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 Agriculture and Markets

EMERGENCY RULE MAKING

Various Trees and Plants of the Prunus Species

I.D. No. AAM-25-10-00004-E
Filing No. 599
Filing Date: 2010-06-02
Effective Date: 2010-06-02

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

Action taken: Repeal of sections 140.2 and 140.3 and addition of new sections 140.2 and 140.3 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: This rule amends the existing plum pox virus quarantine in New York State in response to the most recent detections of this virus in the State. The purpose of the amendments is to help prevent the further spread of this viral infection of stone fruit trees within the State.

The plum pox virus, Potyvirus, is a serious viral disease of stone fruit and ornamental nursery stock that affects many of the Prunus species. This includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but seriously debilitates the productive life of the plants. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also becomemisshapen. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for plum pox.

On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols.

The current regulations are the same as those promulgated on an emergency basis on March 3, 2010, except for the quarantined area in Orleans County (section 140.2(b)) and one of the regulated areas in Wayne County (section 140.3(g)). These changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that failure to immediately establish and extend the quarantine to regulate the intrastate movement of stone fruit could result in the further, unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the agricultural resources of the State, but could also result in a federal quarantine or exterior quarantines imposed by other states. Such quarantines would cause economic hardship for New York's stone fruit growers, since such quarantines may be broader than that which we propose and may vary in requirements and prohibitions from state to state. The consequent loss of business would harm industries which are important to New York State's economy and as such, would harm the general welfare. Accordingly, it appears that

this rule should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Various trees and plants of the Prunus species.

Purpose: To amend the existing plum pox virus quarantine in New York State in response to the most recent detections of the virus.

Text of emergency rule: Section 140.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 140.2 is added to read as follows:

(a) That area of Niagara County which is bordered on the north by Lake Ontario and bordered on the east Johnson Creek Road, which extends south to its intersection with Route 104 (Ridge Road); extends west on Route 104 (Ridge Road) to its intersection with Orangeport Road; and extends south on Orangeport Road to its intersection with Slayton-Settlement Road; extending west on Slayton-Settlement Road to its intersection with Route 78 (Lockport-Olcott Road); extending south on Route 78 (Lockport-Olcott Road) to its intersection with Stone Road; extending northwest on Stone Road to its intersection with Sunset Drive; extending south on Sunset Drive to its intersection with Shunpike Road; extending west on Shunpike Road to its intersection with Route 93 (Townline Road); extending south on Route 93 (Townline Road) to its intersection with Route 270 (Campbell Boulevard); extending south on Route 270 (Campbell Boulevard) to its intersection with Beach Ridge Road; extending southwest on Beach Ridge Road to its intersection with Townline Road; extending south on Townline Road to its intersection with the Tonawanda Creek; following the Tonawanda Creek west to its entry into the Niagara River; following the Niagara River north to its entry into Lake Ontario.

(b) That area of Orleans County which is bordered on the north by Lake Ontario, on the east heading South from Lake Ontario on Kent Road to intersection with Ridge Road (Route 104); extending south on Desmond Road to intersection with State Route 31 (Telegraph Road); extending west on State Route 31 to intersection with Richs Corners Road; extending south on Richs Corners Road to its intersection with State Route 31A (East Lee Street Road); extending west on Route 31A to Culver Road; extending south on Culver Road to intersection with East Barre Road; extending west on East Barre Road to its intersection with State Route 98 (Quaker Hill Road); extending south on State Route 98 to the southern border of Orleans County; extending west along the southern border of Orleans County; extending north along the western border of Orleans County.

(c) That area of Wayne County which is bordered on the north by Lake Ontario and is bordered on the east by Mapleview Heights; extending south on Mapleview Heights to its intersection with Wright Road; extending east on Wright Road. to its intersection with Dutch Street Road; extending south on Dutch Street Road to its intersection with Lasher Road; extending south on Lasher Road to its intersection with Wilson Road; extending west on Wilson Road to its intersection with Brown Road; extending south on Brown Road to its intersection with Salter Road; extending west on Salter Road and becoming Clinton Avenue; continuing west on Clinton Avenue to its intersection with Route 414; extending south on Route 414 to its intersection with Catch Pole Road; extending west on Catch Pole Road to its intersection with Covell Road; extending south on Covell Road to its intersection with Wayne Center Rose Road; extending west on Wayne Center Rose Road and becoming Ackerman Road; continuing west on Ackerman Road to its intersection with Route 14; extending south on Route 14 to its intersection with Burton Road; extending west on Burton Road to its intersection with Middle Sodus Road; extending north on Middle Sodus Road to its intersection with Maple Street Road; extending north on Maple Street Road to its intersection with McMullen Road; extending northwest on McMullen Road to its intersection with Deneef Road; extending south on Deneef Road to its intersection with Zurich Road; extending west on Zurich Road to its intersection with Arcadia-Zurich-Norris Road; extending south on Arcadia-Zurich-Norris Road to its intersection with Henkle Road; extending west on Henkle Road to its intersection with Heidenreich Road; extending south on Heidenreich Road to its intersection with Fairville Station Road; extending northwest on Fairville Station Road to its intersection with Maple Ridge Road; extending northwest on Maple Ridge Road to its intersection with Decker Road; extending west on Decker Road to its intersection with Sand Hill Road; extending north on Sand Hill Road to its intersection with Smith Road; extending west on Smith Road to its intersection with Newark Road; extending south on Newark Road to its intersection with Desmith Road; extending west on Desmith Road to its intersection with Schilling Road; extending northwest on Schilling Road to its intersection with State Route 21; extending south on state Route 21 to its intersection with Cole Road; extending west on Cole Road to its intersection with Parker Road; extending south on Parker Road to its intersection with LeRoy Road; extending west on LeRoy Road to its intersection with Maple Avenue; extending north on Maple Avenue to its intersection with Marion Road; extending west on Marion Road to its intersection with Ontario Center Road; extending north on Ontario Center Road to its intersection with Atlantic Avenue; extending west on Atlantic Avenue to its intersection with Lincoln Road; extending north on Lincoln Road to its intersection with Haley Road; extending west on Haley Road to its intersection with County Line Road; extending north on County Line Road to its intersection with Lake Ontario.

Section 140.3 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 140.3 is added to read as follows:

(a) That area of Niagara County bordered on the north by Lake Ontario; bordered on the west by Maple Road; extending south on Maple Road to its intersection with Wilson-Burt Road; extending east on Wilson-Burt Road to its intersection with Beebe Road; extending south on Beebe Road to its intersection with Ide Road; extending east on Ide Road to its intersection with Route 78 (Lockport-Olcott Road); extending north on Route 78 (Lockport-Olcott Road) to its intersection with Lake Ontario, in the Towns of Burt, Newfane, and Wilson in the County of Niagara, State of New York.

(b) That area of Niagara County bordered on the [east] west by Porter Center Road starting at its intersection with Route 104 (Ridge Road) and extending north-northeast on Porter Center Road to its intersection with Langdon Road; extending east on Langdon Road to its intersection with Dickersonville Road; extending north on Dickersonville Road to its intersection with Schoolhouse Road; extending east on Schoolhouse Road to its intersection with Ransomville Road; extending south on Ransomville Road to its intersection with Route 104 (Ridge Road); [extends east] extending northeast on Route 104 (Ridge Road) to its intersection with Simmons Road; extending south on Simmons Road to its intersection with Albright Road; extending east on Albright Road to its intersection with Townline Road; extending south on Townline Road to its intersection with Lower Mountain Road; extending west on Lower Mountain Road to its intersection with Meyers Hill Road; extending south on Meyers Hill Road to its intersection with Upper Mountain Road; extending west on Upper Mountain Road to its intersection with Indian Hill Road; extending northeast on Indian Hill Road to its intersection with Route 104 (Ridge Road); extending east on Route 104 (Ridge Road) to its intersection with Porter Center Road, in the Town of Lewiston, in the County of Niagara, State of New York.

(c) That area of Niagara County bordered on the north by Lake Ontario extending east to the intersection of Keg Creek, extending south to its intersection with Route 18 (Lake Road); extending east on Route 18 (Lake Road) to its intersection with Hess Road, extending south on Hess Road to its intersection with Drake Settlement Road, west on Drake Settlement Road to its intersection with Transit Road; extending north on Transit Road to its intersection with Route 18 (Lake Road); extending west on Route 18 (Lake Road) to its intersection with Lockport Olcott Road; extending north on Lockport Olcott Road to the border with Lake Ontario.

(d) That area of Orleans County bordered on the north by Route 104 (Ridge Road) at its intersection with Eagle Harbor Waterport Road; extending south on Eagle Harbor Waterport Road to its intersection with Eagle Habor Knowlesville Road; west on Eagle Harbor Knowlesville Road to its intersection with Presbyterian Road; extending southwest on Presbyterian Road to its intersection with Longbridge Road; extending south on Longbridge Road to its intersection with State Route 31; extending west on State Route 31 to its intersection with Wood Road; extending south on Wood Road to West

County House Road; extending west on West County House Road to its intersection with Maple Ridge Road; extending west on Maple Ridge Road to its intersection with Culvert Rd; extending north on Culvert Rd to its intersection with Telegraph Road; extending west on Telegraph Road to its intersection with Beales Road; extending north on Beales Road to its intersection with Portage Road; extending east on Portage Road to its intersection with Culvert Rd; extending north on Culvert Rd to its intersection with Route 104 (Ridge Road), in the Towns of Ridgeway and Gaines, in the County of Orleans, State of New York.

(e) That area of Wayne County bordered on the north by Lake Road at its intersection with Redman Road; extending east to its intersection with Maple Avenue; extending south on Maple Avenue to its intersection with Middle Road; extending west on Middle Road to its intersection with Rotterdam Road; extending south on Rotterdam Road to its intersection with State Route 104; extending west on State Route 104 to its intersection with Pratt Road; extending south on Pratt Road to its intersection with Ridge Road; extending west on Ridge Road to its intersection with Richardson Road; extending south on Richardson Road to its intersection with Tripp Road; extending south on Tripp Road to its intersection with Podger Road; extending west on Podger Road to its intersection with East Townline Road; extending north on East Townline Road to its intersection with Everdyke Road; extending west on Everdyke Road to its intersection with Russell Road; extending south on Russell Road to its intersection with Pearsall Road; extending west on Pearsall Road to its intersection with State Route 21; extending north on State Route 21 to its intersection with State Route 104; extending east on State Route 104 to its intersection with East Townline road; extending north on East Townline Road to its intersection with Van Lare Road; extending east on Van Lare Road to its intersection with Redman Road; extending north on Redman Road to its intersection with Lake Road, in the Town of Sodus, in the County of Wayne, State of New York.

