

# RULE MAKING ACTIVITIES

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

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

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

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## Banking Department

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### NOTICE OF ADOPTION

#### Registration of Domestic Representative Offices

**I.D. No.** BNK-48-08-00004-A

**Filing No.** 359

**Filing Date:** 2009-04-13

**Effective Date:** 2009-04-29

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

**Action taken:** Amendment of Supervisory Policy G-8 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 14(1), 132 and 258

**Subject:** Registration of domestic representative offices.

**Purpose:** Reduce regulatory burden for the establishment of representative offices by domestic banking institutions.

**Text or summary was published** in the November 26, 2008 issue of the Register, I.D. No. BNK-48-08-00004-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Sam Abram, Banking Department, One State. St., New York, NY, (212) 709-1658, email: sam.abram@banking.state.ny.us

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

The agency received no public comment.

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## New York State Canal Corporation

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### NOTICE OF ADOPTION

#### Posting of Speed Limit Signage on the Canal System

**I.D. No.** NCC-46-08-00001-A

**Filing No.** 350

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-29

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

**Action taken:** Amendment of section 151.15 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 354(5), 382(7)(d) and (k); Canal Law, sections 10(9), (26) and 85

**Subject:** Posting of speed limit signage on the Canal System.

**Purpose:** To clarify that float speed shall not exceed any posted speed on canalized river sections of the Canal System.

**Text or summary was published** in the November 12, 2008 issue of the Register, I.D. No. NCC-46-08-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Marcy Pavone, NYS Thruway Authority, 200 Southern Blvd., Albany NY 12209, (518) 436-2860, email: marcy\_pavone@thruway.state.ny.us

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

The agency received no public comment.

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## Department of Environmental Conservation

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### EMERGENCY RULE MAKING

#### The Proposed Regulations are for the CWSRF Co-Administered by NYSDEC and the Environmental Facilities Corporation

**I.D. No.** ENV-17-09-00005-E

**Filing No.** 355

**Filing Date:** 2009-04-13

**Effective Date:** 2009-04-13

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

**Action taken:** Amendment of Part 649 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 15-0101, 15-0105, 15-0109, 15-0315, 15-0317, 15-1303; L.1989, ch. 565

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

**Specific reasons underlying the finding of necessity:** The New York State Department of Environmental Conservation (“DEC”) has determined that the attached amendment to the Part 649 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is in the public interest and necessary for the preservation of the general welfare throughout the State of New York and that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act (“SAPA”), effective immediately upon filing with the Department of State.

This amendment has been adopted as an emergency measure as it is in the public interest to expeditiously use funds made available pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”) to create jobs and stimulate the economy and thus, time is of the essence. The immediate promulgation and adoption of these amended regulations is necessary for the protection and preservation of life, health, property and natural resources due to the severe economic downturn, the possible destabilization of State and local government budgets, the prospect of reduction of essential services and counterproductive local tax increases which will exacerbate the current economic conditions. If the rules are not adopted, projects that protect the public health will not be funded and therefore, not be built. The expected duration of such emergency is expected to last through the 90-day emergency time period and any subsequent 60-day extension of such emergency period while DEC initiates and concludes formal rulemaking procedures for the amended regulations. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the SRF to obtain ARRA funds and provide the same to SRF applicants. In order to meet the tight timeframes of ARRA, these regulations need to be in place. Therefore, compliance with the rule making requirements of section 202(1) of the SAPA would be contrary to the public interest and, as such, the current circumstance necessitates that the public and interested parties be given less than the minimum period for notice and comment provided for in section 202(1) of SAPA.

These revisions conform the current SRF regulations with the requirements and objectives set forth in the ARRA, which are to preserve and create jobs, promote economic recovery and invest in environmental protection and to provide short and long-term economic benefits. ARRA requires that SRF funds be provided to projects on a State’s intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA. Further, the Environmental Protection Agency Administrator is directed to reallocate funds where projects are not under contract or construction within 12 months of the date of enactment of ARRA. Criteria for Green Infrastructure projects will be included in the intended use plan. Given that the science of Green Infrastructure is changing, including the criteria in the intended use plan allows for development and use of the most up to date criteria for Green Infrastructure Projects. In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to fund these types of projects.

With the downturn in the financial markets, residents have seen a dramatic decrease in home values as well as in other assets. Through out the State, businesses are retrenching and closing. Home foreclosure rates in the State have increased. State unemployment levels have risen to 7.8 percent as of February, 2009.

The need to address clean water infrastructure to protect water quality and to reduce operational costs has become more pressing as the economy trends downwards. Compliance with ARRA requirements will provide additional Federal funds to accomplish these purposes.

A potential stimulus package was widely discussed and broadcast on all major networks, television, radio, newspapers and on the web. The details and adoption of ARRA were similarly widely disseminated, as well as the State’s interest in utilizing such funds.

The adoption of these emergency regulations is consistent with EFC’s statutory mission, which is to provide financial assistance for essential environmental infrastructure projects for the benefit of the people of New York State.

**Subject:** The proposed regulations are for the CWSRF co-administered by NYSDEC and the Environmental Facilities Corporation.

**Purpose:** To set forth rules implementing the statutory provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”).

**Substance of emergency rule:** I. SUBJECT:

The proposed revised regulations are for the New York State Clean

Water Revolving Fund (“CWSRF”), Section 1285-j of the Public Authorities Law (“PAL”), co-administered by the New York State Environmental Facilities Corporation (“EFC”) and the New York State Department of Environmental Conservation (“DEC”), pursuant to Chapter 565 of the Laws of 1989.

## II. PURPOSE:

The proposed regulations set forth rules and procedures whereby EFC and DEC implement the requirements and objectives of the American Recovery and Reinvestment Act of 2009 (“ARRA”) to enable the State Revolving Fund (“SRF”) to accept and expend Federal funds to stimulate the economy and retain and create jobs for the benefit of the people of the State.

Among the changes is an addition to the CWSRF Project Priority System (“PPS”) for the purpose of including green infrastructure, water or energy efficiency improvements or other environmentally innovative activities as required by ARRA.

## III. GENERAL SUBSTANCE:

It is proposed to amend the regulations found within 6 NYCRR Part 649 (Companion regulations found within 21 NYCRR Part 2602 will also be changed).

The proposed regulatory amendments serve to incorporate provisions required by or necessitated by ARRA. The term of additional subsidization in the form of forgiveness of principal, a negative interest loan or a grant is added to allow the SRF to provide principal forgiveness or grants, as required by ARRA. Modifications are made to provide flexibility in certain financial terms and products to meet the objectives of ARRA to stimulate the economy and help initiate projects. In addition, the definition of project is expanded to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The proposed amendments will also permit financing of pre-design planning costs prior to completion to further stimulate project development. The proposed amendments will also add school district and soil and water conservation district to the definition of recipient. The provisions regarding project bypassing are also clarified to meet the objectives of ARRA as to project readiness. The proposed regulations will also clarify disbursements and that if certain requirements, including those mandated by ARRA, are not met that the SRF may decline to disburse funds, and if released, recover said funds. Similarly, the remedies provisions are clarified.

Certain definitions are amended within the regulations to expand the types of financial products available. It is proposed to add a new definition of “direct interest rate” and other definitions be modified to allow the SRF to address current and changing market conditions. The hardship assistance program is set out in a new section, and simplified, and clarified to indicate that in the event of a shared municipal project, hardship eligibility will be based upon a municipality’s allocable portion of the shared project.

Section 2602.3(a) of EFC’s proposed new regulations regarding the PPS make a cross reference to the PPS contained in Section 649.12 of DEC’s regulations. It is proposed that the PPS be expanded to include a new category (Category G) for green infrastructure, water or energy efficiency improvements or other environmentally innovative activities in order to meet the objectives of the ARRA.

The proposed regulations provide for an annual allocation for Category G, including a project funding cap, to be determined annually by the Commissioner and described in the IUP. Through these changes, CWSRF funds may be made available to a variety of recipients (public and private) carrying out green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

In addition, there are proposed administrative-oriented changes to EFC’s regulations. The following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: “Interest rate subsidy”, “Leveraged financing”, “Market rate of interest”, and “Reduced interest rate.” Grammatical changes will include the consistent use of capitalized terms, such as “Corporation”, “Department”, “Commissioner”, “Comptroller” and “Administrator” and use of the acronym “Clean Water” Revolving Fund instead of “Water Pollution Control” Revolving Fund.

**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 11, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Robert Simson, New York State Department of Environmental Conservation, Division of Water, 4th Floor, 625 Broadway, Albany, New York, 12233-3500, (518) 402-8271, email: rjsimson@gw.dec.state.ny.us

## Regulatory Impact Statement

### 1. STATUTORY AUTHORITY

When the Legislature enacted Chapter 565 of the Laws of 1989, it cre-

ated the New York State Clean Water Revolving Fund (“CWSRF”) and, in part, amended the State’s Public Authorities Law (“PAL”), creating Section 1285-j, which sets forth the provisions of the CWSRF. Under Section 1285 of the PAL, the New York State Environmental Facilities Corporation (“EFC”) is given the statutory authority to administer the CWSRF. Pursuant to Section 1285-j(4), the Legislature provided that “moneys in the water pollution control revolving fund shall be applied by the corporation to provide financial assistance to municipalities for construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner, for such other purposes permitted by the Federal Water Pollution Control Act, as amended...” PAL Section 1284, which sets forth the general powers of the corporation, provides that EFC has the power “...to make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title...” PAL Section 1284(5). In addition, the Federal Clean Water Act of 1986 (“CWA”) provided for the establishment, by each state, of a revolving fund, for certain identified water pollution control projects. During the last year, the economy has weakened significantly and the American Recovery and Reinvestment Act of 2009 (“ARRA”) was signed into law amending the CWA in an effort to stimulate the economy through building environmental infrastructure.

## 2. LEGISLATIVE OBJECTIVES

In creating the CWSRF under the PAL, the Legislature directed EFC and Department of Environmental Conservation (“DEC”) to provide assistance in support of the planning, development and construction of municipal water pollution control projects and other types of projects permitted by the CWA. ARRA provides federal funds through the CWSRF to create and retain jobs, to stimulate the economy and to promote green infrastructure. EFC and DEC are amending the CWSRF regulations in order to comply with the objectives and requirements of ARRA in order to accept and utilize these Federal funds for projects within New York State. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the SRF to obtain ARRA funds and provide the same to CWSRF applicants.

These revisions conform the current CWSRF regulations with the requirements set forth in the ARRA to more effectively carry out the legislative objectives, which are to preserve and create jobs, promote economic recovery, invest in environmental protection and to provide short and long-term economic benefits. ARRA requires that SRF funds be provided to projects on a State’s intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA.

In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to provide the same.

The proposed regulations amend the regulations found in 6 NYCRR Part 649 and, as appropriate, the 21 NYCRR Part 2602 companion regulations of EFC to: (i) add a new definition of “additional subsidization” that will allow the provision of forgiveness of principal, a negative interest loan or a grant, as either financial assistance or hardship assistance; (ii) amend the definition for “project” to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities; (iii) expand the CWSRF Project Priority System (“PPS”) to include a new category (Category G) for green infrastructure projects allowed under the ARRA and CWA; (iv) permit financing of pre-design planning costs prior to completion to further stimulate project development; (v) clarify provisions regarding project bypassing to meet the objectives of ARRA as to project readiness; and (vi) other administrative-oriented changes, including the changing of various definitions in the regulations for purposes of increasing flexibility in CWSRF financial terms and products to address current market conditions and meet the objectives of ARRA to stimulate the economy and help initiate projects.

## 3. NEEDS AND BENEFITS

As set forth above, PAL Section 1284(5), gives EFC the authority to make and alter regulations to fulfill its purposes under its enabling statutes. PAL Section 1285-(j)(4) gives EFC the power to provide assistance for such other purposes permitted by the CWA, as amended. Compliance with ARRA objectives and requirements will provide substantial additional Federal funds to the CWSRF to construct eligible clean water infrastructure projects and to reduce operational costs.

The proposed regulations allow for CWSRF funding to be extended to green infrastructure, water, and energy efficiency improvements or other

environmentally innovative activities and projects. Other provisions will allow EFC to bypass projects based upon project readiness to meet the requirements of ARRA and address changing market conditions through the provision of additional financial products as well as providing funds for pre-design planning prior to completion in order to facilitate project initiation. These changes will provide greater access to funding for CWSRF recipients and stimulate environmental projects.

The use of ARRA funds in New York State will create and retain jobs, and stimulate the construction of authorized critical environmental infrastructure throughout New York State.

With the changes outlined above being made to the current CWSRF regulations, a clean up of the regulatory definitions will need to be done to reflect these changes. For example, the following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: “Interest rate subsidy”, “Leveraged financing”, “Market rate of interest”, and “Reduced interest rate.”

## 4. COSTS

Participation in the CWSRF program is voluntary. The proposed amendments will not result in any additional costs to recipients other than those with respect to meeting ARRA requirements.

## 5. LOCAL GOVERNMENT MANDATES

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

## 6. PAPERWORK

The proposed amendments do not require any additional paperwork. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would have to submit the documentation required for a complete application to EFC for its consideration, and meet the reporting requirements of ARRA.

## 7. DUPLICATION

The proposed amendments to 21 NYCRR Part 2602 will be consistent, as applicable, with the DEC CWSRF regulations found in 6 NYCRR Part 649.

## 8. ALTERNATIVES

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

## 9. FEDERAL STANDARDS

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

## 10. COMPLIANCE SCHEDULE

There is no relevant compliance schedule to consider with respect to the rule. However, ARRA imposes specific requirements including project readiness in order for a project to qualify for funding.

## Regulatory Flexibility Analysis

### 1. EFFECT OF RULE

Small businesses and local governments throughout New York State will be affected in a positive manner as a result of the promulgation of this rule. The American Recovery and Reinvestment Act of 2009 (“ARRA”) will provide over \$432 million in additional funding for New York State Clean Water State Revolving Fund (“CWSRF”) projects, including sewage treatment works, sewage collection systems and solid waste disposal facilities. In addition, ARRA mandates that at least twenty percent of the funds be distributed for green infrastructure projects, water or energy efficiency or other environmentally innovative activities.

The infusion of these CWSRF funds into the New York State economy will preserve and create a significant number of jobs, primarily via funding for water pollution control construction projects. This will have commensurate positive effect on small businesses and consultants involved in the construction of environmental infrastructure projects, in particular engineering firms, financial consulting firms and attorneys. Small businesses are actively involved in the clean water construction industry in New York State. The rule will also expand the types of projects eligible to receive funding under the CWSRF to include green infrastructure projects, thereby creating additional opportunities for small businesses engaged in these types of projects. This will in turn provide an economic stimulus to localities, including additional tax revenues for local governments.

The types of local governments to be affected by this rule may include cities, towns, villages, and counties throughout New York State as they are considered eligible borrowers under the CWSRF. This rule will have a positive effect on local governments which maintain their own engineering and/or public works departments and are primarily responsible for the engineering, planning, design and construction of clean water projects. This additional funding will allow such local governments to preserve and create jobs in connection with these types of projects.

## 2. COMPLIANCE REQUIREMENTS

Participation in the CWSRF by small businesses and local governments is entirely voluntary. Any reporting or record keeping imposed by this rule would solely be the result of their decision to participate in the CWSRF program. Such participation would require compliance with existing CWSRF reporting and record keeping requirements and any reporting and record keeping requirements imposed by the ARRA.

## 3. PROFESSIONAL SERVICES

Small businesses and local governments who voluntarily participate in the CWSRF program may need to retain professional services for green infrastructure projects to be authorized under the proposed rule. Otherwise, no new professional services will be required by this rule.

## 4. COMPLIANCE COSTS

No initial capital costs will be incurred by a regulated business or industry or local government to comply with the rule. Initial or continuing compliance costs for reporting and record keeping should not vary depending on the size of such small business or local government. However, these reporting and record keeping requirements for small businesses and local governments will vary depending on the type, size and complexity of the project and the number of applicable local, state and federal approvals required. These initial or continuing compliance costs, however, only occur when the small business or local government voluntarily elects to participate in the CWSRF program.

## 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

There are no anticipated economic or technological feasibility compliance requirements on small businesses or local governments as a result of this rule. The purpose of this rule is to provide funds to stimulate the economy of the New York State, to preserve and protect jobs and to stabilize local tax bases. Participation in the CWSRF program is entirely voluntary and any direct or indirect compliance requirements will result from small businesses and local governments applying for and seeking CWSRF assistance.

## 6. MINIMIZING ADVERSE IMPACT

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the ARRA, which are to preserve and create jobs, to promote economic recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in state services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation ("EFC") considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-b(1). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

## 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Rulemaking and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate business councils, trade groups or other associations which represent small businesses and local governments to ensure that small businesses and local governments will be given an opportunity to participate in the rulemaking process.

### *Rural Area Flexibility Analysis*

#### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The proposed rule will affect all types of rural areas throughout all of New York State, particularly those in need of sewage treatment facilities, sewage collection facilities, solid waste disposal facilities and other eligible Clean Water State Revolving Fund ("CWSRF") projects.

#### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

Participation in the CWSRF by any recipient within a rural area is entirely voluntary. Any reporting, record keeping or other compliance requirements would solely be the result of their deciding to participate in the CWSRF program. Such participation would require compliance with existing CWSRF reporting and record keeping requirements and any reporting and record keeping requirements imposed by the American Recovery and Reinvestment Act of 2009 ("ARRA"). However, the provisions of the proposed rule, in and of themselves, will not require any additional reporting or record keeping by rural areas.

#### 3. COSTS

No initial capital or annual costs will be incurred by public or private entities in rural areas as a result of this rule. Initial capital costs and any annual costs to comply with the rule will vary depending upon the size and complexity of the project and the number of applicable local, state and federal approvals required. However, any initial capital or annual compliance costs occur only when public or private entities in rural areas voluntarily elect to participate in the CWSRF program.

## 4. MINIMIZING ADVERSE IMPACT

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the ARRA, which are to preserve and create jobs, to promote economic recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in state services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation ("EFC") considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-bb(7). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

## 5. RURAL AREA PARTICIPATION

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Adoption and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate organizations and other associations which represent rural areas to ensure that public and private entities will be given an opportunity to participate in the rulemaking process.

### *Job Impact Statement*

#### 1. NATURE OF IMPACT

The rule will have a positive impact on jobs and employment opportunities. A primary goal of the American Recovery and Reinvestment Act of 2009 ("ARRA") is job preservation and creation. The infusion of over \$432 million dollars into the New York State Clean Water State Revolving Fund ("CWSRF") will preserve and create a significant number of jobs, in particular those involving construction of sewage collection systems, sewage treatment works and solid waste disposal facilities. The rule will also provide jobs and employment opportunities for consultants involved with CWSRF projects, including engineers, attorneys and financial advisors. The rule will also create additional job opportunities for private and public entities interested in green infrastructure, water or efficiency improvements or other environmentally innovative activities.

#### 2. CATEGORIES AND NUMBERS AFFECTED

The categories of jobs most directly affected will be those of engineers, attorneys, financial advisors and construction related trades in the planning, design, construction and the obtaining of the necessary government permits and approvals regarding these projects.

#### 3. REGIONS OF ADVERSE IMPACT

None. This rule will have a positive impact on jobs and employment opportunities throughout all regions of New York State.

#### 4. MINIMIZING ADVERSE IMPACT

The provisions of the rule will have no unnecessary adverse impacts on existing jobs, but will promote the development of new employment opportunities. Therefore, no measures to minimize adverse impacts needed to be taken.

#### 5. SELF-EMPLOYMENT OPPORTUNITIES

The proposed rule will have a positive effect on self-employment opportunities related to the construction field and consultants therein.

