case management provider or from any other available source to a State-confirmed human trafficking victim, the Office shall:*

*(a) refer a State-confirmed human trafficking victim who appears to meet the criteria for certification as a victim of a severe form of trafficking in persons pursuant to the federal Trafficking Victims Protection Act set forth in section 7105 of 22 U.S.C. (United States Code Annotated, Title 22, § 7105; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, Minnesota 55123. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, New York 12243-0001) to a case management provider, and shall also notify that case management provider of the referral; or*

*(b) refer a State-confirmed human trafficking victim who appears to be otherwise eligible for any federal, state, or local benefits and services to the social services district in which the person resides and to any other available source of assistance, and shall also notify that social services district and any other available source of assistance of the referral; or*

*(c) refer a State-confirmed human trafficking victim who is under the age of 18 to the social services district in the county where such minor was found and to any other available source of assistance.*

*§ 765.7 Appeals. If the Commissioner of the Division reverses a denial of confirmation pursuant to sections 6174.4 (a) and (b) of 9 NYCRR, and notifies the Office of its determination in writing, the Office shall follow the procedures set forth in this part.*

***Final rule as compared with last published rule:*** Nonsubstantial changes were made in sections 765.2(f) and 765.6(a).

***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

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

The nonsubstantive revisions made to sections 765.2(f) and 765.6(a) were merely technical changes concerning the referenced material. These changes do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

***Assessment of Public Comment***

During the public comment period on the proposed rule to govern the process and protocols for confirming an individual as a human trafficking victim in New York State, the Office of Temporary and Disability Assistance (OTDA) received comments from an advocacy group.

Comment: The commentator mentioned that the language defining ''human trafficking victim'' drew only from the New York State Penal Law and did not include the federal definition under the Trafficking Victims Protection Reauthorization Act (TVPA). The commentator felt that this omission could lead to confusion, as well as to unintended consequences where a victim that meets the federal, but not the State, definition could be excluded from services. They further stated that, as the federal definition is used elsewhere in section 765.2, when defining ''State-confirmed human trafficking victim,'' its inclusion will only clarify the process and ensure that victims of human trafficking are more readily eligible to receive services.

Response: The OTDA disagrees with this comment. The definition of a human trafficking victim is set out explicitly in the statutory language. This language cannot be altered to include a federal definition under the TVPA through the regulatory process. In addition, the purpose of the law is to provide for a victim class under New York State law, the class being defined as a human trafficking victim. This class is not necessarily commensurate with the victim class captured by the federal TVPA. Including a federal definition within the State definition would create additional confusion.

Comment: The commentator expressed concern that the term ''as soon as practicable'' as used to define the timeframe in which a ''statutory referral source'' must act when referring a ''human trafficking victim'' was not clear and gave little guidance at a time when the

commentator felt the victim was especially vulnerable. A mandated timeframe for law enforcement to refer a victim was encouraged.

Response: The OTDA disagrees with this comment. After consultation with the Division of Criminal Justice Services (DCJS), a specific timeframe to mandate upon law enforcement was declined because there was a general consensus that some discretion must be provided to law enforcement during on-going investigations. Both the OTDA and the DCJS, however, when working with law enforcement during on-going investigations encourage a referral at the first opportune moment.

In addition, both the DCJS and the OTDA address this issue during their training sessions with law enforcement.

Comment: The commentator sets forth concerns regarding the provisions available for trafficking victims that were minors, and specifically that the language in the proposed regulation gave little guidance as to the steps that should be taken to protect a minor victim. Additionally, the commentator remarked that the proposed regulation did not provide a process of accountability to ensure that services be delivered in the most efficient and effective manner. Thus, the commentator recommended that additional regulatory language be incorporated to mandate the inclusion of an entity under the New York State Office of Children and Family Services (OCFS) to provide a broader range of specialized services to minors to enhance the protections offered under the statute and proposed regulations.

Response: The statutory construct provides that minors referred to the local departments of social services (LDSS's) as trafficked victims can access any services to which the minor is entitled under applicable law. Additional guidance to the LDSS's will be forthcoming in a directive to be jointly issued by the OTDA and the OCFS so that referred child trafficking victims receive those services that they need and are entitled to, including child protective and residential services.