(f) That area of Wayne County bordered on the north by Shepard Road at its intersection with Fisher Road; extending east on Shepard Road to its intersection with Salmon Creek Road; extending southwest on Salmon Creek Road to its intersection with Kenyon Road; extending west on Kenyon Road to its intersection with Furnace Road; extending north on Furnace Road to its intersection with Putnam Road; extending east on Putnam Road to its intersection with Fisher Road; extending north on Fisher Road to its intersection with Shepard Road, in the Towns of Ontario and Williamson, in the County of Wayne, State of New York.

(g) That area of Wayne County bordered on the northeast by Sodus Bay to its intersection with Ridge Road; extending west on Ridge Road to its intersection with Boyd Road; extending north on Boyd Road to its intersection with Sergeant Road; extending north on Sergeant Road to its intersection with Morley Road; extending east on Morley Road to its intersection with State Route 14; extending north on State Route 14 to its intersection with South Shore Road; extending east on South Shore Road; than bordered on the east north east by Sodus Bay, in the Town of Sodus, in the County of Wayne, State of New York.

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 August 30, 2010.

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed rule establishing a quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the further spread within the State of a serious viral infection of plants, the plum pox virus (Potyvirus).

3. Needs and benefits:

This rule amends the existing plum pox virus quarantine in New York State in response to the most recent detections of this virus in the State. The purpose of the amendments is to help prevent the further spread of this viral infection of stone fruit trees within the State.

The plum pox virus, Potyvirus, is a serious viral disease of stone fruit trees that affects many of the Prunus species. This includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but debilitates the productive life of the trees. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. There is no known treatment or cure for this virus. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox virus by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for plum pox.

In 2006, the plum pox virus was detected in two locations in Niagara County near the Canadian border. As a result, on July 16, 2007, the Department adopted, on an emergency basis, a rule which immediately established a plum pox virus quarantine in that portion of Niagara County. The plum pox virus was subsequently detected in four (4) other locations in Niagara County as well as one location in Orleans County. In response to these detections, on October 8, 2008, the Department adopted, on an emergency basis, amendments to the rule, which established the quarantine in Orleans County and extended the quarantine in Niagara County. This rule was adopted on a permanent basis on December 10, 2008.

On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols.

The current regulations are the same as those promulgated on an emergency basis on March 3, 2010, except for the quarantined area in Orleans County (section 140.2(b)) and one of the regulated areas in Wayne County (section 140.3(g)). These changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question.

The amendments are necessary, since the failure to immediately establish or extend this quarantine could result in the further, unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the natural resources of New York, but could also result in the imposition on New York of a federal quarantine or quarantines by other states. Such quarantines would cause economic hardship for New York's nurseries and stone fruit growers, since such quarantines may be broader than this one. The consequent loss of business would harm industries which are important to New York's economy and as such, would harm the general welfare.

4. Costs:

(a) Costs to the State government:

Regulated articles in the newly established regulated areas that are exposed to plum pox virus would be destroyed. Compensation for the regulated articles is predicated upon the age of the plants and trees. Compensation would range from $4,368 to $17,647 per acre, of which the USDA would pay 85% of the compensation. Accordingly, New York's 15% share of the compensation would be $655 to $2,647 per acre, provided the owners of the regulated articles in question submit verified claims to the Department in accordance with section 165 of the Agriculture and Markets Law, and provided further that damages are awarded based on those claims.

Nursery dealers and nursery growers would also be eligible to receive compensation for regulated articles planted in the newly established regulated areas and nursery stock regulated areas that would otherwise be prohibited from sale. New York would pay up to $1,000 per acre in costs to remove such regulated articles.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Regulated parties handling regulated articles in the newly established nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of $25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of $2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed $1,000 per acre for removal of regulated articles planted in the newly established regulated areas and nursery stock regulated areas.

(d) Costs to the regulatory agency:

None. It is anticipated that the regulatory oversight and enforcement of the expanded quarantine would be accomplished through use of existing staff and resources.

5. Local government mandate:

None.

6. Paperwork:

Nursery dealers and nursery growers handling regulated articles in the newly established nursery stock regulated areas would require a compliance agreement with the Department. They may also require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement of these regulated articles.

7. Duplication:

None.

8. Alternatives:

None. The failure of the State to establish and extend the quarantine in response to the most recent findings of the plum pox virus could result in the establishment of quarantines by the federal government or other states. It could also place the State's own natural resources at risk from the further spread of plum pox virus which could result from the unrestricted movement of regulated articles in the regulated areas. In light of these factors, there does not appear to be any viable alternative to the establishment of the quarantine proposed in this rulemaking.

9. Federal standards:

Sections 301.74 through 301.74-5 of Title 7 of the Code of Federal Regulations (CFR) restricts the interstate movement of regulated articles susceptible to the plum pox virus. This rule does not exceed any minimum standards for the same or similar subject areas, since it restricts the intrastate, rather than interstate, movement of regulated articles by establishing a plum pox virus quarantine in New York State.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

The establishment and extension of the plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols.

The current regulations are the same as those promulgated on an emergency basis on March 3, 2010, except for the quarantined area in Orleans County (section 140.2(b)) and one of the regulated areas in Wayne County (section 140.3(g)). These changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question.

It is estimated that seven (7) stone fruit growers in Wayne County and three (3) stone fruit growers in Niagara County are located in the newly established quarantine or regulated areas. All of these entities are small businesses.

It is not anticipated that local governments would be involved in the handling or movement of regulated articles within any part of the quarantine areas.

2. Compliance requirements:

Any regulated parties in the newly established nursery stock regulated areas would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in these newly established nursery stock regulated areas would be required to enter into compliance agreements.

The amendments would prohibit regulated parties in the newly established nursery stock regulated areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties in these newly established areas would be required to maintain sales records of regulated articles for a period of three years.

All regulated parties in the newly established regulated areas would be prohibited from moving regulated articles within those regulated areas. Regulated parties would, however, be able to move regulated articles to and from the newly established regulated areas pursuant to a limited permit.

3. Professional services:

In order to comply with the rule, regulated parties handling

regulated articles in the newly established nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule:

None.

(b) Annual cost for continuing compliance with the proposed rule:

Regulated parties handling regulated articles in the newly established nursery stock regulated areas pursuant to a compliance agreement may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of $25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of $2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed $1,000 per acre for removal of regulated articles planted in the regulated areas.

It is not anticipated that local governments would be involved in movement of regulated to or through the regulated areas.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. The rule establishes and extends the quarantine to only those areas where the plum pox virus has been detected. Additionally, the rule lifts the quarantine in one area of Niagara County where the virus has not been detected for three (3) years. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

In 1999, a Plum Pox Virus Task Force was established in response to the initial discovery of the plum pox virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the United States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convened annually via teleconference and assists in outreach as needed in response to changes in the spread of the virus. Outreach efforts will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Nursery dealers and nursery growers handling regulated articles within the newly established nursery stock regulated areas, other than pursuant to a compliance agreement, would require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, would be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The establishment and extension of the plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols.

The current regulations are the same as those promulgated on an emergency basis on March 3, 2010, except for the quarantined area in Orleans County (section 140.2(b)) and one of the regulated areas in Wayne County (section 140.3(g)). These changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question.

It is estimated that seven (7) stone fruit growers in Wayne County and three (3) stone fruit growers in Niagara County are located in the newly established quarantine or regulated areas. All of these entities are located in rural areas of New York State.

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

Any regulated parties in the newly established nursery stock regulated areas would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in these newly established nursery stock regulated areas would be required to enter into compliance agreements.

All regulated parties in the newly established regulated areas would be prohibited from moving regulated articles within those regulated areas. Regulated parties would, however, be able to move regulated articles to and from the newly established regulated areas pursuant to a limited permit.

In order to comply with the proposed rule, regulated parties handling regulated articles in the newly established nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

3. Costs:

Regulated parties handling regulated articles in the newly established nursery stock regulated areas pursuant to compliance agreement may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of $25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of $2,500.

Most shipments will be made pursuant to compliance agreements for which the costs will be lower.

Regulated parties would also incur those removal costs which exceed $1,000 per acre for removal of regulated articles exposed to the plum pox virus.

4. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on regulated parties in rural areas. The rule establishes and extends the quarantine to only those areas where the plum pox virus has been detected. Additionally, the rule deregulates in one area of Niagara County where the virus has not been detected for three (3) consecutive years. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

In 1999, a Plum Pox Virus Task Force was established in response to the initial discovery of the plum pox virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the Untied States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convenes an-

nually via teleconference and assists in outreach as needed in response to changes in the spread of the virus. Outreach efforts will continue.

Job Impact Statement

The establishment and extension of the plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols.

The current regulations are the same as those promulgated on an emergency basis on March 3, 2010, except for the quarantined area in Orleans County (section 140.2(b)) and one of the regulated areas in Wayne County (section 140.3(g)). These changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question.

It is estimated that seven (7) stone fruit growers in Wayne County and three (3) stone fruit growers in Niagara County are located in the newly established quarantine or regulated areas.

A further spread of this plant infection would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the further spread of the plum pox virus, the rule would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's stone fruit and nursery industries.

Department of Environmental Conservation

NOTICE OF ADOPTION

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

I.D. No. ENV-51-09-00007-A
Filing No. 607
Filing Date: 2010-06-08
Effective Date: 30 days after filing

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

Action taken: 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 and 71-2105; Federal Clean Air Act (42 USC 7507), section 177

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 standards.

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. ENV-51-09-00007-P.

