

# RULE MAKING ACTIVITIES

---

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

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

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

---

## Department of Audit and Control

---

### NOTICE OF ADOPTION

**To Amend Requirements of Finder Agreements Submitted on Behalf of a Claimant of Abandoned Property**

**I.D. No.** AAC-18-10-00002-A

**Filing No.** 750

**Filing Date:** 2010-07-20

**Effective Date:** 2010-08-04

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

**Action taken:** Amendment of section 129.1 of Title 2 NYCRR.

**Statutory authority:** Abandoned Property Law, sections 1401, 1414 and 1416

**Subject:** To amend requirements of Finder Agreements submitted on behalf of a claimant of abandoned property.

**Purpose:** To provide a uniform method of determining the identity of a claimant who has signed a Finder Agreement.

**Text or summary was published** in the May 5, 2010 issue of the Register, I.D. No. AAC-18-10-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jamie Elacqua, Legislative Counsel, Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 473-4146, email: JElacqua@osc.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

---

## Office of Children and Family Services

---

### NOTICE OF ADOPTION

**Child Care Market Rate and Stimulus Regulations**

**I.D. No.** CFS-21-10-00006-A

**Filing No.** 738

**Filing Date:** 2010-07-15

**Effective Date:** 2010-08-04

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

**Action taken:** Amendment of sections 404.5, 415.2 and 415.9 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 410 and title 5-C

**Subject:** Child Care Market Rate and Stimulus Regulations.

**Purpose:** To revise the market rates and address the expanded need for child care services caused by the economic downturn.

**Text or summary was published** in the May 26, 2010 issue of the Register, I.D. No. CFS-21-10-00006-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

---

## Division of Criminal Justice Services

---

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

**Handling of Ignition Interlock Cases Involving Certain Criminal Offenders**

**I.D. No.** CJS-31-10-00014-EP

**Filing No.** 748

**Filing Date:** 2010-07-21

**Effective Date:** 2010-07-21

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

**Proposed Action:** Addition of Part 358 to Title 9 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 1193(1) and 1198(5)(a); and L. 2009, ch. 496 and L. 2010, ch. 56

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

**Specific reasons underlying the finding of necessity:** Significantly, Chapter 496 of the Laws of 2009 greatly expanded the former Division of Probation and Correctional Alternatives (DPCA) regulatory oversight with respect to mandatory ignition interlock compliance in a strategic effort to combat and deter drunk driving and better safeguard the welfare of child passengers. Pursuant to Chapter 56 of the Laws of 2010, the former DPCA has been merged with the Division of Criminal Justice Services (DCJS) which has resulted in the complete transfer of the former agency's functions and continuation of its rules and regulations and contractual agreements and transfer of rulemaking authority to the Commissioner of DCJS. Former DPCA previously issued an emergency regulation in this area on April 23, 2010 which expires on July 21, 2010. In light of the above, DCJS is promulgating this regulation on an emergency basis and now proceeding with formal rulemaking to safeguard the public, optimize traffic safety, and better guarantee accountability with respect to new penalties. In order to ensure timely implementation of the provisions which require DWI misdemeanants and felons sentenced on or after August 15, 2010 be subject to statewide ignition interlock conditions and State regulations governing monitoring standards, handling of cases involving judicial waiver of costs, and to assure availability of devices in every jurisdiction, it is imperative that these regulations which establish a planning framework and core responsibilities of qualified manufacturers, installation/service providers, monitors, and operators be enacted immediately to guarantee implementation, establish training, and ensure compliance.

**Subject:** Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

**Purpose:** To promote public/traffic safety, offender accountability and quality assurance through the establishment of minimum standards.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.dcjs.state.ny.us](http://www.dcjs.state.ny.us)):** This second emergency rule, entitled Handling of Ignition Interlock Cases Involving Certain Criminal Offenders, adds a new Part 358 to 9 NYCRR, and is necessitated by Chapter 496 of the Laws of 2009, commonly referred to as Leandra's Law and Chapter 56 of the Laws of 2010 which now empowers the Division of Criminal Justice Services (DCJS) to promulgate rules and regulations with respect to ignition interlock devices and judicial waiver of costs and establishing monitoring standards relative to any defendant sentenced for a DWI misdemeanor or felony. Chapter 56 specifically merged the former Division of Probation and Correctional Alternatives (DPCA), which originally had such rulemaking authority, with DCJS and transferred and assigned to DCJS former DPCA rules and regulations. Below is a brief summary of the regulatory provisions.

Section 358.1 sets forth the Objective which is to promote public/traffic safety, offender accountability, and quality assurance through the establishment of minimum standards for the usage and monitoring of ignition interlock devices following a conviction of a violation of Vehicle and Traffic Law (VTL) § 1192(2), (2-a), and (3) or any crime defined by the VTL or Penal Law of which an alcohol-related violation of any provision of § 1192 is an essential element.

Section 358.2 governs applicability and establishes that it shall be applicable to every county, monitor, and operator, and shall govern qualified manufacturers and installation/service providers as to use, installation, and reporting with respect to ignition interlock devices imposed upon the aforementioned criminal court population within New York State and be effective immediately, except sections 358.6 through 358.10 which shall be effective August 15, 2010.

Section 358.3 is the definitional section. This section defines over twenty-five key operational terms to ensure consistency statewide with respect to language interpretation. Among these are the definition of "county" to clarify that it refers to every county outside of the city of New York, and the city of New York, and that a "qualified manufacturer" shall mean a manufacturer or distributor of an ignition interlock device certified by the New York State Department of Health who has satisfied the specific operational requirements herein and has been approved as an eligible vendor by DCJS in the designated region where the county is located.

Additionally, other terms, such as "failed tasks", "failed tests" "lockout mode", and "monitor" are defined to ensure there is universal understanding of what is meant by these terms in New York State.

Section 358.4 sets forth parameters of a county ignition interlock program plan which must be submitted by every county executive to DCJS by June 15, 2010. Rule procedures require consultation with certain officials or individuals as to plan development which will ensure that procedures are in place prior to the effective date to foster statutory and regulatory compliance and timely notification of critical information. In an effort to provide greater uniformity with respect to similar cases, yet provide certain flexibility where consistent with public safety and offender accountability, additional language distinguishes between probation and

conditional discharge cases in terms of monitor and decision-making as to specific classes and features of devices required. Additional language states that where any available funding is earmarked for such purpose, the plan shall establish a distribution formula for probation supervision and/or monitoring purposes. This language contemplates DCJS efforts in securing federal grant monies to support local programmatic and/or administrative staff resources to perform monitoring functions for this offender population.

Section 358.5 governs the approval process and responsibilities of qualified manufacturers. It sets forth a procedural application mechanism for a manufacturer of ignition interlock devices to become a qualified manufacturer and requires at the outset that a manufacturer must have a certified ignition interlock device approved by the Department of Health as necessitated by VTL § 1198. Other noteworthy provisions require that any interested applicant agree to adhere and certify that they and their installation/service providers will abide by all germane regulatory procedures governing their devices and services (including specific technical device provisions with respect to vehicle operation), reporting requirements that must be met to safeguard the public and promote greater offender accountability, submission of specific documentation, selection of one or more regions of the state to conduct business, adherence to training and enhanced service delivery requirements, establishment of maximum fee/charge schedules, pay for the cost of devices where a judicial waiver has been granted, and willingness to enter into a three-year contractual agreement with DCJS. On or after August 15, 2010, only a qualified manufacturer may conduct business in New York State with respect to any operator. While an initial application deadline of May 12, 2010 is established for those seeking to do business on August 15, 2010 and thereafter, DCJS permits an open-ended application process for manufacturers seeking to do business in New York State after August 15, 2010, in consideration of the time required for device certification, application approval and contract execution.

Section 358.6 enumerates factors which may lead to cancellation, suspension, and revocation of qualified manufacturers, and installation/service providers, and certified ignition interlock devices.

Section 358.7 establishes monitoring standards. Monitoring functions associated with DWI operators with ignition interlock devices are statutorily required pursuant to the aforementioned 2009 Chapter law. DCJS' regulatory language has been carefully streamlined to afford considerable flexibility where feasible, yet emphasizes that upon learning of specific events, that the applicable monitor shall take appropriate action consistent with public safety. Where under probation supervision, the county probation department shall adhere to DCJS' Graduated Sanctions and Violation of Probation rule. With respect to any operator sentenced to conditional discharge, the monitor shall take action in accordance with the provisions of its county ignition interlock program plan, consistent with the goals of public safety. At a minimum, however in all cases, it necessitates swift and certain notification to the sentencing court and district attorney as to specific failed tasks and failed tests. Overall, DCJS' rule places specific responsibilities upon qualified manufacturers, installation/service providers, as well as operators to provide timely information and/or reports to monitors so as to assist them in managing their caseload and to better guarantee offender accountability and safeguard the public. Other language establishes parameters with respect to case records and record sharing and establishes more stringent access requirements and confidentiality protections surrounding particular records.

Section 358.8 governs costs and maintenance. It recognizes that any operator shall pay the cost of installing and maintaining the ignition interlock device, unless the operator has been determined by the sentencing court to be financially unable to afford the cost of the device, whereupon such cost may be imposed pursuant to a payment plan or waived. If an operator claims financial inability to pay for the device, regulatory provisions establish that the operator shall submit three copies of a financial disclosure report on a form prescribed by DCJS to the sentencing court which shall distribute copies to the district attorney and defense counsel. This report enumerates factors to assist the sentencing court with respect to financial inability of the operator to pay for the device and whether to impose a payment plan or waive the fee/charge.

Section 358.9 governs record retention and disposition and establishes that records retention and disposition of all records of the county, any qualified manufacturer, and installation/service provider with respect to this rule Part shall be in accordance with the applicable Records Retention and Disposition Schedule promulgated by the State Education Department.

Section 358.10 relates exclusively to liability and establishes that nothing contained in this Rule Part shall impose liability upon DCJS, the State of New York, or any county for any damages related to the installation, monitoring or maintenance of an ignition interlock device or an operator's use or failure to use such devices.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 18, 2010.

**Text of rule and any required statements and analyses may be obtained from:** Linda J. Valenti, OPCA Counsel, Division of Criminal Justice Services, 80 Wolf Road - Suite 501, Albany, New York 12205, (518) 485-2394, email: linda.valenti@dpc.state.ny.us

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

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Chapter 496 of the Laws of 2009 (Leandra's Law), was a Governor's Program Bill that unanimously passed by both houses of the State Legislature. New York State joins nine other states mandating the use of ignition interlocks for all individuals sentenced for Driving While Intoxicated (DWI) misdemeanor or felony offenses. Significantly, this measure greatly expanded the former Division of Probation and Correctional Alternatives (DPCA) regulatory oversight with respect to mandatory ignition interlock compliance in a strategic effort to combat and deter drunk driving and better safeguard the welfare of child passengers. Pursuant to Chapter 56 of the Laws of 2010, the former DPCA has been merged with the Division of Criminal Justice Services (DCJS) which has resulted in the complete transfer of the former agency's functions and continuation of its rules and regulations and contractual agreements and transfer of rulemaking authority to the Commissioner of DCJS. Specifically, Vehicle and Traffic Law (VTL) § 1193(1)(g) directs said agency "to promulgate regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices to provide standards for monitoring by departments of probation, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a probation department." While VTL § 1198(5)(a) authorizes a court to allow the costs of the ignition interlock device to be paid through a payment plan or to waive the costs, upon a determination of "financial unaffordability" of the defendant, it further states that in the event of such waiver, the cost of the device shall be borne in accordance with DCJS regulations "or pursuant to such other agreement as may be entered into for provision of the device." Thus, it is the intent that DCJS address the method of payment if the costs of the ignition interlock device were waived or if the DWI offender was afforded a payment plan.

##### 2. Legislative objectives:

This rule serves both the Governor's and the State Legislature's underlying objective of Leandra's Law, to further strengthen DWI laws and penalties through statewide implementation of ignition interlock conditions so as to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance through the establishment of minimum standards for the usage and monitoring of ignition interlock devices following a conviction of a violation of VTL § 1192(2), (2-a), (3) or any crime defined by the VTL or Penal Law of which an alcohol-related violation of any provision of § 1192 is an essential element.

##### 3. Needs and benefits:

This rule is needed to achieve successful implementation of Leandra's Law and address the challenges in achieving statewide implementation of ignition interlock conditions upon the DWI offender population, and establish minimum statewide monitoring standards to achieve uniformity in handling of certain failed tasks and failed tests, better safeguard the public, especially child passengers, and better guarantee operator accountability. DCJS' guidance in providing options for monitoring of compliance in lieu of probation, in conditional discharge cases and plan development and structure provisions will foster better collaboration and communication within jurisdictions and enable alternative monitoring arrangements so as to not burden probation departments with monitoring the entire DWI population subject to ignition interlock restrictions.

Its intent is to safeguard the public, optimize traffic safety, and guarantee accountability with respect to new penalties. In order to ensure timely implementation of the provisions which require DWI misdemeanants and felons sentenced on or after August 15, 2010 be subject to statewide ignition interlock conditions and DCJS regulations governing monitoring standards, handling of cases involving judicial waiver of costs, and to assure availability of devices in every jurisdiction, it is imperative that these regulations which establish a planning framework and core responsibilities of qualified manufacturers, installation/service providers, monitors, and operators be enacted immediately to guarantee implementation, establish training, and ensure compliance.

##### 4. Costs:

a. It is anticipated that there will be some fiscal impact arising from Leandra's law. Chapter 496 of the Laws of 2009 requires monitoring of all DWI defendants subject to ignition interlock devices as a result of sentencing on and after August 15, 2010. This chapter requires, in addition to any

other disposition that may be imposed, that a defendant receive a sentence of probation or conditional discharge with an ignition interlock condition. Where probation is imposed, probation departments are responsible for monitoring. Jurisdictions may designate alternative monitors for conditional discharge cases in lieu of probation. Thus, this Chapter and not DCJS rule is the source of any increased administrative costs. DCJS rule provides every jurisdiction with the flexibility to select one or more persons or entities responsible for monitoring conditional discharge cases. A variety of potential designees are listed for consideration so probation departments will not absorb such responsibilities by omission. Due to the former DPCA, DCJS, DMV and the State's efforts to strengthen ignition interlock laws to deter drunk driving and promote greater offender accountability, the former DPCA was invited and submitted a one year seed grant application to the Governor's Traffic Safety Committee in an amount of three (3) million dollars in National Highway Safety Traffic Administration (NHTSA) monies to offset local government costs in performing monitoring services. The application which is pending and is anticipated to be approved on or about September 1, 2010 will enable DCJS, which former DPCA has been merged with, to distribute monies pursuant to a formula of DWI convictions to support local monitoring responsibilities for activities occurring on and after October 1, 2010.

b. DCJS' regulatory requirements with respect to qualified manufacturers or their installation/service providers will not impose costs upon either beyond normal operating costs. A qualified manufacturer may incur additional costs associated with providing payment plans or devices at no charge where judicial waiver has occurred as provided in law. It is not possible to determine precisely such costs. The new law establishes that the court, upon determining financial "unaffordability" to pay the cost of the device, may impose a payment plan with respect to the device or waive the fee. New Vehicle and Traffic Law statutory provisions require that where the cost is waived, DCJS through its regulation shall determine who bears the costs of the device or through such other agreement which may be entered into. Accordingly, DCJS' regulation requires qualified manufacturers, and not local governments or taxpayers to bear such costs. Effective August 15, 2010, while the decision to waive the fee is reserved to the court, DCJS speculates based upon experience of other states that approximately ten (10) percent of cases will result in waivers. In view of the significant market and profit for ignition interlock manufacturers qualified to do business in New York State, it is reasonable to require manufacturers supply devices free of charge where a judicial waiver has been ordered. Accordingly, interested manufacturers in their applications must provide a maximum fee/charge schedule taking into consideration an estimated 10 % waiver.

Statutory provisions require that operators are responsible for costs of installation and maintenance of the ignition interlock devices where no judicial waiver has been granted due to financial inability. DCJS documentation of fee structure received from interested qualified manufacturers indicates an average \$75-\$100 installation charge and a similar monthly maintenance charge.

c. Although DCJS must approve each county plan, it is anticipated that this approval process will be accomplished using existing staff and resources. As the former statewide oversight agency, with extremely limited staffing resources, the former DPCA pursued some administrative monies in connection with the aforementioned grant to better manage compliance with the statutory and regulatory requirements of this new law.

##### 5. Local government mandates:

This rule establishes that every jurisdiction must submit for DCJS approval an ignition interlock plan for monitoring the use of ignition interlock devices by June 15, 2010. The County Plan content is straightforward, simple, and largely prescriptive to ease any burden on localities. Monitoring functions associated with DWI operators with ignition interlock devices are statutorily required. DCJS' rule has been carefully streamlined to afford considerable flexibility, yet guarantee swift and certain sentencing court and district attorney notification as to certain failed tasks and failed tests. Additionally, it places specific responsibilities upon qualified manufacturers, installation/service providers, as well as operators to provide timely information and/or reports to monitors so as to assist them in managing their caseload. Nationally, fewer than 10% of persons with an ignition interlock installed on their motor vehicle violate the conditions relating to the ignition interlock program.

##### 6. Paperwork:

This rule establishes that every jurisdiction submit an ignition interlock program plan to DCJS for approval meeting certain regulatory requirements. The former DPCA distributed a model simple form, largely prescriptive, to assist jurisdictions in satisfying this requirement. A manufacturer wishing to conduct business in New York State relative to ignition interlock devices will be required to apply to DCJS. The former DPCA distributed and posted an application for interested manufacturers. Other data report requirements imposed upon qualified manufacturers and

installation/service providers are routine business activities and essential to offender accountability and community safety. The former DPCA developed approximately fifteen (15) reporting forms to facilitate exchange of information and promote consistency, which will greatly benefit all jurisdictions in implementation and compliance with this new law. The former DPCA solicited considerable input from constituents, including the Courts in developing the financial disclosure report required of operators applying for judicial waiver. Further efforts at the state level will lead to the availability of Spanish forms.

#### 7. Duplication:

This proposal does not duplicate any other existing State or federal requirements. While the Department of Health (DOH) certifies ignition interlock devices, DOH through regulations has transferred certain regulatory responsibilities to DCJS to achieve a more workable solution with respect to oversight of key areas.

#### 8. Alternatives:

The former DPCA and DCJS weighed several approaches with respect to rule-making, but were required at a minimum to include certain aforementioned statutory components. A plan submission process was viewed essential to ensure that all jurisdictions are prepared to fulfill statutory requirements. An application process for manufacturers with stronger operational requirements was also determined critical to improve statewide service delivery and promote public safety and operator accountability. In crafting rule content and developing the financial disclosure report, a workgroup which included local prosecutorial and probation representation was formed, with representation from former DPCA, DCJS and various other local and state agencies. DPCA had publicized and convened a manufacturer's roundtable in March 2010 to solicit additional information from probation departments and manufacturers. The Office of Court Administration (OCA), Department of Motor Vehicles, the Office of Alcoholism and Substance Abuse Services, the former DPCA, and DCJS, were all actively involved in rule formation and implementation. Further, the Offices of General Services, State Comptroller, Attorney General, and Division of the Budget were consulted as to the request for application. The former DPCA provided the State Probation Commission, probation departments, and manufacturers two separate draft regulations in this area which incorporated numerous suggestions. The regulation reflects many other recommendations to minimize impact, clarify the law, and achieve more sound workable provisions, consistent with public safety.

#### 9. Federal standards:

There are no federal standards governing the monitoring of convicted DWI offenders ordered to use an ignition interlock device although the National Highway Traffic Safety Administration (NHTSA) published model specifications for breath alcohol ignition interlock devices in the Federal Register on April 7, 1992 (57 FR 11772) and this rule requires that any device used meets these standards. Both the former DPCA and DCJS, in consultation with DOH and the Traffic Research Injury Foundation, incorporated additional device operation and monitoring standards that are consistent with good professional practice and have been well-received and which are likely to be embraced as future model provisions.

#### 10. Compliance schedule:

Every county and the city of New York were required to submit an ignition interlock program plan to the former DPCA for approval by June 15, 2010 to ensure smooth and successful implementation of the mandatory ignition interlock statutory and regulatory provisions on August 15, 2010. DCJS is in the process of reviewing these applications. DPCA distributed two earlier regulatory drafts to probation departments and disseminated these to the New York State Association of Counties and conducted a web air conference on the subject.

The State's efforts in conducting a preliminary roundtable for manufacturers and sharing draft regulations and draft request for application and incorporating many business comments has proven beneficial in terms of advance notification of regulatory terms and conditions, making the application process manageable to interested manufacturers, and readiness to achieve timely compliance with regulations.

To foster better understanding and guarantee compliance of the law and its regulations, DCJS is undertaking OCA training initiatives to ensure the judiciary and other interested parties are sufficiently knowledgeable on the new law and regulatory features.

The majority of feedback with respect to the rule has been well-received and it is expected that all affected parties will be able to comply with the rule.

Additionally, all interested qualified manufacturer's applications have been reviewed and approved and all seven (7) State contracts have been signed, approved by the Attorney General, and are in the process of final execution by the Office of the State Comptroller.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule:

This rule will affect every county and the city of New York as a whole, ignition interlock manufacturers and their approved installation/service

providers. As of April 2010 there were approximately thirteen (13) manufacturers of ignition interlock devices currently established in the United States and six (6) doing business in New York State with approximately 175 installation/service providers within the state. The latter are typically automobile repair businesses and automobile sound system installers. Since then, seven (7) have been approved as qualified manufacturers and there has been an increase of approximately fifty (50) additional installation/service providers, with more anticipated in the immediate future.

#### 2. Compliance requirements:

This rule would require that every jurisdiction submit an ignition interlock program plan to the Division of Criminal Justice Services (DCJS) for approval relative to usage of ignition interlock devices and monitoring the compliance of operators subject to such device as directed by the sentencing court. The regulation enumerates parameters with respect to the development, scope, and content of the plan so as to promote consistent application, foster greater local collaboration and coordination within the criminal justice system, guarantee monitoring of all operators subject to the installation of such devices on their motor vehicles, and optimize compliance with Chapter 496 of the Laws of 2009, commonly referred to as Leandra's law, which strengthens various laws to combat and deter drunk driving. The County Plans required by DCJS will be simple and largely prescriptive to ease any burden on localities.

Further, a manufacturer wishing to do business in New York State would be required to apply to DCJS to become a qualified manufacturer, agree to meet our regulatory requirements as to service delivery and enter into a contractual agreement with DCJS. Among relevant information sought in the application are a description of the certified ignition interlock device approved by the New York State Department of Health (DOH), maximum fee/charge schedules, specific service performance measures, a commitment to conduct business in one or more of the four designated regions of the state, certification of installation/service providers, verification of liability coverage and a signed statement that the manufacturer or its representative will indemnify and hold harmless the State of New York and local government from particular claims, demands and actions which might arise out of any act or omission with respect to installation, service, inspection, maintenance, repair, use and/or removal of the device. While DCJS requires that any qualified manufacturer provide for a payment plan or in certain cases agree to provide a device free of charge to an operator who has been determined financially unable to afford the device, this language is consistent with Vehicle and Traffic Law § 1198(5)(a). Further, there exist certain compliance requirements which installation/service providers must satisfy with respect to installation, service delivery, training, and reporting. Moreover, the majority of qualified manufacturer and installation/service provider requirements are similar in nature to what has been previously required by DOH regulations. Due to the new leadership role with respect to ignition interlock programmatic implementation, the former Division of Probation and Correctional Alternatives, which subsequently has been merged with DCJS, jointly worked with DOH to strengthen existing DOH regulations in this area, including transfer of certain regulatory responsibilities to DCJS.

DCJS has incorporated other expanded requirements consistent with other state's best practices and operational provisions to improve service delivery, ensure availability throughout the state, and promote greater accountability. At the same time, DCJS has afforded greater flexibility in certain pre-existing DOH requirements and other new regulatory provisions wherever feasible without compromising ignition interlock performance integrity and public safety. DCJS has recognized differences in technology through special provisions which reflect classification categories and features, and operational differences with respect to servicing certain devices.

#### 3. Professional services:

It is not anticipated that any particular professional services will be required to comply with the rule.

#### 4. Compliance costs:

Chapter 496 of the Laws of 2009 requires monitoring of all defendants subject to ignition interlock devices as a result of sentencing on and after August 15, 2010 involving a DWI misdemeanor or felony. This chapter requires, in addition to any other disposition that may be imposed, that a defendant receive a sentence of probation or conditional discharge with an ignition interlock condition. Where probation is imposed, probation departments are responsible for monitoring. It further permits designation of an alternative person with respect to conditional discharge cases in lieu of probation. The rule provides each county and the city of New York as a whole, with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning ignition interlock device in any vehicle which they own or operate. Potential designees are listed to better guarantee active consideration and not result in probation departments absorbing such responsibilities by omission. Due to the

State's and national efforts to strengthen ignition interlock laws to deter drunk driving and promote greater offender accountability, the former DPCA advocated and was invited to submit a grant application to the Governor's Traffic Safety Committee in an amount up to three (3) million dollars in National Highway Safety Traffic Administration (NHTSA) monies to offset local government costs in performing monitoring services. The application which is pending and is anticipated to be approved on or about September 1, 2010 will enable DCJS, which former DPCA has merged with pursuant to Chapter 56 of the Laws of 2010, to distribute monies to jurisdictions pursuant to a formula of DWI convictions to support local programmatic and/or clerical staff resources to perform monitoring functions for this offender population.

DCJS believes that the regulatory requirements with respect to qualified manufacturers or their installation/service providers will not impose costs upon either beyond normal operating costs. The manufacturer wishing to do business in the State may incur some additional business associated with the regulatory requirement that such manufacturer provide devices at no charge or through a payment plan when ordered by a court. It is not entirely possible to estimate such costs. Currently, any operator subject to the installation of an ignition interlock device is required to pay such costs. Noteworthy, the aforementioned Chapter law establishes that the court, upon determining financial "unaffordability" to pay the cost of the device, may impose a payment plan with respect to the device or waive the fee. New Vehicle and Traffic law statutory provisions require that where the cost is waived, DCJS through its regulation shall determine who bears the costs of the device or through such other agreement which may be entered into. It was decided preferable to require qualified manufacturers, and not local governments to bear such costs. While the decision to waive the fee is reserved to the court and will take effect on August 15, 2010, DCJS speculates based upon other state's experience in this area that approximately ten (10) percent of cases will result in waivers. Due to the significant potential of increase in profits for a manufacturer due to the expansion of the use of ignition interlock devices, DCJS believes that it is reasonable to hold manufacturers responsible for supplying the device free of charge where a judicial waiver has been secured. Further, as interested manufacturers in their applications must provide a maximum fee/charge schedule taking into consideration an estimated 10 % waiver, the costs in this area will likely be absorbed in the fee/charge schedule submitted to DCJS.

#### 5. Economic and technological feasibility:

From feedback that former DPCA received with respect to the proposed and finalized application and regulation which was sent to all ignition interlock manufacturers throughout the nation, manufacturers currently providing certified ignition interlock devices for use in New York State (with respect to offenders already subject to ignition interlock condition as part of their sentence or release) expressed willingness to satisfy compliance with the emergency regulation and all including one additional manufacturer applied and were approved as qualified manufacturers. Moreover, it should be noted that the majority of manufacturers of ignition interlock devices are located in other states. At this time, only two (2) qualified manufacturers are located in New York State. All current installation/service providers within New York State were previously required to satisfy specific installation, training and reporting requirements established in DOH regulations in the area of ignition interlock devices and the transfer of these regulatory requirements to DCJS have resulted in continuation of similar provisions. As to any additional requirements, qualified manufacturers have assured the state through their respective applications and contractual agreements that installation/service providers which they have selected will be able to comply with regulatory requirements.

As to specific technological feasibility features in this rule, the former DPCA and DCJS reviewed other states requirements and existing and anticipated future national standards, worked with DOH to update its regulations with respect to best practices, and incorporated several programmatic and legal suggestions obtained from feedback of manufacturers, probation practitioners with ignition interlock caseloads, prosecutors, along with various professional associations and organizations, including the Council of Probation Administrators, the NYS STOP-DWI Coordinators Association, and the Traffic Safety Research Foundation.