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## Environmental Facilities Corporation

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### EMERGENCY RULE MAKING

**The Proposed Regulations Are for the CWSRF Co-administered  
by EFC and the NYS Department of Environmental  
Conservation ("DEC")**

**I.D. No.** EFC-17-09-00007-E

**Filing No.** 358

**Filing Date:** 2009-04-13

**Effective Date:** 2009-04-13

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

**Action taken:** Amendment of Part 2602 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1284(5) and 1285-j(4)

**Finding of necessity for emergency rule:** Preservation of general welfare.  
**Specific reasons underlying the finding of necessity:** The New York State Environmental Facilities Corporation (“EFC”) has determined that the attached amendment to the Clean Water State Revolving Fund (SRF) Regulations, Part 2602 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York is in the public interest and necessary for the preservation of the general welfare throughout the State of New York and that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act (“SAPA”), effective immediately upon filing with the Department of State.

This amendment has been adopted as an emergency measure as it is in the public interest to expeditiously use funds made available pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”) to create jobs and stimulate the economy and thus, time is of the essence. The immediate promulgation and adoption of these amended regulations is necessary for the protection and preservation of life, health, property and natural resources due to the severe economic downturn, the possible destabilization of State and local government budgets, the prospect of reduction of essential services and counterproductive local tax increases which will exacerbate the current economic conditions. The expected duration of such emergency is expected to last through the 90-day emergency time period and any subsequent 60-day extension of such emergency period while EFC initiates and concludes formal rulemaking procedures for the amended regulations. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the SRF to obtain ARRA funds and provide the same to SRF applicants. In order to meet the tight timeframes of ARRA, these regulations need to be adopted expeditiously. Therefore, compliance with the rule making requirements of section 202(1) of the SAPA would be contrary to the public interest and, as such, the current circumstance necessitates that the public and interested parties be given less than the minimum period for notice and comment provided for in section 202(1) of SAPA.

These revisions conform the current SRF regulations with the requirements and objectives set forth in the ARRA which are to preserve and create jobs, promote economic recovery and invest in environmental protection and to provide short and long-term economic benefits.

ARRA requires that SRF funds be provided to projects on a State’s intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA. Further, the Environmental Protection Agency Administrator is directed to reallocate funds where projects are not under contract or construction within 12 months of the date of enactment of ARRA.

In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to fund these types of projects.

With the downturn in the financial markets, residents have seen a dramatic decrease in home values as well as in other assets. Through out the State, businesses are retrenching and closing. Home foreclosure rates in the State have increased. State unemployment levels have risen to 7.8 percent as of February, 2009.

The need to address clean water infrastructure and to reduce operational costs has become more pressing as the economy trends downwards. Compliance with ARRA requirements will provide additional Federal funds to accomplish these purposes.

A potential stimulus package was widely discussed and broadcast on all major networks, television, radio, newspapers and on the web. The details and adoption of ARRA were similarly widely disseminated, as well as the State’s interest in utilizing such funds.

The adoption of these emergency regulations is consistent with EFC’s statutory mission, which is to provide financial assistance for essential environmental infrastructure projects for the benefit of the people of New York State.

**Subject:** The proposed regulations are for the CWSRF co-administered by EFC and the NYS Department of Environmental Conservation (“DEC”).

**Purpose:** To set forth rules implementing the statutory provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”).

**Substance of emergency rule:** I. SUBJECT:

The proposed revised regulations are for the New York State Clean Water Revolving Fund (“CWSRF”), Section 1285-j of the Public Authorities Law (“PAL”), co-administered by the New York State

Environmental Facilities Corporation (“EFC”) and the New York State Department of Environmental Conservation (“DEC”), pursuant to Chapter 565 of the Laws of 1989.

#### II. PURPOSE:

The proposed regulations set forth rules and procedures whereby EFC and DEC implement the requirements and objectives of the American Recovery and Reinvestment Act of 2009 (“ARRA”) to enable the State Revolving Fund (“SRF”) to accept and expend Federal funds to stimulate the economy and retain and create jobs for the benefit of the people of the State.

Among the changes is an addition to the CWSRF Project Priority System (“PPS”) for the purpose of including green infrastructure, water or energy efficiency improvements or other environmentally innovative activities as required by ARRA.

#### III. GENERAL SUBSTANCE:

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

The proposed regulatory amendments serve to incorporate provisions required by or necessitated by ARRA. The term of additional subsidization in the form of forgiveness of principal, a negative interest loan or a grant is added to allow the SRF to provide principal forgiveness or grants, as required by ARRA. Modifications are made to provide flexibility in certain financial terms and products to meet the objectives of ARRA to stimulate the economy and help initiate projects. In addition, the definition of project is expanded to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The proposed amendments will also permit financing of pre-design planning costs prior to completion to further stimulate project development. The proposed amendments will also add school district and soil and water conservation district to the definition of recipient. The provisions regarding project bypassing are also clarified to meet the objectives of ARRA as to project readiness. The proposed regulations will also clarify disbursements and that if certain requirements, including those mandated by ARRA, are not met that the SRF may decline to disburse funds, and if released, recover said funds. Similarly, the remedies provisions are clarified.

Certain definitions are amended within the regulations to expand the types of financial products available. It is proposed to add a new definition of “direct interest rate” and other definitions be modified to allow the SRF to address current and changing market conditions. The hardship assistance program is set out in a new section, and simplified, and clarified to indicate that in the event of a shared municipal project, hardship eligibility will be based upon a municipality’s allocable portion of the shared project.

Section 2602.3(a) of EFC’s proposed new regulations regarding the PPS make a cross reference to the PPS contained in Section 649.12 of DEC’s regulations. It is proposed that the PPS be expanded to include a new category (Category G) for green infrastructure, water or energy efficiency improvements or other environmentally innovative activities in order to meet the objectives of the ARRA.

The proposed regulations provide for an annual allocation for Category G, including a project funding cap, to be determined annually by the Commissioner and described in the IUP. Through these changes, CWSRF funds may be made available to a variety of recipients (public and private) carrying out green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

In addition, there are proposed administrative-oriented changes to EFC’s regulations. The following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: “Interest rate subsidy”, “Leveraged financing”, “Market rate of interest”, and “Reduced interest rate.” Grammatical changes will include the consistent use of capitalized terms, such as “Corporation”, “Department”, “Commissioner”, “Comptroller” and “Administrator” and use of the acronym “Clean Water” Revolving Fund instead of “Water Pollution Control” Revolving Fund.

**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 11, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Judith A. Avent, Esq., Deputy General Counsel, New York State Environmental Facilities Corporation, 625 Broadway, 7th Floor, Albany, New York 12207-2997, (518) 402-6969, email: avent@nysefc.org

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY

When the Legislature enacted Chapter 565 of the Laws of 1989, it created the New York State Clean Water Revolving Fund (“CWSRF”) and,

in part, amended the State's Public Authorities Law ("PAL"), creating Section 1285-j, which sets forth the provisions of the CWSRF. Under Section 1285 of the PAL, the New York State Environmental Facilities Corporation ("EFC") is given the statutory authority to administer the CWSRF. Pursuant to Section 1285-j(4), the Legislature provided that "moneys in the water pollution control revolving fund shall be applied by the corporation to provide financial assistance to municipalities for construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner, for such other purposes permitted by the Federal Water Pollution Control Act, as amended...." PAL Section 1284, which sets forth the general powers of the corporation, provides that EFC has the power "...to make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title...." PAL Section 1284(5). In addition, the Federal Clean Water Act of 1986 ("CWA") provided for the establishment, by each state, of a revolving fund, for certain identified water pollution control projects. During the last year, the economy has weakened significantly and the American Recovery and Reinvestment Act of 2009 ("ARRA") was signed into law amending the CWA in an effort to stimulate the economy through building environmental infrastructure.

### 2. LEGISLATIVE OBJECTIVES

In creating the CWSRF under the PAL, the Legislature directed EFC and the Department of Environmental Conservation ("DEC") to provide assistance in support of the planning, development and construction of municipal water pollution control projects and other types of projects permitted by the CWA. ARRA provides federal funds through the CWSRF to create and retain jobs, to stimulate the economy and to promote green infrastructure. EFC and DEC are amending the CWSRF regulations in order to comply with the objectives and requirements of ARRA in order to accept and utilize these Federal funds for projects within New York State. Certain regulatory provisions need to be changed in order to streamline provisions as well as to provide the flexibility and provisions specific to and necessitated by ARRA in order for the SRF to obtain ARRA funds and provide the same to CWSRF applicants.

These revisions conform the current CWSRF regulations with the requirements set forth in the ARRA to more effectively carry out the legislative objectives, which are to preserve and create jobs, promote economic recovery, invest in environmental protection and to provide short and long-term economic benefits. ARRA requires that SRF funds be provided to projects on a State's intended use plan that are ready to proceed with construction within 12 months of the date of enactment of ARRA.

In an effort to stimulate the economy and create or retain jobs, ARRA requires that at least 50 percent of the funds be provided as additional subsidization in the form of forgiveness of principal, negative interest loans, or grants. ARRA also provides that to the extent there are sufficient applications for eligible projects not less than 20 percent of the funds are to be provided for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. The amendments to the regulatory provisions will allow EFC to provide the same.

The proposed regulations amend the CWSRF regulations found in 21 NYCRR Part 2602 and, as appropriate, the 6 NYCRR Part 649 companion regulations of DEC to: (i) add a new definition of "additional subsidization" that will allow the provision of forgiveness of principal, a negative interest loan or a grant, as either financial assistance or hardship assistance; (ii) amend the definition for "project" to incorporate green infrastructure, water or energy efficiency improvements or other environmentally innovative activities; (iii) expand the CWSRF Project Priority System ("PPS") to include a new category (Category G) for green infrastructure projects allowed under the ARRA and CWA; (iv) permit financing of pre-design planning costs prior to completion to further stimulate project development; (v) clarify provisions regarding project bypassing to meet the objectives of ARRA as to project readiness; and (vi) other administrative-oriented changes, including the changing of various definitions in the regulations for purposes of increasing flexibility in CWSRF financial terms and products to address current market conditions and meet the objectives of ARRA to stimulate the economy and help initiate projects.

### 3. NEEDS AND BENEFITS

As set forth above, PAL Section 1284(5), gives EFC the authority to make and alter regulations to fulfill its purposes under its enabling statutes. PAL Section 1285-j(4) gives EFC the power to provide assistance for such other purposes permitted by the CWA, as amended. Compliance with ARRA objectives and requirements will provide substantial additional Federal funds to the CWSRF to construct eligible clean water infrastructure projects and to reduce operational costs.

The proposed regulations allow for CWSRF funding to be extended to green infrastructure, water or energy efficiency improvements or other environmentally innovative activities projects, and in the form of forgive-

ness of principal, a negative interest loan or a grant as set forth in the Intended Use Plan (IUP). Other provisions will allow EFC to bypass projects based upon project readiness to meet the requirements of ARRA and address changing market conditions through the provision of additional financial products as well as providing funds for pre-design planning prior to completion in order to facilitate project initiation. These changes will provide greater access to funding for CWSRF recipients and stimulate environmental projects.

The use of ARRA funds in New York State will create and retain jobs, and stimulate the construction of critical environmental infrastructure throughout New York State.

With the changes outlined above being made to the current CWSRF regulations, a clean up of the regulatory definitions will need to be done to reflect these changes. For example, the following definitions, among others, will be changed for the purposes of providing flexibility to address changing market conditions and increase funding opportunities for recipients: "Interest rate subsidy", "Leveraged financing", "Market rate of interest", and "Reduced interest rate."

### 4. COSTS

Participation in the CWSRF program is voluntary. The proposed amendments will not result in any additional costs to recipients other than those with respect to meeting ARRA requirements.

### 5. LOCAL GOVERNMENT MANDATES

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

### 6. PAPERWORK

The proposed amendments do not require any additional paperwork. Participation in the CWSRF program is voluntary. Anyone choosing to apply for financial assistance from the CWSRF would have to submit the documentation required for a complete application to EFC for its consideration, and meet the reporting requirements of ARRA.

### 7. DUPLICATION

The proposed amendments to 21 NYCRR Part 2602 will be consistent, as applicable, with the DEC CWSRF regulations found in 6 NYCRR Part 649.

### 8. ALTERNATIVES

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

### 9. FEDERAL STANDARDS

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

### 10. COMPLIANCE SCHEDULE

There is no relevant compliance schedule to consider with respect to the rule. However, ARRA imposes specific requirements including project readiness in order for a project to qualify for funding.

### *Regulatory Flexibility Analysis*

#### 1. EFFECT OF RULE

Small businesses and local governments throughout New York State will be affected in a positive manner as a result of the promulgation of this rule. The American Recovery and Reinvestment Act of 2009 ("ARRA") will provide over \$432 million in additional funding for New York State Clean Water State Revolving Fund ("CWSRF") projects, including sewage treatment works, sewage collection systems and solid waste disposal facilities. In addition, ARRA mandates that at least twenty percent of the funds be distributed for green infrastructure projects, water or energy efficiency or other environmentally innovative activities.

The infusion of these CWSRF funds into the New York State economy will preserve and create a significant number of jobs, primarily via funding for water pollution control construction projects. This will have commensurate positive effect on small businesses and consultants involved in the construction of environmental infrastructure projects, in particular engineering firms, financial consulting firms and attorneys. Small businesses are actively involved in the clean water construction industry in New York State. The rule will also expand the types of projects eligible to receive funding under the CWSRF to include green infrastructure projects, thereby creating additional opportunities for small businesses engaged in these types of projects. This will in turn provide an economic stimulus to localities, including additional tax revenues for local governments.

The types of local governments to be affected by this rule may include cities, towns, villages, and counties throughout New York State as they are considered eligible borrowers under the CWSRF. This rule will have a positive effect on local governments which maintain their own engineering and/or public works departments and are primarily responsible for the engineering, planning, design and construction of clean water projects.

This additional funding will allow such local governments to preserve and create jobs in connection with these types of projects.

**2. COMPLIANCE REQUIREMENTS**

Participation in the CWSRF by small businesses and local governments is entirely voluntary. Any reporting or record keeping imposed by this rule would solely be the result of their decision to participate in the CWSRF program. Such participation would require compliance with existing CWSRF reporting and record keeping requirements and any reporting and record keeping requirements imposed by the ARRA.

**3. PROFESSIONAL SERVICES**

Small businesses and local governments who voluntarily participate in the CWSRF program may need to retain professional services for green infrastructure projects to be authorized under the proposed rule. Otherwise, no new professional services will be required by this rule.

**4. COMPLIANCE COSTS**

No initial capital costs will be incurred by a regulated business or industry or local government to comply with the rule. Initial or continuing compliance costs for reporting and record keeping should not vary depending on the size of such small business or local government. However, these reporting and record keeping requirements for small businesses and local governments will vary depending on the type, size and complexity of the project and the number of applicable local, state and federal approvals required. These initial or continuing compliance costs, however, only occur when the small business or local government voluntarily elects to participate in the CWSRF program.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY**

There are no anticipated economic or technological feasibility compliance requirements on small businesses or local governments as a result of this rule. The purpose of this rule is to provide funds to stimulate the economy of the New York State, to preserve and protect jobs and to stabilize local tax bases. Participation in the CWSRF program is entirely voluntary and any direct or indirect compliance requirements will result from small businesses and local governments applying for and seeking CWSRF assistance.

**6. MINIMIZING ADVERSE IMPACT**

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the ARRA, which are to preserve and create jobs, to promote economic recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in state services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation (“EFC”) considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-b(1). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

**7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION**

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Rulemaking and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate business councils, trade groups or other associations which represent small businesses and local governments to ensure that small businesses and local governments will be given an opportunity to participate in the rulemaking process.

**Rural Area Flexibility Analysis**

**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS**

The proposed rule will affect all types of rural areas throughout all of New York State, particularly those in need of sewage treatment facilities, sewage collection facilities, solid waste disposal facilities and other eligible Clean Water State Revolving Fund (“CWSRF”) projects.

**2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS**

Participation in the CWSRF by any recipient within a rural area is entirely voluntary. Any reporting, record keeping or other compliance requirements would solely be the result of their deciding to participate in the CWSRF program. Such participation would require compliance with existing CWSRF reporting and record keeping requirements and any reporting and record keeping requirements imposed by the American Recovery and Reinvestment Act of 2009 (“ARRA”). However, the provisions of the proposed rule, in and of themselves, will not require any additional reporting or record keeping by rural areas.

**3. COSTS**

No initial capital or annual costs will be incurred by public or private entities in rural areas as a result of this rule. Initial capital costs and any annual costs to comply with the rule will vary depending upon the size and complexity of the project and the number of applicable local, state and

federal approvals required. However, any initial capital or annual compliance costs occur only when public or private entities in rural areas voluntarily elect to participate in the CWSRF program.

**4. MINIMIZING ADVERSE IMPACT**

The proposed rule will not have any adverse economic impact. The rule is designed to implement the statutory provisions and objectives of the ARRA, which are to preserve and create jobs, to promote economic recovery, to invest in environmental protection infrastructure and to stabilize State and local government budgets in order to minimize reductions in state services and counterproductive local tax increases. In addition, the New York State Environmental Facilities Corporation (“EFC”) considered whether there were any feasible approaches for minimizing any conceivable adverse economic impacts pursuant to State Administrative Procedure Act section 202-bb(7). Due to the nature and purpose of the proposed rule and the fact that there are no adverse economic impacts, EFC came to the conclusion that there were no feasible alternatives to promulgating the provisions of the rule on an emergency basis.

**5. RURAL AREA PARTICIPATION**

With respect to this emergency rulemaking, EFC will publish this Notice of Emergency Adoption and supporting documentation in the State Register and in the Environmental Notice Bulletin. EFC also intends to submit a notice of proposed rulemaking in the near future and will provide notice to the appropriate organizations and other associations which represent rural areas to ensure that public and private entities will be given an opportunity to participate in the rulemaking process.

**Job Impact Statement**

**1. NATURE OF IMPACT**

The rule will have a positive impact on jobs and employment opportunities. A primary goal of the American Recovery and Reinvestment Act of 2009 (“ARRA”) is job preservation and creation. The infusion of over \$432 million dollars into the New York State Clean Water State Revolving Fund (“CWSRF”) will preserve and create a significant number of jobs, in particular those involving construction of sewage collection systems, sewage treatment works and solid waste disposal facilities. The rule will also provide jobs and employment opportunities for consultants involved with CWSRF projects, including engineers, attorneys and financial advisors. The rule will also create additional job opportunities for private and public entities interested in green infrastructure, water or efficiency improvements or other environmentally innovative activities.

**2. CATEGORIES AND NUMBERS AFFECTED**

The categories of jobs most directly affected will be those of engineers, attorneys, financial advisors and construction related trades in the planning, design, construction and the obtaining of the necessary government permits and approvals regarding these projects.

**3. REGIONS OF ADVERSE IMPACT**

None. This rule will have a positive impact on jobs and employment opportunities throughout all regions of New York State.

**4. MINIMIZING ADVERSE IMPACT**

The provisions of the rule will have no unnecessary adverse impacts on existing jobs, but will promote the development of new employment opportunities. Therefore, no measures to minimize adverse impacts needed to be taken.

**5. SELF-EMPLOYMENT OPPORTUNITIES**

The proposed rule will have a positive effect on self-employment opportunities related to the construction field and consultants therein.

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## Department of Health

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### NOTICE OF ADOPTION

**Notification & Submission Requirements for Continuing Care Retirement Communities**

**I.D. No.** HLT-39-08-00007-A

**Filing No.** 360

**Filing Date:** 2009-04-14

**Effective Date:** 2009-04-29

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

**Action taken:** Amendment of section 901.9 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 4602(2)(g) and 4603(8)

**Subject:** Notification & Submission Requirements for Continuing Care Retirement Communities.

**Purpose:** Revises necessary approvals required for a continuing care retirement community's extended construction completion date.