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

Text of 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: airregs@gw.dec.state.ny.us

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 was approved by the Environmental Board.

Revised 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 an adverse impact on consumers. The amendments are intended to provide manufacturers with compliance flexibility by providing them with the option of demonstrating fleet average compliance utilizing a larger pool of vehicles. 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 held public hearings at various locations throughout New York State once the regulation was proposed. Some of these locations were convenient for persons from rural areas to participate. Additionally, there was a public comment period in which interested parties could submit written comments.

Assessment of Public Comment

Comments received from December 23, 2009 through 5:00 P.M., February 17, 2010

Economy

Comment: This proposed rulemaking at a economic downturn like we are experiencing is a further burden on people who have already too many expenses as is. This will cause the price of cars and all subsequent emissions related work to increase substantially and force people to keep older cars roadworthy which counter-productive to the proposed policy. Commentor 1.

Comment: DEC should make efforts not to exacerbate the economic situation by overburdening those already troubled by the current state of the economy. People are in eminent danger of losing long-term jobs and their homes. Delaying the implementation of this a couple of years would be helpful to the whole economy. Commentor 1.

Response: The Department disagrees with these comments. The amendments are intended to provide manufacturers with compliance flexibility by providing them with the option of demonstrating fleet average compliance utilizing a larger pool of vehicles. There are no costs associated with this change that would be passed along to consumers, local government, or businesses in the form of higher prices.

Outside the Scope

Comment: I travel (via train and bus) from Kingston, NY to Newburgh, NY, to NYC and back every week. I see much benefit from implementing current regulations instead of adopting new regulations at the wrong time which burden everyone instead of targeting the actual contributors that currently violate the standards. I see a sign up at every bus station yard

stating that the EPA doesn't allow idling busses for more than 5 minutes yet they are all there for as much as 15 minutes or more idling and contributing to poor air quality. Think of the benefit to the environment of an employee traveling to the bus terminals and giving out fines for violating EPA mandates. Commentor 1.

Response: This comment is outside the scope of this proposed rulemaking.

List of Commentors

1. Robert Severance

NOTICE OF ADOPTION

Stationary Combustion Installations

I.D. No. ENV-51-09-00011-A

Filing No. 609

Filing Date: 2010-06-08

Effective Date: 30 days after filing

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

Action taken: Amendment of Part 200 and Subparts 201-3 and 227-2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311

Subject: Stationary Combustion Installations.

Purpose: Reduce emission limits for all boilers & combustion turbines, redefine the mid-size boiler size, and allow a replacement option.

Substance of final rule: The proposed Part 200 amendments will add the definitions for the terms boiler, combined cycle combustion turbine, combustion turbine, continuous emissions monitoring system (CEMS) certification protocol, continuous emissions monitoring system plan, emergency power generating stationary internal combustion engine, simple cycle combustion turbine, and very large boiler. These definitions are being included under Part 200 for consistency due to their use in multiple regulations. The proposed revisions will also add a reference in section 200.9, Table 1 under clause 227-2.6(b)(3)(i)('b') and streamline the existing reference under subparagraph 227-2.6(b)(3)(v).

The proposed Subpart 201-3 revisions will change the exemptions for ''stationary or portable combustion installations'' and ''emergency power generating stationary internal combustion engines.'' In order to qualify for the exemption for stationary or portable combustion installations, the maximum rated heat input capacity limitation for such sources is being reduced from less than 20 mmBtu/hr to less than 10 mmBtu/hr. The provision exempting emergency power generating stationary internal combustion engines is being revised to reflect the change in the citation for the definition of ''emergency power generating stationary internal combustion engine.''

The following change to Subpart 201-3 is unrelated to the Subpart 227-2 revisions. The reference to Subpart 231-2 in the text of paragraph 201-3.1(c)(2) will be replaced by a reference to Part 231 generally. This revision is meant to align the text of paragraph 201-3.1(c)(2) with the revisions to Part 231 that became effective in early 2009.

The proposed Subpart 227-2 revisions will include the removal of several definitions (to be relocated in Part 200, as stated above) and revision of other definitions, a change in the application and permitting requirements, a change in emission limits for most boiler categories and combined cycle combustion turbines, and revisions to the compliance options.

Section 227-2.2 will be revised to remove the definitions of boiler, combined cycle combustion turbine, combustion turbine, continuous emissions monitoring system (CEMS) certification protocol, emergency power generating stationary internal combustion engine, preliminary continuous emissions monitoring system plan, simple cycle combustion turbine, and very large boiler. These definitions will be moved to Part 200 (preliminary continuous emissions monitoring system plan will be changed to continuous emissions monitoring system plan), as stated above. Also, the revisions will modify the terms mid-size boiler and small boiler. A mid-size boiler will now be defined as ''a boiler with a maximum heat input capacity greater than 25 million Btu per hour and equal to or less than 100 million Btu per hour. A small boiler will now be defined as ''a boiler with a maximum heat input capacity equal to or greater than one million Btu per hour and equal to or less than 25 million Btu per hour.''

Section 227-2.3 will be revised to specifically require that subject facilities must submit an application for a Title V permit or permit modification (depending on the current facility status). The requirement to submit a compliance plan will be removed.

Section 227-2.4 will be revised to change the presumptive RACT emission limits for very large, large, and mid-size boilers. Combined cycle turbines will be required to perform a case-by-case RACT analysis. Also, the revisions will remove the 500-hour non-ozone season presumptive emission limit exemption for simple cycle combustion turbines.

Section 227-2.5 will be revised to include a shutdown option for any subject emission source. The intent to shut down an emission source must be recorded as part of a permit modification prior to January 1, 2012, wherein the owner or operator commits to permanently shut down the emission source prior to December 31, 2014.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 201-3.2(c)(6), 227-2.2(b)(5), (6), (10), 227-2.3(b), 227-2.4(a)(1), (b)(1), (c)(1), (e)(1), (2), (3), (f)(2), (3), (g), 227-2.5(b)(2), (3), (4), (5), (c) and (d).

Text of rule and any required statements and analyses may be obtained from: Robert Stanton, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: airregs@gw.dec.state.ny.us

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 was approved by the Environmental Board.

Summary of Revised Regulatory Impact Statement

INTRODUCTION

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Part 200 and 6 NYCRR Subparts 201-3 and 227-2. 6 NYCRR Part 200, General provisions is being revised to include definitions that were previously only found in 6 NYCRR Subpart 227-2 but are now used in multiple Department regulations. Part 200 is also being revised to include all new citations of federal regulations. The revisions to 6 NYCRR Subpart 201-3, Exemptions and Trivial Activities are being made to the emergency power generating stationary internal combustion engines exemption to cite the new location of the definition in Part 200. Also the exemption for stationary or portable combustion installations will be revised by lowing the applicability threshold to 10 million Btu per hour heat input. 6 NYCRR Subpart 227-2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen imposes RACT limits for emissions of NO_x from seven categories of stationary combustion installations. These RACT limits are a component of the State Implementation Plan (SIP) for New York State directed at attainment of the 1997 ozone national ambient air quality standard (NAAQS) and are expected to be part of the SIP that will be submitted with respect to the 2008 ozone NAAQS.[1] In terms of pollution reductions, the revisions to Subpart 227-2 essentially entail the lowering of size thresholds for two categories of sources (to encompass greater numbers of emission sources in each category, however, this does not increase the overall number of emission sources regulated under this Subpart) and increasing the stringency of emissions limits for six of the source categories. The Department is also proposing two revisions that will allow subject sources increased flexibility in achieving compliance. All of the proposed revisions reflect the Department's latest determination of what constitutes RACT for the subject sources. This is a requirement flowing from the State's obligations under the Clean Air Act. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source.

STATUTORY AUTHORITY

Federal Clean Air Act (CAA) Requirements Concerning Reasonably Available Control Technology (RACT) for NO_x Emissions for Purposes of the 1997 Ozone NAAQS.

New York State is included in the Northeast Ozone Transport Region (OTR) established under CAA Section 184(a), and is a member of the Ozone Transport Commission (OTC) formed pursuant to CAA Sections 184(a) and 176A(b)(1). Under CAA Section 182(f), States must apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of volatile organic compounds (VOCs) in ozone NAAQS nonattainment areas.[2] Among these requirements is the imposition of NO_x RACT statewide in the OTR under CAA Sections 182(b)(2)(C).

The New York State Legislature has accorded the New York State Department of Environmental Conservation (Department) the primary authority to formulate and implement the SIP. The provisions of State law treated below, taken together, clearly empower the Department to promulgate and implement the proposed rule provisions as SIP revisions.

Environmental Conservation Law (ECL) section 1-0101 declares it to be the policy of New York State to conserve, improve and protect its natural resources and environment and control air pollution in order to enhance the health, safety and welfare of the people of New York State and their overall economic and social well being.

ECL section 19-0103 declares that it is the policy of New York State to maintain a reasonable degree of purity of air resources, which shall be

consistent with the public health and welfare and the public enjoyment thereof, the industrial development of the State, and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution in the State.

ECL section 19-0105 declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of New York State under a program which is consistent with the policy expressed in Section 19-0103 and in accordance with other provisions of Article 19.

ECL section 19-0301 declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution and shall include in such regulations provisions prescribing the degree of air pollution that may be emitted to the air by any source in any area of the State.

ECL section 19-0303 provides that the terms of any air pollution control regulation promulgated by the Department may differentiate between particular types and conditions of air pollution and air contamination sources.

ECL section 19-0305 authorizes the Department to enforce the codes, rules and regulations established in accordance with Article 19.

ECL section 19-0311 directs the Department to establish an operating permit program for sources subject to Title V of the CAA.

LEGISLATIVE OBJECTIVES

The legislative objectives underlying the above-referenced statutory authority are essentially directed toward protecting public health and the environment. By promulgating and implementing the proposed revisions to Subpart 227-2, the Department will be amending a regulation to impose more stringent emission limits on major stationary sources of NO_x that contribute to local and regional nonattainment of the 1997 and 2008 ozone NAAQS.