#### 6. Minimizing adverse impact:

Both the former DPCA and DCJS were steadfast in its efforts to minimize adverse impact of this proposed regulation upon small business and local government. As noted earlier, a DCJS application, earlier submitted by former DPCA, is pending to secure federal funding to reduce any local government costs associated with monitoring as a result of Leandra's Law statutory responsibilities and our related regulations. The regulations have been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring have carefully balanced substantive provisions to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where

necessary to achieve uniformity in handling of certain failed tasks and failed tests, safeguard the public and better guarantee offender accountability. There has been added several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers.

With respect to manufacturers, former DPCA and DCJS examined other state's statutory and/or regulatory requirements, sought input of DOH authorities, the Traffic Safety Research Foundation, and experience of other states as to their laws in this area and convened a roundtable for manufacturer participation which was well-attended that provided a candid and meaningful dialogue and exchange as to issues and concerns.

Overall, through circulating two prior draft regulations in this area and a draft of the request for application, the former DPCA received additional feedback which led to numerous edits to address concerns and provide where appropriate greater flexibility. Additionally, the Director of Probation and Correctional Alternatives and program and legal staff of the former DPCA participated in a web air conference with the New York State Association of Counties to foster better understanding of Leandra's Law and our draft regulation.

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

Interested small businesses and local government participated in several ways in crafting and refining this rule. Specifically, a workgroup which included local prosecutorial and probation representation was formed along with representation from former DPCA, DCJS and various other state agencies. DPCA had publicized and convened a manufacturer's roundtable in March 2010 to solicit more information from probation departments and manufacturers of ignition interlock devices and establish a meaningful dialogue of issues and concerns with implementation of Leandra's Law provisions governing ignition interlock. The Office of Court Administration, Department of Motor Vehicles, the Office of Alcoholism and Substance Abuse Services, former DPCA, and DCJS, were all actively involved in rule formation and implementation to gain their professional insight. Further, the Office of General Services, the Office of State Comptroller, the Attorney General's office and the Division of the Budget have been consulted as to the request for application which mirror key regulatory provisions. DPCA provided probation departments and manufacturers two separate draft regulations in this area which incorporated numerous suggestions. The final emergency regulation reflects many other recommendations to minimize impact, clarify the law, and achieve more sound workable provisions.

#### *Rural Area Flexibility Analysis*

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

Forty-four of the 57 local probation departments outside of New York City are located in rural areas and will be affected by the regulation.

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

The proposed regulation implements Chapter 469 of the Laws of 2009, commonly referred to as Leandra's Law, in relation to the monitoring of the use of court-ordered ignition interlock devices ordered upon defendants sentenced for a DWI misdemeanor or felony. Rule provisions require that each county and the city of New York adopt an ignition interlock program plan for the monitoring of such devices and successful implementation of this new law. Such plan must be submitted to the Division of Criminal Justice Services (DCJS) for approval and contain certain enumerated components to ensure a smooth transition, uniformity in handling of similar cases, and optimize compliance with statutory and regulatory provisions to combat and deter drunk driving. For example, such plan must designate the agency or entity that will monitor conditional discharge cases, establish certain procedures to ensure the monitor receives timely notification of those defendants subject to interlock conditions, including advance notification of DWI defendants when released from state or local imprisonment, judicial waiver of cost of devices, intrastate transfers, and interstate transfers. Specific regulatory provisions govern monitoring services. Flexibility is provided to local jurisdictions to establish other procedures governing failure report recipients, including method and timeframe and specific notification and circumstances. In the interest of public safety and offender accountability, other regulatory provisions require court and district attorney notification by all monitors when certain failed tasks or failed tests occur and appropriate notification with respect to intrastate transfers and interstate transfers. Monitors have been given the authority to issue certificates of completions and letters of de-installation. Consistent with state laws governing record retention and disposition, regulatory language requires that all local governmental records shall be retained and disposed of in accordance with the applicable Records Retention and Disposition Schedule promulgated by the New York State Education Department. Lastly, it is not anticipated that any special professional services will be required to adopt and administer such plan.

##### 3. Costs:

Chapter 496 of the Laws of 2009 requires monitoring of all defendants subject to ignition interlock devices as a result of sentencing on and after August 15, 2010 involving a DWI misdemeanor or felony. This chapter requires, in addition to any other disposition that may be imposed, that a defendant receive a sentence of probation or conditional discharge with an ignition interlock condition. Where probation is imposed, probation departments are responsible for monitoring. It further permits designation of an alternative person with respect to conditional discharge cases in lieu of probation. The rule provides each county and the city of New York as a whole, with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning ignition interlock device in any vehicle which they own or operate. Potential designees are listed to better guarantee active consideration and not result in probation departments absorbing such responsibilities by omission. Due to the State's and national efforts to strengthen ignition interlock laws to deter drunk driving and promote greater offender accountability, the former Division of Probation and Correctional Alternatives (DPCA) advocated and was invited to submit a grant application to the Governor's Traffic Safety Committee in an amount up to three (3) million dollars in National Highway Safety Traffic Administration (NHSTA) monies to offset local government costs in performing monitoring services. The application which is pending and is anticipated to be announced on or about September 1, 2010 will enable DCJS, which former DPCA has merged with pursuant to Chapter 56 of the Laws of 2010, to distribute monies to jurisdictions pursuant to a formula of DWI convictions to support local programmatic and/or clerical staff resources to perform monitoring functions for this offender population.

Currently, any operator subject to the installation of an ignition interlock device is required to pay such costs. Noteworthy, Chapter 496 of the Laws of 2009 establishes that the court, upon determining financial "unaffordability" to pay the cost of the device, may impose a payment plan with respect to the device or waive the fee. New Vehicle and Traffic law statutory provisions require that where the cost is waived, DCJS through its regulation shall determine who bears the costs of the device or through such other agreement which may be entered into. DCJS regulations require qualified manufacturers, and not local governments to bear such costs. Moreover, DCJS does not foresee substantial cost variances between rural, suburban, and urban jurisdictions as costs associated with this new law will be impacted upon number of sentenced DWI misdemeanants and DWI felons and this does not necessarily correspond to population size of a jurisdiction.

#### 4. Minimizing adverse impact:

Both the former DPCA and DCJS were steadfast in its efforts to minimize adverse impact of this proposed regulation upon local government, especially rural counties. As noted earlier, a DCJS application, earlier submitted by former DPCA, is pending to secure federal funding to reduce any local government costs associated with monitoring as a result of Leandra's Law statutory responsibilities and our related regulations. The regulations have been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring have carefully balanced substantive provisions to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where necessary to achieve uniformity in handling of certain failed tasks and failed tests, safeguard the public and better guarantee offender accountability. There has been added several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers. Further, our regulatory language requires that in the event of judicial waiver of the cost of the device, the qualified manufacturer not the county government bears the costs associated with installation and maintenance of the ignition interlock device for any person convicted of a DWI misdemeanor or felony and required to have installed a functioning ignition interlock device on any vehicle which he/she owns or operates.

DCJS does not anticipate that these new regulations will have any adverse impact on rural areas. Although rural counties may have fewer resources at their disposal than more populated counties, many rural counties also have the advantage of a smaller population and typically a correspondingly smaller number of operators required to install an ignition interlock device. Further, through the establishment of regions, which include both rural and non-rural counties, this regulation will require that a manufacturer doing business with a non-rural county must do business with rural counties within the region upon the same favorable terms which will ensure service availability and further that installation/service providers be available to operators within 50 miles of their homes statewide.

Lastly, at the state level there has been developed approximately fifteen model forms which will greatly benefit all jurisdictions in implementation and compliance with this new law, especially numerous rural counties

with limited staff resources to undertake form development. These forms have been disseminated to all jurisdictions and have been well-received.

#### 5. Rural area participation:

This rule was developed by the former DPCA prior to its merger with DCJS with the input of a number of entities including probation departments from rural counties. Specifically, a workgroup which included rural probation representation was formed along with representation from former DPCA, DCJS and various other state agencies. DPCA had publicized and convened a manufacturer's roundtable in March 2010 to solicit more information from probation departments and manufacturers of ignition interlock devices and establish a meaningful dialogue of issues and concerns with implementation of Leandra's Law provisions governing ignition interlock. Several rural probation departments attended this roundtable meeting. DPCA provided all probation departments two separate draft regulations in this area which incorporated numerous suggestions. The Council of Probation Administrators (COPA), the statewide professional association of probation executives in New York State, selected two rural probation directors to be part of our aforementioned workgroup. Additionally a separate committee within COPA, comprised of rural probation director membership, reviewed the last regulatory draft and DPCA originally incorporated certain/several amendments that were consistent with public safety, statutory language and intent, and/or otherwise feasible. Additionally, the Director of Probation and Correctional Alternatives directly communicated with officials within the New York State Association of Counties (NYSAC) as to the new law and disseminated the last draft regulatory revision, prior to finalizing the first emergency regulation, for feedback and he previously conducted a NYSAC web air conference on the subject which had large representation from jurisdictions across the state. The final emergency regulation reflects many other recommendations to minimize impact, clarify the law, and achieve more sound workable provisions which will greatly assist rural jurisdictions on implementation of the new law and this rule.

#### Job Impact Statement

##### 1. Nature of impact:

This rule will increase employment opportunities for manufacturers of ignition interlock devices certified by the New York State Department of Health and approved as a qualified manufacturer by the Division of Criminal Justice Services (DCJS) and for businesses in New York State which are designated installation/service providers of these devices. Based on arrest and conviction rates from 2008, the number of convicted drivers who will be required to install an ignition interlock device is projected to be approximately 25,000 per year. As of April 2010, approximately 2,400 ignition interlock devices are in use in New York State and there were approximately 175 approved installation/service providers, mainly small automotive shops specializing in the installation of automobile stereo systems, mufflers, automobile repair, and automobile dealers. Since seven (7) manufacturers are now approved as qualified manufacturers to conduct business in New York State, the demand for devices and installation and maintenance-related services has grown dramatically and is anticipated to continue, leading to increased employment opportunities in our state.

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

This rule will affect manufacturers of certified ignition interlock devices and their respective installation/service providers. Based on the projected number of defendants who will be required to install an ignition interlock device as a sentencing condition upon any vehicle which they own or operate, the number of current ignition interlock users and installation/service providers, the requirement that a manufacturer commit to servicing one or more designated region(s), and the anticipated geographical distribution of future defendants sentenced on Driving While Intoxicated (DWI) misdemeanor(s) and/or felony(ies), subject to such devices, it is projected that there will be increased employment opportunities for manufacturers and installation/service providers. In April 2010, prior to the first emergency rule, there were six (6) manufacturers in New York State and thirteen (13) throughout the nation, and subsequently, seven (7) have been approved as qualified manufacturers. It is anticipated that others doing business outside of New York may apply in the future to conduct business in New York State. As a result of being approved as qualified manufacturers, which includes a commitment to service one or more designated region(s) of New York State, DCJS is aware that approximately fifty (50) additional installation/service providers have been selected by manufacturers to handle the increased service demand resulting from this new law, and more are expected in the near future. This has resulted and will continue to result in corresponding increase in employment opportunities throughout the state.

While counties and New York City, in particular probation departments and other alternative monitors who may be designated to handle conditional discharge cases may be affected by this regulation, the regulation is designed to provide a flexibility wherever feasible consistent with public safety and accountability in order to minimize the effect of the regulation upon local government. Under this new law, where probation is imposed,

probation departments are responsible for monitoring. It further permits designation of an alternative person with respect to conditional discharge cases in lieu of probation. The rule itself provides every jurisdiction with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases. A variety of potential designees are listed to better guarantee active consideration and not result in probation departments absorbing such responsibilities by omission. Due to the State's and national efforts to strengthen ignition interlock laws to deter drunk driving and promote greater offender accountability, DCJS has advocated and been invited to submit a grant application to the Governor's Traffic Safety Committee in an amount up to three (3) million dollars in National Highway Safety Traffic Administration (NHTSA) monies to offset local government costs in performing monitoring services. DCJS is in the process of submitting a grant application which will enable our agency to distribute monies pursuant to a formula of DWI convictions to support local programmatic and/or clerical staff resources to perform monitoring functions for this offender population. In some jurisdictions, new employment opportunities may be available with respect to monitoring services.

3. Regions of adverse impact:

This rule will have no adverse or disproportionate impact on jobs or employment opportunities.

4. Minimizing adverse impact:

This rule will have no adverse impact on jobs or employment opportunities. As noted in paragraph 2, this rule will instead increase employment opportunities throughout the State. With respect to jobs, the new law specifically requires monitoring be performed at the local level. DCJS' rule in this area has provided considerable flexibility and options to local government with respect to monitoring. Further, our rule places specific responsibilities upon qualified manufacturers, installation/service providers, as well as operators to provide timely information and/or reports to monitors so as to assist them in managing their caseload.

5. Self-employment opportunities:

Many manufacturers of ignition interlock devices are independent businesses and designated installation/service providers are typically small, owner-operated businesses. The increase in the number of qualified manufacturers has led to increased installation/service providers throughout the state and it is anticipated that there is a potential for self-employment opportunities where such businesses can meet manufacturer agreements and State regulatory requirements governing training, installation, maintenance of services, and other operational provisions.

adopted procedure applied uniformly at each grade level, to be at risk of not achieving the State designated performance level in English language arts and/or mathematics. This district procedure may also include diagnostic screening for vision, hearing and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(2) Requirements for providing academic intervention services in grade [four] *three* to grade eight. Schools shall provide academic intervention services when students:

(i) score below the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics, social studies or science; *provided that for the 2010-2011 school year only, the following shall apply:*

(a) *those students scoring at or below a scale score of 650 shall receive academic intervention instructional services; and*

(b) *those students scoring above a scale score of 650 but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and shall no later than the commencement of the first day of instruction either post to its Website or distribute to parents in writing a description of such process.*

(ii) are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(iii) are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(3) . . .

(4) Description of academic intervention services.

(i) . . .

(ii) The description of academic intervention services shall be approved by each local board of education by July 1, 2000. In the New York City School District, the New York City Board of Education may designate that the plans be approved by the chancellor or his designee or by community school boards for those schools under their jurisdiction. Beginning July 1, 2002 and every two years thereafter, each school district shall review and revise its description of academic intervention services based on student performance results; *except that this requirement shall not apply to student performance results for the 2010-2011 school year, which shall be excluded from such review.*

(iii) . . .

(iv) . . .

(5) . . .

(6) . . .

**Text of proposed rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** John B. King, Jr., Senior Deputy Commissioner P-12, State Education Department, State Education

---



---

## Education Department

---



---

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

**Academic Intervention Services (AIS)**

**I.D. No.** EDU-31-10-00004-P

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

**Proposed Action:** Amendment of section 100.2(ee) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

**Subject:** Academic Intervention Services (AIS).

**Purpose:** To establish modified requirements for AIS during the 2010-2011 school year.

**Text of proposed rule:** Subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective November 10, 2010, as follows:

(ee) Academic intervention services.

(1) Requirements for providing academic intervention services (AIS) in kindergarten to grade [three] *two*. Schools shall provide academic intervention services to students in kindergarten to grade [three] *two* when such students:

(i) are determined, through a district-developed or district-adopted procedure that meets State criteria and is applied uniformly at each grade level, to lack reading readiness based on an appraisal of the student, including his/her knowledge of sounds and letters; or

(ii) are determined, through a district-developed or district-

Building Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

#### **Regulatory Impact Statement**

##### 1. STATUTORY AUTHORITY:

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

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

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of education.

Education Law section 3204(3) provides for the courses of study in the public schools.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to academic intervention services (AIS).

##### 3. NEEDS AND BENEFITS:

The proposed amendment would establish modified requirements for the provision of AIS during the 2010-2011 school year based on several factors, including: (1) the change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency; (2) the fact that such changes will not be announced to the field until late July or early August; and (3) the fiscal impact that school districts may experience because of the increase in the number of students required to receive AIS. The purpose of the proposed amendment is to provide flexibility to school districts in providing AIS during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

##### 4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

##### 6. PAPERWORK:

The proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

##### 7. DUPLICATION:

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

##### 8. ALTERNATIVES:

There were no significant alternatives and none were considered.

##### 9. FEDERAL STANDARDS:

There are no related federal standards.

##### 10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date.

#### **Regulatory Flexibility Analysis**

##### 1. EFFECT OF RULE:

The proposed amendment applies to each school district within the State.

##### 2. COMPLIANCE REQUIREMENTS:

The proposed amendment establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold

districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

### 3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

### 4. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

### 6. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendment is to provide flexibility to school districts in providing academic intervention services (AIS) during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

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

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

### *Rural Area Flexibility Analysis*

#### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. As part of the modified requirements, the proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-2011 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010, and to either post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

Specifically, the proposed amendment provides that for the 2010-2011 school year only:

(1) Students scoring at or below a scale score of 650 must receive academic intervention instructional services.

(2) Students scoring above a scale score of 650 but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2010-11 school year to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-10, and shall post to its Website or distribute to parents in writing a description of such process no later than the commencement of the first day of instruction.

(4) In recognition of the effects on school districts of a change in cut scores for such school year, a waiver is given for the 2010-2011 school year from the requirement that school districts review and revise their description of AIS based on student performance results.

The proposed rule imposes no additional professional services requirements on school districts in rural areas.

### 3. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored above a scale score of 650 but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2009-2010. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2010-2011 school year.

### 4. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendment is to provide flexibility to

school districts in providing academic intervention services (AIS) during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

#### 5. RURAL AREA PARTICIPATION:

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

#### Job Impact Statement

The proposed amendment establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency.

The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

#### Academic Intervention Services (AIS)

**I.D. No.** EDU-31-10-00005-P

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

**Proposed Action:** Addition of section 100.2(ee)(7) to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

**Subject:** Academic Intervention Services (AIS).

**Purpose:** To allow a school district to provide a Response to Intervention program in lieu of providing AIS under specified conditions.

**Text of proposed rule:** Paragraph (7) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is added, effective November 10, 2010, as follows:

(7) *Notwithstanding the provisions of this subdivision, a school district may provide a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided that:*

(i) *the RTI program is provided in a manner consistent with subdivision (ii) of section 100.2 of this Part;*

(ii) *the RTI program is made available at the grade levels and subject areas (reading/math) for which students are identified as eligible for AIS;*

(iii) *all students who are otherwise eligible for AIS shall be provided such AIS services if they are not enrolled in the RTI program; and*

(iv) *for the 2010-2011 school year, the school district shall submit to the Department, no later than December 15, 2010, a signed statement of assurance that the services provided in the RTI program meet the requirements of this paragraph; and for each school year thereafter, the school district shall submit to the Department no later than September 1st of such school year, a signed statement of assurance that the services provided under the district's RTI program meet the requirements of this paragraph.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** John B. King, Jr., Senior Deputy Commissioner P-12, State Education Department, State Education Building Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

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

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

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of education.

Education Law section 3204(3) provides for the courses of study in the public schools.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to academic intervention services (AIS).

##### 3. NEEDS AND BENEFITS:

The proposed amendment affords flexibility to school districts in providing AIS by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing AIS to eligible students, provided specified conditions are met. Specifically, the amendment would allow for a school district to:

(1) continue with a current AIS model, or

(2) move to or expand on an RTI model, or

(3) use a blended approach of AIS and RTI (ex: RTI in lower grades, AIS in upper grades).

##### 4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided specified conditions are met. The proposed amendment will therefore reduce costs to school districts that choose this option, through consolidation of RTI and AIS services within a single program.

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district. The proposed amendment allows, but does not require, school districts to provide a RTI program in lieu of providing AIS to eligible students.

**6. PAPERWORK:**

For the 2010-2011 school year, a school district choosing the RTI option shall submit to the Department, no later than December 15, 2010 for the 2010-2011 school year, and no later than September 1st of each school year thereafter, a signed statement of assurance that the services provided in the RTI program meet the requirements of section 100.2(ee)(7).

**7. DUPLICATION:**

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

**8. ALTERNATIVES:**

There were no significant alternatives and none were considered.

**9. FEDERAL STANDARDS:**

There are no related federal standards.

**10. COMPLIANCE SCHEDULE:**

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date.

**Regulatory Flexibility Analysis****1. EFFECT OF RULE:**

The proposed amendment applies to each school district within the State.

**2. COMPLIANCE REQUIREMENTS:**

The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing AIS to eligible students, provided specified conditions are met. Specifically, the amendment would allow for a school district to:

(1) continue with a current AIS model, or

(2) move to or expand on an RTI model, or

(3) use a blended approach of AIS and RTI (ex: RTI in lower grades, AIS in upper grades).

School districts may, but are not required to, provide the RTI program in lieu of providing AIS. For the 2010-2011 school year, a school district choosing the RTI option shall submit to the Department, no later than December 15, 2010 for the 2010-2011 school year, and no later than September 1st of each school year thereafter, a signed statement of assurance that the services provided in the RTI program meet the requirements of section 100.2(ee)(7).

**3. PROFESSIONAL SERVICES:**

The proposed amendment imposes no additional professional service requirements on school districts.

**4. COMPLIANCE COSTS:**

The proposed amendment does not impose any costs on school districts. The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing AIS to eligible students, provided specified conditions are met. The proposed amendment will therefore reduce costs to school districts that choose this option, through consolidation of RTI and AIS services within a single program.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed rule does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

**6. MINIMIZING ADVERSE IMPACT:**

The proposed amendment does not impose any compliance requirements or costs on school districts. The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing AIS to eligible students, provided specified conditions are met. The proposed amendment will therefore reduce costs to school districts that choose this option, through consolidation of RTI and AIS services within a single program.

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

Comments on the proposed rule were solicited from school districts

through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

**Rural Area Flexibility Analysis****1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

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

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

The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided specified conditions are met. Specifically, the amendment would allow for a school district to:

(1) continue with a current AIS model, or

(2) move to or expand on an RTI model, or

(3) use a blended approach of AIS and RTI (ex: RTI in lower grades, AIS in upper grades).

School districts may, but are not required to, provide the RTI program in lieu of providing AIS. For the 2010-2011 school year, a school district choosing the RTI option shall submit to the Department, no later than December 15, 2010 for the 2010-2011 school year, and no later than September 1st of each school year thereafter, a signed statement of assurance that the services provided in the RTI program meet the requirements of section 100.2(ee)(7).

The proposed amendment imposes no additional professional service requirements on school districts.

**3. COMPLIANCE COSTS:**

The proposed amendment does not impose any costs on school districts. The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided specified conditions are met. The proposed amendment will therefore reduce costs to school districts that choose this option, through consolidation of RTI and AIS services within a single program.

**4. MINIMIZING ADVERSE IMPACT:**

The proposed amendment does not impose any compliance requirements or costs on school districts in rural areas. The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided specified conditions are met. The proposed amendment will therefore reduce costs to school districts that choose this option, through consolidation of RTI and AIS services within a single program.

**5. RURAL AREA PARTICIPATION:**

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

**Job Impact Statement**

The proposed amendment affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing AIS to eligible students, provided specified conditions are met.

The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

**Retention of Credit for the Architect Registration Examination for Intern Architects**

**I.D. No.** EDU-31-10-00018-P

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

**Proposed Action:** Amendment of section 69.2 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a) and 7304(4)(1)

**Subject:** Retention of credit for the Architect Registration Examination for intern architects.

**Purpose:** Align NYS requirements for licensure standards with current national NCARB standards regarding retention of ARE credit.

**Text of proposed rule:** 1. Paragraph (2) of subdivision (b) of section 69.2 of the Regulations of the Commissioner of Education is amended, effective November 10, 2010, as follows:

(2) Applicants who have passed a division of the examination prior to January 1, 2006 shall retain credit for that examination division [without time limitation] *up to and including June 30, 2014*. Applicants who have passed a division of the examination on or after January 1, 2006 shall retain credit for that division for a five-year period that begins on the date of the administration of that examination division.

2. Paragraph (3) is added to subdivision (b) of section 69.2 of the Regulations of the Commissioner of Education, effective November 10, 2010, as follows:

(3) *Extensions*

(i) *The department may allow an extension of the time period provided in paragraph (2) of this subdivision for an applicant to pass one or more divisions of the examination passed on or after January 1, 2006, where completion of all divisions of the examination by the applicant in accordance with the time limitations set forth in paragraph (2) of this subdivision is prevented by one or more of the following:*

- (a) *the birth or adoption of applicant's child;*
- (b) *the applicant has a serious medical condition;*
- (c) *the applicant is engaged in active duty with the Armed Forces; or*

(d) *the applicant is faced with extreme hardship or other circumstances beyond the control of the applicant.*

(ii) *An applicant shall request such an extension by submitting a written request to the department with supporting documentation for the department's review.*

(iii) *Upon a finding by the department that the conditions for an extension have been met, the department may in its discretion provide the applicant with an appropriate extension as follows:*

(a) *for the birth or adoption of applicant's child, a six month extension;*

(b) *for an applicant with a serious medical condition, a period of time not to exceed two years;*

(c) *for an applicant engaged in active duty with the armed forces, a time period equivalent to that of the applicant's active service in the armed forces, running from the end of the applicant's active service; or*

(d) *for extensions based upon an applicant's demonstration of personal hardship or other circumstances, a time period to be determined by the department.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Frank Munoz, Deputy Commissioner, Office of the Professions, NYS Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-1941, email: fmunoz@mail.nysed.gov

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

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

**Regulatory Impact Statement**

1. **STATUTORY AUTHORITY:**

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise and the State Education Department to administer admission to and regulate the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Paragraph (4) of subdivision (1) of section 7304 of the Education Law requires an applicant for licensure in architecture to pass a licensing examination in accordance with Commissioner's regulations.

2. **LEGISLATIVE OBJECTIVES:**

The proposed amendment carries out the intent of the aforementioned statutes by establishing licensing examination requirements related to the retention of credit for examination divisions passed prior to January 1, 2006.

3. **NEEDS AND BENEFITS:**

The purpose of the proposed amendment is to align the New York State requirements for licensure with current national standards set by the National Council of Architectural Registration Boards (NCARB) regarding the retention of credit for Architect Registration Examination (ARE) divisions passed prior to January 1, 2006.

In 2005, the Board of Regents enacted a five year rolling clock for Architecture Registration Examination (ARE) divisions passed on or after January 1, 2006. This rolling clock gave such applicants for licensure five years to pass all divisions of what was, at the time, a nine division exam. Under current regulations, an applicant may retain credit for ARE divisions passed prior to January 1, 2006 without time limitation. The proposed amendment provides that applicants who have passed a division of the ARE prior to January 1, 2006 will lose credit for those divisions if they have not successfully completed the ARE on or before June 30, 2014. This change would be consistent with a recent policy change by NCARB, which, at its Annual Meeting in 2009, voted to extend the five-year rolling clock provision to ARE divisions passed prior to January 1, 2006.

Since 1983, the ARE has transitioned four times. In June 1987, the ARE had a total of nine divisions, consisting of seven multiple choice and two graphic divisions, and was given in a paper and pencil format. By July 2008, the ARE had a total of 7 divisions, with the graphic divisions fully incorporated into the multiple choice divisions, and the exam is now taken and scored by computer. In between, there were transitions in 1988 and 1997 that both combined and split divisions, changing the configuration of the exam.

One of the critical components of licensure is an exam that ensures a minimum threshold of competency within the profession. Given the numerous division transitions within the ARE, enactment of a five-year rolling clock on divisions passed prior to January 1, 2006 will ensure that a candidate has passed the exam as a whole, and not numerous parts of different exams over many years.

The proposed amendment also contains extension provisions to the existing five year rolling clock requirement. The State Education Department may allow extensions to this rolling clock for the birth or adoption of an applicant's child, an applicant's serious medical condition, active service in the Armed Forces, or for extreme hardships or other circumstances beyond the applicant's control. If the Department finds that the conditions for an extension are met, the Department may grant an applicant an appropriate extension.

4. **COSTS:**

(a) **Costs to State Government:** The amendment will not impose any additional costs on State government. The State Education Department will continue to review whether applicants for licensure in

architecture meet licensure requirements. Existing staff and resources of the State Education Department will continue to be used for these tasks.