Comment: The commentator raised the issue of translation and language services when addressing the written notice of confirmation that a human trafficking victim receives when he or she has been confirmed under the New York State law as a State-confirmed human trafficking victim. The commentator felt that since these written notices provide important information to human trafficking victims about their status, as well as services available to them under the law, the notices should be written in the State-confirmed victim's native language, or his or her language of fluency.

Response: The OTDA already has existing policy guidance regarding access to benefits, programs and services by Limited English Proficient (LEP) individuals. As such, all State-confirmed victims of human trafficking who receive the notice of confirmation from the OTDA are informed of the notice's contents in compliance with the OTDA's policies and procedures so that they are in a position to access all benefits, programs and services to which they may be eligible.

Comment: While the commentator expressed support for the steps that the State is taking to ensure that trafficked persons receive needed services, the commentator expressed strong concern about the efforts themselves.

In particular, the commentator asserted that the proposed rule did not provide a mechanism for social service providers or advocates to contact the OTDA and/or the DCJS directly to refer an individual they discover and identify as a victim of human trafficking. Additionally, the commentator alleged that there is no mention of protocols to protect the confidentiality of victims' information and recommended that it be addressed.

Response: The proposed regulations regarding the acceptance of referrals only from law enforcement and district attorneys were drafted in compliance with statutory requirements and an expansion beyond law enforcement is not within the scope of the statute. Additionally, the OTDA does not believe that further confidentiality requirements need to be included in this regulation as the OTDA already has policies in place to protect information between agencies and in service utilization, in accordance with State and federal laws and regulations. Further, the services contracts between the OTDA and non-governmental organization service providers for State-confirmed victims of human trafficking contain confidentiality provisions which extend to information obtained and/or provided by a trafficking victim.

Comment: The final comment from the commentator expressed concern regarding outreach and training on trafficking into labor sectors. In particular, the commentator asserted that New York State was focusing its resources largely on trafficking into prostitution. It recommended that the prevalence and criminality of labor trafficking situations be taken seriously by the State by encouraging that substantial resources be focused on outreach and training; identification; data collection; and prevention efforts for labor trafficking.

Response: The OTDA maintains that the proposed regulations address human trafficking and service delivery equally. Despite a statutory penalty differential in regards to labor trafficking versus sex trafficking, all efforts are made to address all types of trafficking during training presentations made by the OTDA.

# Workers' Compensation Board

## EMERGENCY RULE MAKING

### Pharmacy and Durable Medical Equipment Fee Schedules and Requirements for Designated Pharmacies

**I.D. No.** WCB-16-09-00001-E
**Filing No.** 342
**Filing Date:** 2009-04-01
**Effective Date:** 2009-04-01

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

***Action taken:*** Addition of Parts 440 and 442 to Title 12 NYCRR.

***Statutory authority:*** Workers' Compensation Law, sections 13, 13-o and 117

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

***Specific reasons underlying the finding of necessity:*** This rule provides pharmacy and durable medical equipment fee schedules, the process for payment of pharmacy bills, and rules for the use of a designated pharmacy or pharmacies. Many times claimants must pay for prescription drugs and medicines themselves. It is unduly burdensome for claimants to pay out-of-pocket for prescription medications as it reduces the amount of benefits available to them to pay for necessities such as food and shelter. Claimants also have to pay out-of-pocket many times for durable medical equipment. Adoption of this rule on an emergency basis, thereby setting pharmacy and durable medical equipment fee schedules will help to alleviate this burden to claimants, effectively maximizing the benefits available to them. Benefits will be maximized as the claimant will only have to pay the fee schedule amount and there reimbursement from the carrier will not be delayed. Further, by setting these fee schedules, pharmacies and other suppliers of durable medical equipment will be more inclined to dispense the prescription drugs or equipment without requiring claimants to pay up front, rather they will bill the carrier. Adoption of this rule further advances pharmacies directly billing by setting forth the requirements for the carrier to designate a pharmacy or network of pharmacies. Once a carrier makes such a designation, when a claimant uses a designated pharmacy he cannot be asked to pay out-of-pocket for causally related prescription medicines. This rule sets forth the payment process for pharmacy bills which along with the set price should eliminate disputes over payment and provide for faster payment to pharmacies. Finally, this rule allows claimants to fill prescriptions by the internet or mail order thus aiding claimants with mobility problems and reducing transportation costs necessary to drive to a pharmacy to fill prescriptions. Accordingly, emergency adoption of this rule is necessary.