NEEDS AND BENEFITS

Ozone - Causes and Effects:

There are two types of ozone, stratospheric and ground level ozone. Ozone in the stratosphere is naturally occurring and is desirable because it shields the earth from harmful ultraviolet rays from the sun which may cause skin cancer. In contrast, ground level ozone or smog, which results from the mixing of VOCs and NO_x on hot sunny summer days, can harm humans and plants. The primary ozone NAAQS was established by EPA at a level that is requisite to protect the public health. In the northeastern United States, the ozone nonattainment problem is pervasive as concentrations of ozone often exceed the level of the NAAQS by mid-afternoon on a summer day. The contiguous metropolitan areas of Washington, D.C., Baltimore, Philadelphia, New York, and Hartford are designated ozone nonattainment areas.

In July 2006, EPA recognized a number of epidemiological and controlled human exposure studies that suggest that asthmatic individuals are at greater risk for a variety of ozone-related effects including increased respiratory symptoms, increased medication usage, increased doctors visits, emergency department visits, and hospital admissions; provide highly suggestive evidence that short-term ambient ozone exposure contributes to mortality; and report health effects at ozone concentrations lower than the level of the current standards, as low as 0.04 parts per million (ppm) for some highly sensitive individuals. 'See' 'Fact Sheet: Review of National Ambient Air Quality Standards for Ozone Second Draft Staff Paper, Human Exposure and Risk Assessments and First Draft Environmental Report', U.S. Environmental Protection Agency, July 2006.

Nonattainment Area Designations and Classifications for the 1997 and 2008 ozone NAAQS.

EPA promulgated nonattainment area designations for the 1997 ozone NAAQS during April 2004. 'See Air Quality Designations and Classifications for the 8-Hour Ozone NAAQS', 69 Fed. Reg. 23,858 (April 30, 2004) (codified at 40 CFR Sections 81.300-356) (the Designations Rule). EPA designated various areas in New York State as nonattainment and classified the areas under either Subpart 1 or Subpart 2 of Part D of Title 1 of the CAA (Part D of Title 1 sets forth the programmatic SIP requirements applicable to nonattainment areas).

Under the Designations Rule, the following areas in New York State were designated as nonattainment:

1. Jefferson County
2. Poughkeepsie (encompassing Dutchess, Putnam, and Orange counties)
3. New York City metropolitan area (encompassing Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester counties)
4. Albany-Schenectady-Troy (encompassing Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie counties)
5. Essex County (the portion of Whiteface Mountain above 1,900 feet in elevation)
6. Jamestown (Chautauqua County)
7. Rochester (encompassing Genesee, Livingston, Monroe, Ontario, Orleans, and Wayne counties)

On March 12, 2009, the Department recommended the following areas be designated nonattainment with the 2008 ozone NAAQS of 0.075 parts per million:

New York City Metropolitan Area - Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk and Westchester counties:

Poughkeepsie-Newburgh-Kingston Metropolitan Area - Dutchess, Orange, Putnam and Ulster counties;

Albany-Schenectady-Troy-Glens Falls Metropolitan Areas - Albany, Columbia, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington counties;

Rochester Metropolitan Area - Genesee, Livingston, Ontario, Orleans, Monroe and Wayne counties;

Buffalo-Niagara Falls Metropolitan Area - Erie and Niagara counties; and,

Jamestown Metropolitan Area - Chautauqua County.

As can be seen by the above listing, ozone nonattainment is a pervasive problem that exists in areas throughout the State.

Measures Taken to Reduce Ozone:

The Department has promulgated several NO_x RACT regulations that apply to various other source categories throughout New York State. These categories include cement kilns (6 NYCRR Part 220), iron and steel process sources (6 NYCRR Part 216), coke oven batteries (6 NYCRR Part 214), and general process NO_x sources (6 NYCRR Part 214). All of these regulations will assist in bringing all areas in the State into attainment with the NAAQS for ozone. The compilation of these control programs constitutes the NO_x portion of the ozone NAAQS nonattainment SIP for New York State.

Through the present rule making, the Department is proposing to require stricter NO_x emissions limits on 766 boilers and 55 combined cycle combustion turbines of various sizes that will reduce their potential NO_x emissions from the current level of 225,708 tons per year down to 109,619 tons per year (based on an average 50 percent reduction). The Department projects that the actual reductions of NO_x will be considerably less. Based on the 2007 NO_x emissions data from these sources, the boilers and turbines that will be affected by this rule making emitted approximately 58,000 tons. Based on operating and compliance assumptions made by the Department, it is expected that the proposed NO_x RACT limitations will result in an emission reduction of 28,796 tons per year of NO_x or a daily reduction of 78.9 tons from 2007 levels.

COSTS

Costs to Regulated Parties and Consumers:

The cost to install RACT will vary depending on the size and fuel type of the boilers that are affected by this proposed regulation and the type of control technology used. The following table lists the average RACT costs in dollars per ton of NO_x reduced for very large, large, and mid-size boilers:

	Gas	Gas/Oil	Distillate	Residual	Solid Fuel
Very Large	5,455	4,824	Not Applicable	Not Applicable	2,741
Large	5,463	5,500	Not Applicable	Not Applicable	4,415
Mid-size	2,617	Not Applicable	3,132	3,200	Not Applicable

The Department proposes to require owners and/or operators of all affected small boilers to conduct an annual tune-up. The average annual tune-up cost will be approximately $3,500 per ton of NO_x reduced. Finally, the Department proposes to require owners and/or operators of combined cycle combustion turbines to conduct a case-by-case RACT analysis. The control technologies that are now available are far more advanced than the control technologies that were considered when the Department established the presumptive RACT emissions limits in the current version of Subpart 227-2 for combined cycle combustion turbines. Currently, there are several retrofit control technologies commercially available for these turbines. This list includes selective catalytic reduction, selective non-catalytic reduction, increased water or steam injection, dry low NO_x technology, and other possible combustion canister modifications. Given the various ages, sizes, and types of combustion turbines that will be affected, it was not possible to determine a cost for retrofitting based on a single prescribed RACT limit. Therefore, the Department has determined that it would be better to have each individual facility conduct a case-by-case RACT analysis (this is a top down analysis that would require a facility to list then price each control technology that is technically available). The facility will apply the most stringent retrofit controls, based on the results of this analysis, which are economically feasible (on a dollars per ton of NO_x removed basis) for that particular combustion turbine.

Costs to State and Local Governments:

As noted earlier, this requirement flows from the State's obligations under the CAA. This is not a mandate on local governments. It applies equally to any entity that owns or operates a subject source. Some State

and local entities will be affected by this proposed regulation. The Department estimates that the cost for municipally owned facilities to install NO_x RACT is approximately $3,774 per ton of NO_x reduced. The total tons of NO_x reduced from the 26 municipally owned facilities are projected to be 1,770 tons annually. The NO_x tonnage to be reduced was calculated by multiplying the percent reductions for each control technology by the current potential to emit (these potential emissions are based on currently permitted NO_x emission rates for the 26 facilities). Therefore, the total estimated cost of this rule revision to the subject municipal facilities will be approximately $6,679,000. The cost estimate for NO_x reductions from the combined cycle turbine at the Jamestown owned facility must be calculated on a case-by-case basis, so no cost estimate has been included in this analysis.

Costs to the Regulating Agency:

The authority and responsibility for implementing Subpart 227-2 lies solely with the Department. The proposed rule revisions have been developed to minimize the administrative cost burden to the Department. Each subject facility is required to have a Title V facility permit under 6 NYCRR Subpart 201-6. Permit revisions will be necessary to account for the changes to Subpart 227-2 and the revised permit conditions will be incorporated into each relevant permit by Department staff.

LOCAL GOVERNMENT MANDATES

This is not a mandate on local governments. No additional requirements beyond compliance with the proposed regulation will be put on local governments.

PAPERWORK

The proposed revisions to Subpart 227-2 will create little additional paperwork for affected facilities. Depending on the type of affected source there may be application submission requirements, minimal additional recordkeeping and reporting, and the requirement to submit testing protocols and test results.

DUPLICATION

The proposed revisions to Subpart 227-2 do not duplicate, overlap, or conflict with any other State or federal requirements.

ALTERNATIVES

The following alternative has been evaluated to address the goals set forth above:

Take no action: The ''take no action'' alternative is not acceptable because failure to adopt this regulation will seriously impede New York State's ability to attain the ozone NAAQS. The proposed revisions to Subpart 227-2, in combination with the implementation of other regulations (concerning NO_x RACT limits for cement kilns, glass manufacturing facilities, and asphalt plants), will help New York State achieve compliance with the 1997 ozone NAAQS. On February 8, 2008, the Department submitted an attainment demonstration to EPA that documents how the State will attain the 1997 ozone NAAQS. While the Department expects the Albany-Schenectady-Troy-Glens Falls, Rochester, Buffalo-Niagara Falls and Jamestown nonattainment areas to come into attainment by 2009, the Department believes that it will take until 2012 for the New York City metro and Poughkeepsie-Newburgh-Kingston nonattainment areas to achieve attainment.

FEDERAL STANDARDS

The proposed rule does not exceed any minimum federal standards.

COMPLIANCE SCHEDULE

The Department proposes to promulgate the revisions to Subpart 227-2 by July 2010. Any facility that contains a source that becomes newly subject to the regulation will be required to complete and submit an application for a permit or permit modification by no later than January 1, 2012. Any facility that is subject to new or revised control requirements under section 227-2.4 must be in compliance with the relevant requirements by July 1, 2014.

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[1] On July 18, 1997, EPA promulgated primary and secondary ozone NAAQS of 0.08 parts per million (ppm) (the 1997 ozone NAAQS). 'See National Ambient Air Quality Rule for Ozone', 62 Fed. Reg. 38,856 (July 18, 1997) (codified at 40 CFR section 50.10). The standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm. When the standard rounding conventions are used, this standard is measured as 0.084 ppm.

On March 27, 2008, EPA promulgated revised ozone NAAQS and set the new primary and secondary standards at 0.075 ppm (the 2008 ozone NAAQS). 'See National Ambient Air Quality Rule for Ozone', 73 Fed. Reg. 16436 (March 27, 2008) (codified at 40 CFR section 50.15). Attainment of the 2008 ozone NAAQS is determined in the same manner as with the 1997 ozone NAAQS.