(b) Costs to local government: None.

(c) Costs to private regulated parties: In situations in which an applicant for licensure loses credit for a part of the examination because of the limitation included in the proposed regulation, that applicant would have to pay the fee to NCARB to retake that part of the exam.

(d) Cost to the regulatory agency: As stated above in Costs to State Government, the proposed amendment does not impose additional costs on the State Education Department.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment establishes requirements relating to licensure as an architect in New York. The amendment does not impose any program, service, duty or responsibility upon local governments.

#### 6. PAPERWORK:

The existing regulation contains no direct recordkeeping requirements.

#### 7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of this amendment. Therefore, the amendment does not duplicate other existing State or Federal requirements.

#### 8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

#### 9. FEDERAL STANDARDS:

There are no Federal standards concerning the subject matter of this amendment.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date, but it does include a transition period within the text of regulation itself. No additional period of time is necessary to enable regulated parties to comply.

#### *Regulatory Flexibility Analysis*

The proposed amendment relates to retention of credit for the Architect Registration Examination for intern architects. The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments, or have any adverse economic effect on them.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. This proposed regulation affects 2,630 candidates for licensure, and 1,759 of those candidates reside in New York. The Department estimates that about 103 will come from a rural county of New York State.

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

The proposed amendment relates to the retention of credit for the Architect Registration Examination (ARE) for intern architects. The proposed amendment does not impose a need for professional services.

##### 3. COSTS:

The proposed amendment will impose additional costs to applicants who may need to take additional divisions of the ARE. The current cost for each division of the ARE costs \$210.

##### 4. MINIMIZING ADVERSE IMPACT:

The proposed regulation amends section 69.2 of the Regulations of the Commissioner of Education pertaining to the examination require-

ments for licensure as an architect. The licensure requirements are in place to ensure minimal competency in newly licensed professionals and thereby safeguard the public. The statutory requirements for licensure in New York State do not make exceptions for individuals who live or work in rural areas. The Department has determined that, insofar as the proposed regulation limits the time period for which credit for passed divisions of the ARE is retained, the proposed amendment shall apply to all applicants seeking licensure as an architect in New York State, regardless of their geographic location, to help ensure minimum competency for licensure across the State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered. In order to minimize any adverse impact from the five-year limitation for a candidate to pass all divisions of the exam, the proposed amendment includes a provision for the granting of extensions in certain specified circumstances.

#### 5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing all parties having an interest in the practice of architecture. Included in this group was the State Board for Architecture and professional associations representing the architecture profession. These groups have members who live or work in rural areas. Each organization has been provided with notice of the proposed rule making and an opportunity to comment.

#### *Job Impact Statement*

The purpose of the proposed amendment is to align the New York State requirements for licensure with current national standards set by the National Council of Architectural Registration Boards (NCARB) regarding the retention of credit for Architect Registration Examination (ARE) divisions passed prior to January 1, 2006 and extensions to the existing five year rolling clock. These regulatory changes will have no effect on the number of jobs or employment opportunities in the field of architecture or any other field.

Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Reference and Research Library Resources Systems

**I.D. No.** EDU-31-10-00019-P

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

**Proposed Action:** Amendment of section 90.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 215(not subdivided), 254(not subdivided), 255(1 through 5), 272(2) and 273(not subdivided)

**Subject:** Reference and research library resources systems.

**Purpose:** To update terminology and clarify procedures relating to the functions of and State aid for reference and research libraries.

**Text of proposed rule:** 1. Subdivision (a) of section 90.5 of the Regulations of the Commissioner of Education is amended, effective November 10, 2010, as follows:

(a) Governance.

(1) The trustees shall employ a full-time director who is a trained professional librarian and who has had at least eight full years of *post-masters of library science* professional library experience, at least two years of which shall have been in an administrative capacity, or equivalent experience as determined by the commissioner, and who holds, or is eligible for, certification under section 90.7 of this Part.

(2) Prior to commencement of his or her duties, the treasurer of a reference and research library resources system, appointed pursuant to paragraph (1) of subdivision (c) of section 90.6 of this Part, shall [execute and file with the trustees an official undertaking in such sum] *be bonded with such penalty and sureties* as the board shall direct and approve.

(3) *Voting. Each voting member institution of a reference and research library resources system shall have one vote in the election of each trustee at the annual meeting, and each member institution shall designate an official representative who shall have the authority to cast the member institution's vote.*

2. Subdivision (b) of section 90.5 of the Regulations of the Commissioner of Education is amended, effective November 10, 2010, as follows:

(b) Membership.

[(1) Criteria. (i) Each reference and research library resources system shall file with the commissioner for his approval, as an amendment to its plan of service, its minimum criteria for membership.

(ii) Each reference and research library resources system shall file with the commissioner for his approval, as an amendment to its plan of service, each new application for membership in the reference and research library resources system.

(iii) Each reference and research library resources system petitioning the commissioner for approval of a plan of service amendment to add a new member shall demonstrate how such new member will improve the library resources presently available to the research community in the area of the system and/or will bring improved reference and research services to the users of such new member.

(iv) (i) Each reference and research library resources system shall include all public library systems which provide service within the area served by the system and which have applied for membership and all school library systems some part of which falls within the area served by the system and which have applied for membership.

[(v) (ii) Each reference and research library resources system may also include public, school, free association, *hospital*, and Indian libraries, libraries of educational agencies, libraries of nonprofit organizations, and other special libraries that provide service within the area served by the system, provided they meet the criteria for membership [as contained in an amendment to the system plan of service approved by the commissioner pursuant to subparagraph (i) of this paragraph] *approved in the annual report* except that no public, free association or Indian library which is not a member of a public library system or school library which is not a member of a school library system shall be eligible for membership in a reference and research library resources system.

[(vi) Provisional approval of any new member of a reference and research library resources system may be given during the period December 31, 1980 to December 31, 1982, subject to review and redetermination after December 31, 1982.

(2) Voting. Each member institution of a reference and research library resources system shall have one vote in the election of each trustee at the annual meeting, and each member institution shall designate an official representative who shall have the authority to cast the member institution's vote.]

3. Subdivision (c) of section 90.5 of the Regulations of the Commissioner of Education is amended, effective November 10, 2010, as follows:

(c) Plan of service.

(1) Each reference and research library resources system shall submit for approval by the commissioner a plan of service in a form *and by a date* [to be] prescribed by [him] *the commissioner*. Such plan shall be [revised periodically as determined by the commissioner] *developed and kept current through revisions made with the ongoing participation of members in the region. The plan of service defines the mutual commitments, responsibilities and obligations of the reference and research library resources system and its members in meeting the service needs of the area served and statewide library service goals.*

(2) In addition to the information required by paragraph d of subdivision 2 of section 272 of the Education Law, the plan shall include, but need not be limited to:

(i) [a description of regional resources, including their variety in format and subject matter;

(ii) a description of programs to meet needs in services, materials and facilities;

[(iii) (ii) a description of the system's efforts to [fully use] *maximize and leverage local resources*, responsibility, initiative and support of library service.[s, and the manner in which] State aid [will assist their] *should be used in the stimulation of local efforts*, but not [be used] as their substitute;

[(iv) (iii) an assurance that public funds will be utilized economically and efficiently;

[(v) (iv) the means by which the system will assure compatibility of its computerized and other technical operations with those of other library systems in the State and the New York State Library;

[(vi) (v) the identification of special client groups, their needs, and the means for meeting these needs;

[(vii) (vi) a description of the means for locating library materials within the system area and the procedures for accepting, verifying and responding to loan requests, including delivery;

[(viii) an indication that the plan is compatible with the approved plans of service of other library systems in the region, as demonstrated by evidence of appropriate consultation with public library systems, school library systems and the regional intersystem cooperative network; and

(ix) (vii) [evidence that service programs are compatible with the

Regional Medical Library Network or other special library networks which also serve member libraries.] *an indication of the manner in which the reference and research library resources system strengthens the programs of its members;*

(viii) *evidence that all types of members in the region participate in the development of the plan and that the plan balances the needs of all types of members; and*

(ix) *activities involving professional development, education, and training.*

[(3) Any contract relating to library services into which the system enters with its member libraries, other library systems, consortia or networks shall be considered an amendment to the plan of service, and shall be subject to the prior approval of the commissioner.]

(d) Reports. . . .

**Text of proposed rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Bernard A. Margolis, St. Librarian & Asst. Comm. for Library, State Education Department, Cultural Education Center, Room 10C34, 222 Madison Avenue, Albany, NY 12230, (518) 474-5930, email: ppaolucc@mail.nysed.gov

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

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

**Regulatory Impact Statement**

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the education supervision of the State and require reports from such schools.

Section 254 of the Education Law authorizes the Regents to fix standards of library service for public libraries.

Section 255 of the Education Law provides for the establishment of public libraries and cooperative library systems.

Section 272(2) of the Education Law defines "reference and research library resources systems" and sets forth the conditions under which they are entitled to State aid. Section 272(2)(e) authorizes the Commissioner to adopt regulations to provide the standard of service with which public library systems must comply.

Section 273 of the Education Law provides for state aid to libraries and library systems providing service under an approved plan.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by updating and clarifying certain terminology relating to the functions of and State aid for reference and research library resources systems.

3. NEEDS AND BENEFITS:

The proposed amendment is needed to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations relating to reference and research library resources systems. Specifically, the proposed rule expands the definition of plan of service and more accurately reflects the information to be included in a plan of service in order to be consistent with the description in other library system regulations; the requirements for a full-time director are clarified; and references to obsolete practices and terms are omitted; in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

4. COSTS:

(a) Costs to the State government. The amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local government: The proposed amendment will not impose any additional costs upon local government.

(c) Costs to private, regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment merely clarifies procedural requirements and updates certain terminology in section 90.5 of the Commissioner's Regulations relating to reference and research library resources systems, in order to accurately reflect the statutory intent and current implementation of Education Law section 272. The proposed amendment does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, ser-

vice, duty or responsibility upon local governments. The proposed amendment is merely needed to clarify procedural requirements and update certain terminology in section 90.5 of the Commissioner's Regulations, in order to accurately reflect the statutory intent and current implementation of Education Law section 272.

**6. PAPERWORK:**

The proposed amendment does not require any additional paperwork requirements.

**7. DUPLICATION:**

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

**8. ALTERNATIVES:**

The proposed amendment merely updates procedural requirements and clarifies certain terminology relating to reference and research library resource systems, in order to accurately reflect the statutory intent and current implementation of Education Law section 272. There were no significant alternatives to the proposed amendment, and none were considered.

**9. FEDERAL STANDARDS:**

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

**10. COMPLIANCE STANDARDS:**

The proposed amendment would take effect on its stated effective date. It is anticipated that the regulated parties would come into compliance with the amendment on or immediately following such date. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

**Regulatory Flexibility Analysis**

**(a) Small Businesses:**

The purpose of the proposed amendment is to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations, relating to the approval of reference and research library resources systems, in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute. The amendment does not impose any reporting, recordkeeping, or compliance requirements on small businesses and will not have an adverse economic impact on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one was not prepared.

**(b) Local Governments:**

**1. EFFECT OF RULE:**

The proposed amendment will affect all counties, cities, villages, towns, school districts or other body authorized to levy and collect taxes, which have established reference and research library resources systems. The reference and research library resources systems (3Rs) are State-funded regional library systems chartered by the New York State Board of Regents and designated to support improved access to information for the people of New York through resource sharing among 23 public library systems, 41 school library systems and over 900 academic, hospital, law, business, large public and special libraries.

**2. COMPLIANCE REQUIREMENTS:**

The amendment does not directly impose any compliance requirements on local governments. The proposed amendment is needed to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations relating to reference and research library resources systems, in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

Specifically, the proposed rule expands the definition of plan of service and more accurately reflects the information to be included in a plan of service in order to be consistent with the description in other library system regulations, the requirements for a full-time director are clarified, and references to obsolete practices and terms are omitted.

**3. PROFESSIONAL SERVICES:**

The proposed amendment applies to reference and research library resources systems and imposes no additional professional service requirements on local governments.

**4. COMPLIANCE COSTS:**

The proposed amendment does not impose any costs on local governments. The proposed amendment merely updates certain terminology and clarifies procedural requirements relating to reference and research library resources systems, in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

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

**6. MINIMIZING ADVERSE IMPACT:**

The proposed amendment does not impose any additional compliance requirements or costs on local governments. The proposed amendment merely updates certain terminology and clarifies procedural requirements in the Commissioner's Regulations relating to reference and research library resources systems, in order to accurately reflect the statutory intent and current implementation of section 272 of the Education Law. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on regulated parties.

**7. LOCAL GOVERNMENT PARTICIPATION:**

Comments on the proposed rule were solicited from reference and research library resources systems directors in various regions of the State.

**Rural Area Flexibility Analysis**

**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment will apply to the nine reference and research library resources systems in New York State, including reference and research library resources systems located in the 44 rural counties with less than 200,000 inhabitants and 71 towns in urban counties with a population density of 150 per square mile or less. The reference and research library resources systems (3Rs) are State-funded regional library systems chartered by the New York State Board of Regents and designated to support improved access to information for the people of New York through resource sharing among 23 public library systems, 41 school library systems and over 900 academic, hospital, law, business, large public and special libraries.

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

The purpose of the proposed amendment is to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations, relating to reference and research library resources systems, in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute. The proposed amendment will not impose any additional reporting, recordkeeping, or other compliance requirements or professional services requirements on reference and research library resources systems located in rural areas.

Current operations of library systems are more accurately reflected and references to obsolete practices and terms are omitted.

**3. COSTS:**

The proposed amendment does not impose any costs on reference and research library resources systems located in rural areas. The proposed amendment merely updates certain terminology and clarifies procedural requirements relating to reference and research library resources systems, in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

**4. MINIMIZING ADVERSE IMPACT:**

The proposed amendment does not impose any additional compliance requirements or costs on reference and research library resources systems located in rural areas. The proposed amendment merely updates certain terminology and clarifies procedural requirements in the Commissioner's Regulations reference and research library resources systems, in order to accurately reflect the statutory intent and current implementation of Education Law section 272. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on regulated parties. In order to ensure uniform, State-wide high standards for reference and research library resources systems, the proposed amendment applies State-wide and, accordingly, it was not possible to provide for a lesser standard or exemption for rural areas.

**5. RURAL AREA PARTICIPATION:**

The proposed amendment has been sent for comment to reference and research library resources systems directors in various regions of the State, including those in rural areas.

**Job Impact Statement**

The purpose of the proposed amendment is to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations, relating to reference and research library resources systems, in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute. The amendment will not affect jobs or employment opportunities in this or any field. Because it is evident from the nature of the proposed rule that it will have no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

## Department of Environmental Conservation

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Proposed Amendments Will Amend Subparts 217-1 and 217-4, and Proposes a New Subpart 217-6

I.D. No. ENV-31-10-00015-P

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

**Proposed Action:** Amendment of Part 217 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** The proposed amendments will amend Subparts 217-1 and 217-4, and proposes a new Subpart 217-6.

**Purpose:** The revisions will end the NY Transient Emissions Short Test (NYTEST) program and update the NY Vehicle Inspection Program.

**Public hearing(s) will be held at:** 10:00 a.m., September 7, 2010 at NYSDEC, 625 Broadway, Public Assembly Rm. 129-A, Albany, NY; 10:00 a.m., September 8, 2010 at NYSDEC Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY.

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

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

**Text of proposed rule:** Amend the title of Subpart 217-1 as follows:

Subpart 217-1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements *Until December 31, 2010*

The remainder of Subpart 217-1 thru 217-3.3(j) remains unchanged.

Amend the title of Subpart 217-4 as follows:

Subpart 217-4, Inspection and Maintenance Program Audits *Until December 31, 2010*

The remainder of Subpart 217-4 thru 217-5.8(b) remains unchanged.

Amend Part 217 by adding a new Subpart 217-6 as follows:

Subpart 217-6, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements *Beginning January 1, 2011*

Section 217-6.1, Definitions.

(a) 'Certified Motor Vehicle Inspector'. A person who has been issued a certificate by the Commissioner of Motor Vehicles under section 304-a of the VTL to perform motor vehicle emissions inspections in New York State. Emissions testing requirements for Certified Motor Vehicle Inspectors are listed within 15 NYCRR 79.1.

(b) 'Department'. The New York State Department of Environmental Conservation.

(c) 'Gross vehicle weight rating (GVWR)'. The value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

(d) 'Diagnostic Trouble Code (DTC)'. An alphanumeric identifier for a fault condition identified by a vehicle's on-board diagnostic system.

(e) 'Light duty truck 1 (LDT1)'. Any motor vehicle rated at 3,750 pounds GVWR or less, and which has a basic frontal area of 45 square feet or less, which is:

(1) designed primarily for transporting property, or is a derivation of such a vehicle;

(2) designed primarily for transporting people, and has a capacity of more than 12 persons; or

(3) available with special features enabling off-street or off-highway operation and use.

(f) 'Light duty truck 2 (LDT2)'. Any motor vehicle rated above 3,751 pounds GVWR, but not greater than 8,500 pounds GVWR, and which has a basic frontal area of 45 square feet or less, which is:

(1) designed primarily for transporting property, or is a derivation of such a vehicle;

(2) designed primarily for transporting people, and has a capacity of more than 12 persons; or

(3) available with special features enabling off-street or off-highway operation and use.

(g) 'Model year'. The manufacturer's annual production period for each engine family which includes January 1st of such calendar year, or, if the manufacturer has no production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

(h) 'Motor vehicle'. Motor vehicle shall have the same meaning as all of the following terms: 'motor vehicle' in section 125 of the Vehicle and Traffic Law (VTL) except for those vehicles specifically set forth in subdivision 15 NYCRR 79.2.

(i) 'Official emissions inspection station'. A facility that has obtained a license from the Commissioner of Motor Vehicles under section 303 of the VTL and 15 NYCRR 79.1.

(j) 'Passenger Car'. Passenger car means any motor vehicle designed with a capability for transportation of persons and having a design capacity of 12 persons or less.

Section 217-6.2, Applicability.

(a) This Subpart applies to all nonelectric powered motor vehicles registered or primarily operated in New York State.

Section 217-6.3, Motor vehicle exhaust and emission standards and inspection procedure.

(a) In accordance with the applicability set forth in section 217-6.2 of this Subpart, no person who owns, operates, or leases a nonelectric powered passenger car or light-duty truck subject to the requirements of this section shall operate said vehicle, or allow or permit it to be operated, in such a manner that:

(1) Effective January 1, 2011, for model year 1996 and newer non-diesel motor vehicles not greater than 8,500 pounds GVWR, the on-board diagnostic system:

(i) fails to function as designed; or

(ii) fails to complete diagnostic routines for necessary supported emission control systems; or

(iii) indicates that the malfunction indicator light fails to illuminate at the starter switch key-on-engine-off position; or

(iv) the malfunction indicator light is illuminated when the engine is running; or

(v) the malfunction indicator light is commanded to be illuminated and diagnostic trouble codes are stored; or

(vi) fails to function as originally designed due to the installation of aftermarket parts prohibited by Section 218-7 of this Title.

(2) Effective on January 1, 2012, for model year 1997 and newer diesel powered motor vehicles not greater than 8,500 pounds GVWR, the on-board diagnostic system:

(i) fails to function as designed; or

(ii) fails to complete diagnostic routines for necessary supported emission control systems; or

(iii) indicates that the malfunction indicator light fails to illuminate at the starter switch key-on-engine-off position; or

(iv) the malfunction indicator light is illuminated when the engine is running; or

(v) the malfunction indicator light is commanded to be illuminated and diagnostic trouble codes are stored; or

(vi) fails to function as originally designed due to the installation of aftermarket parts prohibited by Section 218-7 of this Title.

(b) In accordance with the applicability set forth in section 217-6.2 of this Subpart, any person who owns, operates, or leases a nonelectric powered motor vehicle subject to the requirements of this section shall have adjustments, repairs, or replacements made to said vehicle to ensure that the requirements of subdivision (a) of this section are met unless an emission inspection waiver is issued by the Department of Motor Vehicles pursuant to 15 NYCRR Part 79.25.

Section 217-6.4, Issuance of certificate of inspection

No official emissions inspection station or certified inspector may issue an emission certificate of inspection, as defined by 15 NYCRR 79.1, for a motor vehicle unless the motor vehicle of record has been inspected pursuant to, and meets the requirements of section 217-6.3 of this Subpart.

Section 217-6.5, Program audits

(a) All official emissions inspection stations shall be subject to audit by persons designated by the department to determine conformance with this Subpart.

(b) No person shall operate an official emissions inspection station using equipment and/or procedures that are not in compliance with department procedures and/or standards.

(c) The department may periodically conduct equipment audits of the official emissions inspection stations. During these audits, department personnel shall conduct quality control evaluations of the test equipment required by 15 NYCRR 79.9 to determine compliance with Section 217-6.3.

(d) All duties and obligations under this regulation are enforceable pursuant to article 71 of the Environmental Conservation Law.

**Text of proposed rule and any required statements and analyses may be obtained from:** James J. Clyne, P.E., NYSDEC, Division of Air Resources, 2nd Floor, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: 217MVE@gw.dec.state.ny.us

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

**Public comment will be received until:** September 15, 2010.

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

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

The Department of Environmental Conservation (Department) proposes to amend 6 NYCRR Part 217, Motor Vehicle Emissions, to effect program changes to the existing New York Transient Emissions Short Test (NYTEST) and New York Vehicle Inspection Program (NYVIP) motor vehicle inspection and maintenance (I/M) programs. The Department proposes to end the NYTEST program on December 31, 2010 and to implement revised NYVIP program modifications beginning on January 1, 2011. NYVIP is a statewide (62 counties) program, while NYTEST is limited to vehicles registered within the nine-county New York Metropolitan Area (NYMA). NYMA includes Bronx, Kings, Nassau, New York, Richmond, Rockland, Queens, Suffolk, and Westchester Counties.

The statutory authority for this proposal is the Environmental Conservation Law (ECL) sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105. The Commissioner of Environmental Conservation has broad authority to regulate air pollution, including emissions from motor vehicles. The Legislature bestowed on the Department the power to formulate, adopt, promulgate, amend, and repeal regulations for preventing, controlling, or prohibiting air pollution.

The proposal would amend Subpart 217-1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements. The Department proposes to end the NYTEST program on December 31, 2010.

The proposal would amend Subpart 217-4, Inspection and Maintenance Program Audits. The Department proposes to end the NYTEST program audit requirements on December 31, 2010.

The proposal would implement several NYVIP program modifications beginning on January 1, 2011 through a new Subpart 217-6, "Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Beginning January 1, 2011." The Department proposes an additional on-board diagnostic (OBDII) criterion that would cause a vehicle to fail the NYVIP emissions inspection if a vehicle was tampered with by the installation of aftermarket parts as prohibited by 6 NYCRR Part 218-7. The Department proposes mandatory statewide OBDII inspections for light-duty diesel powered vehicles effective on January 1, 2012. The proposal includes the clarification that OBDII inspection requirements apply to vehicles with a gross vehicle weight rating (GVWR) of 8,500 lbs. and less. Lastly, the Department proposes I/M program audit requirements under Section 217-6.5.

Due to the severity of the health effects associated with ground-level ozone, the federal Clean Air Act (Act) required the United States Environmental Protection Agency (EPA) to establish a National Ambient Air Quality Standard (NAAQS). On July 18, 1997, EPA promulgated a new ozone standard of 0.08 ppm averaged over an 8-hour period. EPA subsequently identified those "nonattainment areas" that do not comply with the health-based 8-hour ozone standard, which included several areas within New York State. Sections 182 and 184 of the Act mandate motor vehicle I/M programs for certain ozone nonattainment areas. As a result of these requirements, New York State implemented the NYTEST (1998) and NYVIP (2004) I/M programs. These programs are defined within New York State regulation under 6 NYCRR Part 217 and 15 NYCRR Part 79. The state regulations have been modified over time to incorporate revised federal I/M changes, including the requirement for OBDII testing.

Due to different federal I/M requirements, New York State (62 counties) has established two I/M program areas. The 9-county NYMA is subject to EPA's most stringent "high enhanced I/M performance standard." As a result, NYMA is currently subject to both tailpipe emissions testing (NYTEST) and OBDII testing requirements (NYVIP). NYTEST was implemented approximately seven years prior to NYVIP and required the purchase and installation of new equipment to perform transient, loaded-mode, tailpipe emissions testing. Initially, there were approximately 3,800 licensed inspection stations in NYMA, but the number of stations has declined to approximately 3,500 stations in 2009.

In 2001, EPA revised the federal I/M regulation<sup>1</sup> to require mandatory OBDII testing. OBDII inspection requirements apply to Model Year (MY) 1996 and newer, light-duty vehicles (< 8,500 lbs. gross vehicle weight rating, GVWR). As consequence, some vehicles that were previously subject to tailpipe testing became subject to OBD II checks. The Departments developed the statewide NYVIP OBDII program to address this federal requirement. Mandatory OBDII inspections through NYVIP were initially required in the Upstate I/M Area in December 2004, and later in NYMA during May 2005. Since May 2005, licensed inspection stations in NYMA

have been required by DMV regulation to operate both the NYTEST and NYVIP equipment. Idle and transient tailpipe emissions tests are completed through the NYTEST equipment, while OBDII and low enhanced emissions tests are completed through the NYVIP equipment.

A long standing emissions test exemption also affects the number of NYMA vehicles subject to NYTEST requirements. DMV regulation under 15 NYCRR Section 79.2(f) provides for an emissions test exemption for non-diesel vehicles that are 25 MYs old and older. This type of age exemption is referred to as a "rolling" model year exemption. With each new calendar year (i.e., January 1st), an entire model year becomes exempt. For example, MY 1985 vehicles that were inspected by NYTEST in 2009 became exempt from emission testing beginning on January 1, 2010. Because of the rolling 25-model year old exemption and the "fixed" model year (1996) applicability of OBDII, the number of NYMA vehicles subject to NYTEST inspection requirements has decreased each year.

The annual decline in NYTEST inspections has resulted in a corresponding reduced demand for the NYTEST inspection equipment. At this same time, the operational costs associated with the NYTEST equipment has increased, in part because of its age. The rising cost of maintaining the NYTEST network, to be offset by a rapidly declining number of vehicles subject to testing on that network, presents an economic situation that cannot be sustained. The Department has determined that the NYTEST program can end on December 31, 2010. NYMA will still maintain compliance with federal I/M requirements after this date with just the NYVIP I/M program.

On July 10, 2009, the Department submitted a NYMA I/M SIP revision to EPA with a proposed end of the NYTEST I/M program on December 31, 2010. Within this SIP revision, the Department provided a Mobile6 modeling demonstration for NYMA that compared volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>)<sup>2</sup> reductions from NYVIP (without NYTEST) against the EPA's high enhanced performance standard. Modeling comparisons were completed for the 2009, 2010, and 2011 ozone seasons. The Department's evaluation concluded that NYVIP I/M alone cannot comply with EPA's I/M performance standard during the 2009 or 2010 ozone seasons, but would comply during the 2011 ozone season. This determination included a ±0.02 gram per mile (gpm) emission level margin provided by federal regulation.

In addition to demonstrating compliance with the I/M performance standard requirements, the Department needed to meet the Act's Section 110(l) to ensure that ending the NYTEST program would not interfere with NYMA attainment, rate of progress, or reasonable further progress requirements. As such, the Departments ozone attainment SIPs (one-hour, eight-hour) needed to be addressed. The Department's inventory for the 8-hour ozone attainment demonstration (2008) had already accounted for the end of NYTEST on December 31, 2010. There can be no loss in I/M emission reductions since the same I/M modeling assumptions were used.

The approved NYMA one-hour ozone SIP (67 FR 5170, February 4, 2002), however, did not include any emission inventory projections beyond the original attainment year of 2007. The NYMA one-hour ozone SIP could not, and did not, account for the proposed end of NYTEST tailpipe emissions testing on December 31, 2010. The Department needed to address this potential loss of I/M emission reductions as the NYTEST I/M was adopted within the approved NYMA one-hour SIP. As part the 2009 I/M SIP, the Department addressed this projected loss of I/M reduction by ending NYTEST through the substitution of reductions gained from other control measure(s).