***Subject:*** Pharmacy and durable medical equipment fee schedules and requirements for designated pharmacies.

***Purpose:*** To adopt pharmacy and durable medical equipment fee schedules, payment process and requirements for use of designated pharmacies.

***Substance of emergency rule:*** Chapter 6 of the Laws of 2007 added Section 13-o to the Workers' Compensation Law (''WCL'') mandating the Chair to adopt a pharmaceutical fee schedule. WCL Section 13(a) mandates that the Chair shall establish a schedule for charges and fees for medical care and treatment. Part of the treatment listed under Section 13(a) includes medical supplies and devices that are classified as durable

medical equipment. The proposed rule adopts a pharmaceutical fee schedule and durable medical equipment fee schedule to comply with the mandates. This rule adds a new Part 440 which sets forth the pharmacy fee schedule and procedures and rules for utilization of the pharmacy fee schedule and a new Part 442 which sets forth the durable medical equipment fee schedule.

Section 440.1 sets forth that the pharmacy fee schedule is applicable to prescription drugs or medicines dispensed on or after the most recent effective date of § 440.5 and the reimbursement for drugs dispensed before that is the fee schedule in place on the date dispensed.

Section 440.2 provides the definitions for average wholesale price, brand name drugs, controlled substances, generic drugs, independent pharmacy, pharmacy chain, remote pharmacy, rural area and third party payor.

Section 440.3 provides that a carrier or self-insured employer may designate a pharmacy or pharmacy network which an injured worker must use to fill prescriptions for work related injuries. This section sets forth the requirements applicable to pharmacies that are designated as part of a pharmacy network at which an injured worker must fill prescriptions. This section also sets forth the procedures applicable in circumstances under which an injured worker is not required to use a designated pharmacy or pharmacy network.

Section 440.4 sets forth the requirements for notification to the injured worker that the carrier or self-insured employer has designated a pharmacy or pharmacy network that the injured worker must use to fill prescriptions. This section provides the information that must be provided in the notice to the injured worker including time frames for notice and method of delivery as well as notifications of changes in a pharmacy network.

Section 440.5 sets forth the fee schedule for prescription drugs. The fee schedule in uncontroverted cases is average wholesale price minus twelve percent for brand name drugs and average wholesale price minus twenty percent for generic drugs plus a dispensing fee of five dollars for generic drugs and four dollars for brand name drugs, and in controverted cases is twenty-five percent above the fee schedule for uncontroverted claims plus a dispensing fee of seven dollars and fifty cents for generic drugs and six dollars for brand-name drugs. This section also addresses the fee when a drug is repackaged.

Section 440.6 provides that generic drugs shall be prescribed except as otherwise permitted by law.

Section 440.7 sets forth a transition period for injured workers to transfer prescriptions to a designated pharmacy or pharmacy network. Prescriptions for controlled substances must be transferred when all refills for the prescription are exhausted or after ninety days following notification of a designated pharmacy. Non-controlled substances must be transferred to a designated pharmacy when all refills are exhausted or after 60 days following notification.

Section 440.8 sets forth the procedure for payment of prescription bills or reimbursement. A carrier or self-insured employer is required to pay any undisputed bill or portion of a bill and notify the injured worker by certified mail within 45 days of receipt of the bill of the reasons why the bill or portion of the bill is not being paid, or request documentation to determine the self-insured employer's or carrier's liability for the bill. If objection to a bill or portion of a bill is not received within 45 days, then the self-insured employer or carrier is deemed to have waived any objection to payment of the bill and must pay the bill. This section also provides that a pharmacy shall not charge an injured worker or third party more than the pharmacy fee schedule when the injured worker pays for prescriptions out-of-pocket, and the worker or third party shall be reimbursed at that rate.

Section 440.9 provides that if an injured worker's primary language is other than English, that notices required under this part must be in the injured worker's primary language.

Section 440.10 provides penalties for failing to comply with this Part and that the Chair will enforce the rule by exercising his authority pursuant to Workers' Compensation Law § 111 to request documents.

Part 442 sets forth the fee schedule for durable medical equipment.