[2] Within the OTR, any source that emits or has the potential to emit at least 50 tons per year of VOCs is considered a "major stationary source" and is subject to the requirements that are applicable to major stationary sources in moderate nonattainment areas under CAA section 184(b)(2). However, under CAA section 302, and section 182(c), (d), and (e), the emission thresholds for major stationary sources of NO_x in the OTC vary from 100 to 10 tons per year depending on the area's designation and classification. For portions of the OTR that are designated as attainment or unclassifiable, or classified as moderate nonattainment, a major stationary source of NO_x is one that emits more than 100 tons of NO_x per year; in portions of the OTC classified a serious nonattainment the emissions threshold is 50 tons of NO_x per year.

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

No revisions were made to the RFA, RAFA and JIS.

Assessment of Public Comment

Comments Received December 23, 2009 through February 17, 2010

The Department of Environmental Conservation (Department) held public hearings on the proposed revisions to 6 NYCRR Subpart 227-2, NO_x RACT, and 6 NYCRR Subpart 201-3, Exemptions and Trivial Activities, on February 8,9, 10, 2010 in Rochester, Albany, and Long Island City. The Department accepted written comments until close of business February 17, 2010. The department received comments from fifteen different commenters. Several of the commenters acknowledged their mutual support for each other's comments. A summary of the significant comments received and the Department's responses are provided below.

The United States Environmental Protection Agency (EPA) provided the Department with comments citing typographical errors and EPA policy guidance. The Department has checked the citations in question and corrected the errors. The Department noted that the EPA guidance did not ''fit'' New York State's requirements or timeframes and thus the EPA's proposed changes were not incorporated into the express terms.

Nearly all of the commenters requested that the Department extend the compliance schedule in the proposed regulation. The reasons provided to expand the compliance schedule included concerns about maintenance of electricity system reliability, engineering/procurement/permitting/construction time requirements, and compliance testing requirements. The New York Independent System Operator (NYISO) contracted for the performance of an evaluation of the impact of the proposed rule on the New York State power industry. NYISO's report concluded that ''[i]mplementation of the revised NO_x RACT rule through generator retrofits, system averaging or retirements must occur in a manner and on a schedule that will ensure continued reliability of the NYS Power System. The NO_x RACT Study indicates that reliability concerns will arise if units are required to install retrofits or shut down within the proposed two-year regulatory timeframe.'' The NYISO proposed that the effects of this rule would be minimized if the Department were to extend the compliance schedule for a minimum of two years.

The Department reviewed the NYISO's NO_x RACT Study and agreed with the study's conclusion that it will take more time to plan, purchase, and install controls on existing sources or to shutdown existing sources. Therefore, the Department believes that it would be reasonable to extend the final compliance dates the two years that the study has concluded would be necessary to insure continued reliability of New York State's power production capabilities.

The majority of the commenters stated that the emissions limits in the proposed NO_x RACT rules should be inapplicable during, or modified for the non-ozone season. EPA guidance states that seasonal controls are generally not allowed and that RACT is generally not a function of seasonal or other temporal factors. The Department's proposed regulation follows the EPA guidance; thus, no changes to the proposed emission limits will be made with respect to operation during the non-ozone season.

Several of the commenters requested that the Department leave the existing exemption for simple cycle turbines that operate 500 hours or less in the non-ozone season. The Department has decided to remove this exemption from the proposed regulation revisions. The reason for the Department eliminating the 500 hour per year non-ozone season exemption is based on the current trend of simple cycle turbine operation. It has been observed that new simple cycle turbines are being designed to operate for longer periods throughout the year and that many of the existing simple cycle turbine fleets are being replaced with new simple cycle turbines that are designed for more operation. The Department believes that the NO_x RACT rule must be revised to meet the change in simple cycle turbine operation.

Many of the commenters requested that the simple cycle combustion turbines should be considered in demonstrating compliance with the 30-day rolling average during the non-ozone season instead of the proposed 24-hour average. The Department intended to allow the simple cycle combustion turbines to use a 30-day average in the non-ozone season. The initial text of the proposed regulation failed to comport with the Department's intent. This mistake has been corrected.

Several commenters stated that the presumptive emissions limits in the

proposed NO_x RACT rules are not justified and should be modified in light of the significant reductions in New York State NO_x emissions that have already taken place based on the requirements of other regulations like the ADRP and CAIR. The Department does not believe that the revised emission rates in the proposed rule are beyond the definition of RACT, ''Lowest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility.'' The Department believes that the proposed rule revisions will result in significant additional NO_x emission reductions.

Many of the commenters have expressed the need for more flexibility and changes to the system averaging provisions in the rule including the addition of planned outage provisions. The Department believes that the proposed system averaging provisions adequately protect the owner of the system from noncompliance, specifically during forced outage events. The Department does not believe that it can justify expanding the forced outage provisions to include planned outages. A planned outage is not an unforeseen event or an emergency. It is a controlled action and therefore, does not qualify (nor can it be justified) for an adjusted emission rate like the forced outage provisions allow.

Several of the commenters stated that the costs and benefits of the proposed NO_x RACT rules are misstated. They believe that the approach used in determining the cost effectiveness of the rule is inappropriate for estimating the cost ranges for EGUs in New York State. The Department believes that the costs and benefits of the proposed NO_x RACT rules are not misstated. The Department stands by its conclusions. RACT and the application of RACT controls are required on an emission source basis. Thus, each emission source may be evaluated individually to determine whether or not the presumptive NO_x RACT emission rates are economically and technically feasible.

A few of the commenters stated that the presumptive emissions levels identified in the proposed NO_x RACT rule should be modified to incorporate startup, shutdown and malfunction periods. They propose as an alternative that NYSDEC should exempt emissions associated with low-load operation, startup, shutdown and malfunction events from the NO_x RACT averaging period for compliance demonstration. The Department does not have the authority to exempt emissions of start-up, shutdown, and/or malfunctions from regulation and is unable to accommodate this change.

A few commenters believe that the Department did not adhere to Executive Order No. 20 before implementing the proposed NO_x RACT rules. Executive Order No. 20 (November 30, 1995) provides that the State Director of Regulatory Reform (''DRR'') may propose that agencies such as DEC amend any rule that is ''excessive in view of State or federal statutes or regulations.'', and allows the DRR ''to require an agency to prepare a cost-benefit analysis [or] risk assessment'' of a proposed rule, and to ''require that any cost-benefit analysis or risk assessment that is prepared for a rule undergo a peer review.'' The Department believes that it followed the procedures set forth in Executive Order 20, as the rulemaking package was reviewed and signed-off by the DRR prior to the rulemaking package's public noticing.

Some commenters stated that the RIS for the proposed NO_x RACT rules does not accurately evaluate DEC's costs. The Department agrees that staff will be required to conduct some permit modifications based on the implementation of the proposed rule revisions. However, the Department does not believe that this will result in a significant increase in overall staff workload.

A few commenters requested that the Department refrain from expanding the size definitions of small and mid-size boilers. The Department has determined that the available control measures for small and mid-size boilers are economically and technically feasible.

A couple of commenters have requested that the flexibility options provided in the proposed NO_x RACT rules be modified to state that a ''system'' can cross state lines. Unfortunately, the Department does not have the authority to regulate emission sources or require recordkeeping and reporting (essential for compliance) beyond the borders of New York State and is unable to satisfy this request.

A few commenters stated that the NYSDEC must demonstrate that the presumptive limits in the proposed NO_x RACT rule are ''reasonable'' and ''available.'' Based on economic factors, the Department calculated the inflationary increase in NO_x RACT costs. The removal rate was determined to be approximately $5,000 per ton of NO_x reduced. The Department believes that this is an accurate, reasonable, and available estimate.

A couple of commenters stated that certain NO_x emissions control technologies can lead to increases in emissions of CO2 and other pollutants. These potential adverse environmental impacts should be evaluated prior to finalization of the proposed NO_x RACT rules. The Department determined that the possible increases in emissions of CO2 were insignificant compared to the benefits of the projected NO_x emissions reductions. The Department believes that it has adequately addressed the issue of potential adverse environmental impacts based on the promulgation of this regulation.

One commenter stated that the NYSDEC did not provide sufficient notice of the proposed Subpart 227-2 rulemaking. The rule package was proposed on December 23, 2009 and fell during the holiday period. The public comment period for 6 NYCRR Subpart 227-2 commenced on December 23, 2009 and ended on February 17, 2010. The Department believes that the 57 days that the public comment period lasted was sufficient for the review of the proposed rule revisions.

One commenter stated that the Department should clarify the fuel switching compliance option to include fuel emergency adjustments that would foster consistency with the system averaging plan compliance option. The Department believes that the fuel switching option was written to allow flexibility to each owner or operator that chooses to use this provision to comply. There are no specific provisions in the fuel switching option that limit flexibility. Thus, the fuel switching provision simply must result in a quantifiable annual NO_x emissions rate equal to or less than the NO_x emissions expected if the emission source complied with the applicable presumptive RACT emission limits for its current fuel.

One commenter stated that the new proposed requirement for small boilers, small turbines and small engines to perform annual ''tune-ups'' will require all Title V permits with these sources to be amended to ensure the provisions are enforceable. The Department recognizes that some permits will need to be modified based on the proposed small emission source tune-up provisions. The Department does not believe that the need to permit these requirements will cause a strain on the resources of either Department staff or subject facilities.

NOTICE OF ADOPTION

Graphic Arts Facilities Engaged in Rotogravure, Flexographic, Offset Lithographic, and Letterpress Printing

I.D. No. ENV-51-09-00012-A
Filing No. 608
Filing Date: 2010-06-08
Effective Date: 30 days after filing

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

Action taken: Amendment of Parts 200, 201 and 234 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301 and 19-0305; and Federal Clean Air Act (CAA), sections 172(c)(1), 182(b)(2)(A) and (1)(B)

Subject: Graphic arts facilities engaged in rotogravure, flexographic, offset lithographic, and letterpress printing.

Purpose: To reduce VOC emissions from graphic arts facilities by requiring reasonably available emission control technology.