**Text of final rule:** Subdivision (c) of Section 901.9 is amended to read as follows:

(c) Changes in the construction timetable that result in the extension of the completion date beyond one year of the current approved completion date shall require the approval of the [Life Care Community Council] Commissioner, with the advice and consent of the Superintendent and, if required, the advice and consent of the Attorney General.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 901.9(c).

**Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.state.ny.us

#### Revised Job Impact Statement

A Job Impact Statement is not required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act, since it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. The effect of the proposed rule will be to establish a more efficient approval process when a continuing care retirement community requests approval of an extension of a construction completion date beyond one year of the date previously approved under its Certificate of Authority.

#### Assessment of Public Comment

The agency received no public comment.

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## Department of Labor

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### EMERGENCY RULE MAKING

#### Enhanced Administration of the State's Apprenticeship Training Program and Enhanced Program Sponsor Accountability

**I.D. No.** LAB-17-09-00003-E

**Filing No.** 353

**Filing Date:** 2009-04-10

**Effective Date:** 2009-04-11

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

**Action taken:** Addition of sections 601.4 and 601.5 to Title 12 NYCRR.

**Statutory authority:** Labor Law, section 811; and 29 CFR 29

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

**Specific reasons underlying the finding of necessity:** The Rule enhances consistency in administration of the State's Apprenticeship Training Program, stakeholder participation in program approval, and program sponsor accountability that will ensure a well-trained workforce for the state's future.

**Subject:** Enhanced administration of the state's apprenticeship training program and enhanced program sponsor accountability.

**Purpose:** To strengthen the Apprenticeship Training Program in New York and ensure a well-trained, skilled workforce for the future.

**Text of emergency rule:** Section 601.4 of the regulations of the Commissioner of Labor is amended by adding a new sub-section (i) as follows:

(i) A written public comment period is required for all new trades and apprenticeship program applications. A list of all new trades and new apprenticeship program applications will be placed on the New York State Department of Labor website for a minimum period of ten business days to solicit public comments. Those individuals who submit comments will be asked to provide their name, title, organizational name and their comments via mail or e-mail. Comments received will be reviewed by the Apprenticeship Training Program Director, and action will be taken, as deemed appropriate.

Section 601.5 of the regulations of the Commissioner of Labor is amended by adding new sub-sections (d), (e), (f), and (g), as follows:

(d) All sponsors of apprenticeship training programs, and their signatories - if any, are required to ensure that their apprentices

maintain records that document job rotation and the skills acquired. The apprentice must maintain this record in a format approved by the New York State Department of Labor. The apprentice's immediate supervisor is required to sign off on this record at least monthly.

(e) Newly approved sponsors seeking registration of new apprenticeship programs must undergo a two year probationary period. Newly approved sponsors will be advised that their programs will be approved contingent upon successful completion of the probationary period.

(1) Factors considered during the probationary period include, but are not limited to:

(i) Payment of wages as specified in the apprenticeship agreement;

(ii) documentation of job rotation;

(iii) documentation of participation in related instruction;

(iv) provision of proper supervision;

(v) provision of a safe work environment; and

(vi) compliance with the provisions of Labor Law, Article 23 and 12 NYCRR Parts 600 and 601.

(2) After a review of the new sponsor's performance during the probationary period, the sponsor will be notified whether they:

(i) passed probation; or

(ii) will be placed on an extended probation for a period of no more than one year, informed of the reasons why this decision was made, and issued a corrective action plan; or

(iii) failed probation and the reasons why.

(f) New sponsors who fail probation will not be permitted to reapply for registration of an apprenticeship program for a period of one year. This prohibition additionally applies to any successor or substantially owned-affiliated entity, as those terms are defined in Labor Law, Section 220, of the new sponsor. The new sponsor may file a written appeal to the decision by sending a letter to the Commissioner of Labor putting forth its arguments why the sponsor candidate should not have failed probation.

(g) All Apprentice Training Program sponsors will undergo a recertification process for each program at three year intervals. Commencing with enactment of these regulations, for the first three years, these recertifications shall be performed on a basis of older programs, by region, being recertified first.

(1) Each sponsor shall complete a new Apprenticeship Training Program Registration Agreement for each of their programs.

(i) Simultaneously, any sponsors of Group Joint or Group Non-Joint programs must submit a current list of program signatories' names, addresses, Federal Employer Identification Numbers, and Unemployment Insurance Employer Numbers in an electronic format as specified by the Department of Labor.

(ii) The Sponsor shall also collect completed and signed Due Diligence forms from each signatory, provide any such forms with affirmative answers to the Department of Labor with its new Apprenticeship Training Program Registration Agreement, and maintain the rest of the applications in its office for ongoing review and inspection by the Department.

(iii) The program sponsor must provide assurances in writing to the New York State Department of Labor that the sponsor will hold all signatories to the standards of their Apprenticeship Training Program Registration Agreement with the New York State Department of Labor.

(2) After a review of the sponsor's performance during the period prior to recertification, the sponsor will receive notification that:

(i) Its Apprenticeship Training Program has been renewed; or

(ii) It was found to have committed the violations specified, and is to be issued a corrective action plan; formal deregistration will be pursued only if NO corrective action has been taken by the sponsor within a reasonable period of time to resolve all issues; or

(iii) Its Training Program has been recommended for deregistration and deregistration proceedings will be initiated.

**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 8, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Maria Colavito, New York State Department of Labor, Room 508, Building 12, State Office Campus, Albany NY 12240, (518) 457-4380, email: [NYSDOL@labor.state.ny.us](mailto:NYSDOL@labor.state.ny.us)

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Labor Law § 811.1(j) states that the Commissioner of Labor shall have the power to adopt such rules and regulations as may be necessary for the effective administration of the purposes and provisions of Article 23. In addition, the emergency regulations are promulgated under authority granted to the Department under federal regulations found at 29 CFR 29.

##### 2. Legislative objectives:

Labor Law Article 23, § 810 makes it the public policy of the State of New York to develop sound apprenticeship training standards and to encourage industry and labor to institute apprenticeship programs as a preferred method of training and preparing workers in New York. These amendments fulfill these legislative objectives and strengthen the Apprenticeship Training program in New York by increasing public participation in the apprenticeship process, reinforcing the need to memorialize skill attainment by apprentices, and reaffirming the accountability of program sponsors for their signatories and apprentices.

##### 3. Needs and benefits:

During the past year, the Commissioner of Labor placed a moratorium on the approval of apprenticeship training programs in all trades while a thorough review of the State's Apprenticeship Training Program was conducted. Two independent reviews were conducted, an internal review - the Process Mapping Report - and an External Review conducted by Coffey Consultant's. These reviews sought input from various stakeholders and partners as well as Apprenticeship Training Program staff. Both the internal and external reviews echoed common themes and consistent recommendations to ensure the development of a world class workforce. Those themes included the need for greater stakeholder involvement in the registration process, increased consistency in program implementation, and increased accountability by program sponsors in ensuring the quality and effectiveness of apprenticeship programs. A number of significant recommendations which surfaced from the internal and external reviews are reflected in these regulatory amendments.

The public comment period for all new program applications affords an opportunity for stakeholders to provide comments on all new programs and new trades initiated in New York State. The requirement for use of Blue Books or other form of documentation of job rotation ensures that apprentices are being rotated to all aspects of their work process resulting in a skilled workforce with portable credentials. Sponsor responsibility for monitoring program signatories and their compliance with apprenticeship training requirements shores up program oversight and accountability. Finally, the program recertification process allows sponsors an opportunity to ensure the Department has current and accurate information on their programs and signatories and ensures periodic monitoring of all apprenticeship programs on a regular basis.

##### 4. Costs:

The implementation of these regulations will result in the need for the apprentice's on-the-job supervisor to sign the apprentice's Blue Book, or other form of documentation of job rotation approved by the Department. It will also require that new sponsors go through a two-year probation period before being certified. Further, the rules call for triennial sponsor recertification, the reporting and monitoring of employer-members and employer-signatories by program sponsors, and, if needed, the preparation and implementation of corrective action plans for sponsors who fail to measure up to program standards. The amount of time and resources needed will be contingent upon the size of the program and the complexity of the corrective action issues.

It is anticipated that the implementation of the regulations will impact Apprenticeship Training Office staff. The caseloads for field staff will be adjusted accordingly to accommodate for these needs; however, additional staff will be required in central office to process the documents for program probation and recertification, for tracking of signatory information, as well as handling the correspondence regarding public comments on new trades and program applications.

##### 5. Local government mandates:

Municipalities, school districts, fire districts and others who currently, or plan to, serve as program sponsors for apprenticeship training programs will have to comply with the new requirements that will apply to any new programs proposed by them including public notice of program applications. All apprenticeship programs in which these entities participate will be subject to ensuring that current and accurate information is held on program signatories. The Department will be responsible for monitoring the signatories on a random sample basis. However, these require-

ments apply only to local governments that choose to serve as program sponsors for apprenticeship programs. Moreover, the amendments will benefit such local governments by ensuring consistency and accountability among program sponsors and will assist local governments that have enacted local laws requiring public work contractors to participate in state registered apprenticeship training programs by helping to ensure the quality of such programs.

Apprenticeship Training Program staff will be available to provide technical assistance to program sponsors - including local governments choosing to undertake this role - to assist them in complying with the rule..

##### 6. Paperwork:

Apprenticeship programs traditionally require apprentices and their supervisors to track apprentices' progress through various job rotations included in their overall training program. While "blue books" have traditionally been used for this purpose, the proposed rule allows for flexibility in this regard by providing for skills attainment to be tracked in some other format approved by the Department.

Additional paperwork that will be required from regulated parties as a result of these rule changes include corrective action plans for program sponsors who fail to comply with program requirements and triennial recertification applications.

At the same time, the Department will have to develop and complete a number of new documents including form letters to address probationary and recertification determinations, form letters to acknowledge receipt of public written comments, as well as revisions to the Apprentice Training Program Registration Agreement.

The database currently used by the Apprenticeship Training Program will also need to be revised to track probationary and recertification periods and program signatories' information.

##### 7. Duplication:

No duplication of rules were identified. Rather, these regulations are intended to clarify existing regulations found in 12 NYCRR § 601.4 Standards for Apprenticeship Programs and 12 NYCRR § 601.5 Standards for Apprenticeship Agreements.

##### 8. Alternatives:

Overall there are no viable alternatives to the requirements set forth in the proposed rule. The rule reinforces basic requirements for program registration, monitoring, and accountability recommended by consultants and various stakeholders folding a long and detailed review of the state's administration of its apprenticeship training program.

##### 9. Federal standards:

United States Department of Labor's proposed rule changes to 29 CFR 29 published in the Federal Register on December 13, 2007, contains a requirement for provisional registration, including a one year provisional approval of newly registered programs after which program approval may be permanent, continued as provisional, or rescinded following a review by the registration agency. New York State's proposed emergency regulation for a probationary period for all new programs mirrors the proposed federal requirement except that the probation period extends for two years. It is believed that this enhanced requirement will result in higher standards for New York's Apprenticeship Training program by offering sponsors additional time to fully develop quality programs, while at the same time, affording the Department an opportunity to assess the success of the program based upon a more representative operating history.

##### 10. Compliance schedule:

The two-year probationary requirement will become effective for new sponsor program applications approved on or after the effective date of these regulations.

The three-year recertification period will be implemented in each geographic region of the state on an incremental scale determined by the age of the program so that one third of the programs within a region - starting with the oldest programs - will be due for recertification each year, commencing on or after the effective date of these regulations.

The establishment of a written public comment period for new trades and program applications will be implemented on or after the effective date of these regulations.

New sponsor mandates with regard to ensuring that current and accurate information is held on their employer signatories will be implemented on or after the effective date of these regulations.

Provisions set forth in the rule clarifying job rotation requirements and acceptable documentation will be effective on or after the effective date of these regulations.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of rule:

Apprenticeship Training Programs include building and construction trades, manufacturing trades, state governments (Division of Correctional Services), local governments (such as villages, school districts, and fire districts), as well as other non-traditional trades (such as chef).

There are four types of Apprenticeship Training programs in the state, as follows:

- Individual Non-Joint: --- Involves a non-union employer and one or more apprentices or an employer with a union that does not wish to participate in the apprenticeship program. (584 Programs)
- Individual Joint: --- Involves a single employer and the union representing the employer's apprentices. (70 Programs)
- Group Joint: --- Involves a group of employers and one union, which represents the workers of the trade. (194 Programs)
- Group Non-Joint: --- Involves a group of non-union employers or an employer trade association whose members agree to apprenticeship standards among themselves or which contracts with a service provider to administer the apprenticeship program and to provide related instruction classes for the apprentices. (27 Programs)

Please note the data listed above reflects the number of programs in each category, not individual sponsors. One sponsor may operate multiple programs.

#### 2. Compliance requirements:

Participation in apprenticeship training programs is completely voluntary. Small businesses and local government sponsors who choose to participate in such programs may be required to undertake additional record keeping activities associated with tracking the apprentice's progress through various job rotations, if they were not complying with this requirement previous to the implementation of this rule. Such record keeping may be accomplished through use of a "Blue Book" or, under the proposed rule, some other format approved by the Commissioner. Small businesses and local governments sponsoring apprenticeship training programs will also be responsible for the preparation and implementation of a corrective action plan, if needed, to bring their program into compliance with statutory and regulatory requirements governing apprenticeship programs; completion of paperwork for triennial recertification; and obtaining and tracking of signatory information. The amount of time needed for all these activities is contingent upon the size of the program and the degree to which these programs are already in compliance with requirements of the current regulations governing the program.

#### 3. Professional services:

The adoption of these emergency regulations is not expected to place an undo burden on program sponsors that would require them to retain professional services.

#### 4. Compliance costs:

The adoption of these emergency regulations is not expected to place an undo burden on program sponsors with regard to cost. For example, the completion of blue books or an alternative method of documentation of job rotation is done by the apprentice's supervisor. All Apprentice Training Program Registration Agreements provide for a specified ratio of apprentices to journey workers (supervisors). Therefore, a supervisor will be responsible for a limited number of apprentices and their Blue Books.

The implementation of these regulations will result in the need for program sponsors to sign the apprentice's Blue Book, or other form of documentation of job rotation, and the preparation and implementation of the completion of a corrective action plan, if needed, completion of paperwork for recertification, and the tracking of signatory information. The amount of time needed is contingent upon the size of the program and the complexity of the corrective action issues.

#### 5. Economic and technological feasibility:

The adoption of these emergency regulations is not expected to place an undo burden on program sponsors. Wherever possible, the Department will utilize technology to make filing of documents with the Department easier. For example, the department encourages sponsors to submit lists of apprenticeship program signatories in an electronic format. Also, public comments on new program applications and new trades will be accepted via an electronic format. 6. Minimizing adverse impact:

For the new regulation regarding sponsors' responsibilities to monitor employer signatories it is presumed that sponsors who conduct Group Joint or Group Non-Joint programs currently maintain a list of program signatories in their normal course of business.

For the new regulation regarding job rotation requirements and acceptable documentation, this change will allow a stricter enforcement of current procedures. Program sponsors should be tracking job rotation at the present time, however, this regulation will provide a more consistent application of this requirement.

While the Department believes that the possibility of adverse impact of the emergency rule should be minimal, the Department will provide apprenticeship program sponsors with reasonable periods of time in which to bring non-compliant programs into compliance with all regulatory requirements, will provide technical assistance to program sponsors, and will provide adjudicatory hearings to program sponsors to challenge any proposed adverse action by the Department. These activities all serve to minimize any adverse impact from the rule.

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

During the past year, New York State placed a moratorium on the approval of apprenticeship training programs in all trades while a thorough

review of the program was conducted. Two independent reviews were conducted which seeking input from various stakeholders and partners as well as Apprenticeship Training Program staff. Small businesses and local governments were given an opportunity to participate in these reviews by responding to questions asked by parties conducting the reviews. The final written Reports authored by Coffey Consulting, LLC., and NYSDOL were posted for public review on NYSDOL's website and seven public forums were held throughout the state in August and September 2008, offering the public, including small businesses and local governments, an opportunity to provide their comments on the reports. All feedback received as a result of these activities was reviewed and considered and a number of recommendations received from stakeholders, interested parties, and the consultants are reflected in this rulemaking.

#### Rural Area Flexibility Analysis

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

Apprenticeship training programs may be sponsored by a single employer, a group of employers, or a joint apprenticeship committee representing both employers and a union. These sponsors may be located throughout New York State, including all rural areas of the State.

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

All Apprenticeship Training Program Sponsors in rural areas who conduct Group Joint or Group Non-Joint programs must provide a list of all employer signatories to NYSDOL and will be required to hold all signatories to the standards of their Apprentice Training Program Registration Agreement with NYSDOL.

All program sponsors in rural areas will be required to ensure their apprentices are regularly keeping "Blue Books" or a comparable record to ensure documentation of job rotation and the attainment of skills.

All program sponsors in rural areas will be required to apply for recertification of programs every three years and to undergo a program review at that time. Deficiencies in program administration or operation identified during the review will have to be corrected.

All applications for new apprenticeship training programs by sponsors in rural areas will be subject to publication and public comments. Sponsors may be required to respond to inquiries from Apprenticeship Training Program staff in response to comments received from the public.

##### 3. Costs:

The adoption of these emergency regulations is not expected to place an undo burden on program sponsors located in rural areas as opposed to program sponsors in other geographic areas of the state. The implementation of these regulations will result in the need for the apprentice's on-the-job supervisor to sign the apprentice's Blue Book or other form of documentation of job rotation approved by the Department. It will also require that new sponsors go through a two-year probation period before being certified. Further, the rules call for triennial sponsor recertification, that sponsors insure current and accurate information is held on program signatories, and, if needed, the preparation and implementation of corrective action plans for sponsors who fail to measure up to program standards. The amount of time and resources needed will be contingent upon the size of the program and the complexity of the corrective action issues. New York State Department of Labor Staff is available to assist in addressing any corrective action issues. It is not anticipated that the rule would require the programs to hire professional staff or consultants to undertake any of these tasks.

##### 4. Minimizing adverse impact:

It is presumed that sponsors located in rural areas who conduct Group Joint or Group Non-Joint programs currently maintain a list of program signatories in their normal course of business. Therefore, the emergency rule should not have an adverse impact from any sponsors in this regard.

The documentation of job rotation requirements for sponsors is currently enacted by procedure. Program sponsors located in rural areas should be tracking job rotation at the present time and the impact from the emergency rule should be minimal.

The Department's Apprenticeship Training Program staff is available to provide technical assistance to program sponsors located in rural areas as well as other areas of the state. Moreover, the Department will provide apprenticeship program sponsors with reasonable periods of time in which to bring non-compliant programs into compliance with all regulatory requirements and will provide adjudicatory hearings to program sponsors to challenge any proposed adverse action by the Department. These activities all serve to minimize any adverse impact from the rule.

##### 5. Rural area participation:

During the past year, New York State placed a moratorium on the approval of apprenticeship training programs in all trades while a thorough review of the program was conducted. Two independent reviews were conducted seeking input from various stakeholders and partners as well as Apprenticeship Training Program staff. Sponsors in rural areas were given an opportunity to participate in these reviews by responding to questions asked by parties conducting the reviews. The final written Reports

authored by Coffey Consulting, LLC. and NYS DOL were posted for public review on NYS DOL's website and seven public forums were held throughout the state in August and September 2008, offering the public, including sponsors in rural areas, an opportunity to provide their comments on the reports. All feedback received as a result of these activities was reviewed and considered and a number of recommendations received from stakeholders, interested parties, and the consultants are reflected in this rulemaking.