Section 442.1 sets for that the fee schedule is applicable to durable medical goods and medical and surgical supplies dispensed on or after July 11, 2007.

Section 442.2 sets forth the fee schedule for durable medical equipment as indexed to the New York State Medicaid fee schedule, except the payment for bone growth stimulators shall be made in one payment. This section also provides for the rate of reimbursement when Medicaid has not established a fee payable for a specific item and for orthopedic footwear. This section also provides for adjustments to the fee schedule by the Chair as deemed appropriate in circumstances where the reimbursement amount is grossly inadequate to meet a pharmacies or providers costs and clarifies that hearing aids are not durable medical equipment for purposes of this rule.

Appendix A provides the form for notifying injured workers that the claim has been contested and that the carrier is not required to reimburse for medications while the claim is being contested.

Appendix B provides the form for notification of injured workers that the self-insured employer or carrier has designated a pharmacy that must be used to fill prescriptions.

***This notice is intended*** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 29, 2009.

***Text of rule and any required statements and analyses may be obtained from:*** Cheryl M. Wood, Special Counsel to the Chair, New York State Workers' Compensation Board, 20 Park Street, Room 400, Albany, New York 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

***Summary of Regulatory Impact Statement***

Section 1 provides the statutory authority for the Chair to adopt a pharmacy fee schedule pursuant to Workers' Compensation Law Section (WCL) 13-o as added to the WCL by Chapter 6 of the Laws of 2007 which requires the Chair to adopt a pharmaceutical fee schedule. Chapter 6 also amended WCL Section 13(a) to mandate that the Chair establish a schedule for charges and fees for medical care and treatment. Such medical care and treatment includes supplies and devices that are classified as durable medical equipment (hereinafter referred to as DME).

Section 2 sets forth the legislative objectives of the proposed regulations which provide the fee schedules to govern the cost of prescription medicines and DME. This section provides a summary of the overall purpose of the proposed regulation to reduce costs of workers' compensation and the scope of the regulation with regard to process and guidance to implement the rule.

Section 3 explains the needs and benefits of the proposed regulation. This section provides the explanation of the requirement of the Chair to adopt a pharmacy fee schedule as mandated by Chapter 6 of the Laws of 2007. The legislation authorizes carriers and self-insured employers to designate a pharmacy or pharmacy network which requires claimants to obtain their prescription medicines from the designated pharmacy or network. This section explains how prescriptions were filled prior to the enactment of the legislation and the mechanisms by which prescriptions were reimbursed by carriers and self-insured employers. This section also provides the basis for savings under the proposed regulation. The cost savings realized by using the pharmacy fee schedule will be approximately 12 percent for brand name drugs and 20 percent for generic drugs from the average wholesale price. This section explains the issues with using the Medicaid fee schedule. The substantive requirements are set forth that carriers must follow to notify a claimant of a designated pharmacy or network. This includes the information that must be included in the notification as well as the time frames within which notice must be provided. This section also describes how carriers and self-insured employers will benefit from a set reimbursement fee as provided by the proposed regulation. This section provides a description of the benefits to the Board by explaining how the proposed regulation will reduce the number of hearings previously necessary to determine proper reimbursement of prescription medications by using a set fee schedule.

Section 4 provides an explanation of the costs associated with the proposed regulation. It describes how carriers are liable for the cost of medication if they do not respond to a bill within 45 days. This section describes how carriers will incur costs for sending the required notices, but also describes how the costs can be offset to a certain degree by sending the notices listed in the Appendices to the regulation concurrently. Pharmacies will have costs associated with the proposed regulation due to a lower reimbursement amount, but the costs are offset by the reduction of administrative costs associated with seeking reimbursement from carriers and self-insured employers. Pharmacies will be required to post notice that they are included in a designated network and a listing of carriers that utilize the pharmacy in the network. This section describes how the rule benefits carriers and self-insured employers by allowing them to contract with a pharmacy or network to provide drugs thus allowing them to negotiate for the lowest cost of drugs and DME.

Section 5 describes how the rule will affect local governments. Since a municipality of governmental agency is required to comply with the rules for prescription drug reimbursement and pharmacy or network notification, the savings afforded to carriers and self-insured employers will be substantially the same for local governments.