Substance of final rule: The Department of Environmental Conservation (Department) is proposing revisions to Part 200, General Provisions, Part 201, Permits and Certificates, and Part 234, Graphic Arts of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York. Part 234 establishes Reasonably Available Control Technology (RACT) for volatile organic compounds (VOCs) emitted by graphic arts processes in an effort to control the formation of ground level ozone.

Proposed revisions to Part 200 will update two references in Table 1 of section 200.9. The publication date and page numbers of the referenced documents will be updated to the 2006 Code of Federal Regulations.

The proposed amendments to Part 201 revise the criteria for a graphic arts process to obtain an exemption at 6 NYCRR 201-3.2(c)(13). In order to qualify for the exemption, graphic arts processes must be located outside a severe ozone non-attainment area and have facility-wide VOC emissions less than three tons per year on a 12-month rolling basis. Also amended is a trivial activity listed at 6 NYCRR 201-3.3(c)(23) to read Proof Press Operations.

The proposed Part 234 revisions expand the regulation's applicability to include letterpress printing and establish Reasonably Available Control Technology (RACT) requirements on facilities that engage in flexographic, offset lithographic and rotogravure printing; they also impose requirements for graphic arts coating and adhesive, and cleaning solution used in letterpress and offset lithographic printing.

All graphic art facilities will become subject to Part 234. Any graphic arts facility that is located in a severe ozone non-attainment area, or that is located outside a severe ozone non-attainment area with annual VOC emissions greater than three tons on a rolling 12-month basis, is subject to all the requirements of this Part. Facilities that are located outside a severe ozone non-attainment area with annual VOC emissions less than three tons on a rolling 12-month basis are only subject to the requirements of sections 234.5, 235.6, 234.7 and 234.8 of this Part.

Unless they are inconsistent with Part 234, the definitions of 6 NYCRR Part 200 apply to graphics arts facilities. Additionally, section 234.2 outlines definitions specific to this Part. Several new definitions are proposed, including new definitions for various types of printing equipment and processes, control equipment, and cleaning materials.

Section 234.3 deals with the emission control requirements for graphic arts printing processes. These requirements have been revised to establish RACT for graphic arts printing processes and follow the Control Techniques Guidance (CTG) published by EPA. The proposed emission control requirements outline minimum control efficiencies for reducing the amount of VOCs emitted by graphic arts printing processes. Operators may choose to use compliant materials with limited VOC content in lieu of installing and operating emission control equipment.

Section 234.4 outlines the testing and monitoring requirements for graphic arts facilities that choose to comply with Part 234 by installing and operating emission control equipment. This section defines acceptable test methods used to demonstrate the emission control efficiency of the equipment. It also lists several continuous control equipment monitors that must be installed and operated on all printing process emission control equipment at graphic arts facilities.

Section 234.5 prohibits the sale or specification of any coating, ink or adhesive that is specifically prohibited by any provision of Part 234. Use or specification of such material is allowed only when Part 234 compliant emission control equipment has been installed, or the material has been granted a variance by the Department. This section also requires that coating, ink and adhesive vendors provide product specifications to the buyer upon request.

Section 234.6 deals with the handling, storage and disposal of VOCs. Owners and operators of graphic arts printing processes are prohibited from storing ink, coating, adhesive, cleaning material, and cloths or papers that contain any amount of VOCs in open containers.

Recordkeeping requirements are listed in section 234.7. Owners and operators of graphic arts printing processes must retain purchase and use records of ink, coating, adhesive, VOCs, solvent, fountain solution, cleaning material and any other information required to determine compliance with this Part at the facility for a period of five years. This section also allows a Department representative to obtain a sample of any material containing VOC in order to determine compliance with Part 234. Facilities that meet any of the exemption criteria in Part 234 must retain records that demonstrate their qualification for the exemption.

Section 234.8 limits the opacity from any emission source subject to Part 234 to no more than ten percent.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 200.9, 234.1(d)(5), 234.2(a)(4), (5), (7), 234.3(a)(1), (2), (b)(2), (c)(1), (d)(2), 234.4(b)(2), (c)(1), (2) and 234.7(c).

Text of rule and any required statements and analyses may be obtained from: Robert Stanton, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: airregs@gw.dec.state.ny.us

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 was approved by the Environmental Board.

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

No changes were made to the previously published RIS, RFA, RAFA and JIS.

Assessment of Public Comment

Comments Received From December 23, 2009 through 5:00 p.m. February 17, 2010

American Packaging Corporation, (Commenter number 1)

1.) Comment: American Packaging believes that the revised Part 234 regulation should allow (as provided for in EPA's Control Techniques Guidelines (CTG)) averaging the volatile organic compound (VOC) content of materials used on a single press, extrusion line, i.e. within a line, in order to meet the VOC content limits.

Response: The Department concurs with this comment and will make it clear in the proposed rule that such VOC content averaging is allowed.

Graphic Arts Coalition, (Commenter number 2 (GAC))

2.) Comment: On 6 NYCRR Part 201-3.2 Exempt activities:

Proposed section 201.3.2(c)(13) revises the non-title V permit exemption limits for graphic arts facilities from less than 20 pounds per day of actual VOC emissions to VOC emissions less than three tons per year on a 12 month rolling basis. The proposed revision also expands the exclusion of eligibility for the exemption from all facilities located in the New York City metropolitan area to all facilities located in a severe nonattainment area. Changing the exemption limit from 20 pounds per day to three tons per year would lower the existing threshold by 0.7 tons per year since 20 pounds per day is equivalent to 3.7 tons per year. The reduced threshold would capture many more small facilities statewide which were previously exempt. The revision would also capture additional small facilities located outside of the New York City metropolitan area that are located in a severe ozone nonattainment area.

GAC contends that these proposed revisions impose an economic and administrative burden on these small printing operations that is unacceptable and unnecessary. It is further contended the costs associated with obtaining the actual air permit, an annual fee is also imposed on these operations and the permit in and of itself, does not produce any reductions in air emissions. GAC recommends that the annual threshold be changed to 3.7 tons per year on a 12 month rolling basis for all facilities statewide, except for those facilities located in the New York City metropolitan area that were constructed or modified prior to date on which the proposed rule becomes effective.

Response: The proposed regulation complies with current State and Federal regulatory practice and the CTG's annual applicability threshold. Based upon the Department's analysis, any affect on the number of facilities required to obtain air registrations is de minimus.

3.) Comment: On 6 NYCRR Part 234.1General applicability and exemptions:

Proposed section 234.1(a) states that, with respect to a facility located in severe ozone nonattainment areas, the rule would apply regardless of the quantity of its actual VOC emissions. In its comment letter dated April 7, 2004, GAC stated:

''The application of the proposed requirements to all printers in…'' a severe nonattainment area"… threatens the viability of many small printers as they do not have the resources to comply.''

GAC still supports our initial recommendation in the April 7 letter which recommended that:

''…that the applicability threshold…'' for facilities located in severe ozone nonattainment areas ''… be divided into those printers with existing equipment and those with new equipment along with considerations for the size of the operation.''

To prevent backsliding, the current requirements in Part 234 should remain in place, but the revised requirements for Part 234 should only apply to new facilities at printing operations with more than three tons per year of actual VOC emissions.''

Based on the above, GAC requests that section 234.1 be revised to require that the existing rule apply to all facilities located in severe ozone nonattainment areas which were in operation prior to the effective date of the rule and to impose the revisions to all facilities located in severe ozone nonattainment areas which commenced operations on or after the effective date of the rule with more than 3 tons per year of actual VOC emissions. The three ton per year actual emission threshold for all other facilities would remain as written.

Response: The majority of these facilities are already required to comply with the permit and control requirements of this regulation. The proposed revisions add relatively few new facilities. Any new facilities would now be required to meet the same requirements already imposed on many other existing facilities. Also, see response to comment 2 above.

4.) Comment: Proposed section 234.1(b) provides reduced requirements for facilities located outside of severe ozone nonattainment areas with actual emission less than three tons on a 12 month rolling basis. For the same economic reason stated in comment number 1 above, GAC requests the reduced requirements in section 234.1(b) also apply to facilities located in severe ozone nonattainment areas which commenced operations or made modifications on or after the effective date of the rule whose actual VOC emissions are equal to or less than three tons per year.

Response: See the response to comments 2 and 3 above.

5.) Comment: Proposed 234.1(c) states that if a printing process that is subject to these regulatory requirements reduces its emissions to below the listed threshold it would still be subject to the rule's requirements. The GAC believes this section should be stricken in its entirety as it provides a disincentive for facilities to reduce their emissions. Inclusion of this requirement will inhibit rather than encourage pollution prevention activities designed to reduce VOC emissions.

Response: This requirement is not new and will remain. Its intent is to prevent the removal or discontinued use of control equipment.

6.) Comment: section 234.3(b)(2) of the existing rule requires that owners and operators of offset lithographic printing processes at facilities located in severe ozone nonattainment areas which were in operation after September 1, 1988 must use only fountain solutions containing 10 percent by weight of less of VOC. To prevent backsliding, GAC recommends that an additional requirement be added to section 234.1 as section 234.1(b)(2). Section 234.1(b)(2) would state ''In addition to the requirements of section 234.1(b)(1), the owner or operator of graphic arts facility with an offset lithographic printing process installed at facility located in a severe ozone nonattainment area with annual actual VOC emissions less than three tons per year on a 12 month rolling basis, shall meet the requirements of section 234.3(d)(3).''

Response: Since the Department does not intend to change the applicability criteria, this addition to prevent backsliding is not necessary. Also see response to comments 2 and 3 above.

7.) Comment: Proposed section 234.1(d) does not include an exemption for cleaning electronic components of a press, cleaning in prepress (plate making) and cleaning post press operations. All of these activities are trivial and should be consider for exemption. GAC requests that these activities be added to 234.1.

Response: There are no requirements specified for these activities in the proposed regulation; and their use should be included in determining the total actual VOC emissions of the facility for applicability purposes.