#### Job Impact Statement

##### 1. Nature of impact:

If a sponsor fails to comply with the requirements of the emergency regulations and a program is ultimately deregistered or not recertified, this would have an impact on an apprentice's status as a registered apprentice and thus affect his or her ability to obtain a portable nationally recognized credential of skills standards. The loss of this credential may have a long term impact on the apprentice's earning potential.

The Department does not anticipate that the proposed rule will impact many jobs as we do not believe it will be necessary to either deregister or refuse to recertify a large number of programs. It is expected that the vast majority of programs would comply with all requirements of the rule. Moreover, except under extreme circumstances, non-compliant program sponsors will be given opportunities to come into compliance before any steps would be taken to terminate a program.

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

The Apprenticeship Training Program currently contains 521 construction trades programs and 354 non-construction trades programs, with over 20,000 registered apprentices.

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

These emergency regulations impact all program sponsors in New York State regardless of the geographic location of the apprenticeship program.

##### 4. Minimizing adverse impact:

While the Department believes that the possibility of adverse impact of the emergency rule on job holders is going to be negligible, the Department will provide apprenticeship program sponsors with reasonable periods of time in which to bring non-compliant programs into compliance with all regulatory requirements, will provide technical assistance to program sponsors, and will provide adjudicatory hearings to program sponsors to challenge any proposed adverse action by the Department. These activities all serve to minimize any adverse impact from the rule.

##### 5. (IF APPLICABLE) Self-employment opportunities:

N/A

## EMERGENCY RULE MAKING

### The Number of Crane Board Members Needed to Conduct Operators Examinations and Hold Administrative Hearings

I.D. No. LAB-17-09-00006-E

Filing No. 356

Filing Date: 2009-04-13

Effective Date: 2009-04-13

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

**Action taken:** Amendment of section 23-8.5 of Title 12 NYCRR.

**Statutory authority:** General Business Law, section 483; Labor Law, sections 21 and 27

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

**Specific reasons underlying the finding of necessity:** This is a very busy season for practical examinations for crane operators. This amendment will allow for more testing days to be scheduled thereby eliminating delays in getting examinations.

**Subject:** The number of Crane Board Members needed to conduct operators examinations and hold administrative hearings.

**Purpose:** To modify the requirements regarding crane operator examinations and administrative hearings for crane operators.

**Text of emergency rule:** 12 NYCRR section 23-8.5 is amended to read as follows:

#### § 23-8.5 Special provisions for crane operators

(a) Finding of fact. The board finds that the trade or occupation of operating cranes of the type described in subdivision (b) of this section, in construction, demolition and excavation work involves such elements of danger to the lives, health and safety of persons employed in such trade or occupation as to require special regulations for their protection and for the

protection of other employees and the public in that such cranes may fall over, collapse, contact electric power lines, dislodge material and cause such material to fall or fail to support intended loads and convey them safely, unless such cranes are operated by persons of proper ability, judgment and diligence.

(b) Limited application of this section. This section applies only to mobile cranes having a manufacturer's maximum rated capacity exceeding five tons or a boom exceeding forty feet in length and to all tower cranes operating in construction, demolition and excavation work. The word crane as used in this section refers to tower cranes and to such mobile cranes of the following type: a mobile, carrier-mounted, power-operated hoisting machine utilizing hoisting rope and a power-operated boom which moves laterally by rotation of the machine on the carrier.

(c) *Certificate of competence - Crane Classifications.* The Commissioner has the authority to issue certificates of competence for the following classes of cranes:

(1) *Class A - Unrestricted - Conventional, cable, lattice boom, and friction are names that have been used in reference to this class. This class includes all cranes having a fixed lattice boom, with or without free fall capability; conventional tower cranes, derricks and all cranes with free fall capability. A certificate of competence for Class A allows the holder to operate any crane.*

(2) *Class B - Hydraulic - This class includes all hydraulic cranes which have a telescopic boom and swinging cab; there is no restriction on maximum manufacturer's rating. This class also includes small trailer or truck mounted self-erecting tower cranes, as well as boom trucks having a manufacturer's rated capacity of over 28 tons. A certificate of competence for Class B allows the holder to operate Class B, C and D cranes.*

(3) *Class C - Boom Truck - This includes cranes having telescopic booms which are generally truck mounted and up to 28 ton maximum manufacturer's rated capacity. A certificate of competence for Class C allows the holder to operate Class C and D cranes.*

(4) *Class D - Restricted Boom Truck - These cranes are also referred to as sign hangers, but their use not restricted to that industry. This class includes cranes having telescopic booms which are generally truck mounted and up to 3 ton maximum manufacturer's rated capacity, and up to 125 feet of boom. A certificate of competence for Class D allows the holder to operate Class D cranes only.*

(5) *Class E - Reserved*

(6) *Class F - Line Truck - These cranes are also referred to as digger derricks. These cranes have up to 15 ton maximum manufacturer's rated capacity, 65 foot maximum boom length, utilize a non-conductive tip with nylon rope, for use in electrical applications only. A certificate of competence for Class F allows the holder to operate Class F cranes only.*

(d) Certificate of competence required. No person, whether the owner or otherwise, shall operate a crane in the State of New York unless such person is a certified crane operator by reason of the fact that:

(1) He holds a valid certificate of competence issued by the commissioner to operate [a] that class of crane; or

(2) He is at least 21 years of age and holds a valid license issued by the Federal government, a State government or by any political subdivision of this or any other State and such license has been accepted in writing by the commissioner as equivalent to a certificate of competence issued pursuant to this Part [by him]; or

(3) He is a person who:

(i) is at least 21 years of age and is employed by the Federal government, the State or a political subdivision, agency or authority of the State and is operating a crane owned or leased by the Federal government, the State or such political subdivision, agency or authority and his assigned duties include operation of a crane;

(ii) is at least 21 years of age and is employed only to test or repair a crane and is operating it for such purpose while under the direct supervision of a certified crane operator; or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and his assigned duties include the operation of a crane;

(iii) an apprentice or learner who is at least 18 years of age and who has the permission of the owner or lessee of a crane to take instruction in its operation and is operating such crane under the direct supervision of a certified crane operator or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and whose assigned duties include the operation of a crane.

(d) Application forms and photographs. An application for a certificate of competence or for a renewal thereof shall be made on forms provided by the commissioner. Upon notice from the commissioner to an applicant that a certificate of competence or a renewal thereof will be issued to him, the applicant must forward photographs of himself in such numbers and sizes as the commissioner shall prescribe, and such photographs must have been taken within 30 days of the request for such photographs.

(e) Physical condition. No person suffering from a physical handicap or illness, such as epilepsy, heart disease, or an uncorrected defect in vision or hearing, that might diminish his competence, shall be certified by the commissioner.

(f) Experience required. An applicant for a certificate of competence must be at least 21 years of age and must have had practical experience in the operation of cranes for at least three years and, in addition, have a practical knowledge of crane maintenance.

(g) Examining board. The commissioner may appoint an examining board which shall consist of at least three members, at least one of whom shall be a crane operator who holds a valid certificate of competence issued by the commissioner, and at least one of whom shall be a representative of crane owners. The members of the examining board shall serve at the pleasure of the commissioner and their duties will include:

(1) The examination of applicants and their qualifications, and the making of recommendations to the commissioner with respect to the experience and competence of the applicants;

(2) The holding of hearings regarding appeals following denials of certificates;

(3) The holding of hearings prior to determinations of the commissioner to suspend or revoke certificates, or to refuse to issue renewals of certificates;

(4) The reporting of findings and recommendations to the commissioner with respect to such hearings;

(5) The acts and proceedings of the examining board shall be in accordance with regulations issued by the commissioner.

(h) General examination. Each applicant for a certificate of competence will, and each applicant for a renewal thereof may, be required by the commissioner to take an appropriate general examination.

(i) Operating examination. An applicant who passes the general examination will also be required to take a practical examination in crane operation, except that the commissioner may waive this requirement with respect to an applicant for a renewal of a certificate of competence. *The commissioner shall designate one member of the examining board to conduct the practical examination for Class F line trucks. For all other practical examinations (for Classes A, B, C, D, and E), the commissioner shall designate a minimum of three members of the examining board to administer the practical examination, of which two members must be present at the practical examination and score the applicant and the other member(s) may review the video of the practical examination and score the applicant. When a practical examination is conducted by a single member of the examining board, the applicant must achieve a passing score from the member to receive a certificate of competence. When the practical examination is administered by three or more members of the examining board, the applicant must achieve a passing score, which shall be calculated as an average of all scores received from the three or more members that administered the practical examination. The procedures used regarding the conduct of the practical examination, the establishment of the passing score and the assignment of the board members to conduct individual examinations shall be set forth in a guidance document approved by the examining board.*

(j) Contents of certificate. Each certificate of competence issued shall include the name and address of the certified crane operator, a brief description of him for the purpose of identification and his photograph.

(k) Term of certificate. Each certificate of competence or renewal thereof shall be valid for three years from the date issued, unless its term is extended by the commissioner or unless it is sooner suspended or revoked. The commissioner may extend the term of any certificate of competence as he may find necessary to relieve a certified operator of unnecessary hardship.

(l) Carrying certificate. Each certified crane operator shall carry his certificate on his person when operating any crane and failure to produce the certificate upon request by the commissioner shall be presumptive evidence that the operator is not certified.

(m) Renewals. An application for renewal of a crane operator's certificate of competence shall be made within one year from the expiration date of the certificate sought to be renewed, except that the commissioner may extend the time to make such application to prevent any undue hardship to a certified crane operator.

(n) Suspension, revocation, refusal to renew, denials of certificates, hearings.

(1) The commissioner may, upon notice to the interested parties and after a hearing before the examining board, suspend or revoke a certificate of competence upon finding that the certified operator has failed to comply with an order of the commissioner or that the certified operator is not a person of proper competence, judgment or ability in relation to the operation of cranes, or for other good cause shown.

(2) Prior to a determination by the commissioner not to renew a certificate of competence, the commissioner shall require a hearing before the examining board upon notice to the interested parties.

(3)[ (i)] An applicant whose application for a certificate has been denied by the commissioner may[, upon his written] request [made to the commissioner within 30 days after the mailing or personal delivery to him of a notice of such denial, have a hearing before the examining board] *an administrative review of the reasons for the denial and a written response will be provided to such applicant but no hearing shall be required in connection with a denial of an application other than a renewal.*

[(ii) Such hearing shall be held by the examining board which] *(4) The commissioner shall designate a panel of two or more members of the examining board to conduct all hearings required pursuant to this section. The commissioner may also designate a hearing officer to assist the panel in conducting the hearings. The panel shall make its recommendations to the commissioner within three days after such hearing has been concluded. A written notice of the commissioner's decision, containing the reasons therefor, shall be promptly given to the certified operator or applicant, as the case may be, and to any interested parties who appeared at the hearing. Every such hearing shall be held in accordance with such regulations as the commissioner may establish.*

*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 10, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Thomas McGovern, New York State Department of Labor, Counsel's Office, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcgovern@labor.state.ny.us

#### **Regulatory Impact Statement**

##### **1. Regulatory Authority:**

Section 483 of the General Business Law gives the Commissioner of Labor the authority to prescribe such rules and regulations as may be necessary and proper for the administration and enforcement of Article 28-D relating to Crane Operators and Blasters. Such regulations may provide for examinations, categories of certificates, licenses or registrations (Section 483(2)).

##### **2. Legislative Objectives:**

The rulemaking accords with the public policy objectives the Legislature sought to advance when it adopted Section 483 of the General Business Law. These regulatory revisions clarify administrative procedures regarding the administration of the practical examinations for crane operator's certificates and the conduct of hearings by the examining board regarding the revocation, suspension, refusal to renew or denial of a crane operator's certificate. The Department is seeking to make it easier to schedule the practical examinations by authorizing the Commissioner to designate one member of the Examining Board to conduct examinations for Class F Line Trucks and to designate three or more members of the Examining Board to administer all other classes (Class A, B, C, D and E) of examination, with two of the members present at the physical examination and the other members to review a video of the examination and score the examination. Currently, at least a quorum of the entire Crane Examining Board must be present to conduct the exams. Crane Board members already dedicate more than forty (40) days annually to crane testing and hearings without compensation. This is a substantial commitment of time given that Board members are responsible for operating their own businesses or are employed full-time. Finding adequate number of Board members to participate in each testing series can be difficult given limitations on availability, particularly in the construction season when demand for testing can be at its highest. The regulation will facilitate the conduct of examinations by allowing the examinations to take place without a quorum of the board present at the exam. Additionally, the Department wants to make it easier to get administrative hearings scheduled regarding the revocation, suspension, and refusal to renew a crane operator's certificate. The Board is responsible for conducting these hearings and making a report and recommendation to the Commissioner. Individuals seeking review of adverse determinations regarding their operator's certificate expect timely access to the hearing process. It is important that crane operators not have any delays in getting their exams scheduled. It is even more important that administrative hearings not be delayed due to scheduling difficulties. The emergency regulation would also revise the procedures to be followed where an applicant fails the practical examination. Currently, the applicant is entitled to request a hearing regarding the failure of the practical examination. This is a rather unusual procedure to follow for failing a practical examination. Accordingly, the emergency regulation provides that an applicant who failed the practical examination and is denied a certificate of competence may ask for a review of the reasons for the denial and will receive a written response to that request.

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

As previously mentioned, the members of the Board serve without salary or other compensation (General Business Law, Section 483(3)). The time estimated to conduct the exams and hearings is approximately 40

days per year. While Board members have been extremely generous in making themselves available for their duties, it is increasingly difficult to find testing and hearing dates when sufficient numbers of the board members are available for tests or hearings given other professional and personal demands on their time. This creates many scheduling difficulties and can create delays which affect crane operator applicants and individuals who are seeking hearings to review adverse determinations regarding their operator certificates. Moreover, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem. The amendments to 12 NYCRR Section 23-8.5 establishing a smaller number of Board members who need to be present at either examinations or hearings will make it easier to schedule the exams, thereby making certain that there will be no delays in the process. Additionally, the amendments will also make it easier to schedule administrative hearings. It is very important that there not be any delays in the hearing process.

4. Costs:

This amendment imposes no compliance costs upon state or local governments. There will be no additional costs to crane operators. There will also be no additional costs to the Labor Department.

5. Local Government Mandates:

The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork:

The proposed amendment imposes no new paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other State or federal requirements.

8. Alternatives:

The primary alternative is to leave the regulation unchanged.

Another alternative would be to add new Board members, thereby increasing the pool of available members for testing and/or hearing panelists. The current regulations provide for the Commissioner of Labor to appoint the Board members and that the Board be comprised of at least three members. Accordingly, the Commissioner could increase the number of Board members to provide for a larger pool of members to conduct tests or hearings. However, as described above, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem.

9. Federal Standards:

There are no federal standards regulating the testing and licensing of crane operators, or administrative hearings relating thereto.

10. Compliance Schedule:

The provisions of this amendment will take effect immediately.

**Regulatory Flexibility Analysis**

These emergency regulations relate to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, and refusal to renew a crane operator's certificate. Currently, regulations already require that a crane operator pass a practical examination before being given a certificate to operate a crane. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation clarifies that the hearings need not be conducted by the entire examining board, but rather may be conducted by a panel of two or more members of the board. The regulations also have been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is rather an unusual process for someone failing a practical examination.

The emergency regulations do not impose any additional obligations on any local government or business entity. Nor do they impose any adverse economic impact, reporting or recordkeeping, or other compliance requirements on small businesses and/or local governments. Rather, they are intended to facilitate the testing of individuals seeking crane operator certificates, some of whom are employees of local governments or businesses. 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 rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. On the contrary, the rule is intended to facilitate the timely conduct of crane operator examinations and hearings. Therefore, the regulations will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

**Job Impact Statement**

The regulation relates to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, and refusal to renew a crane operator's certificate. Currently, regulations already require that a crane operator pass a practical examination before being given a certificate to operate a crane. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation clarifies that the hearings may be conducted by a panel of two or more members of the Board. The regulation has been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is a rather unusual process for someone failing a practical exam. Accordingly, the regulation will not have a substantial adverse impact on jobs and employment opportunities. Rather, the rule will encourage and support employment opportunities for qualified crane operators because it will facilitate the testing of individuals seeking crane operator licenses. Because it is evident from the nature of the regulation that it will have a beneficial impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Therefore, a job impact statement is not required and one has not been prepared.

**NOTICE OF ADOPTION**

**Public Employee Workplace Violence Prevention Programs**

**I.D. No.** LAB-48-08-00003-A

**Filing No.** 357

**Filing Date:** 2009-04-13

**Effective Date:** 2009-04-29

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

**Action taken:** Addition of section 800.6 to Title 12 NYCRR.

**Statutory authority:** Labor Law, section 27-b(6)(F)

**Subject:** Public Employee Workplace Violence Prevention Programs.

**Purpose:** To ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement programs to prevent and minimize the hazard of workplace violence to public employees.

**Substance of final rule:** PUBLIC EMPLOYEE WORKPLACE VIOLENCE PROTECTION PROGRAMS

By L. 2006, C. 82, the New York State Legislature created Labor Law § 27-b, with the intent "to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees." Labor Law § 27-b(6)(f) states that the Commissioner of Labor "shall adopt rules and regulations implementing the provisions of this section."

The proposed rule creates a new section of regulations designated as 12 NYCRR Part 800.16 entitled "Public Employer Workplace Violence Prevention Programs."

Subpart 800.16-1, entitled "Title and Citation" sets forth the title and purpose of this part, gives a method of citing to it, and states that it applies throughout the State to the State, any political subdivision thereof, public authorities, public benefit corporations, or any other governmental agency or instrumentality thereof. This part does not, however, apply to employers defined in Education Law § 2801-a.

Subpart 800.16-2, entitled "Definitions," defines the terms used in this part.

Subpart 800.16-3, entitled "Management Commitment and Employee Involvement," requires employers to develop and implement written policy statements regarding the goals and objectives of their Workplace Violence Prevention Programs, and provide for full employee and employee representative participation, which statement must be posted where notice to employees are normally posted. The employer has the responsibility to prepare and implement these policies.

Subpart 800.16-4, entitled "Workplace Examination" requires employers to examine their records to identify patterns of injuries in particular work areas or incidents involving specific operations or individuals. The employer, with the participation of an employee representative, shall evaluate the workplace for potential risks of workplace violence. The subpart lists factors that might place employees at risk.

Subpart 800.16-5, entitled "The Workplace Violence Prevention Program," states that employers with twenty or more full time permanent employees, with the participation of an employee representative, must develop a written Workplace Violence Prevention Program. Such Program must identify the risk factors identified in the workplace examination and set forth the methods the employer will use to prevent workplace violence incidents, including but not limited to various listed methods. The Program must also set forth various controls, address each specific identified hazard, state when crisis counseling will be provided, set forth a reporting system and provide an outline or lesson plan for employee training. Such Program must be updated as necessary, but at least annually.

Subpart 800.16-6, entitled "Employee Information and Training," states that upon completion of the Workplace Violence Protection Program, the employer must provide each employee with information and training on the risk of workplace violence at the time of hiring and at least annually thereafter. The subpart sets forth the minimum issues to be addressed in such training.

Subpart 800.16-7, entitled "Recordkeeping and Recording of Workplace Violence Incidents," requires employers to develop and implement protocols for reporting of workplace violence incidents, including procedures for reporting possible criminal activity to appropriate police agencies, and for attempting to develop protocols with local District Attorneys for prompt investigation and appropriate prosecution of such incidents. This subpart also requires employers to develop and maintain workplace violence incident reports, sets forth the minimum format of such reports, and requires such reports to be maintained and used for annual program reviews and updates to identify trends in types of workplace incidents and to review the effectiveness of the mitigating actions taken.