Section 6 describes the paperwork requirements that must be met by carriers, employers and pharmacies. Carriers will be required to provide notice to employers of a designated pharmacy or network, and employers in turn will provide such notice to employees so that employees will know to use a designated pharmacy or network for prescription drugs. Pharmacies will be required to post notice that they are part of a designated network and a listing of carriers that utilize the pharmacy within the network. This section also specifies the requirement of a carrier or self-insured employer to respond to a bill within 45 days of receipt. If a response is not given within the time frame, the carrier or self-insured

employer is deemed to have waived any objection and must pay the bill. This section sets forth the requirement of carriers to certify to the Board that designated pharmacies within a network meet compliance requirements for inclusion in the network. This section sets forth that employers must post notification of a designated pharmacy or network in the workplace and the procedures for utilizing the designated pharmacy or network. This section also sets forth how the Chair will enforce compliance with the rule by seeking documents pursuant to his authority under WCL § 111 and impose penalties for non-compliance.

Section 7 states that there is no duplication of rules or regulations.

Section 8 describes the alternatives explored by the Board in creating the proposed regulation. This section lists the entities contacted in regard to soliciting comments on the regulation and the entities that were included in the development process. The Board studied fee schedules from other states and the applicability of reimbursement rates to New York State. Alternatives included the Medicaid fee schedule, average wholesale price minus 15% for brand and generic drugs, the Medicare fee schedule and straight average wholesale price.

Section 9 states that there are no applicable Federal Standards to the proposed regulation.

Section 10 provides the compliance schedule for the proposed regulation. It states that compliance is mandatory and that the proposed regulation takes effect upon adoption.

***Regulatory Flexibility Analysis***

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. As part of the overall rule, these self-insured local governments will be required to file objections to prescription drug bills or durable medical equipment (hereinafter DME) bills if they object to any such bills. This process is required by statute. This rule affects members of self-insured trusts, some of which are small businesses. Typically a self-insured trust utilizes a third party administrator or group administrator to process workers' compensation claims. A third party administrator or group administrator is an entity which must comply with the new rule. These entities will be subject to the new rule in the same manner as any other carrier or employer subject to the rule. Under the rule, objections to a prescription bill must be filed within 45 days of the date of receipt of the bill or the objection is deemed waived and the carrier, third party administrator, or self-insured employer is responsible for payment of the bill. Additionally, affected entities must provide notification to the claimant if they choose to designate a pharmacy network, as well as the procedures necessary to fill prescriptions at the network pharmacy. If a network pharmacy is designated, a certification must be filed with the Board on an annual basis to certify that the all pharmacies in a network comply with the new rule. The new rule will provide savings to small business and local government by reducing the cost of prescription drugs by utilization of a pharmacy fee schedule instead of retail pricing. Litigation costs associated with reimbursement rates for prescription drugs will be substantially reduced or eliminated because the rule sets the price for reimbursement. Additional savings will be realized by utilization of a network pharmacy and a negotiated fee schedule for network prices for prescription drugs.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers are required by statute to file objections to prescription drug bills within a forty five day time period if they object to the bill, otherwise they will be liable to pay for the bill if the objection is not timely filed. Notice to the injured worker must be provided outlining that a network pharmacy has been designated and the procedures necessary to fill prescriptions at the network pharmacy. Certification by carriers and self-insured employers must be filed on an annual basis with the Board that all the pharmacies in a network are in compliance with the new rule. Failure to comply with the provisions of the rule will result in requests for information pursuant to the Chair's existing statutory authority and the imposition of penalties.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will impose minimal compliance costs on small business or local governments which will be more than offset by the savings afforded by the fee schedule. There are filing and notification requirements that must be met by small business and local governments as well as any other entity that utilizes a pharmacy network. Notices are required to be posted in the workplace informing workers of a designated network pharmacy. Additionally, a certification must be filed with the Board on an annual basis certifying that all pharmacies within a network are in compliance with the rule.