8.) Comment: A definition for ''post press operations'' should be added to 234.2. Proposed section 234.1(d)(4) exempts proof presses from the requirements of Part 234. A proof press is just one of many types of equipment used in ''Pre-Press operations'' which generate insignificant quantities of VOC emissions. Other prepress operations equipment include: photo-processing, typesetting, or image setting equipment; proofing systems utilizing water-based, ink jet, dry toner, or dye sublimation or proof press designed to evaluate product quality; plate making equipment or screen preparation activities utilizing water-based developing solutions; equipment used to make blueprints. Proposed 234.1(d) contains an exemption for both digital printing presses as well as screen printing processes that utilize conductive and sterilization ink systems. The GAC supports the inclusion of these printing activities within the exempted sources category. A definition for ''Pre-Press operations'' should be added to section 234.2.

Response: The terms ''Pre-Press Operations'' and ''Post-Press Operations'' are not contained within the proposed regulation so defining them is not necessary.

9.) Comment: Proposed section 234.1(d)(5) provides an exemption for the use of specialty ink, coating or adhesive where the facility's total actual annual usage of all specialty ink, coating and adhesive is no more than 55 gallons, on a 12-month rolling basis. Section 234.1(d)(5)(i) and (iii) require that the each specialty ink, coating or adhesive must be approved by NYDEC prior to applying it to a substrate and must be indentified on the facility's permit, respectively.

These requirements are unreasonable and burdensome. Requiring pre-approval for the use of a new specialty material would be a burden on the printer and would provide no environmental benefit. Also, requiring the permit to identify the materials would require a permit modification each time a facility would use a new specialty ink, coating and adhesive. The requirement for approval to be unreasonable and would provide no environmental benefit. GAC, therefore requests that section 234.1(d)(5)(i) and (iii) be deleted.

Response: The Department agrees with this comment and will update the regulation to delete the requirements of 234.1(5)(i),(ii) and (iii). Such specialty ink, coating and adhesive usage must be recorded in accordance with the provisions of section 234.7 'Recordkeeping'.

10.) Comment: For lithographic printing operations, the proposed rule does not specifically state that varnishes and other overprint coatings applied for decorative or protective purposes are considered part of the lithographic printing process and not subject to regulation under any other standard. GAC is concerned that the application of varnishes and coatings might be considered a separate process (e.g. paper coating) and, therefore, requests that section 234.1(d) include a provision that varnishes and coatings used on offset lithographic printing presses be considered part of the offset lithographic printing process.

USEPA recognized this potential problem and addressed it on page 8 of the CTG where it recommends:

''…that varnishes and coatings used on offset lithographic printing presses be considered part of the offset lithographic printing process and that the recommendations described below in section VI for heatset web offset lithographic inks and dryers apply equally to varnishes. We recommend that varnishes and coatings used on offset lithographic printing presses not be considered as a separate process (e.g., paper coating).''

Response: The Department understands the concern with this added regulatory responsibility of some coating processes. Coating processes are subject to Part 228 'Surface Coating Processes'. When a coating process is performed in conjunction with graphic art processes, it will now be subject to Part 234 and Part 228. The Department will examine this situation in greater detail when Part 228 is amended. It is not appropriate for the Department to include a provision in Part 234 that exempts a coating process from Part 228.

11.) Comment: GAC made extensive comments on 6 NYCRR Part 234.2 'Definitions'. Most were to add definitions which relate to their own proposed revisions to the rule. Some of their suggestions were to add clarification or to correct transcription errors.

Response: After careful consideration of the suggested changes, the Department will make the following revisions to the proposed rule:

- Revise the definition of 'Cleaning Material' by adding: ''For purposes of this rule, cleaning solutions include, but are not limited to blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink or coating from areas around the press.''
- Adding the term ''Non-heatset'' to the definition of 'Cold-set printing process' making the terms 'Non-heatset' and 'Cold-set', equivalent;
- Correcting a transcription error to the equation in the definition of ' Maximum permitted pounds of VOC per gallon of ink, coating, or adhesive, minus water and excluded compounds'; and
- Add a definition for ''Composite Partial Vapor Pressure'' as follows

(7) 'Composite Partial Vapor Pressure.' The sum of the partial pressure of the compounds defined as VOCs. VOC composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_c}{MW_c} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

Where:
Wi = Weight of the ''i"th VOC compound, in grams
Ww = Weight of water, in grams
Wc = Weight of exempt compound, in grams
Mwi = Molecular weight of the ''i"th VOC compound, in g/g-mole
MWw = Molecular weight of water, in g/g-mole
MWc = Molecular weight of exempt compound, in g/g-mole
PPc = VOC composite partial vapor pressure at 20°C (68°F), in mm Hg
Vpi = Vapor pressure of the ''i"th VOC compound at 20°C (68°F), in mm Hg

12.) Comment: Comments on 6 NYCRR Part 234.3 Control Requirements: GAC made extensive comments on section 243.3, mostly concerning the applicability of control techniques based on both the facility's potential to emit VOC's and an individual unit's potential to emit VOC's. Several comments were also provided on 234.3(e) relating to screen printing. Other comments address clarifications and/or omissions.

Response: The Department acknowledges that the CTG specifies the applicability of controls based on a unit's (individual presses) potential to emit VOC's (> or = 25 tons per year). However, the existing regulation's applicability for controls is based on a facility's potential to emit VOC's (> or = to 50 tons per year). To avoid backsliding on the applicability of control requirements it is necessary to apply both the unit and facility criteria. The Department appreciates the comments on screen printing processes; however, this is outside the scope of this proposed amendment. After careful consideration of all the suggested changes to the control requirements, the Department will make the following revisions to the proposed rule:

- In section 234.3(c)(1)(i) and (ii),"as applied'' will be added after ''cleaning materials''.
- In section 234.3(c)(1)(ii), ''or equal to'' will be added after ''less than''.
- In section 234.3(d)(2), ''and Sheet-fed offset lithographic presses'' will be changed to read….. ''or any press''.

13.) Comment: Comments on 6 NYCRR Part 234.4 Testing and Monitoring: The commenter made several clarifications and consistency comments on testing methods.

Response: After careful consideration of the suggested changes to the testing and monitoring provisions, the Department will make the following revisions to the proposed rule:

- In section 234.4(b)(2), ''respectively'' will be changed to ''(as appropriate)''.
- In section 234.4(c)(1), ''exhaust gas'' will be replaced with ''combustion zone'' and ''incinerator'' will be changed to ''oxidizer''.
- Section 234.4(c)(2) will be changed to read ''Inlet temperature at the catalytic oxidizer bed''

14.) Comment: The commenter noticed that 234.7(c) referred only to a facility's potential to emit VOC while the new applicability requirements also include actual emissions.

Response: The Department concurs with this observation and will add the phrase ''or its total actual VOC emissions, whichever applies'' to 234.7(c).

15.) Comment: The commenter suggested that a new section be added to the proposed revisions, which specifies the retention factors and capture efficiencies for various calculations and conditions.

Response: The Department appreciates the suggestion, but feels that such detail is not appropriate for inclusion in the rule. The Department will consider the suggestions in developing implementation guidance for graphic art facilities subject to the rule.

16.) Comment: The commenter suggests that the opacity requirement of 10 percent in section 234.8 be increased to 20 percent to be consistent with various other 6 NYCRR regulations.

Response: The section 234.8 opacity limitation is not new. Graphic art facilities have long been subject to the 10 percent opacity requirement without unreasonable effort to comply with it.

NOTICE OF ADOPTION

Hunting Regulations for Pheasants

I.D. No. ENV-10-10-00003-A

Filing No. 604

Filing Date: 2010-06-07

Effective Date: 2010-06-23

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

Action taken: Amendment of section 2.25 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0901, 11-0903 and 11-0905

Subject: Hunting regulations for pheasants.

Purpose: To adjust pheasant hunting seasons and bag limits to increase hunting opportunity.

Text or summary was published in the March 10, 2010 issue of the Register, I.D. No. ENV-10-10-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Bryan L. Swift, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, email: blswift@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement has been prepared and is on file with the Department of Environmental Conservation.

Assessment of Public Comment

The Department of Environmental Conservation received only one comment, from one individual, who requested that the "cock-only" harvest regulations in wildlife management units (WMUs) 7F and 7J (Syracuse area) be maintained. No additional information on pheasant populations or pheasant habitat in those WMUs was provided to support the request, so no changes were made to the reduced cock-only hunting area that was included in the proposed rule.

NOTICE OF ADOPTION

Management of Atlantic Cod, American Lobster, Coastal Sharks and Weakfish

I.D. No. ENV-15-10-00008-A

Filing No. 614

Filing Date: 2010-06-08

Effective Date: 2010-06-23

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

Action taken: Amendment of Parts 40 and 44 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1303, 13-0105, 13-0329, 13-0338, 13-0339-a and 13-0340-a

Subject: The management of Atlantic cod, American lobster, coastal sharks and weakfish.

Purpose: Ensure regulations are consistent with State and Federal laws and maintain compliance with Interstate Fishery Management Plans.

Substance of final rule: The Department of Environmental Conservation (DEC) proposes to amend 6 NYCRR 40.1(f) Table A - Recreational fishing as follows:

1. The minimum length for haddock decreases from 19 inches to 18 inches.

2. The possession limit for Atlantic cod taken by recreational anglers shall be reduced from no limit to 10 fish, except that anglers fishing on board federally permitted party or charter vessels may possess any number.

3. The possession limit for weakfish is reduced from 6 fish to one (1) fish.

4. The portions of Table A that apply to Large and small coastal sharks, Pelagic sharks and Prohibited sharks are repealed. All the footnotes of Table A that apply to Large and small coastal sharks, Pelagic sharks and Prohibited sharks are removed.

DEC proposes to amend 6 NYCRR 40.1(i) Table B - Commercial fishing as follows:

1. The trip limit for weakfish is reduced from no limit to 100 pounds. The bycatch possession limit is reduced from 150 pounds to 100 pounds: no more than 100 pounds in the round, per vessel, and provided that at least an equal amount of other food fish species is caught during the same trip is on board the vessel.

2. The portions of Table B that apply to Large and small coastal sharks, Pelagic sharks and Prohibited sharks are repealed. All the footnotes of Table B that apply to Large and small coastal sharks, Pelagic sharks and Prohibited sharks are removed.