Subpart 800.16-8, entitled "Employee Access to Information," states that every employer required to make a written Workplace Violence Prevention Program must make such written program available to employees, their authorized representatives, and the Commissioner of Labor.

Subpart 800.16-9, entitled "Employee Reporting of Workplace Violence Prevention Concerns or Incidents," requires employees and their authorized representatives to report, in writing, violations of the employer's workplace violence protection program or that an imminent danger of workplace violence exists, with certain exceptions to such requirement. If, after making such report and providing the employer a reasonable opportunity to correct the problem, the matter has not been resolved, the employee may request, in writing, an inspection by the Commissioner of Labor, who shall make such inspection forthwith. No employer may retaliate against an employee for exercising any right granted by these regulations.

Subpart 800.16-10, entitled "Effective Dates," requires the

Employer's Policy Statement to be complete thirty days after the effective date of these regulations, the workplace examination to be completed sixty days after such effective date, the Workplace Violence Prevention Program to be completed seventy-five days after such effective date, and to be in full compliance with this entire part within one hundred twenty days of such effective date.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 800.6(g)(2)(ix).

**Text of rule and any required statements and analyses may be obtained from:** David Ruppert, New York State Department of Labor, Room 522, State Office Campus, Building 12, Albany, New York 12240, (518) 457-3518, email: usadir@labor.state.ny.us

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

The deleted section, 800.6(g)(2)(ix), stated that an employer withholding information for security reasons must provide advance notice of the intent to withhold and the reasons for withholding to the authorized employer representative. Employers have argued that such a requirement would be unnecessary, against public policy and contrary to the letter and spirit of the law and may cause employers to release information that employees and their representatives have no need to know. The Department agrees with these comments and has removed such section.

This deletion does not constitute a substantive change to the regulations or their impact upon any person or entity and therefore requires no revised Regulatory Impact Statement.

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

The deleted section, 800.6(g)(2)(ix), stated that an employer withholding information for security reasons must provide advance notice of the intent to withhold and the reasons for withholding to the authorized employer representative. Employers have argued that such a requirement would be unnecessary, against public policy and contrary to the letter and spirit of the law and may cause employers to release information that employees and their representatives have no need to know. The Department agrees with these comments and has removed such section.

This deletion does not constitute a substantive change to the regulations or their impact upon any person or entity and therefore requires no revised Regulatory Flexibility Analysis for Small Businesses and Local Governments.

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

The deleted section, 800.6(g)(2)(ix), stated that an employer withholding information for security reasons must provide advance notice of the intent to withhold and the reasons for withholding to the authorized employer representative. Employers have argued that such a requirement would be unnecessary, against public policy and contrary to the letter and spirit of the law and may cause employers to release information that employees and their representatives have no need to know. The Department agrees with these comments and has removed such section.

This deletion does not constitute a substantive change to the regulations or their impact upon any person or entity and therefore requires no revised Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

The deleted section, 800.6(g)(2)(ix), stated that an employer withholding information for security reasons must provide advance notice of the intent to withhold and the reasons for withholding to the authorized employer representative. Employers have argued that such a requirement would be unnecessary, against public policy and contrary to the letter and spirit of the law and may cause employers to release information that employees and their representatives have no need to know. The Department agrees with these comments and has removed such section.

This deletion does not constitute a substantive change to the regulations or their impact upon any person or entity and therefore requires no revised Job Impact Statement.

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

Comments were received regarding the overview of the regulation including the use of the term workplace violence instead of assaults and homicides and filing of employee complaints and requesting of an inspection.

The Department believes that the paragraph accurately summarizes the rule.

There were comments by employee representatives regarding the exemption of public schools.

This exemption is in the Law.

Several comments related to the term “imminent danger” were raised. The requirement that the agency take corrective action whenever an employee notifies his or her supervisor of such danger; the provision that if the agency fails to take corrective action within a reasonable amount of time, the Commissioner of Labor can come in and remediate the danger and that the definition of “imminent danger” is overly vague. The Mental Health Community questioned if the right first action was to call for emergency assistance not the supervisor and upon the receipt of a complaint, what mental health expertise the Department would bring to the investigation.

The definition of Imminent Danger was taken from the PESH Field Operations Manual for consistency. While the Department makes no claim to be expert in the mental health field the Legislature has determined that the Department must act when a complaint is received. The Department recognizes that there are duties that are imminently dangerous but must be undertaken by public employees. The Department also recognizes that there are methods to minimize the risks. If the employer has taken proven and appropriate actions there will be no enforcement necessary and employers are properly trained on these actions. The manner in which an employee is required to report imminent danger was provided for in the legislation.

A commenter stated the application of the definition of “Retaliatory Action” should be clarified that employers will not be in violation of the regulations when they take reasonable and prudent steps to address complaints of workplace violence, which may include reassigning an employee while an investigation is pending and/or taking disciplinary action against an employee who engages in violence or violates company rules.

The Department recognizes that the Legislature did not intend that this regulation remove the employer’s right to manage the workforce. This definition is effective only for actions taken against an employee in the exercise of the three specific rights that are listed in the Law.

Some employers commented that “Serious Violation” should be restricted to a situation where an employer has not implemented one or more components of a workplace violence prevention program required by the Law.

As the Legislature did not define serious violation, it was necessary for the Department to define it as we did in the rule.

Comments from employee representatives expressed concern that not every supervisor has the authority to change work rules or procedures.

The statute’s definition clearly defines “Supervisor” as an individual who has the authority to take corrective action.

Employers expressed concern about the definition of workplace.

The definition is taken from the Law. The Department believes that the Legislature intended that employers develop policies and procedures for accounting for employees working in the field.

Comments were received arguing that the workplace violence definition should include no more than assaults and homicides.

The Department disagrees with that interpretation and believes that the Legislature intended to prevent workplace assaults and homicides and gave the Commissioner latitude to develop a rule to accomplish that end.

Employers commented that the Department has not defined the workplace violence prevention program as intended by the legislature.

The Department provided a definition, which is consistent with the Law’s intent.

Comments were received stating that the Law does not provide for a workplace violence policy statement or the participation of the employee representative.

The Department believes that a short policy statement, which lays out the employers policy on workplace violence, identifies the “Supervisor” who will take complaints and outlines briefly how the

employer will involve employee representatives in the process is appropriate.

Comments were received that the Department has no authority to permit or direct local governments to share resources.

The Governor’s Office of Regulatory Reform has requested that the Department remind employers that this may be a way to reduce the cost and burden of compliance in each rule.

Comments received contend that the Department has added a component to the employers program, which is inconsistent with the regulatory scheme of the Law, which permits employers to use their discretion as to how a risk assessment is to be carried out.

The Department interprets the requirement in the Law for employers to establish and implement a reporting system for acts of aggressive behavior as evidence that the Legislature intended that employers have and use records in developing protective measures.

Employers commented that requiring review of administrative risk factors is contrary to the intent of the Law.

The Department believes that an examination of work practices, policies and procedures and then updating them to reflect what this examination revealed.

Employers commented that this section alters the provisions of Section 27b(4) by granting the authorized employee representative the right to participate in the employers written workplace violence prevention program.

The Department disagrees with the comments received and believes that it has carried out the intent of 27b(4) in the content of the workplace examination and also included the Legislature’s intent that employer and employees examine the workplace.

Employers comment that regulation substitutes Workplace examination as opposed to the “risk evaluation and determination” specified in the Law.

The Department believes that the workplace examination is part of the risk evaluation and determination.

Employers comment that this rule uses the language “prevent incidents of workplace violence” rather than the “prevent workplace assaults and homicides”.

The Department has taken the position that the prevention of workplace violence will prevent assaults and homicides.

Employer commented the regulation does mandate employers follow a hierarchy of controls in their program rather than allow employers to use discretion in the selection of control measures.

The Department does not interpret the Law to allow employers to use a less effective control measure when a hazard is identified and a more protective measure is available, reasonable and feasible.

Employers commented that the employers written program address the control measures for “each specific hazard” identified in the workplace evaluation alters the direction of Section 27b(4)(b) which requires only that employers list the control methods it has selected in the written program. In addition the term “each specific hazard” is inconsistent with the terms used in the Law when referring to the results identified in the course of a risk evaluation, “the presence of factors or situations” (27b(3)) or “risk factors” (27b(4)(a)).

The Department contends that identifying a risk and not applying a specific control measure is not consistent with the intent of the Law.

Employers commented that requiring a reporting system for workplace violence incidents is contrary to the Law and creates an unfunded mandate.

The Department contends that the Law requires that one of the methods the employer must use to prevent occupational assaults and homicides is “establishing and implementing reporting systems for incidents of aggressive behavior”.

Employers contend that the requirement for a training outline impermissibly adds a component to the program not specified in Law.

The Department contends that the outline for the training and information required by 27b (5) (a) and (b) needs to be condensed to a document that can be evaluated for effectiveness.

Employers commented that requiring a program review is inconsistent with the Law.

The Department believes that the Legislature would not have required that the employer keep records of acts of aggressive behavior if there was no intent that they be utilized for review and updating the plan.

Employers commented that requiring advance notice of withholding security information would be unnecessary, against public policy and potentially put public employees in danger. It also may cause employers to release information that employees or their representatives have no need to know.

The Department agrees with the comments and has removed the requirement for notice to authorized representatives of employees of the decision to withhold the information.

Comments were received that this section substitutes the term "workplace violence" for "assaults and homicides" and adds a requirement for retraining not found in the Law.

The Department believes that the term workplace violence includes the assaults and homicides. The requirement for training is found in the Law.

Employers commented that the regulation would add a requirement to develop a reporting system for workplace violence incidents not found in the law.

The Department's position is that the requirements for a reporting system are found in the law.

Employers commented that there is no provision in the Law, which authorizes the Department to oversee or regulate the working relationships between law enforcement agencies and public employers.

It was not the Department's intent to oversee or regulate the working relationship between law enforcement agencies and public employers merely suggest the cooperation.

Employers commented the regulation adds a requirement, not found in the Law, that employers develop a reporting system for workplace violence incidents.

The Law clearly requires the employer to establish and implement a reporting system for incidents of aggressive behavior.

Employers stated that release of certain information would violate laws and rules regarding employee privacy.

This issue was addressed when privacy rules were needed to comply with reporting requirements of 12NYCRR Part 801. These provisions have been incorporated into this rule.

Employers commented the requirement that employers review workplace violence incident reports with the authorized employee representative at least annually and that employee representatives would be allowed accesses to confidential health information are not required by the Law.

The Department interprets the Law to specifically require a reporting system and that employee participation in the review of the data.

Comments were received regarding requirements around employee reporting of serious violations of the workplace violence prevention programs both pro and con.

The reporting procedure mirrors the language found in the statute.

Several comments questioned the Commissioner's right to inspect with out a properly filed complaint.

The statute permits such inspections provided the Commissioner has an administrative plan for such inspection. The current PESH administrative plan will be used for the enforcement of this section.

The retaliatory section is based on Section 27-b (6) (e), except that it states employers cannot retaliate against an employee who "exercises any right accorded to him or her by this Part [the regulations]", instead of following the language of the Law, which provides that employees are protected against retaliation only with respect to three specified categories of conduct specified in the Law. This alteration would impermissibly expand the scope of this provision by enabling employees to file complaints of retaliation relating to wide range of conduct not permitted by the statute.

The Department has not expanded the scope of Section 27b (6)(e). The rule has not changed the manner or circumstances under which employees may give notice the employer of hazards or violation of the employers plan.

Comments were received that the Legislature has set an effective date for the Law at March 4, 2007 and there should be no phased compliance dates.

The Department feels it is necessary to provide a reasonable time frame after formal adoption of the rule for employers to come into compliance.

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## Office of Mental Health

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### NOTICE OF ADOPTION

#### Rights of Patients

**I.D. No.** OMH-07-09-00009-A

**Filing No.** 354

**Filing Date:** 2009-04-13

**Effective Date:** 2009-04-29

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

**Action taken:** Amendment of Part 527 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09 and 33.02

**Subject:** Rights of Patients.

**Purpose:** To correct outdated references and utilize "person-first" language.

**Text or summary was published** in the February 18, 2009 issue of the Register, I.D. No. OMH-07-09-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: [cocbjdd@omh.state.ny.us](mailto:cocbjdd@omh.state.ny.us)

#### Assessment of Public Comment

The agency received no public comment.

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## Department of Motor Vehicles

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### NOTICE OF ADOPTION

#### Dutchess County Motor Vehicle Use Tax

**I.D. No.** MTV-05-09-00006-A

**Filing No.** 361

**Filing Date:** 2009-04-14

**Effective Date:** 2009-04-29

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

**Action taken:** Amendment of Part 29 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 401(6)(d)(ii); Tax Law, section 1202(c)

**Subject:** Dutchess County motor vehicle use tax.

**Purpose:** To impose a Dutchess County motor vehicle use tax.

**Text or summary was published** in the February 4, 2009 issue of the Register, I.D. No. MTV-05-09-00006-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Heidi A. Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: [heidi.bazicki@dmv.state.ny.us](mailto:heidi.bazicki@dmv.state.ny.us)

#### Assessment of Public Comment

The agency received no public comment.

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## Office of Parks, Recreation and Historic Preservation

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

#### Environmental Protection Fund (EPF) Grants for Park, Historic Preservation and Heritage Area Projects

**I.D. No.** PKR-17-09-00004-P

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

**Proposed Action:** This is a consensus rule making to amend Parts 439, 440, 441, 442 and 443; and repeal section 439.4 of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(8); Environmental Conservation Law, art. 54

**Subject:** Environmental Protection Fund (EPF) grants for park, historic preservation and heritage area projects.

**Purpose:** To conform the rule to statutory changes and clarify application requirements.

**Substance of proposed rule (Full text is posted at the following State website: [www.nysparks.state.ny.us](http://www.nysparks.state.ny.us)):** The proposed rule:

- Clarifies the authority and purpose of Title 9 of the Environmental Protection Act and clarifies that heritage area projects are also eligible for State assistance (Section 439.1);
- In accordance with the recent statutory changes, updates the definitions of “heritage area project,” “historic preservation project” and “park project” to include costs of planning and structural assessment; clarifies the definition of “municipality;” and updates the definition of the “Secretary of the Interior’s Standards for the Treatment of Historic Properties” by reference to 36 CFR Part 68. It also amends the definition of “cost” to include federal assistance in the approved project cost (Section 439.2);
- Clarifies that a State agency project must be recommended by the State agency’s chief executive (Section 440.1);
- Requires the copy of the not-for-profit corporation’s certificate from either the Department of State or Board of Regents and the IRS determination letter be included in the grant application, and requires verification of not-for-profit status for the project agreement (Section 440.2);
- Clarifies that the State may not guarantee a project or public benefit agreement for a project on State land (Section 440.3);
- Increases the State assistance up to 75% of approved cost for a project in an area with a 10% or more poverty rate (Section 440.4);
- Allows the fair market value of real property for the project sponsor’s match to include only property acquired or converted within 1 year prior to the application deadline date (Section 440.5);
- Clarifies that an application may be obtained from OPRHP’s website at [www.nysparks.state.ny.us/grants](http://www.nysparks.state.ny.us/grants) or from OPRHP’s Grants Management office in Albany or from OPRHP’s 11 regional offices (Section 440.7);
- Clarifies that an application for a park, historic preservation or heritage area project located in the Catskill and Adirondack Parks should be submitted to OPRHP’s Grants Management office in Albany. (Section 440.7);
- Clarifies that the project agreement will require a municipality’s contracting to comply with General Municipal Law Sections 103 (competitive bidding) and 104-b (procurement policies and procedures), and will require that a not-for-profit corporation’s procurement policies services ensure prudent and economical use of public money (Section 440.10);
- Clarifies that an “urban cultural park” is now called a “heritage area” (see, PRHPL § 31.01[2] and ECL § 54-0901[3]) (Sections 439.2[f], 440.11 and 443.1);
- Clarifies that eligible park, historic preservation and heritage area projects may include costs for planning and structural assessments and the value of acquisitions made within one year prior to the application deadline (Sections 441.1, 442.1 and 443.1);
- Clarifies that for park projects any required alienation legislation must be part of the application; clarifies the rating criteria for determining public benefit in a public-private partnership; and clarifies that the project agreement will also require commissioner approval and alienation legislation for any proposed subsequent lease,

exchange or donation of the park property (Sections 441.2 and 441.4); and

- Repeals an outdated section pertaining to reporting requirements, a task force and public input that are not required by the controlling statute and repeals a SEQRA requirement that is redundant (Section 439.4).

**Text of proposed rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Building 1, Albany, NY 12238, (518) 486-2921, email: [rulemaking@oprhp.state.ny.us](mailto:rulemaking@oprhp.state.ny.us)

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

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

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

No person is likely to object to adoption of this rule because it merely implements the non-discretionary statutory amendments to ECL Sections 54-0901 and 54-0903 that took effect on January 17, 2009, and it makes technical non-controversial changes. (See SAPA § 102[11]).

#### **Job Impact Statement**

The existing rule does not affect jobs or employment opportunities and its repeal would not affect jobs or employment opportunities.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### Approving, with Modifications, O&R’s Gas Energy Efficiency “Fast Track” Filing

**I.D. No.** PSC-38-08-00009-A

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, Orange and Rockland Utilities, Inc.’s (O&R) Energy Efficiency Portfolio Standard (EEPS) “Fast Track” utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, O&R’s gas energy efficiency “fast track” filing.

**Purpose:** To approve, with modifications, O&R’s EEPS “Fast Track” utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, Orange and Rockland Utilities, Inc.’s Energy Efficiency Portfolio Standard (EEPS) “Fast Track” utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

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

(08-G-1004SA1)

## NOTICE OF ADOPTION

**Approving, with Modifications, Con Edison's Gas Energy Efficiency "Fast Track" Filing****I.D. No.** PSC-38-08-00010-A**Filing Date:** 2009-04-09**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s (Con Edison) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, Con Edison's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, Con Edison's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-G-1008SA1)

## NOTICE OF ADOPTION

**Approving, with Modifications, Corning's Gas Energy Efficiency "Fast Track" Filing****I.D. No.** PSC-38-08-00011-A**Filing Date:** 2009-04-09**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, Corning Natural Gas Corporation's (Corning) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, Corning's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, Corning's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, Corning Natural Gas Corporation's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents

per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-G-1010SA1)

## NOTICE OF ADOPTION

**Approving, with Modifications, NYSEG's Gas Energy Efficiency "Fast Track" Filing****I.D. No.** PSC-38-08-00012-A**Filing Date:** 2009-04-09**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, New York State Electric & Gas Corporation's (NYSEG) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, NYSEG's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, NYSEG's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, New York State Electric & Gas Corporation's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(08-G-1012SA1)

## NOTICE OF ADOPTION

**Approving, with Modifications, RG&E's Gas Energy Efficiency "Fast Track" Filing****I.D. No.** PSC-38-08-00013-A**Filing Date:** 2009-04-09**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, Rochester Gas and Electric Corporation's (RG&E) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, RG&E's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, RG&E's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, Rochester Gas and Electric Corporation's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Resi-

dential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-1013SA1)

### NOTICE OF ADOPTION

**Approving, with Modifications, Niagara Mohawk's Gas Energy Efficiency "Fast Track" Filing**

**I.D. No.** PSC-38-08-00014-A

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, Niagara Mohawk's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, Niagara Mohawk's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-1015SA1)

### NOTICE OF ADOPTION

**Approving, with Modifications, KeySpan NY's Gas Energy Efficiency "Fast Track" Filing**

**I.D. No.** PSC-38-08-00015-A

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** On 4/7/09, the PSC adopted an order approving, with modifications, The Brooklyn Union Gas Company d/b/a KeySpan Energy-New York's (KeySpan NY) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, KeySpan NY's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, KeySpan NY's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, The Brooklyn Union Gas Company d/b/a KeySpan Energy – New York's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-1016SA1)

### NOTICE OF ADOPTION

**Approving, with Modifications, St. Lawrence's Gas Energy Efficiency "Fast Track" Filing**

**I.D. No.** PSC-38-08-00016-A

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, St. Lawrence Gas Company, Inc.'s (St. Lawrence) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, St. Lawrence's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, St. Lawrence's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, St. Lawrence Gas Company, Inc.'s Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-1021SA1)

### NOTICE OF ADOPTION

**Approving, with Modifications, KeySpan LI's Gas Energy Efficiency "Fast Track" Filing**

**I.D. No.** PSC-38-08-00017-A

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** On 4/7/09, the PSC adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a KeySpan Energy-Long Island's (KeySpan LI) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, KeySpan LI's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, KeySpan LI's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a KeySpan Energy – Long Island's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-1017SA1)

### NOTICE OF ADOPTION

#### **Approving, with Modifications, Central Hudson's Gas Energy Efficiency "Fast Track" Filing**

**I.D. No.** PSC-38-08-00019-A

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's (Central Hudson) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program.