5. Economic and technological feasibility:

There are no additional implementation or technology costs to comply with this rule. The small businesses and local governments are already familiar with average wholesale price and regularly used that information prior to the adoption of the Medicaid fee schedule. Further, some of the reimbursement levels on the Medicaid fee schedule were determined by using the Medicaid discounts off of the average wholesale price. The Red Book is one source for average whole sale prices and it can be obtained for less than $100.00. Since the Board stores its claim files electronically, it has provided access to case files through its eCase program to parties of interest in workers' compensation claims. Most insurance carriers, self-insured employers and third party administrators have computers and internet access in order to take advantage of the ability to review claim files from their offices.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts to all insurance carriers, employers, self-insured employers and claimants. The rule provides a process for reimbursement of prescription drugs as mandated by WCL section 13(i). Further, the notice requirements are to ensure a claimant uses a network pharmacy to maximize savings for the employer as any savings for the carrier can be passed on to the employer. The costs for compliance are minimal and are offset by the savings from the fee schedule. The rule sets the fee schedule as average wholesale price (AWP) minus twelve percent for brand name drugs and AWP minus twenty percent for generic drugs. As of July 1, 2008, the reimbursement for brand name drugs on the Medicaid Fee Schedule was reduced from AWP minus fourteen percent to AWP minus sixteen and a quarter percent. Even before the reduction in reimbursement some pharmacies, especially small ones, were refusing to fill brand name prescriptions because the reimbursement did not cover the cost to the pharmacy to purchase the medication. In addition the Medicaid fee schedule did not cover all drugs, include a number that are commonly prescribed for workers' compensation claims. This presented a problem because WCL § 13-o provides that only drugs on the fee schedule can be reimbursed unless approved by the Chair. The fee schedule adopted by this regulation eliminates this problem. Finally, some pharmacy benefit managers were no longer doing business in New York because the reimbursement level was so low they could not cover costs. Pharmacy benefit managers help to create networks, assist claimants in obtaining first fills without out of pocket costs and provide utilization review. Amending the fee schedule will ensure pharmacy benefit managers can stay in New York and help to ensure access for claimants without out of pocket cost.

7. Small business and local government participation:

The Assembly and Senate as well as the Business Council of New York State and the AFL-CIO provided input on the proposed rule.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

This rule applies to all carriers, employers, self-insured employers, third party administrators and pharmacies in rural areas. This includes all municipalities in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file objections to prescription drug bills within a forty five day time period or will be liable for payment of a bill. If regulated parties fail to comply with the provisions of Part 440 penalties will be imposed and the Chair will request documentation from them to enforce the provision regarding the pharmacy fee schedule. The new requirement is solely to expedite processing of prescription drug bills or durable medical bills under the existing obligation under Section 13 of the WCL. Notice to the injured worker must be provided outlining that a network pharmacy has been designated and the procedures necessary to fill prescriptions at the network pharmacy. Carriers and self-insured employers must file a certification on an annual basis with the Board that all the pharmacies in a network are in compliance with the new rule.

3. Costs:

This proposal will impose minimal compliance costs on carriers and employers across the State, including rural areas, which will be more than offset by the savings afforded by the fee schedule. There are filing and notification requirements that must be met by all entities subject to this rule. Notices are required to be posted and distributed in the workplace informing workers of a designated network pharmacy and objections to prescription drug bills must be filed within 45 days or the objection to the bill is deemed waived and must be paid without regard to liability for the bill. Additionally, a certification must be filed with the Board on an annual basis certifying that all pharmacies within a network are in compliance with the rule. The rule provides a reimbursement standard for an existing administrative process.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government from imposition of new fee schedules and payment procedures. This rule provides a benefit to small businesses and local governments by providing a uniform pricing standard, thereby

providing cost savings reducing disputes involving the proper amount of reimbursement or payment for prescription drugs or durable medical equipment. The rule mitigates the negative impact from the reduction in the Medicaid fee schedule effective July 1, 2008, by setting the fee schedule at Average Wholesale Price (AWP) minus twelve percent for brand name prescription drugs and AWP minus twenty percent for generic prescription drugs. In addition, the Medicaid fee schedule did not cover many drugs that are commonly prescribed for workers' compensation claimants. This fee schedule covers all drugs and addresses the potential issue of repackagers who might try to increase reimbursements.

5. Rural area participation:

Comments were received from the Assembly and the Senate, as well as the Business Council of New York State and the AFL-CIO regarding the impact on rural areas.

***Job Impact Statement***

The proposed amendment will not have an adverse impact on jobs. This amendment is intended to provide a standard for reimbursement of pharmacy and durable medical equipment bills.