As noted above, NYTEST operational costs have increased since 1998. Ending the NYTEST program would result in a cost savings to the NYMA inspection stations by eliminating the need for NYTEST equipment maintenance/repairs and required use of calibration gas. In 2009, the annual cost for a NYTEST service agreement ranged from \$3,100-\$7,100 depending on the equipment provider.<sup>3</sup> The annual cost for calibration gas varies according to station usage and supplier pricing. The Department estimates that annual NYTEST calibration gas costs range within \$150-\$300.<sup>4</sup>

NYMA inspection stations may wish to remove their NYTEST equipment after the program ends. This cost would be borne by the station. Massachusetts had equipment very similar in size and function as the NYTEST equipment and their tailpipe testing program was discontinued in 2009. A contractor was selected to remove the units for an average unit cost of approximately \$1,100.<sup>5</sup> The removal and disposal of NYTEST equipment would be offset by the elimination of NYTEST operational (i.e., service, calibration gas) costs and to some extent by the additional availability of test bay space after dynamometer removal. A fact sheet outlining the proper disposal of the NYTEST equipment is being developed by the New York State Environmental Facilities Corporation's Small Business Environmental Assistance Program (SBEAP). The Department could realize a savings in personnel, travel, and equipment costs with the discontinuance of on-site NYTEST equipment audits when the NYTEST program ends. Presently, approximately eight full-time equivalent (FTE)

positions within the Department's Division of Air Resources (DAR) Central Office (Albany) and the Region 2 Office are assigned to complete NYTEST audits.

The Departments considered several alternatives to ending the NYTEST program, including alternate end dates, but these were determined infeasible based on the economic factors and federal I/M requirements discussed above. As a short term measure, a "NYTEST Shared Network" program was adopted through 15 NYCRR Part 79, whereas participating NYMA stations could refer NYTEST inspections to nearby stations. Stations participating in this on-going program are subject to DMV approval and additional program requirements within Part 79.

The Department proposes new Section 217-6.3 to clarify that NYVIP OBD II inspections are applicable to vehicle weights up to (and including) 8,500 pounds gross vehicle weight rating (GVWR). This clarification is needed to avoid confusion with a vehicle's registered weight. Registered weight may, or may not, correspond to GVWR. Intended OBD II inspections may not occur without this clarification. The proposed clarification is consistent with federal and California Air Resources Board (CARB) requirements that require vehicle manufacturers incorporate OBD II functionality based on GVWR.

The Department proposes, under new Section 217-6.3(a)(2), to require OBD II inspections of MY 1997 and newer light-duty diesel passenger cars and trucks, or light-duty vehicles (LDDVs). This proposal would become effective January 1, 2012, which provides sufficient time to modify and test the NYVIP inspection software before actual LDDV OBD II implementation. Inclusion of these vehicles will result in increased emphasis on maintenance and repair of vehicles with illuminated malfunction indicator lights (MILs). The proposed LDDV OBD II inspections would provide a statewide emissions reduction benefit, as these vehicles are currently exempt from emissions testing by 15 NYCRR Part 79 and 6 NYCRR Part 217. The Department estimates initial statewide emission reductions of as much as 63.25 tons per year (combined VOC and NO<sub>x</sub>) by adopting LDDV OBD II testing. Further, LDDVs are projected to become a larger percentage of the nation's light-duty fleet in the future, and the Department's proposal to require LDDV OBD II inspections is proactive in anticipation of this projected increase.

The Department completed an evaluation of the NYS DMV registration database to estimate the number of LDDVs potentially subject to statewide OBD II testing in 2012. This evaluation determined that the number of LDDVs could range between 9,500-36,000 vehicles due to the uncertainty of registered weight. The Department believes the initial number of LDDVs is closer to 9,500 vehicles with the number of LDDVs increasing each year with the addition of new (future) model years.

The cost of a NYVIP OBD II emissions inspection varies by I/M area. The Upstate and NYMA emissions inspection fees are presently \$11.00 and \$27.00, respectively. The Department also reviewed the States of New Hampshire and Connecticut LDDV inspection databases and estimates that the NYVIP LDDV OBD II failure rate would range between 11-14 percent. Owners of LDDVs that fail the OBD II inspection would be required to repair these vehicles and to pay for a re-inspection. The average repair cost for a vehicle failing an OBD II inspection was cited at \$370 within EPA's "High-Mileage Study."<sup>6</sup> The EPA estimate is consistent with average OBD II related repair costs referenced within state I/M program evaluation reports.

The Department proposes, under subparagraphs 217-6.3(a)(1)(vi) and 217-6.3(a)(2)(vi), an additional NYVIP criterion that would fail vehicles tampered with by the installation of aftermarket parts as prohibited by 6 NYCRR Part 218-7. Upon evaluation of completed NYVIP OBD II inspections, the Department identified inspections where vehicles have been modified by aftermarket software to disable previously "supported" OBD II monitors. Vehicles that fail for this criterion would need to be repaired to conform to the manufacturer's original OBD II software. The Department cannot estimate the number of affected vehicles at this time.

Local governments that own or operate vehicles in New York State are subject to the same requirements as private owners of vehicles as they are required to inspect their vehicles and to complete emissions-related repairs if necessary. The proposed changes to Part 217 do not impose a local government mandate. No additional paperwork or staffing requirements are expected. This is not a mandate pursuant to Executive Order 17.

<sup>1</sup> Code of Federal Regulations (CFR), Title 40, Chapter I, Subchapter C, Part 51, subpart S.

<sup>2</sup> New York State Implementation Plan, New York Metropolitan Area Enhanced I/M Program, June 2009, 14.

<sup>3</sup> Correspondence from Environmental Systems Products Holdings Inc., SPX Corporation, and Snap-on, April and May 2009.

<sup>4</sup> DEC field audit discussions, February 2010.

<sup>5</sup> MA RFR/Procurement ID EQE-900-007.

<sup>6</sup> Mobile Source Technical Review Subcommittee, Clean Air Act Advisory Committee, "High Mileage Study," November 2002.

### Regulatory Flexibility Analysis

#### 1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend Subparts 217-1 and 217-4, and proposes a new Subpart 217-6. The revisions will affect the existing New York Transient Emissions Short Test (NYTEST) and New York Vehicle Inspection Program (NYVIP) motor vehicle inspection and maintenance (I/M) programs. Each of these I/M programs require mandatory annual emissions inspections. NYVIP is a statewide (62 counties) program, while NYTEST is limited to vehicles registered within the nine-county New York Metropolitan Area (NYMA). NYMA includes Bronx, Kings, Nassau, New York, Richmond, Rockland, Queens, Suffolk, and Westchester Counties.

The Department proposes the following revisions as listed by Subpart:

Subpart 217-1: Motor Vehicle Enhanced Inspection and Maintenance Program Requirements - The Department proposes to end the NYTEST program on December 31, 2010. Subpart 217-1 will be revised to remain in effect until December 31, 2010.

Subpart 217-4: Inspection and Maintenance Program Audits - The Department proposes to end the NYTEST program on December 31, 2010. Subpart 217-4 will be revised to remain in effect until December 31, 2010.

New Subpart 217-6: Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Subject to Regulation Beginning January 1, 2011 - The Department proposes a new Subpart to establish revised I/M requirements following the end of the NYTEST I/M program on December 31, 2010. Proposed Subpart 217-6 includes: an additional OBD II criterion that would cause a vehicle to fail an inspection if a vehicle was tampered with as prohibited by Section 218; mandatory statewide OBD II inspections of light-duty diesel powered vehicles effective on January 1, 2012; clarification that OBD II inspection requirements apply to vehicles with a gross vehicle weight rating (GVWR) of 8,500 lbs. and less; and revised I/M program audit requirements.

#### 2. Compliance requirements:

Many licensed emissions inspection stations are small businesses. Licensed inspection stations in NYMA will be required to maintain and operate the existing NYTEST equipment until December 31, 2010. Beginning on January 1, 2011, the licensed NYMA station will no longer be required to perform NYTEST inspections, and these stations may elect to remove the NYTEST equipment. There are no specific requirements in the regulation that apply exclusively to local governments, although there are local governments that perform emissions inspections on their vehicles.

The Department proposes to adopt mandatory statewide on-board diagnostic (OBDII) testing of light-duty (? 8,500 lbs. GVWR) diesel-powered passenger cars and light-duty trucks, beginning with the 1997 model year (MY), effective on January 1, 2012. Owners of these vehicles will be subject to inspection fees, and possibly re-inspection fees and repair costs if the LDDV fails the OBDII inspection. Statewide, there will be a minor increase in inspection volume and repair business for licensed NYVIP stations.

Local governments that own and operate vehicles are subject to the same motor vehicle inspection requirements (NYTEST, NYVIP) as privately owned vehicles. Local governments are required to pay inspection fees and to repair their vehicles if necessary. The proposed revisions do not mandate any local government action.

#### 3. Professional services:

Professional services are not explicitly required by the proposed amendments. Licensed NYMA inspection stations, including some local governments, may elect to remove the NYTEST test equipment from their facilities after January 1, 2011. Thus, some professional services may be needed for equipment removal.

#### 4. Compliance costs:

Ending the NYTEST program will reduce the current operational costs of NYMA stations by eliminating the need for NYTEST equipment maintenance/repairs and the need to purchase calibration gas. NYMA stations currently have the option of paying for NYTEST equipment repairs on an "as needed" basis, or by entering into service contracts with their equipment provider. The Department estimates that 30 percent of the NYTEST stations purchased annual service agreements in 2009. The annual cost of a NYTEST service agreement varies by the service provider with the costs ranging from \$3,100-\$7,100 (2009). The Department estimates that NYMA stations would realize a \$5,400,000 annual savings in service agreement costs. This estimate assumes an average service agreement cost of \$5,100 and 1,050 stations (30 percent of 3,500). Note that most of the NYTEST stations do not purchase annual service contracts. Rather, they either pay for repairs as needed, or they purchase replacement parts when possible and complete their own repairs if possible. The cost of NYTEST repairs vary significantly depending on the nature of the repair, and the Department cannot reliably estimate these program costs.

Operation of the NYTEST equipment requires the use of calibration gases. A NYTEST station's annual cost for calibration gases will vary depending on the amount of calibration gas used and gas supplier pricing. The Department estimates annual NYTEST calibration gas cost to range within \$150-\$300. Using the current number of NYTEST stations (3,500) stations and an estimated annual cost of \$225 per station, an annual NYMA program savings of \$787,500 would be realized by the eliminating the need for NYTEST calibration gases.

NYTEST stations may decide at their option to remove the NYTEST equipment following the end of the program. The Department estimates this cost would be approximately \$1,100 based on similar decommissioning completed in Massachusetts in 2009.

The Department estimates the initial (2012) number of light-duty diesel vehicles (LDDVs) subject to the proposed OBDII inspections to be 9,500 vehicles statewide. The number of LDDV inspections would increase each year with the addition of new model years. LDDVs are currently exempt by 15 NYCRR Part 79 from emission testing, so affected vehicle owners would be subject to emission inspection fees and possibly vehicle repair and re-inspection costs.

A motorist's cost for a NYVIP OBD inspection currently varies by I/M area. The Upstate and NYMA emissions inspection fees are presently \$11.00 and \$27.00, respectively. Assuming these fees, an estimated 9,500 LDDVs, and an equal distribution between Upstate and NYMA LDDV registrations, the statewide cost in emissions inspection fees for LDDV OBDII inspections is \$180,500.

Based on reviews of other states' inspection databases, the Department estimates a NYVIP LDDV OBDII failure rate of 12 percent. Owners of LDDVs that fail the OBDII inspection would be required to repair these vehicles and to pay for a re-inspection. Assuming 9,500 LDDVs statewide and a 12 percent failure rate, the Department estimates that 1,140 LDDVs would fail the OBDII inspection in 2012. In general, OBDII-related repair costs are highly variable dependent upon the nature of the repair. An average repair cost of \$370 is believed to be representative based on an USEPA sponsored study. The annual statewide costs associated with repairing LDDV OBDII failures would be \$421,800 based on these assumptions. The estimated 1,140 LDDV failures would also require a NYVIP re-inspection. The Department estimates the first year cost (2012) of re-inspections to be \$21,660. This re-inspection estimate is based on an equal distribution of LDDVs OBD II failures between the Upstate and NYMA I/M areas; the current Upstate and NYMA emission re-inspection fees, and that only one re-inspection is required.

Vehicles that fail to additional OBDII failure criterion under proposed Subpart 217-6 would also be required to be repaired and re-inspected. The Department cannot estimate these costs at this time.

The Department does not envision any new costs to the +/- 10,000 licensed NYVIP inspection stations (statewide) as a result of the proposed Subpart 217-6 revisions.

New York State currently maintains personnel and equipment to administer the NYTEST program. The Department could realize a substantial savings in personnel, travel, and equipment costs with the discontinuance of on-site NYTEST equipment audits when the NYTEST program ends. Presently, approximately eight full-time equivalent (FTE) positions within the Department's Division of Air Resources (DAR) Central Office (Albany) and the Region 2 Office are assigned to complete NYTEST audits. The audit staff could be tasked to complete NYVIP desk (no travel) audits or be re-assigned to non-I/M functions.

##### 5. Minimizing adverse impact:

The end of the NYTEST program is anticipated to result in an overall cost savings to the licensed NYMA stations. Most of the inspection stations are small businesses. Licensed NYMA stations are not required by the regulation to remove the NYTEST equipment after the program ends, but they may choose to do so.

The additional statewide I/M revisions proposed under new Subpart 217-6 will be incorporated through the existing NYVIP equipment. No new costs are anticipated for the licensed NYVIP stations to implement Subpart 217-6.

There will be no adverse impact on local governments who own or operate vehicles in the State because they are subject to the same requirements as those imposed on privately owned vehicles.

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

The Department conducted an administrative hearing on May 13, 2009 in Long Island City, NY for the proposed NYMA I/M SIP revision to end the NYTEST program on December 31, 2010. The public notice for this hearing was published in the Environmental Notice Bulletin and the State Register on April 8, 2009. The hearing notice was also published in the April 8, 2009 editions of the New York Post, Newsday, Albany Times Union, Glens Falls Post Star, Syracuse Post, Rochester Democrat, and Buffalo News. The Department's Office of Environmental Justice informed potentially interested groups of the Department's proposed action prior to the May 2009 hearing. The Department's I/M staff attended

the hearing and answered questions related to the proposed NYMA I/M SIP.

The Department met with the three NYTEST equipment providers on June 18, 2009 in Albany, NY to advise them of the NYMA I/M SIP submission, the proposed December 31, 2010 NYTEST end date, and to review remaining NYTEST program requirements.

The Department participated at a DMV advisory board meeting held in Yonkers, NY on October 29, 2009 with associations representing NYMA inspection and repair stations. The Department provided a summary of the proposed NYMA I/M SIP revision and answered questions from the attendees.

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

##### 7. Economic and technological feasibility:

There are fewer vehicles subject to NYTEST inspections each year, but NYTEST operational costs have increased during the same time. Ending the NYTEST program is economically feasible as licensed NYMA inspection stations will realize a cost savings. New York State can still meet its air quality obligations for NYMA after the end of NYTEST I/M.

The proposed revisions under new Subpart 217-6 are technically feasible, as OBDII inspection of non-diesel light-duty vehicles have been completed through NYVIP since 2004. Similar to this proposal, other states (CA, CT, MA, MO, NH, OR, VT) have integrated light-duty diesel OBDII inspections into existing I/M programs.

##### Rural Area Flexibility Analysis

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

The proposed rules apply to the entire State. The revisions will affect mandatory annual emissions inspections completed under the existing New York Transient Emissions Short Test (NYTEST) and the New York Vehicle Inspection Program (NYVIP) motor vehicle inspection and maintenance (I/M) programs. NYVIP is a statewide (62 counties) program, while NYTEST is limited to vehicles registered within the nine-county New York Metropolitan Area (NYMA). NYMA includes Bronx, Kings, Nassau, New York, Richmond, Rockland, Queens, Suffolk, and Westchester counties. None of the proposals target rural areas specifically.

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subparts 217-1 and Subpart 217-4, and proposes a new Subpart 217-6, as follows:

Subpart 217-1: The Department proposes to end the NYTEST program on December 31, 2010. The existing Subpart 217-1 will be revised to remain in effect until December 31, 2010.

Subpart 217-4: The Department proposes to end the NYTEST program on December 31, 2010. The existing Subpart 217-4 will be revised to remain in effect until December 31, 2010.

New Subpart 217-6: The Department proposes a new Subpart to establish revised I/M requirements beginning on January 1, 2011. Subpart 217-6 includes: an additional OBDII criterion that would cause a vehicle to fail an inspection if a vehicle was tampered with as prohibited by Section 218-7; mandatory statewide OBDII inspections of light-duty diesel powered vehicles effective on January 1, 2012; a clarification that OBDII inspection requirements apply to vehicles with a gross vehicle weight rating (GVWR) of 8,500 lbs. and less; and revised I/M program audit requirements.

The most significant change proposed is the end of the NYTEST I/M program within NYMA on December 31, 2010. There are few rural areas located within the 9-county NYMA.

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

The proposed I/M program revisions will be administered by the New York State Departments of Environmental Conservation and Motor Vehicles. There are no recordkeeping or other compliance requirements that apply exclusively to rural areas.

Any person operating a registered motor vehicle applicable to the emissions inspection requirements under existing Subpart 217-1 or proposed Subpart 217-6 are/will be required to have their vehicle inspected prior to registration renewal. An additional OBDII failure requirement is proposed under Subpart 217-6 that would result in vehicles requiring repair to pass the statewide OBDII inspection. Similarly, the applicability of OBDII inspections for light-duty diesel vehicles, also proposed under Subpart 217-6, will require owners to pay for emission inspections, and repairs may be necessary for failing vehicles.

Professional services are not specifically required by the proposed rules. Following the end of the NYTEST program on December 31, 2010, some NYMA stations may contract for professional services to remove the NYTEST equipment.

##### 3. Costs:

The proposed regulations will not result in any additional costs that apply exclusively to rural areas.

The end of the NYTEST program will result in a cost savings to licensed NYMA inspection stations through the elimination of NYTEST operational costs. Stations are currently required to purchase calibration gases and to complete NYTEST equipment maintenance and/or repairs. In 2009, there were approximately 3,500 NYTEST inspection stations. The Department estimates that the annual station cost to purchase NYTEST calibration gas ranged within \$150-\$300 per station. The annual station cost to purchase an optional service contract from a NYTEST vendor ranged from \$3,100-\$7,400 (2009).

NYTEST stations may decide to remove its NYTEST equipment following the end of the program on December 31, 2010. The Department estimates this cost would be approximately \$1,100 based on similar decommissioning completed in Massachusetts in 2009.

The Department estimates the initial number (2012) of light-duty diesel vehicles (LDDVs) subject to the OBDII inspections to be approximately 9,500 vehicles statewide. The number of LDDV inspections would increase each year with the addition of new model years. LDDVs are currently exempt by 15 NYCRR Part 79 from emissions testing, so affected vehicle owners would be subject to costs associated with emissions inspection fees and possibly vehicle repairs and re-inspections.

A motorist's cost for a NYVIP OBD inspection currently varies by I/M area. The Upstate and NYMA emissions inspection fees are presently \$11.00 and \$27.00, respectively. Assuming these fees, an estimated 9,500 LDDVs, and an equal distribution between Upstate and NYMA LDDV registrations, the statewide cost in emissions inspection fees for LDDV OBDII inspections is \$180,500.

Based on reviews of other states' inspection databases, the Department estimates a NYVIP LDDV OBDII failure rate of 12 percent. Owners of LDDVs that fail the OBDII inspection would be required to repair these vehicles and to pay for a re-inspection. Assuming 9,500 LDDVs statewide and a 12 percent failure rate, the Department estimates that 1,140 LDDVs would fail the OBDII inspection in 2012. OBDII-related repair costs are highly variable depending on the nature of the repair. An average repair cost of \$370 referenced in an USEPA report is believed to be representative. The annual statewide cost associated with repairing LDDV OBDII failures would be \$421,800 using these assumptions.

The estimated 1,140 LDDV failures would also require NYVIP re-inspections. The Department estimates the first year cost (2012) of re-inspections to be \$21,660 based on the following: an equal distribution of LDDVs OBD II failures between the Upstate and NYMA I/M areas; the current Upstate and NYMA emission re-inspection fees, and that a failed LDDV would require a single re-inspection.

Vehicles that fail to additional OBDII failure criterion under proposed Subpart 217-6 would also be required to be repaired and re-inspected. The Department cannot estimate these costs at this time.

The Department does not envision any new costs to the +/- 10,000 licensed NYVIP inspection stations (statewide) as a result of the proposed Subpart 217-6 revisions.

#### 4. Minimizing adverse impact:

The proposed changes will not adversely impact rural areas. Those licensed NYMA inspection stations located within rural areas are expected to realize an overall savings in operational costs following the end of NYTEST on December 31, 2010. The proposed Subpart 217-6 changes can be incorporated into the existing statewide NYVIP inspection equipment without cost to the +/- 10,000 licensed NYVIP stations. The cost of vehicle inspections and repairs cannot be minimized. Rural areas statewide may benefit by seeing an improvement in the air quality.

#### 5. Rural area participation:

Although motor vehicles in rural areas of the state may be impacted by the proposed rule, there will be no significant rural area impact. The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

### **Job Impact Statement**

#### 1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subparts 217-1 and 217-4, and proposes a new Subpart 217-6. The revisions will affect the existing New York Transient Emissions Short Test (NYTEST) and New York Vehicle Inspection Program (NYVIP) motor vehicle inspection and maintenance (I/M) programs. Both I/M programs require annual inspections, but NYVIP is a statewide (62 counties) program while NYTEST is limited to the nine-county New York Metropolitan Area (NYMA). NYMA includes Bronx, Kings, Nassau, New York, Richmond, Rockland, Queens, Suffolk, and Westchester counties. The most significant revision proposed is the end the NYTEST I/M program on December 31, 2010.

The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York

State has required motor vehicle emissions testing requirements in NYMA since 1981 for non-diesel passenger cars and trucks. Most of the vehicles previously inspected on the NYTEST equipment would still receive an emissions inspection through the NYVIP equipment beginning on January 1, 2011.

The Department proposes to adopt mandatory statewide on-board diagnostic (OBDII) testing of light-duty ( $\leq 8,500$  lbs. GVWR) diesel-powered passenger cars and light-duty trucks, beginning with the 1997 model year (MY), effective on January 1, 2012. The Department estimates that an additional 9,500 light-duty diesel vehicles (LDDVs) will initially (2012) require inspection statewide. This number would increase each year with the addition of new model years. LDDVs that fail the OBDII inspection may also require an emissions-related repair and a re-inspection. As a consequence, there will be a positive job impact with the addition of LDDV OBD inspections as it will result in a minor increase in inspection and repair business. This impact is considered modest when compared to the current annual NYVIP OBDII inspection volume of approximately six million vehicles statewide.

The Department is unaware of any significant adverse impact to jobs and employment opportunities as a result.

#### 2. Categories and numbers affected:

The proposed changes will have a positive impact on licensed NYMA inspection stations that currently perform NYTEST emissions inspections. Approximately 3,500 NYMA inspection stations would realize a cost savings with the elimination of operational costs when NYTEST ends. To comply with current inspection requirements, NYTEST stations must purchase calibration gases and maintain their NYTEST equipment.

NYTEST stations have the option of paying for equipment repairs on an "as needed" basis, or by entering into service contracts with their equipment provider. The Department estimates that 30 percent of the NYTEST stations purchased annual service agreements in 2009. The annual cost of a NYTEST service agreement varied by the service provider with annual costs ranging from \$3,100-\$7,100 (2009). The Department estimates that applicable NYTEST stations would save \$5,400,000 annually based on an average service agreement cost of \$5,100 and 1,050 stations (30 percent of 3,500). Most of the NYTEST stations, however, do not purchase annual service contracts. Rather, they either pay for repairs as needed, or they purchase replacement parts when possible and complete their own repairs. The cost of NYTEST repairs vary significantly depending on the nature of the repair, and the Department cannot reliably estimate these program costs.

The NYTEST inspection equipment requires the use of calibration gases. A NYTEST station's annual cost for calibration gases will vary depending on the amount of calibration gas used and supplier pricing. The Department estimates annual NYTEST calibration gas cost to range within \$150-\$300. Using the current number of NYTEST stations (3,500) stations and an estimated annual cost of \$225 per station, the program savings by the eliminating the need for NYTEST calibration gases is \$787,500 per year.

Conversely, there would be a negative impact on those businesses that currently service the NYTEST equipment. After the December 31, 2010 end date, the three certified manufacturers of NYTEST equipment would no longer be required to provide NYTEST repair services. As such, there will no longer be any inspection-based business opportunities for these companies. The Department estimates that the three NYTEST manufacturers currently employ between 20-25 technicians (combined) for this purpose.

#### 3. Regions of adverse impact:

Within the 9-county NYMA, there will be a loss of repair service for three equipment providers, but this loss also represents an overall cost savings for approximately 3,500 licensed inspection stations. Most of the licensed inspection stations are small businesses.

#### 4. Minimizing adverse impact:

The limited adverse impact in NYMA cannot be minimized as there will be no need for NYTEST inspections or equipment service after December 31, 2010. The end of the NYTEST program is anticipated to result in an overall cost savings to the licensed NYMA stations.

The statewide I/M revisions, proposed under new Subpart 217-6, will be incorporated through the existing NYVIP equipment. No new costs are anticipated for the +/- 10,000 licensed NYVIP stations statewide to implement the proposed Subpart 217-6 revisions.

#### 5. Self-employment opportunities:

We are aware of no self employment activities associated with this rule.

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

**Low Emission Vehicle (LEV) Greenhouse Gas (GHG) Emission Standards**

**I.D. No.** ENV-31-10-00016-P

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

**Proposed Action:** Amendment of Parts 200 and 218 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105; and section 177 of the Federal Clean Air Act (42 USC 7507)

**Subject:** Low emission vehicle (LEV) greenhouse gas (GHG) emission standards.

**Purpose:** To incorporate revisions California has made to its LEV program to amend its GHG emission standards.

**Public hearing(s) will be held at:** 10:00 a.m., September 7, 2010 at NYSDEC, 625 Broadway, Public Assembly Rm. 129-A, Albany, NY; 10:00 a.m., September 8, 2010 at NYSDEC Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY.