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

**Subject:** Approving, with modifications, Central Hudson's gas energy efficiency "fast track" filing.

**Purpose:** To approve, with modifications, Central Hudson's EEPS "Fast Track" utility-administered gas energy efficiency program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" utility-administered gas energy efficiency program. The program shall consist of a residential gas heating, ventilation and air conditioning program (Residential Gas HVAC Program). The program may be commenced immediately but shall be in operation by July 1, 2009, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-1020SA1)

### NOTICE OF ADOPTION

#### **Modifications to the Rider U - Distribution Load Relief Program**

**I.D. No.** PSC-01-09-00014-A

**Filing Date:** 2009-04-08

**Effective Date:** 2009-04-08

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

**Action taken:** On April 7, 2009, the PSC adopted an order approving Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service PSC 9.

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

**Subject:** Modifications to the Rider U - Distribution Load Relief Program. **Purpose:** To approve modifications to the Rider U - Distribution Load Relief Program.

**Substance of final rule:** The Commission, on April 7, 2009, adopted an order approving Consolidated Edison Company of New York, Inc's tariff revisions to the Company's Schedule for Electricity Service, P.S.C. No. 9 – Electricity, effective April 15, 2009, with modification, related to Rider U - Distribution Load Relief Program, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann\_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-E-1463SA1)

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

#### **Purchase of Accounts Receivable Program to be Implemented by KEDLI**

**I.D. No.** PSC-17-09-00008-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 whether to approve, reject, or modify, in whole or in part, a Purchase of Accounts Receivables program to be implemented by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KEDLI).

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

**Subject:** Purchase of Accounts Receivable Program to be implemented by KEDLI.

**Purpose:** To implement a Purchase of Accounts Receivable Program in KEDLI consistent with the Joint Proposal approved by the Commission.

**Substance of proposed rule:** The Commission is considering whether to approve, reject, or modify, in whole or in part, a Purchase of Accounts Receivables (POR) program to be implemented by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KEDLI) for Gas Service. On December 21, 2007, the Public Service Commission (Commission) issued an Order in Case 06-G-1186 (Order Adopting Gas Rate Plans for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island) adopting the terms of the Gas Rates Joint Proposal filed October 11, 2007 subject to certain conditions. The Joint Proposal required "KEDLI to implement a POR program for ESCOs active in its service territory that are participating in the consolidated billing program" and "work collaboratively with ESCOs and other interested parties in establishing the other terms of a non-recourse POR program, a mechanism to address customer disputes with ESCO charges that have been purchased by KEDLI as receivables, and any necessary revisions to the consolidated billing agreement".

There have been several filings, comments by the parties on specific is-

sues, and multiple in-person and teleconference meetings. A Company proposed Billing Services Agreement and Staff prepared summary of the program components for the KEDLI program constitutes the express terms.

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

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

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

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

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

(08-G-1186SP5)

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

**Termination of a Guaranty Agreement**

**I.D. No.** PSC-17-09-00009-P

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

**Proposed Action:** The Commission is considering a request from National Grid PLC/KeySpan Corporation asking that the termination of a guaranty agreement be approved.

**Statutory authority:** Public Service Law, sections 160, 161, 162 and 168

**Subject:** Termination of a guaranty agreement.

**Purpose:** Consideration of termination of a guaranty agreement.

**Substance of proposed rule:** The Public Service Commission is considering a request from National Grid PLC and KeySpan Corporation asking that the termination of a guaranty agreement, including a standby trust agreement, be approved. The guaranty and standby trust agreements secure the costs of decommissioning at the Unit 40 Generation Facility in Queens, New York formerly owned by National Grid PLC/KeySpan Corporation. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(09-F-0317SP1)

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

**Whether to Permit the Use of Elster REX2 Solid State Electric Meter for Use in Residential and Commercial Accounts**

**I.D. No.** PSC-17-09-00010-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 approve, deny or modify, in whole or in part, a petition filed by Elster Electricity LLC for the approval to use the Elster REX2 solid state electric metering device.

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

**Subject:** Whether to permit the use of Elster REX2 solid state electric meter for use in residential and commercial accounts.

**Purpose:** To permit electric utilities in New York State to use the Elster REX2.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Elster Electricity LLC, to use the REX2 solid-state electric meter in Classes 20, 200 and 320 and Forms 1 S, 2S, 3S, 4S and 12S, for use in residential and commercial accounts.

**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, Three Empire State Plaza, Albany, New York 10007, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, email: jaclyn\_brillling@dps.state.ny.us

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

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

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

(09-E-0305SP1)

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

**Whether Brooklyn Navy Yard Cogeneration Partners, L.P. Should be Reimbursed by Con Edison for Past and Future Use Taxes**

**I.D. No.** PSC-17-09-00011-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, modify or deny, in whole or in part, the petition of Brooklyn Navy Yard Cogeneration Partners, L.P., seeking a declaratory ruling and order regarding reimbursement for use taxes.

**Statutory authority:** Public Service Law, sections 2(12), (13), 4(1), 5(1), 64, 66-h; and Tax Law, art. 13-A and sections 186, 186-a, 189, 189-a, 301(i), 1107 and 1115(c)

**Subject:** Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes.

**Purpose:** Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes.

**Substance of proposed rule:** On March 23, 2009, Brooklyn Navy Yard Cogeneration Partners, L.P. (BNY) petitioned the Public Service Commission for a declaratory ruling and for an order directing reimbursement for use taxes imposed under Section 1107 of the New York State Tax Law. BNY requests that the Commission find that, under Public Service Law (PSL) Section 66-h, the sales and compensating use taxes imposed on BNY's use of natural gas under Section 1107 of the Tax Law are reimbursable to BNY by Consolidated Edison Company of New York, Inc. (Con Edison). The petitioner requests that the Public Service Commission direct Con Edison to reimburse BNY for all such taxes paid since April 9, 2008, the effective date of the amendment to PSL Section 66-h.

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

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

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

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

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

(09-E-0253SP1)

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

**Petition for the Submetering of Gas at Commercial Property**

**I.D. No.** PSC-17-09-00012-P

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

**Proposed Action:** The Public Service Commission is considering a petition filed by Turner Construction Company, for permission to submeter gas to NYC Maritime High School at 550 Short Ave., and 10 South St., Governors Island, New York.

**Statutory authority:** Public Service Law, sections 65(1), 66(2), (3), (4), (5), (8), (9), (10), (12) and (14)

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

**Purpose:** To consider the request of Turner Construction, to submeter natural gas at 550 Short Ave. & 10 South St., Governors Island, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Turner Construction, for the Governors Island Preservation and Education Corporation to submeter natural gas to the New York City Department of Education Maritime High School located at 550 Short Avenue, Governors Island, New York, and 10 South Street, Battery Maritime Building Slip 7, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(09-G-0316SP1)

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

**Just and Reasonable Rates for Gas Transportation Service**

**I.D. No.** PSC-17-09-00013-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 complaint from AG-Energy, L.P. asking that just and reasonable rates, terms and conditions be established for the gas transportation service provided to it by St. Lawrence Gas Corporation.

**Statutory authority:** Public Service Law, sections 64, 65(1), (2), (3), 66(1), (3), (5) (10) and (12)

**Subject:** Just and reasonable rates for gas transportation service.

**Purpose:** Establishing just and reasonable rates for gas transportation service.

**Substance of proposed rule:** The Public Service Commission is considering a complaint from AG-Energy, L.P. asking that just and reasonable

rates, terms and conditions be established for the gas transportation service provided to it by St. Lawrence Gas Corporation, and that it be determined a gas transportation contract between the two entered into pursuant to Service Classification No. 5 is no longer just and reasonable. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(09-G-0320SP1)

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

**Benefit-cost Framework for Evaluating AMI Programs Prepared by the DPS Staff**

**I.D. No.** PSC-17-09-00014-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 approve, reject or modify a benefit-cost framework for evaluating advance metering infrastructure (AMI) programs prepared by the Staff of the Department of Public Service (DPS Staff).

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

**Subject:** Benefit-cost framework for evaluating AMI programs prepared by the DPS Staff.

**Purpose:** To consider a benefit-cost framework for evaluating AMI programs prepared by the DPS Staff.

**Substance of proposed rule:** To address the need for greater consistency in the benefit-cost analysis used by New York utilities, the Commission found in its Order in Case 09-M-0074, issued February 13, 2009, that a process is needed to examine the key aspects of advanced metering infrastructure (AMI) benefit-cost analysis, culminating in guidance to the utilities on the methodology to be used to calculate benefits and costs. Therefore, the Commission directed Staff to begin such a process by developing a generic approach to the AMI benefit-cost analysis. The generic approach to such analysis developed by Staff will assist the Commission in making a determination on how to proceed with utility plans for AMI. The generic benefit-cost framework defines common terms and the methodology to be used by the utilities in filings of AMI proposals; and provides listings of the costs and benefits that must be addressed in a benefit-cost analysis of AMI, several deployment scenarios that must be analyzed, certain assumptions to be used for the values of avoided energy and capacity costs and discount rate, and certain issues that need further examination.

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

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

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

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

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

(09-M-0074SP1)

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

**The Construction of a Tower for Wireless Antennas on Land Owned by National Grid**

I.D. No. PSC-17-09-00015-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 joint petition of Niagara Mohawk Power Corporation d/b/a National Grid and SBA Towers II, LLC to construct a tower for wireless antennas on National Grid's Harris Road Substation Facility in the Town of Onondaga.

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

**Subject:** The construction of a tower for wireless antennas on land owned by National Grid.

**Purpose:** To approve, reject or modify the petition to build a tower for wireless antennas in the Town of Onondaga.

**Substance of proposed rule:** Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid) and SBA Towers II, LLC (the Petitioners) have requested permission for the construction of a cell tower and related facilities on National Grid's Harris Road Substation Facility in the Town of Onondaga, New York, pursuant to Section 70 of the Public Service Law.

Construction of the tower will comply with the terms set in the Commission's January 10, 2005 Order in Case 04-M-1078, which established a streamlined procedure for the construction of such facilities on utility property. The Commission may accept, reject or modify the Petitioner'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.

(09-M-0269SP1)

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

**Development Planning for Consolidated Edison of New York, Inc.'s Hudson Avenue Generating Facility**

I.D. No. PSC-17-09-00016-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 analysis under Case 09-S-0029 related to development planning for Consolidated Edison of New York, Inc.'s (Consolidated Edison) Hudson Avenue generating facility.

**Statutory authority:** Public Service Law, sections 79, 80 and 81

**Subject:** Development planning for Consolidated Edison of New York, Inc.'s Hudson Avenue generating facility.

**Purpose:** To analyze the policy implications of options for redevelopment of Consolidated Edison's Hudson Avenue generating facility.

**Substance of proposed rule:** The Commission has initiated a proceeding to examine, among other things, the options for redevelopment of Consolidated Edison Company of New York, Inc.'s (Consolidated Edison) Hudson Avenue generating facility. Among the principal options are to install boilers that generate steam only, or to construct a cogeneration fa-

cility that generates steam and electricity. Among the factors that the proceeding will examine are the impacts of various options on rates for steam, electric and gas customers, on system wide energy efficiency, and on system wide emissions. The proceeding will also examine whether the Hudson Avenue facility should be constructed, owned and operated by Consolidated Edison or whether merchant options should be considered. Actions to be taken by the Commission could include a specific direction to Consolidated Edison or a statement of policy to guide Consolidated Edison's decisions, or other action as deemed reasonable by the Commission.

**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-S-0029SP2)

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

**Lightened Regulation of Retail Steam Operations**

I.D. No. PSC-17-09-00017-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 petition dated April 3, 2009 from Georgia-Pacific Consumer Operations, LLC requesting that retail steam service it provides in Plattsburg, New York be subject to lightened regulation.

**Statutory authority:** Public Service Law, sections 2(22), 5(1)(b), 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Lightened regulation of retail steam operations.

**Purpose:** Consideration of lightened regulation of retail steam operations.

**Substance of proposed rule:** The Public Service Commission is considering a petition dated April 3, 2009 from Georgia-Pacific Consumer Operations LLC requesting that the retail steam service it provides to one customer, Pactiv Corporation, at an adjacent property in Plattsburg, New York be subject to lightened regulation. 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-S-0315SP1)

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

**Rules and Guidelines for the Exchange of Retail Access Data between Jurisdictional Utilities and Eligible ESCO/Marketers**

**I.D. No.** PSC-17-09-00018-P

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

**Proposed Action:** The Public Service Commission is considering adding new data segments to the TS810 Invoice - Utility Bill Ready Transaction Standard to enable energy service companies to transmit certain budget bill data to the utility for presentation on customers bills.

**Statutory authority:** Public Service Law, section 5(2)

**Subject:** Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible ESCO/Marketers.

**Purpose:** To maintain uniform statewide Electronic Data Interchange Standards and business practices.

**Substance of proposed rule:** In its Opinion and Order No. 01-03 (Approving Electronic Data Interchange (EDI) Data Standards and Data Protocols and Modifying the New York Uniform Business Practices for EDI Implementation), the Commission directed the development of EDI transaction standards necessary to support retail access billing and payment processing practices as described in various orders in Case 98-M-1343.

On June 21, 2002, the Commission issued an order in this proceeding entitled "Order Approving Electronic Data Interchange Transactions for Utility Bill Ready and Rate Ready Billing." In that order, the Commission approved an EDI Implementation Guide for the 810 Invoice - Utility Bill Ready Billing (contained in Supplement A). This Notice pertains to the need to modify the 810 Invoice - Utility Bill Ready Transaction Set Standard to add two new BAL segments and modify two existing BAL segments. These data segments would be used by energy service companies (ESCOs) to transmit to the distribution utility budget bill data for presentation on the ESCO portion of the customers' consolidated bill.

The proposed modifications are described in draft version 1.2 of the 810 Invoice - Utility Bill Ready Implementation Guide prepared by Staff.

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

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

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

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

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

(98-M-0667SP58)

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## Department of State

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**EMERGENCY  
RULE MAKING**

**Electrical Bonding of Gas Piping, and Protection of Gas Piping Against Physical Damage**

**I.D. No.** DOS-17-09-00001-E

**Filing No.** 351

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** Amendment of sections 1220.1 and 1224.1 of Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 377 and 378

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

**Specific reasons underlying the finding of necessity:** At its meeting held on April 2, 2009, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve public safety by clarifying requirements for electrical bonding of gas piping, clarifying requirements for protection of gas piping against physical damage, and adding new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST), which will increase protection against fires caused by lightning strikes in the vicinity of buildings equipped with CSST gas piping and fires caused by accidental punctures of CSST gas piping.

**Subject:** Electrical bonding of gas piping, and protection of gas piping against physical damage.

**Purpose:** To clarify requirements for electrical bonding of gas piping and protection of gas piping against physical damage, and to add new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST).

**Substance of emergency rule:** This rule amends several existing provisions in, and adds several new provisions to, the 2007 edition of the Residential Code of New York State (the "2007 RCNYS"), the publication which is incorporated by reference in 19 NYCRR Part 1220, and the 2007 edition of the Fuel Gas Code of New York State (the "2007 FGCNYS"), the publication which is incorporated by reference in 19 NYCRR Part 1224. The new and amended provisions in the 2007 RCNYS and 2007 FGCNYS:

(1) Clarify the situations in which a gas piping system that contains no corrugated stainless steel tubing ("CSST") will be considered to be "likely to become energized" and, therefore, required to be bonded to an effective ground-fault current path;

(2) Specify that a gas piping system that contains no CSST may be bonded in any manner described in Section E3509.7 of the 2007 RCNYS, in cases where the 2007 RCNYS applies, or in any manner described in Section 250.104(B) of NFPA 70-2005, in cases where the 2007 FGCNYS applies;

(3) Require gas piping systems that contain any CSST to be electrically continuous and bonded to the electrical service grounding electrode system at the point where the gas service enters the building or structure;

(4) Specify standards for the installation and bonding of CSST, including standards for the size of the bonding jumper, standards for bonding clamp, standards for the place and manner of attachment of the bonding clamp, and standards for separation of the CSST from other electrically conductive systems;

(5) Specify standards for protection of piping other than black or galvanized steel from physical damage, including standards for the types of shield plates to be used, standards for determining the location where shield plates are required, and additional standards for protection of piping made of CSST; and

(6) Clarify the situations in which section E3509.7 in the RCNYS (entitled "Bonding other metal piping") will apply.

This rule also provides that the 2005 edition of standard NFPA 70, entitled "National Electrical Code" shall be deemed to be one of the standards incorporated by reference into 19 NYCRR Part 1224.

**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:** Joseph Ball, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-6740, email: joseph.ball@dos.state.ny.us

**Regulatory Impact Statement**

**1. STATUTORY AUTHORITY.**

Subdivision 1 of Executive Law section 377 authorizes the State Fire Prevention and Building Code Council to periodically amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code").

Subdivision 1 of Executive Law section 378 directs that the Uniform Code shall address standards for safety and sanitary conditions.

**2. LEGISLATIVE OBJECTIVES.**

Executive Law section 371 provides that it is be the public policy of the State of New York to provide for the promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. The Legislative objective sought to be achieved by this rule is a reduction in the number of fires caused by lightning strikes in the vicinity of buildings equipped with gas piping

made of corrugated stainless steel tubing (CSST), and the number of fires caused by accidental puncturing of such piping.

### 3. NEEDS AND BENEFITS.

The purpose of this rule is to reduce the number of fires caused by lightning strikes in the vicinity of buildings equipped with gas piping made of corrugated stainless steel tubing (CSST), and the number of fires caused by accidental punctures of such piping. This rule is necessary because it has been determined that the existing provisions of the Uniform Code relating to electrical bonding and physical protection of gas piping could be construed as permitting electrical bonding which is not adequate to prevent fires caused by lightning strikes, and as permitting physical shielding which is not adequate to prevent accidental punctures by nails driven into walls containing piping, and because it has been determined that more detailed requirements relating to installation of CSST piping are appropriate. The benefits to be derived from this rule will be a reduction in the number of fires caused by lightning strikes and by accidental punctures of CSST gas piping.