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

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

**Text of proposed rule:** (Sections 200.1 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

218-1.2(d)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Pub. L. 101-549 (1990)	**	California Code of Regulations, Title 13, Section 1962 (4-17-09)	** ***
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**	California Code of Regulations, Title 13, Section 1962.1 (4-17-09)	** ***
218-1.2(e)	California Health and Safety Code, Section 39003 (2004)	** †	California Code of Regulations, Title 13, Section 1965 (6-16-08)	** ***
218-1.2(h)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	** ***
218-1.2(j)	California Vehicle Code, Section 165 (2004)	** †	California Code of Regulations, Title 13, Section 1968.2 (11-9-07)	** ***
218-1.2(k)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Section 1976 (1-4-08)	** ***
218-1.2(r)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Section 1978 (1-4-08)	** ***
218-1.2(s)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Section 2030 (9-25-97)	** ***
218-1.2(t)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Section 2031 (9-25-97)	** ***
218-1.2(v)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Section 2047 (5-31-88)	** ***
218-1.2(w)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
218-1.2(x)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***	California Code of Regulations, Title 13, Section 2235 (9-17-91)	** ***
218-1.2(z)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***	California Code of Regulations, Title 13, Article 1.5 (12-4-03)	** ***
218-1.2(ad)	California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Pub. L. 101-549 (1990)	**
218-1.2(ai)	California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***		
218-1.2(al)	40 CFR Section 86.1827-01 (2-26-07)	*		
218-1.2(aq)			California Code of Regulations, Title 13, Section 2112 (8-15-07)	** ***
218-1.2(at)			California Code of Regulations, Title 13, Section 1962 (4-17-09)	** ***
218-1.2(au)			California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***
218-1.2(av)			California Code of Regulations, Title 13, Section 1900 (4-17-09)	** ***
218-2.1(a)			California Code of Regulations, Title 13, Section 1956.8 [(1-4-08) and (12-31-08)] (10-7-06)	** ***
			California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***
			California Code of Regulations, Title 13, Section 1960.1 (3-26-04)	** ***
			California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	** ***
			California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***
			California Code of Regulations, Title 13, Section 1961 [(1-4-08) and (6-16-08)] (4-1-10)	** ***
			California Code of Regulations, Title 13, Section 1961(a)(8)(B) [(1-4-08) and (6-16-08)] (4-1-10)	** ***
			California Code of Regulations, Title 13, Section 1961(d) [(1-4-08) and (6-16-08)] (4-1-10)	** ***

218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 'et seq'. (1988) as amended by Pub. L. 101-549 (1990)	**	218-5.2(a)	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (2004)	***		California Code of Regulations, Title 13, Section 2109 (12-30-83)	** ***
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**		California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
218-2.4	California Health and Safety Code, Section 43656 (2008)	** †	218-5.2(b)(1)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
218-3.1	California Code of Regulations, Title 13, Section 1960.1 (3-26-04)	** ***	218-5.3(b)	California Code of Regulations, Title 13, Section 2101 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1961 [(1-4-08) and (6-16-08)] (4-1-10)	** ***	218-6.2	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Pub. L. 101-549 (1990)	**
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) [(1-4-08) and (6-16-08)] (4-1-10)	** ***	218-7.3(a)(1)	California Code of Regulations, Title 13, Section 2221 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 1961(d) [(1-4-08) and (6-16-08)] (4-1-10)	** ***		California Code of Regulations, Title 13, Section 2224 (8-16-90)	** ***
218-3.1(a)	California Code of Regulations, Title 13, Section 1960.1 (3-26-04)	** ***	218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
218-3.1(b)	California Code of Regulations, Title 13, Section 1960.1 (3-26-04)	** ***	218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
	California Code of Regulations, Title 13, Section 1961 [(1-4-08) and (6-16-08)] (4-1-10)	** ***	218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) [(1-4-08) and (6-16-08)] (4-1-10)	** ***	218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
	California Code of Regulations, Title 13, Section 1961(d) [(1-4-08) and (6-16-08)] (4-1-10)	** ***	218-8.1(a)	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
218-4.1	California Code of Regulations, Title 13, Section 1962 (4-17-09)	** ***	218-8.1(b)	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
	California Code of Regulations, Title 13, Section 1962.1 (4-17-09)	** ***	218-8.2	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
218-4.2	California Code of Regulations, Title 13, Section 1962 (4-17-09)	** ***	218-8.3(a)	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
218-5.1(a)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***	218-8.3(b)	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***	218-8.3(c)	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***	218-8.3(d)	California Code of Regulations, Title 13, Section 1961.1 (4-1-10)	** ***
	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***	218-8.4(a)	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
	California Code of Regulations, Title 13, Section 2107 (11-27-99)	** ***	218-8.4(b)	California Code of Regulations, Title 13, Section 1961.1 [(9-24-09)] (4-1-10)	** ***
	California Code of Regulations, Title 13, Article 1.5 (12-4-03)	** ***	218-8.5(c)	California Code of Regulations, Title 13, Section 1961.1 (4-1-10)	** ***
218-5.1(b)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***			
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***			
	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***			
	California Code of Regulations, Title 13, Article 1.5 (12-4-03)	** ***			

Section 218-1.1(a) is amended to read as follows:  
 (a) This Part applies to all 1993, 1994, 1996 and subsequent model-year motor vehicles that are passenger cars and light-duty trucks, motor vehicle engines, and air contaminant emission control systems; to all 2004 and subsequent model-year motor vehicles which are medium-duty vehicles, motor vehicle engines, and air contaminant emission control systems; to all 2005 and subsequent model-year motor vehicles which are heavy-duty otto-cycle engines or vehicles which use such engines; and to all 2005 [and subsequent] through 2007 model-year motor vehicles which are heavy-duty diesel engines of vehicles which use such engines offered for sale or lease, or sold, or leased, for registration in this State. In the 1993 model-year, this regulation will only be effective against those engine families that are first produced more than two years from November 22, 1990.

Section 218-1.1(b) through Section 218-8.3(c) remains the same.  
 A new Section 218-8.3(d) is added to read as follows:  
 (d) For the 2012 through 2016 model years, manufacturers may elect to demonstrate compliance with the California exhaust emissions standards

by demonstrating compliance with the national greenhouse gas program pursuant to California Code of Regulations, title 13, section 1961.1 (see Table 1, section 200.9 of this Title). Manufacturers with outstanding greenhouse gas debits at the end of the 2011 model year are required to submit a plan to the Department detailing how the debits will be offset utilizing credits earned under the National greenhouse gas program.

Section 218-8.4 through 218-8.5(b) remains the same.

A new Section 218-8.5(c) is added to read as follows:

(c) A manufacturer demonstrating compliance pursuant to Section 218-8.3(d) must submit to the Department a copy of the official report demonstrating compliance with the National greenhouse gas program containing the same information and format as required in California Code of Regulations, title 13, section 1961.1 (see Table 1, section 200.9 of this Title).

Section 218-9 remains the same.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: 218GHG@gw.dec.state.ny.us

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

**Public comment will be received until:** September 15, 2010.

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

#### Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 200, and 6 NYCRR Part 218. Part 218 is being amended to incorporate revisions to the greenhouse gas (GHG) requirements that have been adopted by the California Air Resources Board (CARB) as part of the Low Emission Vehicle (LEV) program.

By statutory authority of, and pursuant to, Environmental Conservation Law (ECL), the Commissioner of Environmental Conservation is responsible for protecting the air resources of New York State. The Commissioner is authorized to adopt rules and regulations to enforce the ECL. The Legislature bestowed on the Department the power to formulate, adopt, promulgate, amend, and repeal regulations for preventing, controlling, or prohibiting air pollution.

The main purpose of enacting this regulation is to further the goals of reducing criteria and greenhouse gas pollution from motor vehicles by requiring cleaner vehicles be sold in New York. The transportation sector accounts for approximately 39 percent of all greenhouse gas (GHG) emissions in New York State. The Department has the obligation to regulate and mitigate emissions from mobile sources in order to safeguard the health of New York residents and protect the State's environment.

Part 218 is being revised to incorporate California's amendments to the GHG program. The Department is proposing to adopt GHG standards and credit mechanisms that are identical to those adopted by CARB. New York State last updated the GHG requirements in 2009. The proposed amendments would adopt the proposed federal GHG emission standards for the 2012 through 2016 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 would apply to all 2012 through 2016 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

The proposed amendments to the GHG standards are not expected to have any impact on consumers. There are no costs associated with this change that would be passed along to consumers in the form of higher prices.

Currently there is no automotive manufacturing in New York involving the final assembly of vehicles. Affiliated businesses, such as dealerships and engineering and design facilities, are local businesses which compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York, as is currently the case. New York residents will not be able to buy noncompliant vehicles out of state since vehicles must be California certified in order to be registered in New York. This is currently the case with the existing LEV program and will not change with the proposed requirements. The proposed GHG regulation applies equally to all large volume manufacturers delivering new vehicles for sale in New York. Several of the surrounding states have adopted, or expect to adopt, similar GHG requirements. Therefore, the proposed regulations are not expected to impose a competitive disadvantage on dealerships.

There are no costs associated with this change that would be passed along to dealerships. The proposed amendments are not expected to cause a noticeable change in New York employment, and are not expected to have a significant adverse impact on business creation, elimination, or expansion.

The proposed GHG regulations are not expected to result in any additional costs for local and state agencies. No additional paperwork or staffing requirements are expected. The proposed GHG regulations do not impose a local government mandate. No additional paperwork or staffing requirements are expected. This is not a mandate on local governments pursuant to Executive Order 17.

The GHG regulation should not result in any new significant paperwork requirements for New York vehicle suppliers, dealers or government. New York relies on materials submitted to California for certification, while manufacturers must submit to New York annual sales and corporate fleet average reports to show compliance with the fleet average requirements. While dealers must ensure that the vehicles they sell are California certified, the Department believes that most manufacturers currently include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. This has been the case since New York first adopted the California LEV program in 1992. The implementation of the proposed GHG regulation is not expected to be burdensome in terms of paperwork to owners/operators of vehicles.

The Department could maintain the current LEV program without adopting CARB's GHG amendments. This option was reviewed and rejected. The primary basis for this decision was that the Department believes this is not permitted under Section 177 due to the identity requirement. Further, the severity of New York State's air quality problems means New York State must maintain compliance with recent improvements in the California standards in order to achieve reductions necessary for the attainment and maintenance of the ozone and carbon monoxide standards, as well as reductions of GHG emissions. Federal GHG emission standards will be available as an alternative for the 2012 through 2016 model years.

This GHG regulatory amendment will take effect for the 2012 model year for passenger cars, light-duty trucks, and medium-duty passenger vehicles.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 200, and 6 NYCRR Part 218. Part 218 is being amended to incorporate revisions to the greenhouse gas (GHG) requirements that have been adopted by the California Air Resources Board (CARB) as part of the Low Emission Vehicle (LEV) program. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, or purchasing passenger cars or trucks.

State and local governments are also consumers of vehicles that will be regulated under the proposed GHG amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as owners of private vehicles in New York State; i.e., they must purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

The changes are an addition to the current LEV standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any adverse impact to small businesses or local governments as a result.

##### 2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, record-keeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars are required to sell or offer for sale only California certified vehicles. These proposed amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified.

##### 3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

##### 4. Compliance costs:

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

##### 5. Minimizing adverse impact:

The GHG requirements are not expected to have any impact on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most

manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed GHG regulation is not expected to be burdensome in terms of additional reporting requirements for dealers.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed on owners of private vehicles. In other words, state and local governments will be required to purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

7. Economic and technological feasibility:

The GHG requirements are not expected to have any adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed GHG regulation is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG requirements attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2012 through 2016 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 would apply to all 2012 through 2016 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218. Part 218 is being amended to incorporate revisions to the greenhouse gas (GHG) requirements that have been adopted by the California Air Resources Board (CARB) as part of the Low Emission Vehicle (LEV) program.

There are no requirements in the regulation which apply only to rural areas. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks.

The changes are additions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

The proposed amendments to the GHG standards are not expected to have any impact on consumers. The amendments are intended to provide manufacturers with compliance flexibility by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2012 through 2016 model years. There are no costs associated with this change that would be passed along to consumers in the form of higher prices.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas.

5. Rural area participation:

The Department plans on holding public hearings at various locations

throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

**Job Impact Statement**

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218. Part 218 is being amended to incorporate revisions to the greenhouse gas (GHG) requirements that have been adopted by the California Air Resources Board (CARB) as part of the Low Emission Vehicle (LEV) program.

The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to jobs and employment opportunities as a result.

2. Categories and numbers affected:

The changes to this regulation will not adversely impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are not expected to incur costs in order to comply with the regulation. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out-of-state, but may be able to buy complying vehicles out-of-state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The GHG requirements are not expected to have adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed GHG regulation is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG requirements attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2012 through 2016 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 would apply to all 2012 through 2016 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

5. Self-employment opportunities:

None that the Department is aware of at this time.

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

**Endangered and Threatened Species of Fish and Wildlife**

**I.D. No.** ENV-31-10-00020-P

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

**Proposed Action:** Amendment of Part 182 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 11-0535

**Subject:** Endangered and Threatened Species of Fish and Wildlife.

**Purpose:** To clarify process and procedures for handling listed species issues in New York State.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov>):** The Department of Environmental Conservation (the department) proposes to amend the regulations pertaining to endangered, threatened and special concern species under Part 182 of 6 NYCRR. Under the New York State Endangered Species Law, endangered and threatened species may not be taken except under permit by the department. These amendments clarify the department's jurisdiction pertaining to listed species, delineate an application and review process for addressing proposals that will take listed species and establish standards for permit issuance. An incidental take permitting program for proj-

ects that will result in a take of listed species as part of otherwise legal activities is described in detail. A process consistent with Uniformed Procedures Act procedures is established for the issuance of incidental take permits when proposed actions are anticipated to result in the taking of listed species. The standard for permit issuance is that the proponent of an action that will take listed species must also take actions that ensure that the affected species will be afforded a net conservation benefit. This requirement ensures that the applicant's actions will have an overall positive affect on the status of the affected species, even if some portions of the project may be detrimental to the listed species or its habitat. Further clarification is also provided by the inclusion of several new definitions of terms associated with listed species project review.

**Text of proposed rule and any required statements and analyses may be obtained from:** Dan Rosenblatt, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4750, (518) 402-8884, email: wildliferegs@gw.dec.state.ny.us

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

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

**Additional matter required by statute:** SEQR documentation including an EAF and Negative Declaration are on file with the department.

#### **Regulatory Impact Statement**

1. Statutory authority: Environmental Conservation Law (ECL) 11-0535.

2. Legislative objectives: To protect threatened and endangered species from going extinct and recover populations of same to a level where listed status is no longer required.

3. Needs and benefits: The current Endangered Species Act regulations (6 NYCRR Part 182) list species that have been classified by the department as endangered or threatened and provide for the prohibition against the "take" of listed species unless permitted by the department. However, the current regulations do not establish procedures or standards for review of such permit applications. Recent court decisions in relation to the enforcement of ECL 11-0535 have provided additional clarity on the situations where such permits are necessary and how the department should proceed in such cases. These revised regulations build upon those decisions to provide a predictable regulatory framework for establishment of jurisdiction under 11-0535 and the process for addressing listed species issues, including the review and issuance of relevant permits.

4. Costs: Since these regulations do not create a new regulatory burden, there will be no significant additional costs to the department or the regulated community as a result of these regulations. However, due to an increase in the availability of information on listed species through recently initiated programs, there may be an apparent increase in the number of projects that fall under the jurisdiction of these regulations. However, those same projects would still be subject to similar requirements under the existing regulations.

5. Local government mandates: None.

6. Paperwork: The proposed regulations define the paperwork that would be necessary to obtain a permit under the new regulations. Currently, the lack of regulations delineating the information necessary for the department to render decisions and issue permits has led to the need for multiple correspondences between applicants and the department. The new regulations make explicit the information necessary to complete an application. In addition to reducing the amount of written correspondence currently required under existing regulations, the new regulations require information that should already be generated under existing regulations, including the State Environmental Quality Review Act.

7. Duplication: The proposed regulations do not duplicate any State requirement. However, there is some duplication of Federal requirements where there is overlap with species listed by the Federal Government. This overlap is necessary in order for New York State to be in compliance with federal programs regarding the issuance of permits to take listed species. This also allows the State greater flexibility in tailoring conditions for federally listed species to meet State management objectives.

8. Alternatives: There are no significant alternatives. By law (ECL, section 11-0535), when the department has determined that an endangered species will be taken, the proposed action may only legally continue under a permit issued by the department. The proposed regulatory changes provide guidance to the regulated public as to how the permit process works and when it is applicable.

9. Federal standards: For Federally listed species, standards are well established. These regulations would not supercede or replace federal standards for permit issuance. Instead, these regulations borrow definitions liberally from Federal regulations (50 CFR - Wildlife and Fisheries - part 17 - revised as of October 1, 1998 - pages 95-177) in developing a regulation that is compatible with Federal guidance. These regulations will allow for the department to participate in Federally funded species management programs such as Safe Harbor Agreements and Habitat Con-

servations Plans that require the issuance of incidental take permits. State permits for federally protected species would be invalid without the project proponent procuring the appropriate permit from the regulating Federal entity.

10. Compliance schedule: The proposed changes are largely based on current interpretations of the existing law and regulations, as supported by recent court decisions. Therefore, the department will be able to comply with the proposed regulatory changes within one month of implementation. It is anticipated that the regulated community be able to comply with the requirements within one month of implementation due to the similarity of the proposed regulations to existing regulations and implementation by department personnel. The regulated community will also have the opportunity to become familiar with the regulatory changes during the public review process.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: This rule making will provide businesses and local governments with a better understanding of the types of projects that fall under the jurisdiction of Article 11-0535 and the requirements and procedures for projects to follow once such jurisdiction has been determined.

2. Compliance requirements: Compliance requirements are not altered over existing regulations. As already required under SEQR and Article 11-0535, listed species impacts must already be addressed. Compliance with this requirement is made easier through the issuance of better guidance and the creation of a predictable, transparent process for evaluating the need for permits and the regulatory requirements necessary for the issuance of said permits.

3. Professional services: As is the case under the existing regulations, environmental consultant services will continue to be necessary for projects subject to the jurisdiction of this rule making.

4. Compliance costs: This regulation does not impose any additional burden on affected local governments and small businesses. Instead, it provides a better defined process for project proponents to follow when they fall under the jurisdiction of this rule making. Those entities that pursue projects subject to the jurisdiction of this rule making will continue to adjust their projects to avoid the taking of listed species. This rule making makes the alternative process explicit, creating an opportunity for project proponents to proceed by preparing and funding an effective listed species mitigation plan and obtaining a permit to authorize the planned activity.

5. Economic and technological feasibility: The implementation of this rule making is both economically and technologically feasible.

6. Minimizing adverse impact: These regulations are clarifications of the existing law and regulation based on over 30 years of program implementation under the existing regulations and supplemented with legal decisions relevant to this regulation. As such, this rule making is not anticipated to create any new or additional impacts on local government or small business, as the existing rule already established the prohibitions and permit needs that are clarified in this rule making. The focus of the rule making is on avoidance. Projects that are able to achieve avoidance of impacts do not require permits at all. Minimization of adverse environmental impacts is accomplished through permitting standards. Permits will only be issued when projects achieve a net conservation benefit, which requires that status of impacted listed species and/or their occupied habitats are improved over pre-project conditions.

7. Small business and local government participation: The State Administrative Procedures Act requires agencies to provide public and private interests the opportunity to participate in the rule making process and/or public hearings. The Department will hold public hearings on Part 182 throughout the state and will notify interested parties of this proposed rulemaking. Listed species issues will also still primarily be addressed through the SEQR process, with local governments continuing to frequently be lead agencies.

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

1. Types and estimated numbers of rural areas:

Part 182 applies statewide and this rule making will not alter that. However, a new exemption for routine and ongoing agricultural activities may reduce the extent of application of this regulation in some rural areas.

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

The changes that the department is proposing will establish a predictable and transparent process for the implementation of the State's Endangered Species Law. Existing law and regulation requires permits for activities that result in harm to listed species, but the current regulations do not provide any relevant guidance on how the department will review projects or permits. This rule provides guidance and procedures to assist project proponents assess and avoid impacts to listed species. Permit procedures are established for those projects that can not avoid such impacts. These regulations codify the existing process utilized by the department and make that process open and accessible to the public.

## 3. Costs:

The proposed rule does not create any new requirement for landowners or municipalities, as it provides clarification to existing regulations where little guidance currently exists. The impact of this rule making on rural communities may actually reduce any costs associated with this rule as an exemption is provided for routine and ongoing agricultural activities, where none previously existed.

## 4. Minimizing adverse impact:

These regulations are clarifications of the existing law and regulation based on over 30 years of program implementation under the existing regulations and supplemented with legal decisions relevant to this regulation. As such, this rule making is not anticipated to create any new or additional impacts on rural communities, as the existing rule already established the prohibitions and permit needs that are clarified in this rule making. Additionally, there are explicit exemptions for routine and ongoing agricultural activities which should mitigate the likelihood of adverse impacts in rural farming communities.

## 5. Rural area participation:

The State Administrative Procedures Act requires agencies to provide public and private interests in rural areas the opportunity to participate in the rule making process and or public hearings. The department will hold public hearings on Part 182 in upstate and rural areas and will notify interested parties of this proposed rule making.

**Job Impact Statement**

## 1. Nature of impact:

This rule making will modify the existing regulations to clarify the jurisdictional authority of the department over endangered species and creates standard procedures for the determination of jurisdiction and establishes the parameters for the application, review and issuance of required permits. The actions outlined in the regulation have been undertaken by the department under existing regulatory authority and supported through legal decisions relevant to the underlying law and regulations. Therefore, the impact on jobs is estimated to be neutral.

## 2. Categories and numbers affected:

As with the existing regulation, projects may not take listed species. While there may be a perception that this regulation may increase the requirements of project proponents in relation to listed species, this rule making provides guidance and delineates procedures that will enable project proponents to more effectively design their projects and assemble the information required by the department. The result will be an increase in the efficiency in which listed species issues are addressed, potentially resulting in more rapid project approvals. This rule making clarifies the types of actions that would result in a take of listed species and provides a transparent process for applicants to pursue alternatives to harmful projects. No net impact to jobs is expected.

## 3. Regions of adverse impact:

This rule making makes no modification of the regions impacted by the existing regulation.

## 4. Minimizing adverse impact:

This rule making includes explicit exemptions for routine and ongoing agricultural activities, where no such exemption formerly existed. Therefore, any adverse impacts of the existing regulation may actually be reduced through this rule making.

## 5. Self-employment opportunities:

Not applicable.

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

**Specific reasons underlying the finding of necessity:** This part sets forth the license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries and financial accountability requirements for life settlement providers as required under sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009. These sections, along with other sections of the new life settlement legislation, became effective May 18, 2010.

These sections of the Insurance Law require licensing and registration of life settlement providers, life settlement intermediaries and life settlement brokers. In order to license and register these persons, the fees associated with the licensing and registration, as well as financial accountability requirements which life settlement providers must demonstrate at licensing, must be established by regulation as required by the legislation. The licensing of these entities is a critical aspect of the new life settlement law in order to properly safeguard the public in life settlement transactions.

Section 21 of Chapter 499 of the Laws of 2009 permits a person lawfully operating as a life settlement provider, life settlement intermediary, or life settlement broker in this state with respect to life settlement transactions not heretofore regulated under the Insurance Law to continue to do so pending approval or disapproval of the person's application for license or registration, if such person filed the appropriate application with the Superintendent not later than 30 days after the Superintendent published the application on the Department's website and certified that the applicant shall comply with all applicable provisions of the Insurance Law and regulations promulgated thereunder. The licensing applications for life settlement provider, life settlement intermediary and life settlement broker were posted on the Department's website on April 29, 2010, May 18, 2010 and June 17, 2010 respectively. Because the law provides that the Superintendent must establish the application filing fees for licensing of life settlement providers and brokers, and the registration of life settlement intermediaries, and financial accountability requirements for life settlement providers, and such constitutes rulemaking under the State Administrative Procedure Act, it is critical that the fees, established by Emergency Measure on April 23, 2010, be maintained in effect on an emergency basis to facilitate the continued processing of these applications and acceptance of new licensing and registration applications. Otherwise, life settlement providers, life settlement intermediaries and life settlement brokers who previously submitted licensing or registration applications will be able to continue to operate in New York and engage in life settlement transactions without being licensed by or registered with the Superintendent, which will not adequately protect the public. In addition, absent continuation of this regulation on an emergency basis, no additional applications for licensure or registration could be accepted; thus prohibiting the growth of the New York life settlement market.

The Department is now focused on the issues that need to be addressed regarding licensing (e.g., development of licensing applications; establishing internal procedures, processes and systems; responding to inquiries). The Department is also engaging in outreach to interested parties to get their input regarding the additional provisions to be added to the regulation.

For the reasons stated above, an emergency adoption of Regulation No. 198 is necessary for the general welfare.

**Subject:** Life Settlements.

**Purpose:** Implement Chapter 499 of the Laws of 2009's provisions of license fees and financial accountability requirements.

**Text of emergency rule:** Chapter XV of Title 11 is renamed "Life Settlements."

*Section 381.1 License fees and financial accountability requirements for life settlement providers.*

(a) The application for a license as a life settlement provider shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$10,000.

(b) The financial accountability of a life settlement provider required in accordance with section 7803(c)(2)(E) of the Insurance Law, to assure the faithful performance of its obligations to owners and insureds on life settlement contracts subject to Article 78 of the Insurance Law, shall be in an amount at least equivalent to \$250,000, shall be maintained at all times and may be evidenced in one of the following manners:

(1) Assets in excess of liabilities in an amount at least equal to \$250,000 as reflected in the applicant's financial statements;

(2) A surety bond in an amount at least equal to \$250,000 placed in trust with the superintendent issued by an insurer licensed in this State to write fidelity and surety insurance under section 1113(a)(16) of the Insurance Law; or

(3) Securities placed in trust with the superintendent consisting of securities of the types specified in section 1402(b)(1) and (2) of the Insurance Law, estimated at an amount not exceeding their current market value, but with a total par value not less than \$250,000; provided that:

(i) If the life settlement provider is incorporated in another state,

---



---

## Insurance Department

---



---

### EMERGENCY RULE MAKING

**Life Settlements**

**I.D. No.** INS-31-10-00001-E

**Filing No.** 741

**Filing Date:** 2010-07-19

**Effective Date:** 2010-07-19

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

**Action taken:** Addition of Part 381 (Regulation 198) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201 and 301 and sections 2137, 7803 and 7804 as added by L. 2009, ch. 499 and L. 2009, ch. 499, section 21

the securities allowed for placement in the trust may consist of direct obligations of that state; and

(ii) If the aggregate market value of the securities in trust falls below the required amount, the superintendent may require the life settlement provider to deposit additional securities of like character.

(c) The application for the biennial renewal of a life settlement provider license shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$5,000.

*Section 381.2 License fees for life settlement brokers.*

(a) The application for a license as a life settlement broker shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee for each individual applicant and for each proposed sub-licensee of forty dollars for each year or fraction of a year in which a license shall be valid.

(b) The application for the biennial renewal of a life settlement broker license shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee for each individual applicant and for each proposed sub-licensee of forty dollars for each year or fraction of a year in which a license shall be valid.

*Section 381.3 Registration fees for life settlement intermediaries.*

(a) The application for registration as a life settlement intermediary shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$7,500.

(b) The application for the biennial renewal of a life settlement intermediary registration shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$2,500.

**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 October 16, 2010.

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

#### **Regulatory Impact Statement**

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201 and 301 of the Insurance Law, sections 2137, 7803 and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, and section 21 of Chapter 499 of the Laws of 2009.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law and prescribe regulations interpreting the Insurance Law.

Section 2137, as added by Chapter 499 of the Laws of 2009, sets forth the licensing requirements for life settlement brokers. Section 2137(h)(8) requires licensing and renewal fee be determined by the Superintendent, provided that such fees do not exceed that which is required for the licensing and renewal of an insurance producer with a life line of authority.

Section 7803, as added by Chapter 499 of the Laws of 2009, sets forth the licensing requirements for life settlement providers. Section 7803(c)(1) requires the application for a life settlement provider's license be accompanied by a fee in an amount to be established by the Superintendent. Section 7803(h)(1) provides that an application for renewal of the license be accompanied by a fee in an amount to be established by the Superintendent. Section 7803(c)(2)(E) requires a life settlement provider to demonstrate financial accountability as evidenced by a bond or other method for financial accountability as determined by the Superintendent pursuant to regulation.

Section 7804, as added by Chapter 499 of the Laws of 2009, sets forth the registration requirements for life settlement intermediaries. Section 7804(c)(1) requires the application for a life settlement intermediary registration be accompanied by a fee in an amount to be established by the Superintendent. Section 7804(i)(1) provides that an application for renewal of the registration be accompanied by a fee in an amount to be established by the Superintendent.

Pursuant to State Administrative Procedure Act Section 202, the implementation of the fee requirements under Sections 2137, 7803 and 7804 requires the promulgation of regulations.

Section 21(6) of Chapter 499 of the Laws of 2009 authorizes the Superintendent to promulgate rules and regulations necessary for the implementation of its provisions.

2. Legislative objectives: Sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, became effective May 18, 2010, require the licensing of life settlement providers and life settlement brokers and the registration of life settlement intermediaries. Such sections also provide that the license and registration fees charged these persons and the financial accountability requirements that life settlement providers must demonstrate at licensing shall be established by the Superintendent.

Section 21(6) of Chapter 499 of the Laws of 2009 authorizes the Superintendent to promulgate rules and regulations necessary for the implementation of its provisions. This rule is necessary to implement Sections 2137, 7803 and 7804 of the Insurance Law.

3. Needs and benefits: Section 21 of Chapter 499 of the Laws of 2009 permits a person lawfully operating as a life settlement provider, life settlement intermediary or life settlement broker in this state with respect to life settlement transactions not heretofore regulated under the Insurance Law to continue to do so pending approval or disapproval of the person's application for license or registration, if such person filed the appropriate application with the Superintendent not later than 30 days after the Superintendent published the application on the Department's website and certified that the applicant shall comply with all applicable provisions of the Insurance Law and regulations promulgated thereunder. The licensing applications for life settlement provider, life settlement intermediary and life settlement broker were posted on the Department's website on April 29, 2010, May 18, 2010 and June 17, 2010 respectively. Because the law provides that the Superintendent must establish the application filing fees for licensing of life settlement providers and brokers, and the registration of life settlement intermediaries, and financial accountability requirements for life settlement providers, and such constitutes rulemaking under the State Administrative Procedure Act, it is critical that these fees, established by Emergency Measure on April 23, 2010, be maintained in effect on an emergency basis to facilitate the continued processing of these applications and acceptance of new licensing and registration applications. Otherwise, life settlement providers, life settlement intermediaries and life settlement brokers who previously submitted licensing or registration applications will be able to continue to operate in New York and engage in life settlement transactions without being licensed by or registered with the Superintendent, which will not adequately protect the public. In addition, no new applications for licensure or registration could be accepted; thus prohibiting the growth of the New York life settlement market.

Adoption of this rule establishing license and registration fees and financial accountability requirements is necessary for the continued implementation of the life settlement legislation.

4. Costs: The rule requires an initial license application fee of \$10,000 for life settlement providers and an initial registration application fee of \$7,500 for intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in the amount of \$5,000 and \$2,500, respectively. The rule also sets an annual license fee of \$40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must meet financial accountability requirements by demonstrating its assets exceed its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

In developing the license and renewal fees for life settlement providers, life settlement intermediaries and life settlement brokers, the following were considered:

- New York Insurance Law Section 332 provides that the expenses of the Department for any fiscal year, including all direct and indirect costs, shall be assessed by the Superintendent pro rata upon all domestic insurers and licensed United States branches of alien insurers domiciled in New York. Life settlement providers and life settlement intermediaries are not subject to this assessment. As a result, these expenses will be borne by insurers through the Section 332 assessments, since fees collected by the Superintendent are turned over to the State's general fund, and do not directly reimburse the expenses of the Department. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration. Several factors were considered in arriving at appropriate fees:
- Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.
- Initial and renewal licensing fees charged to life settlement providers are set at rates greater than initial and renewal registration fees charged to life settlement intermediaries. The differences in such

fees reflect the lesser time-based expenses associated with the registration of intermediaries than associated with provider licensing.

- New Insurance Law Sections 2137 provides that the licensing or renewal fees prescribed by the Superintendent for a life settlement broker shall not exceed the licensing or renewal fee for an insurance producer with a life line of authority. In accordance with the statute, this rule sets the licensing and renewal fee for a life settlement broker at \$40, which is equal to the current licensing or renewal fee of an insurance producer with a life line of authority.

In developing the financial accountability requirements that a life settlement provider must comply with, the Superintendent considered the cash outlay of each offered compliance option. The establishment of a surety bond requires the purchase of the surety bond. The deposit of securities with the Superintendent requires the establishment of a custodian account and incurrence of the associated expenses. The maintenance of a required level of assets in excess of liabilities may require the addition of capital where such level is not currently maintained.

The rule does not impose additional costs to the Insurance Department or other state government agencies or local governments.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the provisions set by this rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: In the development of the licensing and registration fees imposed on life settlement providers and life settlement intermediaries, the Department's draft proposal was premised on the Superintendent retaining the fees to cover Department costs, and the fees were significantly higher than as included in the emergency regulation. However, as noted, such fees are turned over to the State's general fund and thus do not directly reimburse the Department for its expenses.

The Department solicited comments from interested parties on the draft rule, which contained the higher fees. An outreach draft of the rule was posted on the Department's website for a two-week public comment period and a meeting was held at the Department on April 6, 2010 to discuss the rule with interested parties. The Life Insurance Settlement Association (LISA), a life settlement industry trade association, and other life settlement interested parties commented that the intended fees would present a financial barrier for some life settlement providers wishing to compete in the New York marketplace. LISA, as well as other interested parties, took the position that a decreased number of licensed providers in New York inhibits fair competition and industry growth, which would ultimately harm New York policyholders seeking the assistance of the secondary market for life insurance because of the lack of competition. In response to these comments, the initial license fee for life settlement providers was reduced from \$20,000 to \$10,000 and the initial registration fee for life settlement intermediaries was reduced from \$10,000 to \$7,500.

The Life Insurance Council of New York (LICONY), a life insurance trade association, has expressed support of a licensing and registration fee structure set at a level that is sufficient so that participating entities are paying for the regulation of their industry. The Superintendent attempted to balance the competing interests discussed above to arrive at a fee schedule that would be fair and equitable.

With regard to financial accountability requirements, the outreach draft posted to the Department's website for public comment had provided two options - surety bond and security deposit - to comply with such demonstration. After consideration of the comments received from LISA and other life settlement industry interested parties indicating that these options would create a financial barrier for some providers wishing to enter and operate in the New York market, the Superintendent added a third option that provides a less costly and less capital restrictive compliance alternative. The third option allows a life settlement provider to satisfy the financial accountability requirements by demonstrating that its assets exceed its liabilities by an amount no less than \$250,000. These financial accountability requirements are on a par with the requirements in many other states.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The emergency adoption of this regulation ensures that the fees and financial accountability requirements can be included in the license application for life settlement providers and life settlement brokers and registration application for life settlement intermediaries. To ensure the continued implementation of Sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, the fees and financial accountability requirements established by the Emergency Measure on April 23, 2010 must be maintained in effect.

The emergency regulation was necessary in order to establish fees and financial accountability standards in order to commence licensing life

settlement providers, intermediaries and brokers. Since the emergency regulation went into effect in April, 2010, the Department has focused on the issues that needed to be addressed regarding licensing (e.g., development of licensing applications; establishing internal procedures, processes and systems; responding to inquiries). The Department is also engaging in outreach to interested parties to get their input regarding the additional provisions to be added to the regulation.

#### **Regulatory Flexibility Analysis**

1. Effect of the rule: This rule sets license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries, and financial accountability requirements for life settlement providers.

This rule is directed to life settlement providers, life settlement brokers and life settlement intermediaries. Some of these entities may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

This rule should not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at the entities allowed to conduct life settlement business, none of which are local governments.

2. Compliance requirements: The affected parties will need to accompany their applications along with fees as prescribed by this rule. Also, each life settlement provider applying for license has to comply with financial accountability requirements by demonstrating that its assets exceeds its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

3. Professional services: None is required to meet the requirements of this rule.

4. Compliance costs: The regulation requires a license fee of \$10,000 for life settlement providers and a registration fee of \$7,500 for life settlement intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in amount of \$5,000 and \$2,500, respectively. The rule also sets an annual license fee of \$40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must comply with financial accountability requirements by demonstrating that its assets exceed its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

5. Economic and technological feasibility: The affected parties will need to pay licensing and registration fees as prescribed by the rule.

6. Minimizing adverse impact: The initial and renewal licensing and registration fees and financial accountability requirements for life settlement providers and life settlement intermediaries prescribed by the rule may present a financial barrier for some small-business life settlement providers and life settlement intermediaries wishing to compete in the New York market. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration.

Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.

With regard to the licensing and registration fees, alternatives (such as the direct billing of expenses, an assessment based allocation of expenses, or a reduction of licensing and registration fees charged to small-business life settlement providers and life settlement intermediaries) that may have reduced the impact of such fees on small-business life settlement providers and intermediaries were considered. However, such alternatives would require legislative authority, which could not be secured in a timeframe necessary for the timely implementation of the life settlement legislation.

With regard to the financial accountability requirements imposed on life settlement providers, after consideration of the public comment received by the Department from interested parties in response to the posting of a draft of the rule on the Department website and a meeting held with such parties to discuss the rule, the Superintendent did include in the rule an additional compliance method - demonstration of assets in excess

of liabilities by an amount no less than \$250,000 - which provides a less costly and less capital restrictive alternative to the other two methods of compliance in the rule.

7. Small business and local government participation: Affected small businesses had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period starting March 19, 2010 and to participate (in person or by conference call) in a meeting held at the Department on April 6, 2010 to discuss the rule.

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

1. Types and estimated numbers of rural areas: There may be some life settlement providers, life settlement brokers, and life settlement intermediaries that do business in rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting or record-keeping requirements on public or private entities in rural areas. The affected parties that do business in rural areas will need to comply with the license and registration fees and financial accountability requirements imposed by the rule.

3. Costs: The rule requires a license fee of \$10,000 for life settlement providers and a registration fee of \$7,500 for life settlement intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in the amount of \$5,000 and \$2,500, respectively. The rule also sets an annual license fee of \$40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must meet financial accountability requirements by demonstrating its assets exceed its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

4. Minimizing adverse impact: The initial and renewal licensing and registration fees and financial accountability requirements for life settlement providers and life settlement intermediaries prescribed by the rule may present a financial barrier for some life settlement providers and life settlement intermediaries doing business in rural areas that wish to compete in the New York market. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration.

Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.

With regard to the fees, alternatives (such as the direct billing of expenses, an assessment based allocation of expenses, or a reduction of licensing and registration fees charged to rural area life settlement providers and life settlement intermediaries) that may have reduced the impact of such fees on life settlement providers and intermediaries doing business in rural areas were considered. However, such alternatives would require legislative authority, which could not be secured in a timeframe necessary for the timely implementation of the life settlement legislation.

With regard to the financial accountability requirements imposed on life settlement providers, after consideration of the public comments received from interested parties by the Department in response to the posting of a draft of the rule on the Department website and a meeting held with such parties to discuss the rule, the Superintendent did include in the rule an additional compliance method - demonstration of assets in excess of liabilities by an amount no less than \$250,000 - which provides a less costly and less capital restrictive alternative to the other two methods of compliance included in the rule.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period starting March 19th and participate (in person or by teleconference) in the Department meeting on April 6th with interested parties to discuss the rule.

#### **Job Impact Statement**

The Insurance Department finds that this rule should have no impact on jobs and employment opportunities. This rule sets license fees for life settlement providers and life settlement brokers, registration fees for life

settlement intermediaries, and financial accountability requirements that life settlement providers must demonstrate at licensing. Additional licensing and registration requirements will be established by related rulemaking in the near future.

---



---

## Department of Labor

---



---

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

#### **Licensing of Blaster, Crane Operators, Laser Operators and Pyrotechnicians**

**I.D. No.** LAB-31-10-00003-EP

**Filing No.** 742

**Filing Date:** 2010-07-19

**Effective Date:** 2010-07-19

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

**Proposed Action:** Addition of Part 61 to Title 12 NYCRR.

**Statutory authority:** General Business Law, section 483

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

**Specific reasons underlying the finding of necessity:** These regulations provide that no individual shall use lasers, operate a crane or act as a blaster or a pyrotechnician without holding a valid certificate of competence issued by the Commissioner of Labor. These regulations provide procedures to regulate these four occupations that have been designated by the legislature as creating special risks to the safety and health of the citizens of New York as well as to their property.

A new part 61 was added to 12 NYCRR to create a single part (12 NYCRR 61) for the licensing and certification requirements for pyrotechnicians, blasters, crane operators and laser operators.

All provisions regarding pyrotechnicians are new because the licensing and certification requirements for pyrotechnicians were only recently added to statute by Chapter 57 of the Laws of 2009.

**Subject:** Licensing of blaster, crane operators, laser operators and pyrotechnicians.

**Purpose:** To clarify and standardize the licensing of blasters, crane operators, laser operators, and pyrotechnicians.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.labor.ny.gov](http://www.labor.ny.gov)):** These regulations provide that no individual shall use lasers, operate a crane or act as a blaster or a pyrotechnician without holding a valid certificate of competence issued by the Commissioner of Labor. These regulations provide procedures to regulate these four occupations that have been designated by the legislature as creating special risks to the safety and health of the citizens of New York as well as to their property.

A new part 61 was added to 12 NYCRR to create a single part (12 NYCRR 61) for the licensing and certification requirements for pyrotechnicians, blasters, crane operators and laser operators.

All provisions regarding pyrotechnicians are new because the licensing and certification requirements for pyrotechnicians were only recently added to statute by Chapter 57 of the Laws of 2009.

The licensing and certification requirements regarding crane operators were moved from 12 NYCRR Section 23-8.5 to new Part 61 and amended to establish a smaller number of Crane Board members who need to be present at either examinations or hearings. This will make it easier to schedule examinations, thereby making certain that there will be no delays in the process. The amendments will make it easier to schedule administrative hearings.

The licensing and certification requirements for blasters were moved from 12 NYCRR Section Subparts 39-5 and 39-7 to new Part 61, and revised to conform New York state regulations to nationally recognized safety standards. The proposed amendments require each certified blaster to preserve a comprehensive and accurate record for

each blast site. Additionally, the categories of certificates of competence were increased from three to six. These new categories decrease the level of risk to the blaster and the public by ensuring that a blaster is not operating outside of his level of expertise.

The provisions regarding the licensing of laser operators are being moved from 12 NYCRR Subpart 50-9 and have been incorporated into Part 61.

Additionally, under new part 61 all certified individuals will be required to report unusual incidents or events. The Department will accept notification by phone calls, fax, email, in person or any other means acceptable to the Commissioner.

The proposed sections of Part 61 are summarized as follows:

Subpart 61-1 General Provisions

Subpart 61-2 Special Provisions for Pyrotechnicians

Subpart 61-3 Special Provisions for Crane Operators

Subpart 61-4 Special Provisions for Blasters

Subpart 61-5 Special Provisions for Laser Operators.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 16, 2010.

**Text of rule and any required statements and analyses may be obtained from:** Joan Connell, New York State Department of Labor, Harriman State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380

**Data, views or arguments may be submitted to:** Lansing Lord, New York State Department of Labor, Harriman State Office Campus, Building 12, Room 157, Albany, NY 12240, (518) 485-2586, email: lansing.lord@labor.ny.gov

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

**Additional matter required by statute:** National Fire Protection Association, 1123 and 1126 Standards on Fireworks Displays and Use of Pyrotechnics Before a Proximate Audience, and IME Safety Library Publications #3 and #20.

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

General Business Law Section 482(1) provides that no individual shall use lasers, operate a crane or act as a blaster or a pyrotechnician without holding a valid certificate of competence issued by the Commissioner. General Business Law Section 483(1)(a) provides that the Commissioner of Labor is authorized and directed to prescribe rules and regulations with respect to lasers, crane operators, blasters and pyrotechnicians. Penal Law Sections 405.00 405.003 and 405.002 provide that firework displays must be conducted by certified operators in accordance with permits issued by local jurisdictions in which the firework displays are conducted.

##### 2. Legislative objectives:

General Business Law Section 480 states that the use of lasers, the operation of cranes, the detonation of explosives, and the preparation and firing of pyrotechnics involves such elements of potential danger to the lives, health and safety of the citizens of this state and to their property that special regulations are necessary to insure that only persons of proper ability and experience shall engage in such operations. Section 483 of the General Business Law provides that such regulations may provide for examinations, categories of certificates, licenses, or registrations, age and experience requirements, payments of fees, and may also provide for such limitations and exemptions that the Commissioner of Labor finds necessary and proper.

##### 3. Needs and benefits:

The Commissioner of Labor recognizes the need for procedures to regulate the four occupations which have been designated by the legislature as creating special risks to the safety and health of the citizens of New York as well as to their property. This proposal creates new Occupational licensing and Certification Code 12 NYCRR Part 61, to establish a new certification process for pyrotechnicians and to unify and standardize existing licensing and certification requirements for blasters, crane operators and laser operators. The issuance of a restricted use certificate for all categories is new. The Commissioner addressed the need for restricted use certificates to take

into account an individual's physical limitations or to allow for unique circumstances.

There are two changes in the administrative review procedures for these occupations. An initial applicant can no longer request a hearing for an application denial. There was a need to change this review process as the initial application is based on factual, objective criteria as to whether or not the applicant has the requisite education and/or training. As such, there is no need for a hearing. In denying an initial application, the Commissioner shall provide reason(s) for such denial so that the applicant can decide whether to seek additional education, training and/or experience; and reapply in the future. A hearing shall be granted when an applicant's renewal is denied, or when a certificate is revoked or suspended. After the hearing, and upon notice to the certificate holder, the Commissioner may suspend, revoke, restrict or refuse to renew a certificate. Prior to the new Part 61, a certificate holder first had to appeal the Commissioner's order to the Industrial Board of Appeals. Under the General Business Law, the certificate holder may appeal the Commissioner's order pursuant to Article 78 of the Civil Practice Law and Rules. This new change affords the certificate holder an opportunity for judicial review without first having to present a case before an administrative tribunal.

**Pyrotechnicians:** All provisions regarding pyrotechnicians are new because the licensing and certification requirements for pyrotechnicians were only recently added to statute by Chapter 57 of the Laws of 2009. There have been several incidents where individuals have been or could have been seriously injured during pyrotechnic displays. The most recent incident occurred during the summer of 2008 when a member of the public was struck by a pyrotechnic shell in the Village of Ticonderoga during an aerial display.

Requiring certification will insure that only individuals who have demonstrated adequate training and experience in the field will be allowed to be in charge of these displays.

These regulations clarify that firework displays subject to the permitting requirements of Penal Law Section 405.00 may be conducted by a single certified operator, who shall ensure that a sufficient number of authorized assistants are available for the safe conduct of the fireworks display. Penal Law Section 405.00(3) requires two operators; but makes no provision regarding certification of these individuals. These regulations clarify that at least one certified operator (as defined in the regulation) must conduct the fireworks display with the assistance of a sufficient number of authorized assistants (as defined in the regulation) to ensure the safe conduct of the fireworks display. Penal Law Section 405.00(2) provides that the permit application for a fireworks display must contain a verified statement from the applicant identifying the individuals who are authorized to fire the display. Since firing the display is undefined in the statute, these regulations clarify that the firing of the display refers to the actions of the certified operator in issuing a signal to start, or halt, the ignition of fireworks, but does not include the actions of authorized assistants, such as shooters, who ignite fireworks in response to a certified operator's signal.

**Cranes:** The licensing and certification requirements regarding crane operators was moved from 12 NYCRR Section 23-8.5 to new Part 61. Certification levels were added in accordance with the recommendations of the Board and industry practice. The rule establishes a smaller number of Board members who need to be present at the practical examinations to allow one Board member to review the practical crane operator examination via video rather than requiring all examiners to be physically present at the examination site for all certification levels. This rule also reduces administrative review of initial application denials and clarifies that the Commissioner's final written determination regarding certifications properly exhausts administrative review. These changes will make it easier to schedule the exams and provide timely administrative hearings for denial of renewals, or revocation or suspension of certification, without infringing on the licensees due process rights. The members of the Crane 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 for crane operators seeking certification or renewal. The heavy work load and lack of reimbursement incentive has made it difficult to recruit enough Board members. Increasing the required number of members would exacerbate the problem.

**Blasters:** The licensing and certification requirements regarding blasters was moved from 12 NYCRR Sections [Subparts] 39-5 and 39-7 to new Part 61. These provisions require reasonable and proper guarding against personal injuries to employees and the public in the use and the operation of explosives. This regulation is being revised to conform New York state regulations with national safety standards outlined in the National Fire Protection Association, Institute of Makers of Explosives and International Society of Explosive Engineers (hereinafter referred to as the Standards). In developing the proposed amendments, the Department received assistance from industry representatives from throughout the state, which represented both large and small businesses most affected by parts of the code under review. As a result of these meetings, both the Department and industry representatives concluded that these recommendations will improve accountability and actually reduce the risks associated with explosives to blasters and the general public.

The absence of consistency between current New York state regulations and the Standards resulted in a lack of accountability within the industry and also to the general public. The proposed amendments require the certified blaster to maintain records regarding: the blast site; the type of explosives used; the amount, if any, of explosives that were returned to the magazine and the individuals who were present at the site. Additionally, the certified blaster will be responsible for informing the Department of any unusual incidents or events that occur at a blast. Not only are these enhanced measures in line with current industry practices, but they ensure that each certified blaster will be responsible for preserving a comprehensive and accurate record for each blast site. The duty to report and to maintain records will also facilitate the gathering of evidence at an explosive incident which will expedite the investigation conducted by the Department.

The categories of certificate of competence have been increased from three to six. Prior to the creation of these new categories, blasters were required to be competent in all areas of blasting. These new tiers allow blasters to attain levels of expertise and certification that match the type of blasting they will be performing, rather than requiring them to become certified in all categories. These new categories decrease the level of risk to the blaster and the public by ensuring that a blaster is not operating outside his level of expertise. Additionally, certified blasters will be required to complete two continuing education courses during the three year certification period.

**Lasers:** The licensing and certification requirements for mobile lasers were moved from 12 NYCRR Subpart 50-9 to new Part 61. Minimal revisions to Mobile Laser Operator certifications include:

- Addition of reporting and recordkeeping requirements similar to the other occupations.
- Exemption from investigations of criminal and mental health histories, and limiting physical health history to eye exams.
- Alignment of the regulation with statute, by clarifying that a Laser Examining Board will not be constituted.

#### 4. Costs:

Section 483 of the General Business Law authorizes the Commissioner to determine the costs of the application fees. This amendment imposes no compliance costs upon state or local governments. Since there are no changes to the substantive training hours and certification requirements, there will be no additional costs to crane operators, or laser operators.

Blasters will have an additional cost as they are required to complete two continuing education courses during the three year certification period.

Since the pyrotechnician certification was only recently added to the statute, these provisions establish the fees. The cost to applicants for pyrotechnician certification will be a one hundred and fifty dollar

(\$150) non-refundable application fee which will entitle them to be certified for three years. They will also be required to submit and agree to a criminal background check as part of the application process which will cost ninety four dollars and twenty five cents (\$94.25). The total cost will be two hundred and forty four dollars and twenty five cents (\$244.25) initially and upon renewal every three years.

Additionally, applicants will be required to demonstrate that they had training in safe handling and firing of pyrotechnic displays. Most employers currently provide this training to their staff on an annual basis. The examining board appointed by the commissioner, will develop the requisite criteria and training standards.

The other requirement for certification is experience. Applicants will have to be able to demonstrate that they have three years of practical experience by having worked on displays.

The final requirement will be that the applicant passes a written examination, conducted by an examining board, demonstrating that they do have the knowledge necessary to properly carry out their duties as a pyrotechnician. There will be no additional fee for taking the written examination.

#### 5. Local government mandates:

This rule imposes no additional requirements on local governments; all occupational certifications are the sole responsibility of the Department. Pyrotechnicians must still comply with local laws and obtain applicable permits and variances for shows. For example, the City of New York requires Certificates of Fitness for firework displays (see 3 RCNY Section 113-01(e)(2)(B)).

#### 6. Paperwork:

The paperwork requirements contained in the proposed rule include submission of applications for certification to be submitted to the Department along with consent to criminal background checks and fingerprint cards, medical history waivers, employment histories and proof of training and experience.

The Department will have to develop and complete new documents including application forms and letters to address certification determinations. The Department will also need to develop a data base to process the certificates of compliance. Regarding the duty to report unusual incidents or events, the Department will accept notification by phone calls, fax, email, in person or any other means acceptable to the Commissioner.

#### 7. Duplication:

No duplication of rules was identified. Rather, the general provisions of this regulation provide uniformity for the four occupations, yet does not supersede the specific certification criteria for each of the occupations.

#### 8. Alternatives:

**Pyrotechnicians:** During rule development the Department conducted two years of policy dialogue with the pyrotechnics industry, including a public forum in Syracuse which resulted in selection by the industry of representatives to work with the Department. The resulting three different classifications of pyrotechnicians depending on the applicants training and certification, rather than the alternative single unrestricted certification was presented to and accepted by the Department. The regulation also reflects various other certification provisions recommended by various stakeholders.

**Cranes:** The primary alternative is to leave the regulation unchanged. The Department considered the alternative of adding new Board members, to increase 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. The heavy work load and lack of reimbursement incentive has made it difficult to recruit enough Board members. Increasing the required number of members would exacerbate the problem. The Department developed and incorporated into the text the use of a video camera to tape the person taking the examination as an alternative to one board member having to physically be present at the examination. This saves the Board member travel costs and time that can be applied to increase the efficiency of conducting practical examinations and hearings while maintaining the same safety standards.

**Blasters:** The Department conducted two years of policy dialogue with the explosive industry, including a public forum in Syracuse which resulted in selection of industry representatives to work with the Department. The resulting additional classifications for blasters, rather than leaving it unchanged, is one alternative presented to and accepted by the Department. The regulation also reflects various record keeping and monitoring provisions recommended by various stakeholders.

**Lasers:** No substantive alternatives to this category were presented or explored.

The proposal also clarifies that the Commissioner may issue restricted use certificates which takes into account an individual's physical limitations or allows for unique circumstances.

#### 9. Federal standards:

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

#### 10. Compliance schedule:

The provisions of this amendment will take effect permanently upon notice of adoption to be published in the State Register. The statute for pyrotechnicians became effective on October 4, 2009. The regulation contains provisions to allow individuals, who can otherwise demonstrate compliance with the age, training and experience requirements for certification, to be certified without having to sit for the exam. These individuals will have until the Commissioner determines a schedule for conducting written examinations. After that date, all applicants, except those holding licenses issued by another regulatory entity in accordance with standards comparable to New York State's standards, will be required to pass a written exam. Current blaster certificate holders will have two years to complete the required continuing education courses.

### *Regulatory Flexibility Analysis*

#### 1. Effect of rule:

These regulations accomplish two purposes. One is to standardize the certification process for the various occupations (crane operators, blasters, laser operators, and now, pyrotechnicians) that the Department is charged with regulating. The second is to adopt specific requirements that relate to the issuance of a Pyrotechnician's Certificate of Competence. The requirement for a Pyrotechnician's Certificate of Competence was enacted by Chapter 57 of the Laws of 2009, and amended General Business Law Section 482. These regulations do not impose any new burdens on local governments. All of the requirements for review and issuance of certificates rests with the Department of Labor. Pyrotechnicians who own or work for a pyrotechnic business in New York State will be impacted by the rule, in that the person in charge of each display will have to be certified by the Department. Currently there are approximately 79 businesses outside of New York City that are involved in pyrotechnic displays. Pyrotechnicians, Crane Operators, Blasters and Laser Operators who own or work for businesses in New York State will be impacted by the rule, in that the each of those people in the four specified occupations will have to be certified by the Department. Currently there are approximately 79 Pyrotechnician businesses, 3,500 Crane Operators, 5,000 Laser Operators and 675 Blasters outside of New York City. Most of these would qualify as small businesses. Therefore, the rule may have some economic impact on small businesses.

Chapter 57 amended the General Business Law, the Penal Law and the Labor Law. The amendments to the Penal Law now make it possible for pyrotechnic companies to put on displays for "private" events such as weddings etc. Prior to this change, only public displays of fireworks were allowed. It is expected that this change will increase the number of shows being done on an annual basis thereby having a positive economic impact on these small businesses.

The Crane Operator provisions in this proposal 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 adds these existing classifications to the crane regulations. The regulations have also 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 proposed amendments require the certified blaster to maintain records regarding: the blast site; the type of explosives used; the amount, if any, of explosives that were returned to the magazine; and the individuals present at each site. Not only are these enhanced measures in line with current industry practices, but they ensure that each certified blaster will be responsible for preserving a comprehensive and accurate record for each blast site. Additionally, three categories of competence will be added for blasters. These new tiers allow the individual's level of expertise to match the type of blasting they will be performing. It is possible that this will have an advantage to the individual blaster because they only need to be certified in their area of expertise.