A report or study that served as a basis for this rule is Corrugated Stainless Steel Tubing for Gas Distribution in Buildings and Concerns Over Lightning Strikes, dated August 2007, published by The NAHB Research Center, Inc., which is summarized as follows: “. . . the primary issue is safeguarding against an electric potential in metallic piping. In the case of proximity lightning, a high voltage can be induced in metallic piping that may cause arcing; and for CSST there is concern that arcing may cause perforation of the CSST wall and therefore cause gas leakage. The fuel gas code, electric code, plumbing code, product standards, and manufacturer installation instructions have different methods of providing dissipation of electrical energy through techniques called bonding and grounding. Since the codes, product standards, and installation requirements are not harmonized, builders and contractors may find differing and possibly conflicting requirements. Generally, the local jurisdiction having authority and code official will rely upon the manufacturer’s installation recommendations in lieu of other requirements.” This report was used to determine the necessity for and benefits derived from this rule in the following manner: CSST manufacturers have always required that CSST systems be bonded to the electrical system in accordance with the local codes (i.e. FGCNYS, NFGC and the NEC). Based on this report, the bonding methods prescribed within these documents are minimum requirements and are designed to protect the consumer against ground-faults from the premise wiring system only. The intent of this rule is to harmonize the requirements for bonding of metallic piping while providing protection from proximity lightning strikes.

### 4. COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the Uniform Code provisions which are amended by this rule, as compared to complying with the provisions as currently written, will be negligible.

Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of this rule, except as follows:

First, if the State or any local government constructs a building equipped with gas piping (including gas piping made of CSST), or installs any such piping in an existing building, the State or such local government, as the case may be, will be required to bond the piping and protect the piping from physical damage in the manner required by this rule.

Second, since this rule amends provisions in the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections.

### 5. PAPERWORK.

This rule will not impose any new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

### 6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that constructs a building equipped with gas piping (including gas piping made of CSST), or installs any such piping in an existing building, will be required to comply with the electrical bonding and physical protection provisions amended and/or added by this rule.

Second, cities, towns and villages (and sometimes counties) are charged by Executive Law section 381 with the responsibility of administering and enforcing the Uniform Code; since this rule amends provisions in the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

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

### 7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

### 8. ALTERNATIVES.

The alternative of making no change to the Uniform Code provisions relating to electrical bonding and physical protection of gas piping was considered. However, it was determined that the existing provisions of the Uniform Code could be construed as permitting inadequate electrical bonding and inadequate physical shielding of gas piping, particularly in the case of gas piping made of CSST. Therefore, this alternative was rejected.

The alternative of banning the use of CSST was considered. However, it was determined that the principal concerns about the use of CSST piping (viz., fires cause by lightning strikes in the vicinity of buildings equipped with CSST piping and puncturing of CSST piping by nails driven into walls in which CSST piping is concealed) could be adequately addressed by the increased electrical bonding and physical protection requirements to be added by this rule. Therefore, this alternative was rejected.

### 9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule.

### 10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with this rule in the normal course of operations, either as part of the installation or construction of a new building or the renovation of an existing building.

### *Regulatory Flexibility Analysis*

#### 1. EFFECT OF RULE:

This rule amends provisions in the Uniform Fire Prevention and Building Code (“Uniform Code”). The amended provisions clarify requirements for electrical bonding of gas piping and for protection of gas piping against physical damage, and add new requirements for installation of gas piping made from corrugated stainless steel tubing (CSST). Any small business or local government that constructs a building equipped with gas piping (including gas piping made of CSST), or that installs any such gas piping in an existing building, will be affected by this rule. Small businesses that manufacture, sell or install gas piping (including gas piping made of CSST), bonding jumpers, bonding clamps, shield plates, and other related equipment may also be affected by this rule.

Since this rule amends provisions in the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimate that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

#### 2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install gas piping (including gas piping made of CSST) in accordance with the rule’s provisions. In most cases, such installation will be incidental to the construction of a building or will otherwise involve the issuance of a building permit; in such cases, the local government responsible for administering and enforcing the Uniform Code will be required to consider the requirements of this rule when reviewing plans and inspecting work.

#### 3. PROFESSIONAL SERVICES:

The rule will clarify the requirements relating to electrical bonding of gas piping, clarify the requirements relating to protection of gas piping against physical damage, and add new requirements relating to the installation of gas piping made from CSST. No professional services will be required to comply with the rule.

#### 4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the provisions amended by this rule, as compared to complying with the provisions as currently written, will be negligible. Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

Any variation in costs of complying with this rule for different types or sizes of small businesses and local governments will be attributable to the

size and configuration of the gas piping installed by such entities, and not to nature or type or sizes of such small businesses and local governments. To the extent that larger businesses and larger local governments may tend to own larger buildings, or more than one building, the total costs of compliance would be higher for larger businesses and larger local governments.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. This rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

#### 6. MINIMIZING ADVERSE IMPACT:

The economic impact of this rule on small businesses and local governments will be no greater than the economic impact of this rule on other regulated parties, and the ability of small businesses and local governments to comply with the requirements of this rule should be no less than the ability of other regulated parties to comply. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

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

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. Participants in the conference calls included members of the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee, representatives of CSST manufacturers, and local government representatives. The Department of State also participated in several meetings on this topic, including a meeting with local fire official and electrical inspectors held on June 26, 2007 in East Meadow, NY, and a meeting with code officials, plumbing inspectors, a utility company representative and a CSST manufacturer representative held on January 21, 2009 in Hicksville, NY. Finally, speakers provided comments at the Code Council meetings where earlier versions of this rule were considered for adoption by the Code Council as emergency rules. Comments received in the conference calls, meetings, and Code Council meetings described above included:

(1) a suggestion that all metal gas piping, and not just CSST piping, should be subject to the bonding requirements, since all metal piping could be susceptible to damage from nearby lightning strikes (this suggestion has been incorporated into the proposed rule);

(2) a suggestion that non-CSST metal piping should be considered to be bonded when it is connected to appliances that are connected to the appliance grounding conductor of the circuit supplying that appliance (this suggestion was not incorporated into the proposed rule);

(3) suggested changes to the wording of the proposed rule, to clarify its intent (these suggestions have been incorporated, in whole or in substantial part, into the proposed rule);

(4) a suggestion that earlier versions of the proposed rule may have confused the concept of bonding with grounding (the Department of State believes that the current version of the proposed rule eliminates any such confusion); and

(5) a suggestion that it is inappropriate to attempt to address concerns about lightning damage to CSST by requiring bonding of CSST systems, since that shifts responsibility from CSST manufacturers to electrical inspectors (the Department of State believes that the weight of expert opinion is that with appropriate bonding, CSST can be as safe from lightning damage as non-CSST metal piping, and that given a choice between banning the use of CSST or permitting its use but requiring that it be bonded, the better choice is to permit its use and require that it be bonded).

The Department of State will publish a notice of the emergency adoption of this rule in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code"). The amended provisions clarify requirements for electrical bonding of gas piping and for protection of gas piping against physical damage, and add new requirements for installation of gas piping made from corrugated stainless steel tubing (CSST). Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

##### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will clarify the requirements relating to electrical bonding of gas piping, clarify the requirements relating to protection of gas piping against physical damage, and add new requirements relating to the installation of gas piping made from CSST. No professional services are likely to be needed in a rural area in order to comply with such requirements.

##### 3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule. It is anticipated that any increase in costs of complying with the provisions amended by this rule, as compared to complying with the provisions as currently written, will be negligible. Compliance with this rule will occur when gas piping or is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule. Any variation in costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the gas piping installed by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

##### 4. MINIMIZING ADVERSE IMPACT.

The economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

##### 5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry in all areas of the State, including rural areas.

In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. Participants in the conference calls included members of the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee, representatives of CSST manufacturers, and local government representatives. The Department of State also participated in several meetings on this topic, including a meeting with local fire officials and electrical inspectors held on June 26, 2007 in East Meadow, NY, and a meeting with code officials, plumbing inspectors, a utility company representative and a CSST manufacturer representative held on January 21, 2009 in Hicksville, NY. Finally, speakers provided comments at the Code Council meetings where earlier versions of this rule were considered for adoption by the Code Council as emergency rules. Comments received in the conference calls, meetings, and Code Council meetings described above included:

(1) a suggestion that all metal gas piping, and not just CSST piping, should be subject to the bonding requirements, since all metal piping could be susceptible to damage from nearby lightning strikes (this suggestion has been incorporated into the proposed rule);

(2) a suggestion that non-CSST metal piping should be considered to be bonded when it is connected to appliances that are connected to the appliance grounding conductor of the circuit supplying that appliance (this suggestion was not incorporated into the proposed rule);

(3) suggested changes to the wording of the proposed rule, to clarify its intent (these suggestions have been incorporated, in whole or in substantial part, into the proposed rule);

(4) a suggestion that earlier versions of the proposed rule may have confused the concept of bonding with grounding (the Department of State believes that the current version of the proposed rule eliminates any such confusion); and

(5) a suggestion that it is inappropriate to attempt to address concerns about lightning damage to CSST by requiring bonding of CSST systems, since that shifts responsibility from CSST manufacturers to electrical inspectors (the Department of State believes that the weight of expert opinion is that with appropriate bonding, CSST can be as safe from lightning damage as non-CSST metal piping, and that given a choice between banning the use of CSST or permitting its use but requiring that it be bonded, the better choice is to permit its use and require that it be bonded).

The Department of State will publish a notice of the emergency adoption of this rule in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule, and the full text of this rule, on the Department's website.

#### *Job Impact Statement*

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on

jobs and employment opportunities” (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

The rule adds new paragraphs (9), (10), (11), and (12) to subdivision (d) of section 1220.1, amends subdivision (b) of section 1224.1, and adds new paragraphs (2), (3), and (4) to subdivision (c) to section 1224.1 of Title 19 NYCRR. New paragraphs (9), (10), (11), and (12) of subdivision (d) of section 1220.1 and new paragraphs (2), (3), and (4) of subdivision (c) of section 1224.1 will clarify requirements in the Uniform Fire Prevention and Building Code (“Uniform Code”) relating to electrical bonding of gas piping and protection of gas piping against physical damage, and will add new requirements relating to installation of gas piping made of corrugated stainless steel tubing (CSST).

It is anticipated that builders will be able to comply with the electrical bonding and physical protection requirements, as clarified and added by this rule, by using equipment that is currently available and techniques that are currently known. It is also anticipated that any increase costs of compliance resulting from this rule will be negligible. Therefore, it is anticipated that this rule will have no significant adverse impact on jobs or employment opportunities in the building industry, or in businesses that manufacture or install gas piping, other metal piping, or CSST piping.

## EMERGENCY RULE MAKING

### Administration and Enforcement of the Uniform Code by the Department of State

**I.D. No.** DOS-17-09-00002-E

**Filing No.** 352

**Filing Date:** 2009-04-09

**Effective Date:** 2009-04-09

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

**Action taken:** Amendment of Part 1202 of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 381(1) and (2)

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

**Specific reasons underlying the finding of necessity:** Part 1202 of Title 19 NYCRR (“Part 1202”) establishes the procedures applicable in circumstance in which the Department of State (“DOS”) must administer and enforce the Uniform Fire Prevention and Building Code (the “Uniform Code”). For many years prior to 2009, DOS administered and enforced the Uniform Code only with respect to buildings and structures in the custody of 15 counties (the “opted-out counties”). On January 1, 2009, DOS became responsible for administering and enforcing the Uniform Code with respect to all buildings and structures, public and private, in a town located in one of the opted-out counties. However, DOS’s code enforcement program (Part 1202) does not now include all of the features which must be included in a code enforcement program adopted by a local government that administers and enforces the Uniform Code (those features being described in 19 NYCRR Part 1203). This rule will amend Part 1202 to make the features of DOS’s code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of Part 1203. Adopting this rule on an emergency basis is required to preserve public safety and the general welfare by ensuring that administration and enforcement of the Uniform Code by DOS in the town mentioned above will be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1).

**Subject:** Administration and enforcement of the Uniform Code by the Department of State.

**Purpose:** Ensuring that administration and enforcement of the Uniform Code by the Department of State will be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State.

**Substance of emergency rule:** Subdivision 1 of Executive Law section 381 authorizes the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the State Uniform Fire Prevention and Building Code (the Uniform Code). Subdivision 2 of Executive Law section 381 provides that in the event that a local government elects not to administer and enforce the Uniform Code within such local government, and the county in which such local government is located elects not to administer and enforce the Uniform Code in such county, the Secretary of State shall administer and enforce the Uniform Code in the place and stead of such local government. Part 1202

of Title 19 NYCRR establishes the procedures applicable in circumstance in which the Secretary of State must administer and enforce the Uniform Code. This rule amends Part 1202.

This rule renumbers current Section 1202.7 (Fees) of Title 19 NYCRR as section 1202.12.

This rule repeals current Sections 1202.1 to 1202.6 of Title 19 NYCRR and adds new Sections 1202.1 to 1202.11.

New Section 1202.1 specifies the purpose of Part 1202 and defines certain terms used in Part 1202.

New Section 1202.2 provides that building permits and demolition permits are required for any work which must comply with the Uniform Code or Energy Code. Section 1202.2 also specifies certain exceptions, where a permit is not required; specifies requirements applicable to permit applications; specifies requirements applicable when a permit applicant is not the owner of the subject property; specifies requirements applicable to the construction documents that must be submitted with a permit application; specifies requirements applicable to the issuance and display of permits; specifies when permits may be suspended or revoked; and specifies the duration of permits and the procedures applicable to renewal of permits.

New Section 1202.3 provides that construction inspections will be performed at appropriate stages during the performance of work for which a building permit has been issued. Section 1202.2 also includes provisions relating to scheduling inspections, and includes provisions relating to the results of the inspections.

New Section 1202.4 provides that a certificate of occupancy or certificate of completion must be obtained upon completion of any work for which a permit has been issued. Section 1202.4 also prohibits the use or occupancy of buildings or structures without an appropriate certificate of occupancy or certificate of completion; prohibits any change in the nature of the occupancy of an existing building or structure, or any portion thereof, unless a certificate of occupancy authorizing the change has been issued; includes provisions relating to temporary certificates of occupancy; includes provisions relating to the issuance of certificates and the suspension or revocation of certificates.

New Section 1202.5 provides for periodic inspections of buildings for compliance with applicable fire safety and property maintenance provisions of the Uniform Code. In general, buildings which contain an area of public assembly, buildings under the jurisdiction of a college, and dormitories shall be subject to inspection at least once every twelve (12) months; normally unoccupied buildings shall be subject to inspection at least once every sixty (60) months; and all other buildings shall be subject to inspection at least once every thirty-six (36) months. However, Section 1202.5 provides that in most cases, regular, periodic inspections of agricultural buildings used directly and solely for agricultural purposes, one-family dwellings, two-family dwellings, townhouses, or occupied dwelling units in multiple dwellings shall not be required. Section 1202.5 also includes provisions relating to inspections that are in addition to the regular, periodic inspections previously described.

New Section 1202.6 includes provisions relating to operating permits. Section 1202.6 prohibits certain activities and certain uses of buildings without an appropriate operating permit. Section 1202.6 also includes provisions relating to applications for operating permits; tests that may be required prior to the issuance of an operating permit; inspections to be performed prior to the issuance of an operating permit; the duration of an operating permit; keeping operating permits at the subject premises and making operation permits available for inspection; posting operation permits in a conspicuous place at the subject premises; and revocation or suspension of operating permits.

New Section 1202.7 includes provisions relating to violations and remedies. Section 1202.7 authorizes the Department of State and its employees and agents to issue stop work orders, not to be occupied orders, compliance orders, notices of violation, and appearance tickets, and includes provisions relating to the content, service, and effect of stop work orders, not to be occupied orders and compliance orders. Section 1202.7 also includes provisions relating to applications by the Department of State for injunctive relief. The remedies and penalties specified in section 1202.7 are not exclusive, and shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in any other applicable law.

New Section 1202.8 includes provisions relating the review and investigation of complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, or Part 1202.

New Section 1202.9 provides that the chief of any fire department providing fire fighting services for any building subject to this Part shall promptly notify the Department of any fire or explosion in any building subject to this Part involving any structural damage, fuel burning appliance, chimney or gas vent.

New Section 1202.10 includes provisions relating to unsafe building and structures.

New Section 1202.11 includes provisions relating to performance of reviews of permit applications by third party reviewers, and performance of construction inspections, periodic inspections and operating permit inspections by third party inspectors. Such reviews would be performed at the cost and expense of the owner or occupant or proposed owner or occupant of the subject premises by a competent reviewer or inspector acceptable to the Department of State.

Former section 1202.7 of Title 19 NYCRR, renumbered as section 1202.12 by this rule, is amended by this rule. In general, existing fees are not changed, although some provisions relating to existing fees are clarified. Section 1202.12 also adds provisions relating to reduced fees payable to the Department of State when a third party reviewer, a third party inspector, or both a third party reviewer and a third party inspector are used. Section 1202.12 also establishes fees for items for which no fee was previously established, such as fees for operating permits.

**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 7, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Steven Rocklin, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Steven.Rocklin@dos.state.ny.us

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY.

Subdivision 1 of Executive Law section 381 authorizes the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the State Uniform Fire Prevention and Building Code (the Uniform Code).

Subdivision 2 of Executive Law section 381 provides that in the event that a local government elects not to administer and enforce the Uniform Code within such local government, and the county in which such local government is located elects not to administer and enforce the Uniform Code in such county, the Secretary of State shall administer and enforce the Uniform Code in the place and stead of such local government.

Part 1202 of Title 19 NYCRR establishes the procedures applicable in circumstance in which the Secretary of State must administer and enforce the Uniform Code. This rule amends Part 1202.

##### 2. LEGISLATIVE OBJECTIVES.

This rule will further the legislative objective of ensuring that administration and enforcement of the Uniform Code be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1).

Part 1203 of Title 19 NYCRR was promulgated pursuant to Executive Law section 381(1). Part 1203 establishes the minimum standards for administration and enforcement of the Uniform Code by local governments.

Part 1203 was amended in 2005, with an effective date of January 1, 2007. At the time of the amendment of Part 1203, the Department of State (DOS) was not responsible for administration and enforcement of the Uniform Code in any local government. However, one local government has recently enacted a local law providing that it (the local government) will not enforce the Uniform Code within such local government on or after January 1, 2009. This particular local government is located in a county that has also elected not to enforce the Uniform Code. As a result, DOS will become responsible for administration and enforcement of the Uniform Code within that local government, starting on January 1, 2009.

Part 1202 of Title 19 NYCRR establishes the procedures applicable in circumstances in which DOS must administer and enforce the Uniform Code. As of January 1, 2009, Part 1202 will be, in effect, the code enforcement program in the local government mentioned above. Thereafter, Part 1202 will become the code enforcement program in any other local government in which DOS may become responsible for enforcing the code. This rule will amend Part 1202 to make the features of DOS's code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of Part 1203.

##### 3. NEEDS AND BENEFITS.

The purpose of this rule is to cause the features included in DOS's program for enforcing the Uniform Code (Part 1202) to be substantially similar to the features which are required (under Part 1203) to be included in a code enforcement program adopted by any local government that enforces the Uniform Code. This is necessary because certain features (e.g., operating permit requirements) now required by Part 1203 are not now included in Part 1202. The benefits to be derived from this rule include insuring that enforcement of the Uniform Code by DOS in those local governments where DOS has that responsibility complies with the minimum standards set forth in the current version of Part 1203.

##### 4. COSTS.

##### Costs to Regulated Parties.

Regulated parties that build, alter, or demolish buildings or structures located in a local government in which DOS enforces the Uniform Code will be required to obtain building permits, demolition permits, and certificates of occupancy or completion. The initial costs of obtaining a building or demolition permit will include the costs of obtaining the construction documents and other documents needed to include in or with the application for the required permits, and the fees payable to obtain such permits.

The cost of the required construction documents (plans, specifications and drawings) will depend on the nature and scope of the project. DOS estimates that the cost of construction documents for a typical 1,500 square foot one-family dwelling will be approximately \$10,000 to \$18,000 (\$7.00 to \$12.00 per square foot). The cost of construction documents for commercial buildings will vary significantly, depending upon the use, size and complexity of the building. However, the requirement that construction documents be provided as part of a permit application is not a new requirement added by this rule. Part 1202 currently requires the submission of "three sets of plans and specifications for the proposed work." This rule would amend this requirement by providing that only two sets of construction documents need be submitted; this may reduce the cost of applying for a building or demolition permit in certain cases.

The fees to be paid to DOS for building permits or demolition permits are set forth in the current version of Part 1202, and will be set forth in section 1202.12 of the new version of Part 1202 to be added by this rule. This rule does not change those fees. Typical fees are as follows: \$200 for a building permit for a 1,500 square foot one-family dwelling; \$300 for a building permit for a 2,500 square foot one-family dwelling; \$200 per 1,000 square feet for a building permit for a multiple dwelling or other general construction; and \$50 for a demolition permit. This rule continues provisions which are found in the current version of Part 1202 and which allow DOS to require the use of a third-party inspector to perform required inspections. This rule also adds provisions which allow DOS to require the use of a third-party reviewer to review permit applications. Permit applicants will be required to pay the fees and expenses charged by any third-party inspector or third-party reviewer; however, in either such case, the fee payable to DOS for the permit will be reduced.

The fee for renewing a building permit or demolition permit will be one-half of the original permit fee.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to obtain an operating permit. The initial costs of obtaining an operating permit will include a permit fee of \$100.00 per building affected by the permit, plus an inspection fee of \$100.00 per building affected by the permit. DOS may require that a third-party inspector perform the required inspection; in such a case, the applicant will be required to pay the fees and expenses charged by the third-party inspector, but will not be required to pay the \$100 per building inspection fee that would otherwise be payable to DOS. The applicant will also be required to pay for any tests or reports that DOS may determine to be necessary to verify that the proposed activity or use complies with the applicable provisions of the Uniform Code.

The fee for renewing an operating permit will be one-half of the initial fee, and will be payable annually in the case of an operating permit issued for an area of public assembly and once every three years in any other case.

##### Costs to the Department of State, the State, and Local Governments.

DOS will be required to provide the staff necessary to administer and enforce the Uniform Code in the local government(s) where the Department has that responsibility, and DOS will be required to develop permit application forms, permit forms, and other aspects of programs for enforcing the Uniform Code in such local government(s). However, these obligations are imposed upon the Department by statute, as a consequence of local governments and counties opting out of their code enforcement responsibilities, and not by reason of this rule or implementation of this rule. Further, it is anticipated that these costs will be offset, in part, by the fees to be charged.

The State of New York will be required to pay the costs incurred by DOS in providing code enforcement services in the affected local governments and in developing and implementing the code enforcement programs. However, these obligations arise by operation of the statute, as a consequence of local governments and counties opting out of their code enforcement responsibilities, and not by reason of this rule or implementation of this rule.

There will be no cost to local governments for the implementation of this rule, except as follows: DOS currently enforces the Uniform Code with respect to buildings and structures controlled by counties that have

ected not to enforce the Uniform Code (the “opted-out counties”). Enforcement of the code against those buildings and structures is performed under the current version of Part 1202. This rule will amend Part 1202 by, inter alia, adding provisions requiring the issuance of operating permits in certain cases and adding provisions permitting DOS to require the use of third-party reviewers to review permit applications. Opted-out counties will incur the cost of applying for, obtaining, and maintaining any required operating permits. Further, if DOS requires the use of a third-party reviewer to review any building permit, demolition permit or operating permit application filed by an opted-out county, such county will be required to pay the fees and expenses charged by such third-party reviewer; however, in a case where a third-party reviewer is used, the permit fee that would otherwise be paid to DOS will be reduced.

#### 5. PAPERWORK.

This rule will not impose any new reporting requirements.

This rule will require regulated parties to file permit application forms and to obtain permits. However, regulated parties (other than opted-out counties) should now be subject to similar requirements under code enforcement programs that local governments are required to adopt under Part 1203. Further, except for the new provisions relating to operating permits to be added to Part 1202 by this rule, opted-out counties are now subject to similar paperwork requirements under the current version of Part 1202.

#### 6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows: Opted-out counties, which are not subject to operating permit requirements under the current version of Part 1202, will be subject to the operating permit requirements to be added to Part 1202 by this rule.

#### 7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

#### 8. ALTERNATIVES.

The alternative of making no change to Part 1202 was considered. However, it was determined that the existing provisions of Part 1202 do not include certain features (e.g., operating permit requirements) which are required by Part 1203 to be included in code enforcement programs adopted by local governments that enforce the Uniform Code, and it was determined that the differences between the features included in Part 1202 and the features required by Part 1203 should be minimized before the Department assumes responsibility for enforcing the code in a local government. Therefore, this alternative was rejected.

#### 9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule.

#### 10. COMPLIANCE SCHEDULE.

It is anticipated that regulated persons will be able to achieve compliance with this rule immediately.

#### *Regulatory Flexibility Analysis*

##### 1. SMALL BUSINESSES AND LOCAL GOVERNMENTS TO WHICH THIS RULE WILL APPLY.

This rule amends 19 NYCRR Part 1202 (“Part 1202”), which sets forth the procedures applicable in circumstances in which the Department of State (“DOS”) must administer and enforce the Uniform Fire Prevention and Building Code (“Uniform Code”). Currently, DOS administers and enforces the Uniform Code with respect to buildings and structures in the custody of the following fifteen counties (the “opted-out counties”): Allegany County, Cattaraugus County, Chautauga County, Clinton County, Essex County, Greene County, Hamilton County, Herkimer County, Madison County, Oneida County, Oswego County, Saratoga County, Schoharie County, St. Lawrence County, and Wayne County. Effective January 1, 2009, DOS will also be responsible for administering and enforcing the Uniform Code with respect to all buildings and structures, public and private, in the Town of Conewango in Cattaraugus County.

This rule will apply to (1) the opted-out counties, (2) the Town of Conewango, and (3) all individuals and businesses (including all small businesses) in the Town of Conewango. This rule will also apply to any county that elects to opt out in the future, and to all individuals and businesses (including all small businesses) in any city, town or village in which DOS becomes responsible for administering and enforcing the Uniform Code in the future.

##### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule will require regulated parties to file permit application forms and to obtain permits. However, regulated parties (other than opted-out counties) should now be subject to similar requirements under code enforcement programs that local governments are required to adopt under 19 NYCRR Part 1203. Further, except for the new provisions relating to operating permits to be added to Part 1202 by this rule, opted-out counties are now subject to similar paperwork requirements under the current version of Part 1202.

##### 3. PROFESSIONAL SERVICES.

Regulated parties will be required to provide construction documents (plans, drawings and specifications) when they apply for a building or demolition permit. In most cases, construction documents must be stamped and signed by a registered architect or professional engineer. However, the requirement that permit applicants submit construction documents is not a new requirement added by this rule; it is a requirement which is established by statute (Executive Law section 7303(1)), which is reflected in the current version of Part 1202, and which should be reflected in code enforcement programs enacted by local governments that enforce the Uniform Code.

##### 4. COMPLIANCE COSTS.

An opted-out county that builds, alters, or demolishes a building or structure will be required to obtain a building permit, demolition permit, or certificate of occupancy or completion. Regulated parties that build, alter, or demolish buildings or structures located in a local government in which DOS enforces the Uniform Code will be required to obtain building permits, demolition permits, and certificates of occupancy or completion. The initial costs of obtaining a building or demolition permit will include the costs of obtaining the construction documents and other documents needed to include in or with the application for the required permits, and the fees payable to obtain such permits.

The cost of the required construction documents (plans, specifications and drawings) will depend on the nature and scope of the project. DOS estimates that the cost of construction documents for a typical 1,500 square foot one-family dwelling will be approximately \$10,000 to \$18,000 (\$7.00 to \$12.00 per square foot). The cost of construction documents for commercial buildings will vary significantly, depending upon the use, size and complexity of the building. However, the requirement that construction documents be provided as part of a permit application is not a new requirement added by this rule. Part 1202 currently requires the submission of “three sets of plans and specifications for the proposed work.” This rule would amend this requirement by providing that only two sets of construction documents need be submitted; this may reduce the cost of applying for a building or demolition permit in certain cases.

The fees to be paid to DOS for building permits or demolition permits are set forth in the current version of Part 1202, and will be set forth in section 1202.12 of the new version of Part 1202 to be added by this rule. This rule does not change those fees. Typical fees are as follows: \$200 for a building permit for a 1,500 square foot one-family dwelling; \$300 for a building permit for a 2,500 square foot one-family dwelling; \$200 per 1,000 square feet for a building permit for a multiple dwelling or other general construction; and \$50 for a demolition permit. This rule continues provisions which are found in the current version of Part 1202 and which allow DOS to require the use of a third-party inspector to perform required inspections. This rule also adds provisions which allow DOS to require the use of a third-party reviewer to review permit applications. Permit applicants will be required to pay the fees and expenses charged by any third-party inspector or third-party reviewer; however, in either such case, the fee payable to DOS for the permit will be reduced.

The fee for renewing a building permit or demolition permit will be one-half of the original permit fee.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly areas with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to obtain an operating permit. The initial costs of obtaining an operating permit will include a permit fee of \$100.00 per building affected by the permit, plus an inspection fee of \$100.00 per building affected by the permit. DOS may require that a third-party inspector perform the required inspection; in such a case, the applicant will be required to pay the fees and expenses charged by the third-party inspector, but will not be required to pay the \$100 per building inspection fee that would otherwise be payable to DOS. The applicant will also be required to pay for any tests or reports that DOS may determine to be necessary to verify that the proposed activity or use complies with the applicable provisions of the Uniform Code.

The fee for renewing an operating permit will be one-half of the initial fee, and will be payable annually in the case of an operating permit issued for an area of public assembly and once every three years in any other case.

Any variation in the foregoing compliance costs for small businesses or local governments of different types and of differing sizes would be a factor of the types of buildings and structures typically owned by such small businesses or local governments. For example, a small business or local government that typically owns complex commercial buildings will incur higher costs for the construction documents that must accompany an application for a building permit than would a small business or local government that typically owns less complex commercial buildings or residential

buildings. The compliance costs associated with the construction, alteration or demolition of any particular building is not likely to vary significantly by reason of the type or size of the small business or local government that constructs, alters or demolishes the building.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

It is economically and technologically feasible for small businesses and local governments to comply with the rule. This rule imposes no substantial new compliance costs. No new technology need be developed for compliance with this rule.

#### 6. MINIMIZING ADVERSE IMPACT.

This rule is intended to further the legislative objective of ensuring that administration and enforcement of the Uniform Code be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1); it does so by amending Part 1202 to make the features of the DOS's code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of 19 NYCRR Part 1203.

In the opinion of DOS, establishing differing compliance or reporting requirements or timetables for small businesses and local governments or providing exemptions from coverage by the rule for small businesses and local governments would be detrimental to the foregoing objective and would endanger public health, safety or general welfare by reducing code enforcement standards with respect to buildings and structures owned by small businesses and local governments.

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

In December of 2008, the Department of State sent a copy of the proposed rule to the chief executive officer of each of the fifteen opted-out counties, the Town of Conewango and several small businesses in the Town of Conewango by e-mail and/or by regular mail, and invited the opted-out counties, the Town of Conewango and those small businesses to contact the Department of State if they had any questions or comments. To date, no substantive comments have been received.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends 19 NYCRR Part 1202 ("Part 1202"), which sets forth the procedures applicable in circumstances in which the Department of State ("DOS") must administer and enforce the Uniform Fire Prevention and Building Code ("Uniform Code"). Currently, DOS administers and enforces the Uniform Code with respect to buildings and structures in the custody of the following fifteen counties (the "opted-out counties"): Allegany County, Cattaraugus County, Chautauga County, Clinton County, Essex County, Greene County, Hamilton County, Herkimer County, Madison County, Oneida County, Oswego County, Saratoga County, Schoharie County, St. Lawrence County, and Wayne County. Effective January 1, 2009, DOS will also be responsible for administering and enforcing the Uniform Code with respect to all buildings and structures, public and private, in the Town of Conewango in Cattaraugus County.

This rule will apply in the opted-out counties (as to buildings and structures in the custody of the opted-out counties) and in the Town of Conewango. This rule will also apply in any county that elects to opt out in the future (as to buildings and structures in the custody of such county), and in any city, town or village in which DOS becomes responsible for administering and enforcing the Uniform Code in the future.

##### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule will require regulated parties to file permit application forms and to obtain permits. However, regulated parties (other than opted-out counties) should now be subject to similar requirements under code enforcement programs that local governments are required to adopt under 19 NYCRR Part 1203. Further, except for the new provisions relating to operating permits to be added to Part 1202 by this rule, opted-out counties are now subject to similar paperwork requirements under the current version of Part 1202.

##### 3. PROFESSIONAL SERVICES.

Regulated parties will be required to provide construction documents (plans, drawings and specifications) when they apply for a building or demolition permit. In most cases, construction documents must be stamped and signed by a registered architect or professional engineer. However, the requirement that permit applicants submit construction documents is not a new requirement added by this rule; it is a requirement which is established by statute (Executive Law section 7303(1)), which is reflected in the current version of Part 1202, and which should be reflected in code enforcement programs enacted by local governments that enforce the Uniform Code.

##### 4. COMPLIANCE COSTS.

An opted-out county that builds, alters, or demolishes a building or structure will be required to obtain a building permit, demolition permit,

or certificate of occupancy or completion. Regulated parties that build, alter, or demolish buildings or structures located in a local government in which DOS enforces the Uniform Code will be required to obtain building permits, demolition permits, and certificates of occupancy or completion. The initial costs of obtaining a building or demolition permit will include the costs of obtaining the construction documents and other documents needed to include in or with the application for the required permits, and the fees payable to obtain such permits.

The cost of the required construction documents (plans, specifications and drawings) will depend on the nature and scope of the project. DOS estimates that the cost of construction documents for a typical 1,500 square foot one-family dwelling will be approximately \$10,000 to \$18,000 (\$7.00 to \$12.00 per square foot). The cost of construction documents for commercial buildings will vary significantly, depending upon the use, size and complexity of the building. However, the requirement that construction documents be provided as part of a permit application is not a new requirement added by this rule. Part 1202 currently requires the submission of "three sets of plans and specifications for the proposed work." This rule would amend this requirement by providing that only two sets of construction documents need be submitted; this may reduce the cost of applying for a building or demolition permit in certain cases.

The fees to be paid to DOS for building permits or demolition permits are set forth in the current version of Part 1202, and will be set forth in section 1202.12 of the new version of Part 1202 to be added by this rule. This rule does not change those fees. Typical fees are as follows: \$200 for a building permit for a 1,500 square foot one-family dwelling; \$300 for a building permit for a 2,500 square foot one-family dwelling; \$200 per 1,000 square feet for a building permit for a multiple dwelling or other general construction; and \$50 for a demolition permit. This rule continues provisions which are found in the current version of Part 1202 and which allow DOS to require the use of a third-party inspector to perform required inspections. This rule also adds provisions which allow DOS to require the use of a third-party reviewer to review permit applications. Permit applicants will be required to pay the fees and expenses charged by any third-party inspector or third-party reviewer; however, in either such case, the fee payable to DOS for the permit will be reduced.

The fee for renewing a building permit or demolition permit will be one-half of the original permit fee.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to obtain an operating permit. The initial costs of obtaining an operating permit will include a permit fee of \$100.00 per building affected by the permit, plus an inspection fee of \$100.00 per building affected by the permit. DOS may require that a third-party inspector perform the required inspection; in such a case, the applicant will be required to pay the fees and expenses charged by the third-party inspector, but will not be required to pay the \$100 per building inspection fee that would otherwise be payable to DOS. The applicant will also be required to pay for any tests or reports that DOS may determine to be necessary to verify that the proposed activity or use complies with the applicable provisions of the Uniform Code.

The fee for renewing an operating permit will be one-half of the initial fee, and will be payable annually in the case of an operating permit issued for an area of public assembly and once every three years in any other case.

Any variation in the foregoing compliance costs for different types of public and private entities in rural areas would be a factor of the types of buildings and structures typically owned by such entities. For example, a public or private entity that typically owns complex commercial buildings will incur higher costs for the construction documents that must accompany an application for a building permit than would a public or private entity that typically owns less complex commercial buildings or residential buildings. The compliance costs associated with the construction, alteration or demolition of any particular building is not likely to vary significantly by reason of the type of entity that constructs, alters or demolishes the building.

##### 5. MINIMIZING ADVERSE IMPACT.

This rule is intended to further the legislative objective of ensuring that administration and enforcement of the Uniform Code be conducted in a manner that satisfies the minimum standards established by the rules and regulations promulgated by the Secretary of State pursuant to Executive Law section 381(1); it does so by amending Part 1202 to make the features of the DOS's code enforcement program (Part 1202) substantially similar to the features that local governments must include in the code enforcement programs they are required to adopt under the current version of 19 NYCRR Part 1203.

In the opinion of DOS, establishing differing compliance or reporting

requirements or timetables for rural areas or providing exemptions from coverage by the rule in rural areas would be detrimental to the foregoing objective and would endanger public health, safety or general welfare by reducing code enforcement standards in rural areas.

**6. RURAL AREA PARTICIPATION.**

In December of 2008, the Department of State sent a copy of the proposed rule to the chief executive officer of each of the fifteen opted-out counties, the Town of Conewango and several small businesses in the Town of Conewango by e-mail and/or by regular mail, and invited the opted-out counties, the Town of Conewango and those small businesses to contact the Department of State if they had any questions or comments. To date, no substantive comments have been received.

**Job Impact Statement**

The Department of State has concluded, after reviewing the nature and purpose of the rule, that it will not have a “substantial adverse impact on jobs and employment opportunities” (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

Part 1202 of Title 19 NYCRR establishes the procedures applicable in circumstances in which the Department of State must administer and enforce the State Uniform Fire Prevention and Building Code (the Uniform Code) in the place and stead of a local government or county. This rule amends Part 1202.

Regulated parties that build, alter or demolish buildings in local governments in which the Department of State enforces the Uniform Code will be required to apply for and obtain building or demolition permits and certificates of occupancy or completion. However, regulated parties currently are, or should be, subject to substantially similar obligations under code enforcement programs adopted by local governments pursuant to the mandate of Part 1203 of Title 19 NYCRR or under the current version of Part 1202.

Regulated parties that manufacture, store or handle hazardous materials; conduct hazardous processes and activities; use pyrotechnic devices in any assembly occupancies; own buildings containing one or more areas of assembly areas with an occupant load of 100 persons or more; or own buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, will be required to apply for, obtain and maintain an operating permit. Counties that have elected not to enforce the Uniform Code (the “opted-out counties”) and that engage in such activities or uses are not currently subject to operating permit requirements. This rule will extend those requirements to the opted-out counties. However, all other regulated parties currently are, or should be, subject to substantially similar operating permit requirements under code enforcement programs adopted by local governments pursuant to the mandate of Part 1203 of Title 19 NYCRR.

Based on the foregoing, it is anticipated that this rule will have no significant adverse impact on jobs or employment opportunities in the building industry, or in any related businesses or industry.

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

*Text of rule and any required statements and analyses may be obtained from:* John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax\_regulations@tax.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Taxation and Finance

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**NOTICE OF ADOPTION**

**Communications of the Division of Taxation of the Department of Taxation and Finance**

**I.D. No.** TAF-07-09-00010-A

**Filing No.** 349

**Filing Date:** 2009-04-08

**Effective Date:** 2009-04-29

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

**Action taken:** Amendment of Parts 2375, 2376 and section 536.2 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subs. First and Twenty-fourth; 1142(1); and 1250 (not subdivided)

**Subject:** Communications of the Division of Taxation of the Department of Taxation and Finance.

**Purpose:** To update the regulations in conjunction with the implementation of recent changes in policy concerning communications.

**Text or summary was published** in the February 18, 2009 issue of the Register, I.D. No. TAF-07-09-00010-P.