The licensing and certification requirements regarding crane operators were moved from 12 NYCRR Section 23-8.5 to new Part 61. The licensing and certification requirements for blasters were moved from 12 NYCRR Sections [Subparts 39-5 and 39-7] 39.5 and 39.7 to new Part 61. The licensing and certification requirements for mobile lasers were moved from 12 NYCRR [Subpart] Section 50.9 [50-9] to new Part 61.

#### 2. Compliance requirements:

There are no requirements for local governments associated with this rule. In order to receive a certificate, an individual is required to prove that they are competent in their area of expertise. For example, small businesses will now be required to hire at least one certified pyrotechnician to be in overall charge of each display. Each pyrotechnician must comply with the rule by obtaining Certification from the Department of Labor. They will also be required to submit to a criminal background check as part of the application process, demonstrate that they have had training in safe handling and firing of pyrotechnic displays, practical experience by having worked on displays and must pass a written examination.

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. These regulations are intended to facilitate the testing of individuals seeking crane operator certificates.

Additionally, three categories of competence will be added for blasters. These new categories allow the individual's level of expertise to match the type of blasting they will be performing. It is possible that this will have an advantage to the individual blaster because they only need to be certified in their area of expertise.

There are no substantive changes for laser operators except the addition of reporting and recordkeeping requirements similar to that of the other certified occupations; exemption from investigations of criminal and mental health histories, and limiting physical health history to eye exams; and changing some language to conform the regulation with statute by clarifying that a Laser Examining Board will not be constituted.

#### 3. Professional services:

The only required professional services associated with this regulation are those of the pyrotechnician created by the regulation.

#### 4. Compliance costs:

This amendment imposes no compliance costs on the state[s] or local governments. There will be no additional costs to crane operators, blasters or laser operators for certifications. The certifications issued under this regulation are individual occupational certifications. The cost of compliance is borne by the employee not the business or government. Blasters will have an additional cost for completing two education courses prior to renewing their certificates.

Since the pyrotechnician certification was only recently added to

the statute, these provisions establish the fees. The application fee to obtain a three year certification is one hundred and fifty dollars (\$150). An individual will also be required to submit and agree to a criminal background check as part of the application process which will cost ninety four dollars and twenty five cents (\$94.25). The total cost will be two hundred and forty four dollars and twenty five cents (\$244.25) [224.25] initially and upon renewal every three years. It is possible that there may be some positive impact on wages for these licensed individuals but that will remain to be determined by the marketplace.

5. Economic and technological feasibility:

No undue economic or technological requirements are imposed by this rule.

6. Minimizing adverse impact:

This rule will have no adverse impact on local governments because the certification is an individual licensing requirement. These regulations provide a procedure for obtaining certification and the requirements for licensing. The cost of the license is borne by the employee not the business or the government. The review and issuance of certificates for these various occupations is the sole responsibility of the Department. All certificate holders must still comply with local laws and obtain applicable permits and variances.

Pyrotechnicians who own or work for a pyrotechnic business in New York State will be impacted by the rule, in that the person in charge of each display will have to be certified by the Department. The Department was able to minimize adverse impacts on individuals applying for a pyrotechnician's certification by allowing a certificate to be issued to any individual who files an application prior to the Commissioner's determination of a schedule for conducting written examinations, providing that each applicant can establish proof of at least three years of actual experience as an operator on the types of shows covered by the particular classification for which the applicant applies. These applicants may be required to take and successfully pass an appropriate written examination before renewing their certificates. Additionally, the three classifications of certificates of competence may minimize training and experience for pyrotechnicians who choose to specialize in one category, rather seek certification in all categories. The proposal also reflects the statutory change allowing private pyrotechnic shows, which provides increased flexibility to the industry, and is expected to increase the number of shows being done.

For Blasters, three categories of competence will be added, providing flexibility for blasters who specialize in different levels of blasting. Furthermore, the new classifications of certificates of competence will minimize training and experience for blasters who choose to specialize in one category. In addition, blasters are required to take two educational courses for initial certification, and, under this proposal, they also need to take two training courses prior to each renewal. The Department notes that some certified blasters are too close to the certification renewal date to have enough time to take these courses. Instead of denying the renewal, the Department intends to offer flexibility to those blasters by issuing the renewed certification under a temporary variance. The variance will allow certified blasters to continue working while they complete the required courses within two years, prior to the next renewal date.

The Crane Examining Board is responsible for witnessing practical tests for Crane Operators. Since the members of the Board are not always readily available for this duty, the proposal offers flexibility to them by allowing a review of a video taped test rather than requiring all reviewers to be physically present at the practical exam. That change will also make scheduling exams more efficient thereby minimizing delays. The regulations have also 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.

There are no substantive compliance changes for laser operators except for the addition of reporting and record keeping requirements similar to the other three certified occupations.

7. Small businesses and local government participation:

The Department has done extensive outreach with respect to blasters and pyrotechnicians while developing this regulation. It began two

years ago with a public forum in Syracuse where members of the explosives industry were invited to discuss reforms to the Department's existing regulations regarding pyrotechnicians and blasters. As a result of these meetings, it became apparent that there was a need to certify pyrotechnicians and that new categories were required for blasters. At the conclusion of the meeting the Department requested that individuals be selected to act as industry representatives. These individuals worked with the Department in developing and revising the existing statutes and regulations. These proposals are a result of the recommendations developed by that workgroup.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers.

It is expected that the requirement to certify pyrotechnicians may have some economic impact on rural areas. The person in charge of each display will have to be certified by the Department. Currently there are approximately 79 businesses outside of New York City that are involved in pyrotechnic displays. Most of these would qualify as small businesses, some of which may be located in rural areas.

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

The only additional reporting, recordkeeping or other compliance requirements on public or private entities in this rule making will be that all certified individuals will be required to report unusual incidents or events. The Department will accept notification by phone calls, fax, email, in person or any other means acceptable to the Commissioner. Additionally, the proposed amendments require certified blasters to maintain records regarding: each blast site; the type of explosives used; the amount, if any, of explosives that were returned to the magazine; and the individuals present.

There are no requirements for rural local governments associated with this rule. Small businesses located in rural areas will be required to hire or contract with at least one certified pyrotechnician in charge of each display.

3. Costs.

The certifications issued under this regulation are individual occupational certifications. This amendment imposes no compliance costs upon state or local governments. There are no additional costs to crane operators or laser operators. Blasters will have an additional cost as they are required to complete two continuing education courses during the three year certification period. Since the pyrotechnician certification was only recently added to the statute, these provisions establish the fees. Pyrotechnicians located in rural areas will need to become certified. . The application fee to obtain a three year certification is one hundred and fifty dollar (\$150). An individual will also be required to submit and agree to a criminal background check as part of the application process which will cost ninety four dollars and twenty five cents (\$94.25). The total cost will be two hundred and forty four dollars and twenty five cents (\$244.25) initially and upon renewal every three years. It is possible that there may be some positive impact on wages for these licensed individuals but that will remain to be determined by the marketplace.

4. Minimize adverse impact.

This rule should have no adverse economic impact on rural areas.

5. Rural area participation.

In developing the proposed regulation with respect to pyrotechnicians and blasters, the Department sought assistance from the explosives industry, which included rural areas. It began two years ago with a public forum in Syracuse where members of the industry were invited to discuss reforms to the Departments existing regulations. At the conclusion of the meeting, the Department requested that individuals be selected to act as industry representatives. These individuals worked with the Department in developing and revising the existing statutes and regulations.

**Job Impact Statement**

1. Nature of impact:

It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs or employment opportunities, therefore no Job Impact Analysis is required. The certifications issued under this regulation are individual occupational certificates. It

is possible that there may be some positive impact on wages for these licensed individuals. The regulation requires that the person in charge of a pyrotechnic display be certified to ensure that they have the necessary training and experience to properly set up and carry out pyrotechnic displays. This certification requirement was enacted into law by Chapter 57 of the Laws of 2009 and is effective on October 4, 2009.

2. Categories and numbers of jobs or self-employment opportunities affected:

Currently, approximately 79 businesses in New York State are involved in pyrotechnic displays. Some are manufactures, some are display companies and some are a combination of both. Pyrotechnicians who own or work for a pyrotechnic business in New York State will be affected by the rule, in that the person in charge of each pyrotechnic display will have to be certified by the Department.

3. Regions of the state where there would be a disproportionate adverse impact:

None.

---



---

## Office of Mental Health

---



---

### NOTICE OF ADOPTION

#### Operation of Residential Treatment Facilities for Children and Youth

**I.D. No.** OMH-20-10-00001-A

**Filing No.** 752

**Filing Date:** 2010-07-20

**Effective Date:** 2010-08-04

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

**Action taken:** Amendment of Part 584 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

**Subject:** Operation of Residential Treatment Facilities for Children and Youth.

**Purpose:** To continue the existing capacity of Residential Treatment Facilities serving children and youth who are residents of NYC.

**Text or summary was published** in the May 19, 2010 issue of the Register, I.D. No. OMH-20-10-00001-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Operation of Psychiatric Inpatient Units of General Hospitals and Operation of Hospitals for Persons with Mental Illness

**I.D. No.** OMH-21-10-00010-A

**Filing No.** 751

**Filing Date:** 2010-07-20

**Effective Date:** 2010-08-04

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

**Action taken:** Amendment of Parts 580 and 582 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, arts. 7 and 31

**Subject:** Operation of Psychiatric Inpatient Units of General Hospitals and Operation of Hospitals for Persons with Mental Illness.

**Purpose:** To update provisions that reflect outdated statutory references, nomenclature, practices or principles.

**Substance of final rule:** The complete text of this rulemaking is available at: [www.omh.state.ny.us](http://www.omh.state.ny.us).

#### Summary

This rule amends 14 NYCRR Part 580, Operation of Psychiatric Inpatient Units of General Hospitals, and 14 NYCRR Part 582, Operation of Hospitals for the Mentally Ill, by providing greater accuracy and clarity to providers of mental health services with respect to the standards under which they are expected to operate.

#### Changes Made to the Final Rule

Only non-substantive modifications were made to the final rule. The changes are consistent within both Part 580 and Part 582. They are as follows:

1. Statutory Authority header has been amended to reflect Mental Hygiene Law Section 29.15.

2. Section 580.2(c) and Section 582.2(d) have been amended to reflect the provisions of Mental Hygiene Law Section 29.15 regarding discharges and conditional releases of patients from hospitals operated by the Office of Mental Health (OMH) or from psychiatric inpatient services subject to licensure by OMH.

3. Section 580.8(e)(2) and Section 582.8(e)(2) have been amended to clarify the requirements of facilities administering electroconvulsive therapy (ECT). The proposed rule referenced a specific journal published by the American Psychiatric Association. As it would be necessary to amend the regulations should the journal be updated in the future, OMH believes it is more expeditious, and ultimately, less confusing to providers, if the reference to the specific publication is removed and clarifying language is added to the regulations which states that facilities administering ECT must remain current with standards of practice supported by the American Psychiatric Association. The intent of the proposed rule remains unchanged.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in the statutory authority and sections 580.2(c), 580.8(e)(2), 582.2(d) and 582.8(e)(2).

**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

#### Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive and do not impact upon the regulatory impact statement submitted with the proposed rule. The changes include the addition of a reference to statute and clarification regarding requirements of facilities administering electroconvulsive therapy. The meaning and intent of the proposed rule remains unchanged.

#### Revised Regulatory Flexibility Analysis

A Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this adoption notice because the changes to the final rule do not impose any new reporting, record keeping or other compliance requirements on small businesses or local governments. The changes include the addition of a reference to statute and clarification of requirements of facilities administering electroconvulsive therapy. The meaning and intent of the proposed rule remains unchanged. There will be no adverse economic impact on small businesses or local governments.

#### Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not being submitted with this notice because the minor, non-substantive changes made to the final rule do not impact upon the rural area flexibility analysis originally submitted with the proposed rule. The changes include a point of reference for facilities administering electroconvulsive therapy, as well as the addition of a reference to Mental Hygiene Law Section 29.15.

#### Revised Job Impact Statement

A Job Impact statement is not being submitted with this notice because the changes made to the final rule are non-substantive and do not alter the original job impact statement submitted with the Notice of Proposed Rule Making.

#### Assessment of Public Comment

The Office of Mental Health (OMH) received one letter regarding the amendments to Part 580 and Part 582 of Title 14 NYCRR. The letter expressed general agreement and support of the proposed rule. However, the writer felt the regulations should be amended to reflect provisions regarding discharging of patients from inpatient settings. The writer suggested the inclusion of a subdivision entitled, "Discharges", as well as a reference to Mental Hygiene Law Section 29.15, which establishes requirements for discharge and conditional release of individuals from psychiatric inpatient settings. OMH believes that the regulations adequately address requirements pertaining to discharging patients from hospitals operated by OMH or from psychiatric inpatient services subject

to licensure by OMH; therefore, a “Discharges” subdivision has not been added to the regulations. However, the agency has added a reference to Mental Hygiene Law Section 29.15 in both the Statutory Authority and Legal Base sections of Part 580 and 582.

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

**Mental Health Services - General Provisions; Community Based Service System for Children; Operation of Outpatient Programs**

**I.D. No.** OMH-31-10-00017-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 501, 507 and 587 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.01 and 31.04

**Subject:** Mental Health Services - General Provisions; Community Based Service System for Children; Operation of Outpatient Programs.

**Purpose:** To add a definition of “serious emotional disturbance”.

**Text of proposed rule:** 1. A new subdivision (g) is added to section 501.2 of Title 14 NYCRR as follows:

(g) *Serious emotional disturbance means a child or adolescent has a designated mental illness diagnosis according to the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) and has experienced functional limitations due to emotional disturbance over the past 12 months on a continuous or intermittent basis. The functional limitations must be moderate in at least two of the following areas or severe in at least one of the following areas:*

(1) *ability to care for self (e.g., personal hygiene; obtaining and eating food; dressing; avoiding injuries); or*

(2) *family life (e.g., capacity to live in a family or family like environment; relationships with parents or substitute parents, siblings and other relatives; behavior in family setting); or*

(3) *social relationships (e.g., establishing and maintaining friendships; interpersonal interactions with peers, neighbors and other adults; social skills; compliance with social norms; play and appropriate use of leisure time); or*

(4) *self-direction/self-control (e.g., ability to sustain focused attention for a long enough period of time to permit completion of age-appropriate tasks; behavioral self-control; appropriate judgment and value systems; decision-making ability); or*

(5) *ability to learn (e.g., school achievement and attendance; receptive and expressive language; relationships with teachers; behavior in school).*

2. Section 507.4 of Title 14 NYCRR is amended to read as follows:

(a) Expanded children’s services is a program established to provide new and expanded community based services to [seriously emotionally disturbed] children and adolescents with serious emotional disturbance and to provide grants for 100 percent net deficit costs for those services.

(b) [Seriously emotionally disturbed means persons under the age of 18 who have serious, persistent disability which:

(1) is caused by a medically determined mental illness as evidenced by primary psychiatric diagnosis made by a physician, or is caused by other serious emotional disturbance as defined by the regulations of the commissioner;

(2) has continued or is likely to continue for a period of at least one year;

(3) would cause substantial risk of psychiatric hospitalization in the absence of community based mental health services; and

(4) results in substantial functional limitations in two or more of the following areas:

(i) self-care at an appropriate developmental level;

(ii) receptive and expressive language;

(iii) learning;

(iv) self-direction; and

(v) capacity for living in a family environment.]

*Serious emotional disturbance means a child or adolescent has a designated mental illness diagnosis according to the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) and has experienced functional limitations due to emotional disturbance over the past 12 months on a continuous or intermittent basis. The functional limitations must be moderate in at least two of the following areas or severe in at least one of the following areas:*

(1) *ability to care for self (e.g., personal hygiene; obtaining and eating food; dressing; avoiding injuries); or*

(2) *family life (e.g., capacity to live in a family or family like environ-*

*ment; relationships with parents or substitute parents, siblings and other relatives; behavior in family setting); or*

(3) *social relationships (e.g., establishing and maintaining friendships; interpersonal interactions with peers, neighbors and other adults; social skills; compliance with social norms; play and appropriate use of leisure time); or*

(4) *self-direction/self-control (e.g., ability to sustain focused attention for a long enough period of time to permit completion of age-appropriate tasks; behavioral self-control; appropriate judgment and value systems; decision-making ability); or*

(5) *ability to learn (e.g., school achievement and attendance; receptive and expressive language; relationships with teachers; behavior in school).*

3. Paragraph (8) of subdivision (a) of Section 587.4 of Title 14 NYCRR is amended to read as follows:

(8) [Extended impairment in functioning due to] *Serious emotional disturbance means a child or adolescent has a designated mental illness diagnosis according to the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) and has experienced functional limitations due to emotional disturbance over the past 12 months on a continuous or intermittent basis. The functional problems must be moderate in at least two of the following areas or severe in at least one of the following areas:*

(i) [self-care] *ability to care for self (e.g., personal hygiene; obtaining and eating food; dressing; avoiding injuries); or*

(ii) *family life (e.g., capacity to live in a family or family like environment; relationships with parents or substitute parents, siblings and other relatives; behavior in family setting); or*

(iii) *social relationships (e.g., establishing and maintaining friendships; interpersonal interactions with peers, neighbors and other adults; social skills; compliance with social norms; play and appropriate use of leisure time); or*

(iv) *self-direction/self-control (e.g., ability to sustain focused attention for a long enough period of time to permit completion of age-appropriate tasks; behavioral self-control; appropriate [judgement] judgment and value systems; decision-making ability); or*

(v) [learning] *ability to learn (school achievement and attendance; receptive and expressive language; relationships with teachers; behavior in school).*

**Text of proposed 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

**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**

This rule making is filed as a Consensus rule on the grounds that it is non-controversial and makes a technical change which establishes consistency with other regulations within Chapter XIII of Title 14 NYCRR. No person is likely to object to this rulemaking since it merely clarifies the definition of “serious emotional disturbance” and provides consistency with other Office regulations.

Statutory Authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction. Section 31.01 of the Mental Hygiene Law charges the Commissioner of the Office of Mental Health with the responsibility to promulgate rules and regulations requiring the development of evaluation criteria and methods, including, but not limited to: uniform definitions of services for persons with mental disabilities; uniform financial and clinical reporting procedures; requirements for the generation and maintenance of uniform data for all individuals receiving services from any provider of services; uniform criteria for evaluating categories of need; and uniform standards for all comparable services and programs.

As this rule is non-controversial, makes a technical change and conforms to regulations within Chapter XIII of Title 14 NYCRR, it is appropriately filed as a consensus rule making.

**Job Impact Statement**

A Job Impact Statement is not submitted with this notice because this consensus rule merely clarifies the definition of “serious emotional disturbance” and provides consistency with other Office regulations. There will be no impact on jobs and employment opportunities as a result of this rulemaking.

---



---

## Department of Motor Vehicles

---



---

### NOTICE OF ADOPTION

#### Post-Revocation Conditional License

**I.D. No.** MTV-20-10-00014-A

**Filing No.** 746

**Filing Date:** 2010-07-20

**Effective Date:** 2010-08-04

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

**Action taken:** Amendment of Part 140 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 1198

**Subject:** Post-revocation conditional license.

**Purpose:** To make technical changes regarding the issuance of the post-revocation conditional license.

**Text or summary was published** in the May 19, 2010 issue of the Register, I.D. No. MTV-20-10-00014-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Monica J Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 486-3131, email: monica.staats@dmv.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

---



---

## Office of Parks, Recreation and Historic Preservation

---



---

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

#### Fees and Charges of \$100 or More for Use of State Parks Historic Sites, Parks and Recreational Facilities

**I.D. No.** PKR-31-10-00002-P

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

**Proposed Action:** Repeal of Part 381 and addition of new Part 381 to Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, sections 3.09(2)(8) and 13.15

**Subject:** Fees and charges of \$100 or more for use of State Parks historic sites, parks and recreational facilities.

**Purpose:** To update the State Parks fee schedule and increase patron fees and charges that are \$100 or more.

**Substance of proposed rule (Full text is posted at the following State website: [www.nysparks.state.ny.us](http://www.nysparks.state.ny.us)):** 9 NYCRR Part 381 is repealed and a new Part 381 is added.

Section 381.1 General requirements for fees and charges.

This section explains the statutory requirement that any fee assessed by the Office of Parks, Recreation and Historic Preservation (State Parks) of \$100 or more that produces annual aggregate revenue greater than \$1000 must be established by rule. The section also explains that the term "non-profit" in the rule includes State or municipal agencies or entities. And, it indicates that general information about fees and State Parks facilities may be obtained at [www.nysparks.state.ny.us](http://www.nysparks.state.ny.us), or at the headquarters of the eleven park regions listed 9 NYCRR section 461.6, or at the Albany Office, Empire State Plaza, Agency Building 1, Albany, NY 12238.

Section 381.2 Statewide fees for cabins.

This section describes base statewide fees for two-person through eight-person cabins for a 7-day rental period and explains surcharges and deductions from the fees.

Section 381.3 Other statewide fees.

This section describes statewide fees for shotgun golf outings and rowboat rentals.

Section 381.4 Boating facility and marina berth fees by region and marina.

This section describes different seasonal fees based on the length in feet of the vessel requiring a berth at a marina or based on a flat fee.

Section 381.5 Picnic shelter use fees by region and park.

This section describes different fees for renting picnic shelters based on the size of the group, capacity, amenities and market demand.

Section 381.6 Lodging use fees by region and park.

Different rental rates for cottages are described in this section based on size, amenities, services, location, market demand and time of year.

Section 381.7 Special facility and event fees by region and park.

Different fees are described here for use of various types of park and historic facilities including: halls, rooms, lawns, athletic facilities and fields for various activities and permits including but not limited to: tent rentals, group events, weddings, peddling, special programs, athletic events and competitions, and fishing.

Section 381.8 Refunds.

This section outlines the conditions under which refunds may be provided.

Section 381.9 Cash deposits, bonds.

This section describes the conditions under which deposits and bonds will be forfeited.

**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.

#### Regulatory Impact Statement

Introduction:

All fees collected by the Office of Parks, Recreation and Historic Preservation (State Parks) are dedicated by law to the operation, maintenance and improvement of our parks and historic sites. There are new fees and fee increases for fees of \$100 or more proposed that have been required by the FY 2009-2010 Enacted Budget Financial Plan at <http://publications.budget.state.ny.us/budgetFP/2009-10EnactedBudget-FINAL.pdf>. Projected to raise \$4.85 million in revenue - these fees also support activities and services for the upcoming season.

The proposed regulation repeals 9 NYCRR Part 381 and replaces it with a new rule that specifically:

1. increases fees and charges for facilities currently listed in the existing regulation;
2. increases fees and charges for facilities currently assessed in the master fee schedule that were not listed in the existing regulation; and
3. adds fees and charges for new facilities that have become available to the public since the last rulemaking.

1. Statutory authority:

- Subdivision 2 of Section 3.09 of the Parks, Recreation and Historic Preservation Law (PRHPL) authorizes State Parks to operate and maintain historic sites, parks and recreational facilities.
- Subdivision 5 of Section 3.09 of the PRHPL requires State Parks to "provide for the health, safety and welfare of the public using facilities under its jurisdiction."
- Subdivision 8 of section 3.09 of the PRHPL authorizes State Parks to adopt rules and regulations necessary to perform or exercise its functions, powers and duties.
- Section 13.15 of the PRHPL authorizes State Parks to establish fees or other charges for the use of facilities under its jurisdiction.
- Subdivision 2 of section 102 of the State Administrative Procedure Act requires any fee of \$100 or more resulting in annual aggregate revenue of more than \$1,000 to be promulgated as a rule.
- Section 97-mm of the State Finance Law requires fees to be deposited in the patron services account in the miscellaneous special revenue fund and other state revenue funds. The State Legislature appropriates the funds to State Parks.

2. Legislative objectives:

Through Environmental Protection Fund appropriations the State Legislature has increased the size of the State park and historic site system by more than 27 percent since 1995. Under the Parks, Recreation and Historic Preservation Law State Parks is required to operate and maintain parks and historic sites for the health, safety and welfare of the general public.

The system is a sound and pragmatic economic investment, contributing to the vitality and quality of life of local communities and directly supporting New York's tourism industry. From Bethpage and Jones Beach on

Long Island to the Walkway Over the Hudson to Letchworth and Niagara Falls, the State parks system actually defines many communities. For example, Niagara Falls State Park attracts nearly eight million visitors a year - attendance greater than that of Grand Canyon and Yosemite National Parks combined.

The State Legislature's objectives include continuing to have State parks and historic sites offer affordable family fun, healthful recreation, a place of rest and beautiful vistas in these stressful times. Additionally, the objectives include managing our facilities to provide for countless species of plants and animals, irreplaceable ecosystems, and incredible and varied historic and cultural resources.

Although State Parks is making every effort to reduce costs in all parts of the agency's budget - particularly administrative costs and non-essential activities - it is no longer feasible to continue to operate the facilities and programs without the new and increased fees of \$100 or more. The State Legislature requires revenue from these fees and charges to be collected and deposited in funds and appropriates money to State Parks for operating and maintaining the facilities. The FY 2009-10 financial plan adopted by the State Legislature projected that \$4.85 million could be generated by the fee increases.

### 3. Needs and benefits:

There are 178 parks and 35 historic sites that State Parks operates and manages. This diverse inventory of facilities includes: 5,000 buildings; 29 golf courses; 52 swimming pools; 76 beaches; 27 marinas; 40 boat launches; 18 nature centers; 817 cabins; 8,355 campsites; 1,350 miles of trails; 106 dams and 640 bridges.

Visitation remains strong throughout the system. In 2009, state parks and historic sites hosted nearly 56 million visitors, an increase of 1.9 million visitors over the previous year. And in 2009 cabins and campsites were booked more nights than any other year in State Parks' history.

A recent study by the University of Massachusetts Political Economy Research Institute documented that the State park and historic site system generates \$1.9 billion in economic activity every year. Nearly half the economic activity is from visitors outside the immediate areas in which the facilities are located. Drawing visitors to parks and historic sites, therefore, provides positive economic benefits for local tourism and similar private sector facilities in each region.

Eighty-five percent (85%) of State Parks' operating budget of \$155 million is spent directly on park operations. State Parks, however, only generates an estimated \$85 million in revenue through patron and user fees, concession contracts and other sources.

In 2009 - the second year of this fiscal crisis - budget cuts were managed through administrative savings and service reductions. Seasons, days, and hours of operation were shortened and programming was reduced at 100 state parks and historic sites across the State, saving more than \$5 million in operating costs. Beaches and pools were open for swimming fewer days of the week or fewer hours of the day. Campgrounds opened later and closed earlier. Cleaning, grounds keeping and trail maintenance were reduced. Nature centers and historic sites offered fewer educational programs. Efforts were made to limit the cuts to the non-peak seasons or least busy days of the week. When a park or historic site is closed or hours or operations are reduced, however, any savings are offset by a loss of revenue.

Also, the Green Thumb, Conservation Corps and AmeriCorps programs were cut due to the loss of State matching funds. This past fall as part of the FY 09-10 Deficit Reduction Plan further reductions included the cancellation of existing heritage trails contracts, elimination of the military battle flag preservation project, and ongoing reductions in equipment replacement and other discretionary spending.

Another ongoing challenge for the agency is the cancellation of the park police training academy. State Parks has cancelled the academy three years in a row due to the fiscal crisis. Park Police staffing in the parks this summer will be down 25 percent - or 70 uniformed officers - from July 2008 levels. From a high of more than 500 full and part-time officers in 2003, State Parks now has 266 police officers.

### 4. Costs:

#### Overview

This fee rule was last amended in 2004. There are no additional costs to State Parks for implementing the rule. The costs to persons and groups that choose to use parks and historic site facilities are the patron fees, permit fees, commercial fees and charges they pay to State Parks. They may also pay nominal costs for applying to use the facilities and consulting with facility managers.

State Parks facilities are available in response to the huge public demand for use of gardens, lawns, structures and unique spaces for meetings, conferences, weddings, parties, athletic events and other special events.

In establishing the fees and charges State Parks worked with each of the regional offices to make them comparable where possible throughout the system (e.g., cabin fees and charges). Otherwise, they reflect the local private sector markets within each region (e.g., seasonal lodging fees).

Factors such as size, design, location, demand and number of people who could be accommodated at a recreational site were considered in determining appropriate fees. Discounted rates are established across the board for public and non-profit groups.

#### Fee Increases

- Cabin fees increased from 12-19% and on average about 15%.
- Surcharges for cabin amenities increased 67% but the maximum surcharge is \$50.
- Marina fees are charged per foot or as a flat fee; they increased on average about 26%.
- Picnic shelter fees increased on average 18%.
- Seasonal lodging fees increased on average 24%.
- Fees for special events increased on average 19%.

#### New Fees in Regulation

Some fee increases e.g., for marinas, picnic facilities and rowboat rentals are appearing for the first time in the rule because they reached the \$100 threshold that requires they now be established by regulation as well as in the master fee schedule.

The majority of the new fees e.g., for special events, room rentals and athletic activities appear for the first time in regulation because they reached the \$100 threshold or are no longer subject to negotiation.

Also, new fees are established for facilities at three new parks that have been added to the system since 2004: Betty and Wilbur Davis, Midway and Walkway over the Hudson.

#### New Lodging Facilities

The six cottages at the newly-established Betty and Wilbur Davis State Park, a new cottage at existing Robert G. Wehle State Park and a new cottage at Moreau Lake State Park were all added to the system in the interim period since the rule was last amended. Those fees, therefore, also appear for the first time in this rule.

5. Local government mandates: The rule does not impose any program, service, duty or responsibility on any county, city, town, village, school district or fire district.

6. Paperwork: There are no new reporting requirements in connection with this rule.

7. Duplication: The rule does not duplicate any State or federal requirements.

8. Alternatives: The objectives of the rule are to meet the FY 2009-10 financial plan's requirement to raise \$4.85 million in revenue to help operate and maintain parks and historic sites and to keep rates affordable and realistic within each regional market area. Not raising the fees and charges or lowering them would result in drastic cuts that could decrease levels of service for the public. State Parks thoroughly investigated its options, consulted with each region and each facility manager, considered how the patrons that visit our facilities could be accommodated, considered what costs patrons in each regional market could bear, and concluded that the proposed fees and charges would accomplish the objective established by the State Legislature in this fiscal crisis.

9. Federal standards: There are no federal standards that relate to this rule.

10. Compliance schedule: The rule takes effect upon adoption.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed repeal and addition of a new rule implements increases in patron fees and charges of \$100 or more for use of State Parks historic sites, parks and recreational facilities.

#### Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed amendments implement changes in fees and charges of \$100 or more for the use of State Parks historic sites, parks and recreational facilities.

#### Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rule will not have an impact on jobs and employment opportunities. The proposed repeal and addition of a new section increases patron fees and charges \$100 or more for use of State Parks historic sites, parks and recreational facilities.

## Public Service Commission

### NOTICE OF ADOPTION

#### Joint Proposal for Follow-On Merger Credit Benefits for Niagara Mohawk Ratepayers

**I.D. No.** PSC-25-08-00005-A

**Filing Date:** 2010-07-16

**Effective Date:** 2010-07-16

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

**Action taken:** On July 15, 2010, the PSC adopted an order approving the Joint Proposal of Niagara Mohawk Power Corporation d/b/a National Grid, DPS Staff and Multiple Intervenors to quantify and allocate follow-on merger credit benefits.

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

**Subject:** Joint Proposal for follow-on merger credit benefits for Niagara Mohawk ratepayers.

**Purpose:** To approve the allocation for follow-on merger credit benefits for Niagara Mohawk ratepayers.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving, the Joint Proposal of Niagara Mohawk d/b/a National Grid (Niagara Mohawk), Department of Public Service Staff and Multiple Intervenors, to quantify and allocate, among Niagara Mohawk and its customers, certain follow-on merger benefits resulting from the 2007 acquisition of KeySpan Corporation by Niagara Mohawk's parent, National Grid Group plc, 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.

(01-M-0075SA42)

### NOTICE OF ADOPTION

#### Consideration of Utilities Compliance Filings

**I.D. No.** PSC-10-09-00013-A

**Filing Date:** 2010-07-19

**Effective Date:** 2010-07-19

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

**Action taken:** On 7/15/10, the PSC adopted an order concerning remote customer access to account information.

**Statutory authority:** Public Service Law, section 66(1)

**Subject:** Consideration of utilities compliance filings.

**Purpose:** To approve, with modifications, certain utility proposals, and direct further filings of others.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving, with modifications, the proposals of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Company d/b/a National Grid and Orange and Rockland Utilities, Inc. to provide customers with access to their utility account numbers conditioned on the customer's provision of a partial Social Security Number. The Commission directed, KeySpan Energy Delivery of New York and KeySpan Energy Delivery of Long Island to submit a report of estimated costs for providing customers with access through an Integrated Voice Response (IVR) System, and directed National Fuel Gas Distribution Corporation, New York State Electric and Gas Company and Rochester Gas and Electric Corporation to submit plans

to provide customers with real-time remote access through an IVR system or other mechanism, and provide detailed estimates of the implementation costs for such plans, 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.

(98-M-1343SA16)

### NOTICE OF ADOPTION

#### Minor Rate Filing

**I.D. No.** PSC-01-10-00015-A

**Filing Date:** 2010-07-20

**Effective Date:** 2010-07-20

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Jamestown Board of Public Utilities amendments to PSC 6 — Electricity, effective August 1, 2010, to increase its annual revenues by \$883,012 or 2.33%.

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

**Subject:** Minor Rate Filing.

**Purpose:** To approve amendments to PSC 6 — Electricity, effective August 1, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Jamestown Board of Public Utilities amendments to PSC 6 — Electricity, effective August 1, 2010, to increase its annual revenues by \$883,012 or 2.33%, 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.

(09-E-0862SA1)

### NOTICE OF ADOPTION

#### Major Water Rate Filing

**I.D. No.** PSC-10-10-00006-A

**Filing Date:** 2010-07-20

**Effective Date:** 2010-07-20

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

**Action taken:** On 7/15/10, the PSC adopted an order approving, with modifications, the Joint Proposal of United Water New York, Inc. and Department staff dated April 20, 2010, to establish a three year rate plan.

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

**Subject:** Major water rate filing.

**Purpose:** To approve, with modifications, the Joint Proposal of United Water New York, Inc. to establish a three year rate plan.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving, with modifications, the Joint Proposal of United Water New York, Inc. (UWNY) and Department of Public Service Staff dated April 20, 2010, to establish a three year rate plan for UWNY, 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.  
(09-W-0731SA1)

### NOTICE OF ADOPTION

#### Requests for Late Submission and Waiver of Certain Filing Requirements

**I.D. No.** PSC-17-10-00008-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10 the PSC adopted an order granting the motion of St. Lawrence Gas Company, Inc. for waivers and denying a determination as to the applicability of local zoning requirements.

**Statutory authority:** Public Service Law, sections 4(1) and 122(1)(f)

**Subject:** Requests for late submission and waiver of certain filing requirements.

**Purpose:** To approve a request for waivers of PSC rules and deny the request for a determination of applicability of local zoning.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order granting the April 7, 2010 motion of St. Lawrence Gas Company, Inc. for waivers of information requirements, and denying a determination as to the applicability of local zoning requirements, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.  
(10-T-0154SA1)

### NOTICE OF ADOPTION

#### Sale of Street Lighting Facilities

**I.D. No.** PSC-18-10-00010-A

**Filing Date:** 2010-07-19

**Effective Date:** 2010-07-19

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

**Action taken:** On 7/15/10, the PSC adopted an order approving the petition of Rochester Gas and Electric Corporation to sell to the City of Rochester its street lighting facilities situated within the City of Rochester, County of Monroe, New York.

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

**Subject:** Sale of street lighting facilities.

**Purpose:** To approve the sale of street lighting facilities to the City of Rochester.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving the petition of Rochester Gas and Electric Corporation to sell to the City of Rochester its street lighting facilities situated within the City of Rochester, County of Monroe, New York for a sum of \$7,060,906 plus any accrued taxes, 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.  
(09-E-0768SA1)

### NOTICE OF ADOPTION

#### Indebtedness for a Term in Excess of 12 Months

**I.D. No.** PSC-18-10-00011-A

**Filing Date:** 2010-07-19

**Effective Date:** 2010-07-19

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

**Action taken:** On 7/15/10, the PSC adopted an order approving The New York Independent System Operator, Inc.'s (NYISO) petition to incur up to \$125,000,000 in combined indebtedness.

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

**Subject:** Indebtedness for a term in excess of 12 months.

**Purpose:** To approve NYISO's petition to incur up to \$125,000,000 in combined indebtedness.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving The New York Independent System Operator, Inc.'s petition to incur up to \$125,000,000 in combined indebtedness that consists of a \$50,000,000 Revolving Line of Credit and a \$75,000,000 capital and project financing facility, 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.  
(10-E-0160SA1)

### NOTICE OF ADOPTION

#### Availability of Telecommunications Services in New York

**I.D. No.** PSC-18-10-00013-A

**Filing Date:** 2010-07-16

**Effective Date:** 2010-07-16

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

**Action taken:** On 7/15/10, the PSC adopted an order approving the Phase I Joint Proposal for Temporary Transition Fund Extension.

**Statutory authority:** Public Service Law, sections 5, 91(1) and 94

**Subject:** Availability of telecommunications services in New York.

**Purpose:** To approve the Phase I Joint Proposal for Temporary Transition Fund Extension.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving the Phase I Joint Proposal for Temporary Transition Fund Extension, 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.  
(09-M-0527SA1)

### **NOTICE OF ADOPTION**

#### **Amendments to PSC 220 — Electricity, Effective August 1, 2010**

**I.D. No.** PSC-19-10-00015-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC 220 — Electricity, effective August 1, 2010.

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

**Subject:** Amendments to PSC 220 — Electricity, effective August 1, 2010.

**Purpose:** To approve amendments to PSC 220 — Electricity, effective August 1, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC 220 — Electricity, effective August 1, 2010, to revise Rule 21 Service Laterals below 15,000 volts to implement the National Grid Connects Program.

**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.  
(10-E-0191SA1)

### **NOTICE OF ADOPTION**

#### **Delivery Rate Adjustment**

**I.D. No.** PSC-19-10-00017-A

**Filing Date:** 2010-07-16

**Effective Date:** 2010-07-16

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Corning Natural Gas Corporation's amendments to PSC 4, 5 and 6 — Gas effective July 20, 2010, to modify the Delivery Rate Adjustment.

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

**Subject:** Delivery Rate Adjustment.

**Purpose:** To approve amendments to PSC 4, 5 and 6 — Gas effective July 20, 2010, to modify the Delivery Rate Adjustment.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Corning Natural Gas Corporation's amendments to PSC 4, 5 and 6 — Gas effective July 20, 2010, to modify the Delivery Rate Adjustment provision to pass back to its customers pipeline refunds received from the Tennessee Gas Pipeline Company, 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.  
(10-G-0183SA1)

### **NOTICE OF ADOPTION**

#### **Approval of the Transfer of Ownership Interests in a 50 MW Generation Facility**

**I.D. No.** PSC-19-10-00018-A

**Filing Date:** 2010-07-20

**Effective Date:** 2010-07-20

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

**Action taken:** On 7/15/10, the PSC adopted an order approving the petition of Catalyst Renewables LLC and others for the transfer of the ownership interests.

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

**Subject:** Approval of the transfer of ownership interests in a 50 MW generation facility.

**Purpose:** To approve the transfer of ownership interests in a 50 MW generation facility.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving the petition of Catalyst Renewables LLC (Catalyst), Black River Energy LLC, Black River Generation LLC (Black River), ELF Hamakua LLC, USPF Holdings LLC, and United States Power Fund, L.P. (USPF), for the transfer of the ownership interests in Black River from USPF to Catalyst Renewables LLC. Black River owns a 50 MW coal-fired electric generation facility located at Fort Drum in the Town of LeRay, New York, 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.  
(10-E-0163SA1)

### **NOTICE OF ADOPTION**

#### **Issuance of and Sale of Long-Term Debt Securities and Other Forms of Indebtedness**

**I.D. No.** PSC-19-10-00020-A

**Filing Date:** 2010-07-19

**Effective Date:** 2010-07-19

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

**Action taken:** On 7/15/10, the PSC adopted an order authorizing New York State Electric & Gas Corporation (NYSEG) to issue and sell up to \$273 million of securities in one or more transactions, not later than December 31, 2013.

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

**Subject:** Issuance of and sale of long-term debt securities and other forms of indebtedness.

**Purpose:** To approve NYSEG to issue and sell up to \$273 million of securities in one or more transactions, not later than 12/31/13.

**Substance of final review:** The Commission, on June 17, 2010, adopted an order authorizing New York State Electric & Gas Corporation to issue and sell up to \$273 million of securities in one or more transactions, not later than December 31, 2013, 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 Commis-

sion, 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.  
(10-M-0182SA1)

**NOTICE OF ADOPTION**

**Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating**

**I.D. No.** PSC-20-10-00005-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Consolidated Edison Company of New York Inc.'s amendments to PSC 9 — Electricity, effective July 23, 2010.

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

**Subject:** Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating.

**Purpose:** To approve amendments to PSC 9 — Electricity, effective July 23, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Consolidated Edison Company of New York Inc.'s amendments to PSC 9 — Electricity, effective July 23, 2010, to effectuate amendments to Public Service Law § 66-j and § 66-l Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating Systems, and directed the company to comply with the revised Standard Interconnection Requirements, 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.  
(10-E-0134SA1)

**NOTICE OF ADOPTION**

**Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating**

**I.D. No.** PSC-20-10-00007-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC 15 — Electricity, effective July 23, 2010.

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

**Subject:** Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating.

**Purpose:** To approve amendments to PSC 15 — Electricity, effective July 23, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC 15 — Electricity, effective July 23, 2010, to effectuate amendments to Public Service Law § 66-j and § 66-l Net Energy Metering for

Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating Systems, and directed the company to comply with the revised Standard Interconnection Requirements, 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.  
(10-E-0133SA1)

**NOTICE OF ADOPTION**

**Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating**

**I.D. No.** PSC-20-10-00008-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10, the PSC adopted an order approving New York State Electric & Gas Corporation's amendments to PSC 120 — Electricity, effective July 23, 2010.

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

**Subject:** Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating.

**Purpose:** To approve amendments to PSC 120 — Electricity, effective July 23, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving New York State Electric & Gas Corporation's amendments to PSC 120 — Electricity, effective July 23, 2010, to effectuate amendments to Public Service Law § 66-j and § 66-l Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating Systems, and directed the company to comply with the revised Standard Interconnection Requirements, 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.  
(10-E-0135SA1)

**NOTICE OF ADOPTION**

**Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating**

**I.D. No.** PSC-20-10-00009-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC 220 — Electricity, effective July 23, 2010.

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

**Subject:** Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating.

**Purpose:** To approve amendments to PSC 220 — Electricity, effective July 23, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC 220 — Electricity, effective July 23, 2010, to effectuate amendments to Public Service Law § 66-j and § 66-l Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating Systems, and directed the company to comply with the revised Standard Interconnection Requirements, 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.

(10-E-0136SA1)

### NOTICE OF ADOPTION

#### Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating

**I.D. No.** PSC-20-10-00010-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC 19 — Electricity, effective July 23, 2010.

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

**Subject:** Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating.

**Purpose:** To approve amendments to PSC 19 — Electricity, effective July 23, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC 19 — Electricity, effective July 23, 2010, to effectuate amendments to Public Service Law § 66-j and § 66-l Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating Systems, and directed the company to comply with the revised Standard Interconnection Requirements, 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.

(10-E-0137SA1)

### NOTICE OF ADOPTION

#### Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating

**I.D. No.** PSC-20-10-00011-A

**Filing Date:** 2010-07-15

**Effective Date:** 2010-07-15

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

**Action taken:** On 7/15/10, the PSC adopted an order approving Orange and Rockland Utilities' amendments to PSC 2 — Electricity, effective July 23, 2010.

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

**Subject:** Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating.

**Purpose:** To approve amendments to PSC 2 — Electricity, effective July 23, 2010.

**Substance of final rule:** The Commission, on July 15, 2010, adopted an order approving Orange and Rockland Utilities' amendments to PSC 2 — Electricity, effective July 23, 2010, to effectuate amendments to Public Service Law § 66-j and § 66-l Net Energy Metering for Non-Residential Photovoltaic and Non-Residential and Farm Service Wind Electric Generating Systems, and directed the company to comply with the revised Standard Interconnection Requirements, 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.

(10-E-0138SA1)

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

#### Whether to Permit the Use of the IMAC Pulsimatic Transmitter for Use in Commercial and Industrial Gas Meter Applications

**I.D. No.** PSC-31-10-00006-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 Consolidated Edison Company of New York, Inc. for the approval to use the IMAC Systems Inc. Pulsimatic Transmitter.

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

**Subject:** Whether to permit the use of the IMAC Pulsimatic Transmitter for use in commercial and industrial gas meter applications.

**Purpose:** To permit gas utilities in New York State to use the IMAC Systems Inc. Pulsimatic Transmitter.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Consolidated Edison Company of New York, Inc. to use the IMAC Systems Pulsimatic Transmitter for automatic meter readings in commercial and residential natural gas meter applications.

**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: Secretary@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.

(10-G-0311SP1)

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

**Waiver of the Attachment 23 Requirement in 2001 Rate Order That NMPC Board of Directors Consist of "Outside Directors"**

**I.D. No.** PSC-31-10-00007-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve, deny or modify a petition of Niagara Mohawk Power Corporation d/b/a National Grid (NMPC), for a limited waiver of the December 3, 2001 Merger Rate Plan Order.

**Statutory authority:** Public Service Law, section 66(1)

**Subject:** Waiver of the Attachment 23 requirement in 2001 Rate Order that NMPC Board of Directors consist of "outside directors".

**Purpose:** To consider the waiver of the requirement that a majority of NMPC Board of directors consist of "outside directors".

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a June 10, 2010 petition of Niagara Mohawk Power Corporation d/b/a National Grid (NMPC or Company) for a limited waiver of Section 2.1.2 of Attachment 23 of the 2001 Merger Rate Plan which requires that a majority of NMPC's Board of Directors consist of "outside directors." The request is made in order to implement Recommendation III-9 of the December 4, 2009 Management Audit in Case 08-E-0827 recommending that the Company replace the current membership of the NMPC Board with representatives of National Grid's U.S. senior management.

**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](mailto: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: [Secretary@dps.state.ny.us](mailto:Secretary@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.

(01-M-0075SP48)

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

**KEDNY's Interim Low Income Energy Efficiency Program**

**I.D. No.** PSC-31-10-00008-P

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

**Proposed Action:** The Public Service Commission is considering The Brooklyn Union Gas Company d/b/a KeySpan Delivery New York's (KEDNY) request for approval of costs incurred while providing low income multifamily energy efficiency services.

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

**Subject:** KEDNY's Interim Low Income Energy Efficiency Program.

**Purpose:** Consideration of KEDNY's request for approval of costs related to large multifamily energy efficiency services.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action regarding the relief requested in Case 06-G-1185 by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York. The company seeks authorization to retain approximately \$7.35 million in already collected System Benefit Charge funds representing costs incurred serving large multifamily service classes through the company's Interim Low Income Energy Efficiency Program. The Commission approved the program in the July 18, 2007 Order Authorizing Interim Gas Energy Efficiency Programs and Related Deferrals. However, the list of service

classes eligible for the Interim Low Income Energy Efficiency Programs did not include any large multifamily service classes.

**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](mailto: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: [Secretary@dps.state.ny.us](mailto:Secretary@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.

(06-G-1185SP12)

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

**KEDLI's Interim Low Income Energy Efficiency Program**

**I.D. No.** PSC-31-10-00009-P

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

**Proposed Action:** The Public Service Commission is considering KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's (KEDLI) request for approval of costs incurred while providing low income multifamily energy efficiency services.

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

**Subject:** KEDLI's Interim Low Income Energy Efficiency Program.

**Purpose:** Consideration of KEDLI's request for approval of costs related to low income large multifamily energy efficiency services.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action regarding the relief requested in Case 06-G-1186 by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island. The company seeks authorization to retain approximately \$4.08 million in already collected System Benefit Charge funds representing costs incurred serving large multifamily service classes through the company's Interim Low Income Energy Efficiency Program. The Commission approved the program in the July 18, 2007 Order Authorizing Interim Gas Energy Efficiency Programs and Related Deferrals. However, the list of service classes eligible for the Interim Low Income Energy Efficiency Programs did not include large multifamily service classes.

**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](mailto: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: [Secretary@dps.state.ny.us](mailto:Secretary@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.

(06-G-1186SP9)

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

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

**I.D. No.** PSC-31-10-00010-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, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated June 16, 2008 (Agreement) between Saratoga and KO-HO Realty, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement. The Commission may grant, deny or modify, in whole or in part, the filings submitted, and may also consider related matters.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@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-W-0598SP1)

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

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

**I.D. No.** PSC-31-10-00011-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 approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated August 20, 2009 (Agreement) between Saratoga and Malta Properties 1, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement. The Commission may grant, deny or modify, in whole or in part, the filings submitted, and may also consider related matters.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@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-W-0641SP1)

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

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

**I.D. No.** PSC-31-10-00012-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated January 22, 2008 (Agreement) between Saratoga and Bluth Company, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement. The Commission may grant, deny or modify, in whole or in part, the filings submitted, and may also consider related matters.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@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-W-0645SP1)

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

**Lightened and Incidental Regulation**

**I.D. No.** PSC-31-10-00013-P

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

**Proposed Action:** The Public Service Commission is considering a petition by the Connecticut Municipal Electric Cooperative for lightened and incidental regulation in connection with a 2.5 MW generator proposed to be located on Fishers Island, New York.

**Statutory authority:** Public Service Law, sections 4(1) and 66(13)

**Subject:** Lightened and incidental regulation.

**Purpose:** To consider lightened and incidental regulation in connection with a proposed generator.

**Substance of proposed rule:** The Public Service Commission is considering a petition by the Connecticut Municipal Electric Cooperative (CMEC) for lightened and incidental regulation in connection with its proposed construction and operation of a 2.5 MW electric generator to be located on a leased parcel located within the utility yard of Fishers Island Electric Corporation (FIEC). The project will provide CMEC with peak shaving capacity and provide a local source of backup electric power to FIEC. The Commission may approve, modify or reject, in whole or in part, the relief requested.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** 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: Secretary@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.

(10-E-0281SP1)

## Department of State

### NOTICE OF ADOPTION

#### Qualifying Education and Experience for Real Estate Appraisers

**I.D. No.** DOS-22-10-00004-A

**Filing No.** 749

**Filing Date:** 2010-07-20

**Effective Date:** 2010-08-04

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

**Action taken:** Repeal of Parts 1103 and 1105, and section 1107.8; addition of new Parts 1103 and 1105; and amendment of sections 1107.2, 1107.4 1107.5, 1107.9 and 1107.21.

**Statutory authority:** Executive Law, section 160-d

**Subject:** Qualifying education and experience for real estate appraisers.

**Purpose:** To conform regulations with recent statutory amendments.

**Substance of final rule:** Part 1103 is repealed and a new part enacted.

1103.1 is added to define frequently used terms.

1103.2 is added to set forth the education requirements for appraisal applicants.

1103.3 is added to require the approval of appraisal courses by the Department of State and to set forth the qualifications of appraisal schools and procedures for obtaining course approval.

1103.4 is added to provide the required qualifications for appraisal instructors.

1103.5 is added to set forth the procedures and basis for approval, denial, suspension and revocation of appraisal courses by the Department.

1103.6 is added to set forth the residential course outlines.

1103.7 is added to set forth the national Uniform Standards of Professional Appraisal Practice course requirements.

1103.8 is added to set forth the statistics, modeling and finance course outline.

1103.9 is added to set forth the residential elective course outlines.

1103.10 is added to set forth general course outlines.

1103.11 is added to set forth the course outlines for general elective courses.

Sections 1105.1 through 1105.8 are repealed and new sections 1105.1 through 1105.7 are added.

1105.1 and 1105.2 are added to set forth the procedures for obtaining approval to offer appraisal examinations.

1105.3 is added to set forth examination registration and scheduling requirements.

1105.4 is added to require examination administrators to include state specific examination questions as prescribed by the Department.

1105.5 is added to require examination administrators to report examination results in form and manner prescribed by the Department.

1105.6 is added to set forth when the Department may deny, suspend or revoke the approval of examination administrators.

1105.7 is added to require examination administrators to copy the Department on any Appraisal Qualifications Board reports.

Section 1107.4 is amended to set forth the number of continuing education credits which may be granted for the authorship of publications.

Section 1107.8 is repealed.

Sections 1107.2, 1107.5 and 1107.9 are amended to clarify that applicants seeking a renewal of their license/certificate must successfully complete the 7 hour USPAP update course.

Section 1107.21 is amended to specify course attendance requirements.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 1103.1, 1103.2, 1103.3 and 1107.8.

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

#### Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to this rule are not substantial.

#### Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Business and Local Government is not required because changes made to this rule are not substantial. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

The rule does not apply to local governments.

#### Revised Rural Area Flexibility Analysis

A revised rural flexibility analysis is not required because changes made to this rule are not substantial. Additionally, this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

#### Revised Job Impact Statement

A revised job impact statement is not required because changes made to the rule are not substantial. The rule will not have any substantial impact on jobs or employment opportunities for licensed or certified real estate appraisers.

#### Assessment of Public Comment

The Department of State received comments from two entities regarding the rule as proposed: The Federal Appraisal Subcommittee and the NYS Board of Real Estate Appraisal. As set forth in the Regulatory Impact Statement, the proposed rulemaking was necessitated by changes to the Executive Law and the need to bring the Department's appraisal regulations into compliance with mandatory Federal appraisal standards.

In reviewing the regulations as proposed, the Federal Appraisal Subcommittee, which oversees New York State's appraisal program noted that three concepts in the regulations were out of compliance with Federal requirements. The first is the concept of correspondence courses, which are not longer permitted by the Appraisal Subcommittee. Accordingly, all references to correspondence courses have been removed in the regulations as adopted.

The second issue commented upon by the Appraisal Subcommittee was the course attendance requirements. As proposed, the regulations required a student to attend 90% of a qualifying course, 100% of a 2 to 7 ½ hour continuing education course and 80% of an 8 to 28 hour continuing education program. The Appraisal Subcommittee noted that Federal regulations now require students to attend 100% of a course to receive credit, but that instructors have discretion to allow students to make up missed course material. The regulations have been revised accordingly.

The Appraisal Subcommittee also commented that extensions of time within which to complete continuing education are not permitted under its regulations. The rule, as adopted, has been revised to bring the regulations into compliance with this requirement.

The NYS Board of Real Estate Appraisal commented upon the requirements that qualifying courses be taken in sequential order and that only certain elective courses be permitted. These were requirements of the Board, and not ones imposed by the Federal Appraisal Subcommittee. Due to the changes in Federal Law and New York State statute, there has been a shortage of available appraisal courses in certain areas of the State. To accommodate appraisal students, without compromising the quality of the education received, the Board requested that the proposed regulation be amended to permit students to take appraisal courses out of sequence and to permit the Department of State to approve elective courses other than those specifically mentioned in the regulations. The rule, as adopted, has been amended accordingly.

---



---

## Workers' Compensation Board

---



---

### NOTICE OF ADOPTION

#### **Employer Compliance, Enforcement, Record and Reporting Requirements and Stop-Work Orders**

**I.D. No.** WCB-17-10-00001-A

**Filing No.** 747

**Filing Date:** 2010-07-20

**Effective Date:** 2010-08-04

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

**Action taken:** Addition of Part 308 to Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 2(22), 117, 131 and 141-a

**Subject:** Employer compliance, enforcement, record and reporting requirements and stop-work orders.

**Purpose:** To define the cost of compensation calculation, list records employers must keep, describe reports and redetermination process.

**Text or summary was published** in the April 28, 2010 issue of the Register, I.D. No. WCB-17-10-00001-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.