DEC proposes to adopt a new section 40.7 of 6 NYCRR entitled Coastal Sharks. The purpose of adopting this new section is to promote the prudent management of coastal sharks that are landed in the State of New York. This section shall define which sharks may be taken for commercial and recreational purposes and which sharks are prohibited from harvest, size limits, possession limits, manner of taking and landing, gear restrictions and open and closed seasons will also be specified in this section. The provisions in this section are designed to promote healthy self-sustaining populations of coastal sharks and provide for the sustainable use of the shark resource for the benefit of the residents of the State of New York.

For recreational anglers, it is unlawful to take or possess any shark other those listed below: Atlantic sharpnose (''Rhizoprionodon terraenovae''); blacknose (''Carcharhinus acronotus''); blacktip (''Carcharhinus limbatus''); blue (''Prionace glauca''); bonnethead (''Sphyrna tiburo''); bull (''Carcharhinus leucas''); common thresher (''Alopias vulpinus''); finetooth (''Carcharhinus isodon''); great hammerhead (''Sphyrna mokarran''); scalloped hammerhead (''Sphyrna lewini''); smooth hammerhead (''Sphyrna zygaena''); lemon (''Negaprion brevirostris''); nurse (''Ginglymostoma cirratum''); oceanic whitetip (''Carcharhinus longimanus''); porbeagle (''Lamna nasus''); shortfin mako (''Isurus oxyrinchus''); smooth dogfish (''Mustelus canis''); spiny dogfish (''Squalus acanthias''); spinner (''Carcharhinus brevipinna''); and tiger (''Galeocerdo cuvier'').

1. The minimum size limit for the shark species listed above is 54 inches fork length. There is no minimum size limit for Atlantic sharpnose, finetooth, blacknose, bonnethead, smooth dogfish and spiny dogfish.

2. Recreational anglers may not take sharks using any means other than handlines that are retrieved by hand, not mechanical means, or by rod and reel.

3. Recreational anglers may not sell, trade or barter sharks or shark pieces.

4. Shore anglers may take or possess no more than one shark, regardless of species, except that one additional Atlantic sharpnose may be taken and possessed, one additional bonnethead may be taken and possessed; and there shall be no limit to the number of spiny dogfish and smooth dogfish that can be taken or possessed.

5. Recreational anglers fishing from a vessel may take or possess no more than one shark, regardless of species, except that one additional Atlantic sharpnose may be taken and possessed per angler, one additional bonnethead may be taken and possessed per angler and there shall be no limit to the number of spiny dogfish and smooth dogfish that can be taken or possessed per angler.

For commercial fishing in New York and for the purposes of these regulations and for consistency with Federal rules and the fishery management plan for coastal sharks developed by the Atlantic States Marine Fisheries Commission, coastal sharks shall be classified as follows:

1. Prohibited species: Atlantic angel (''Squatina dumeril''); basking shark (''Cetorhinus maximus''); bigeye sand tiger shark (''Odontaspis noronhai''); bigeye thresher shark (''Alopias superciliosus''); bignose shark (''Carcharhinus altimus''); Carribean sharpnose shark (''Rhizoprionodon porosus''); dusky shark (''Carcharhinus obscurus''); Galapagos shark (''Carcharhinus galapagensis''); longfin mako shark (''Isurus paucus''); narrowtooth shark (''Carcharhinus brachyurus''); night shark (''Carcharhinus signatus''); reef shark (''Carcharhinus perezii''); sand tiger shark (''Carcharias taurus''); sharpnose sevengill shark (''Heptrachias perlo''); bigeye sixgill shark (''Hexanchus nakamurai''); bluntnose sixgill shark (''Hexanchus griseus''); smalltail shark (''Carcharhinus porosus''); whale shark (''Rhincodon typus''); white shark (''Carcharodon carcharias'');

2. Research species: sandbar (''Carcharhinus plumbeus'');

3. Smooth dogfish: smooth dogfish (''Mustelus canis'');

4. Small coastal species: Atlantic sharpnose shark (''Rhizoprionodon terraenovae''); blacknose shark (''Carcharhinus acronotus''); bonnethead shark (''Sphyrna tiburo''); finetooth shark (''Carcharhinus isodon'');

5. Pelagic species: blue shark (''Prionace glauca''); common thresher shark (''Alopias vulpinus''); oceanic whitetip shark (''Carcharhinus longimanus''); porbeagle shark (''Lamna nasus''); shortfin mako shark (''Isurus oxyrinchus''); and

6. Non-sandbar large coastal species: great hammerhead shark (''Sphyrna mokarran''); scalloped hammerhead shark (''Sphyrna lewini''); smooth hammerhead shark (''Sphyrna zygaena''); lemon shark (''Negaprion brevirostris''); nurse shark (''Ginglymostoma cirratum''); silky shark (''Carcharhinus falciformis''); spinner shark (''Carcharhinus brevipinna''); tiger shark (''Galeocerdo cuvier'').

7. There is no closed season for the shark commercial fishery.

8. No person shall take, possess or land any shark species listed as Prohibited or Research Species without first obtaining and possessing a valid special license in accordance with Part 175.

9. There is no possession limit for sharks listed as Smooth dogfish, Small coastal species, Pelagic species, and Non-sandbar large coastal species.

10. No person shall take possess or land more than thirty-three sharks, regardless of species in any 24-hour period.

11. Sharks harvested for commercial purposes shall be taken by the following methods and gears only: rod and reel; handline, which shall be retrieved by hand, not mechanical means, and shall be attached to or in contact with a vessel; small mesh gillnet; large mesh gillnet; trawl; shortline; pound net; and weir. A maximum of two shortlines per vessel may be used. The use of any other gear to take sharks for commercial purposes is prohibited.

12. The following bycatch reduction measures must be practiced by any person taking, possessing or landing sharks using shortlines or large mesh gillnets:

(a) All hooks attached to shortline gear must be corrodible circle hooks;

(b) All persons participating in the commercial shark fishery shall practice the protocols and possess the Federally-required release equipment for pelagic and bottom longlines for the safe handling, release and disentanglement of sea turtles and other non-target species;

(c) All captains and vessel owners must be certified in using handling and release equipment through workshops offered by National Oceanic and Atmospheric Administration's National Marine Fisheries Service;

(d) Large mesh gillnets shall be no longer than 2.5 kilometers (1.55 miles).

13. No person shall possess or land a shark listed in 6 NYCRR 40.7 without the tails and fins naturally attached to the carcass. Fins may be cut as long as they remain attached to the carcass by natural means with at least a small portion of uncut skin. Finning is prohibited. Sharks may be eviscerated and have the heads removed. Sharks may not be filleted or cut into pieces at sea.

14. Quotas, trip limits and directed fishery thresholds may be set by the Atlantic States Marine Fisheries Commission Spiny Dogfish & Coast Sharks Management Board (Sharks Board) for the smooth dogfish, small coastal, non-sandbar large coastal and pelagic species groups for each commercial fishing year. DEC will establish trip limits and directed fishery thresholds within the fishing year consistent with those established by the Sharks Board. Such trip limits and thresholds will be enforceable upon 72 hours notice to license holders of the vessel trip limit allowed.

15. If DEC determines that the maximum allowable harvest of sharks has been taken or is projected to be taken before the end of the fishing year, DEC may prohibit the take and possession of a shark species for commercial purposes upon 72 hours notice to license holders.

16. If DEC closes a fishery, but determines that the quota will not be harvested by the projected date, then DEC may reopen the fishery for a specified time at a specified trip limit up to the maximum allowed upon 72 hours notice to license holders.

17. No person shall take, possess or land sharks for commercial purposes when the Federal commercial fishery for that species is closed.

18. No harvester shall sell sharks taken in state waters for commercial purposes except to a holder of a Federal Commercial Shark Dealer Permit. A Federal Commercial Shark Dealer Permit shall be required to buy and sell sharks taken in state waters.

DEC proposes to amend 6 NYCRR section 44.3 to read as follows:

1. Subdivision 44.3(a) is repealed. Subdivisions 44.3(b), 44.3(c) and 44.3(d) are renumbered 44.3(a), 44.3(b) and 44.3(c).

2. Effective June 1, 2010, all lobster pots or traps in use shall contain escape vents that are either one or more unobstructed rectangular openings not less than five and three quarter inches by not less than two inches or two or more unobstructed circular openings not less than two and five-eighths inches in diameter each.

Final rule as compared with last published rule: Nonsubstantive changes were made in Part 40.

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department of Environmental Conservation.

Revised Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 11-1303, 13-0105, 13-0339-a, and 13-0340-a authorize the Department of Environmental Conservation (DEC or department) to establish by regulation management measures for Atlantic cod and weakfish including size limits, catch and possession limits, provided that such regulations are consistent with the compliance requirements of the applicable fishery management plans (FMPs) adopted by the Atlantic States Marine Fishery Commission (ASMFC).

ECL section 13-0329 authorizes DEC to establish by regulation escape panels and vents consistent with the ASMFC Interstate FMP for American Lobster.

ECL section 13-0338 authorizes DEC to establish by regulation measures for the management of sharks, including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility for such permits, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the ASMFC and with applicable provisions of FMPs adopted pursuant to the Federal Fishery Conservation and Management Act.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries in such a way as to protect this natural resource for its intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters. The ECL stipulates that management and use of State fish and wildlife resources must be consistent with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This proposed rule is necessary to make New York State regulations for Atlantic cod and haddock consistent with Federal rules. Both species are managed by the federal government and are not usually caught in New York waters. However, Atlantic cod and haddock are often landed in New York from fishing trips to EEZ (Federal) waters. Under current regulations, it is unclear to recreational anglers what rules apply when they seek to land in New York cod caught in Federal waters. This rule will prevent confusion by synchronizing New York's regulations with the Federal rules.

The following paragraphs describe rule makings that are necessary for New York State to remain in compliance with ASMFC FMPs. All member states of ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) must comply with the provisions of FMPs and management measures adopted by ASMFC and MAFMC. These FMPs and management measures are designed to promote the long-term sustainability of quota managed marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any regulations necessary to implement the provisions of the FMPs and remain compliant with the FMPs. New York State must promulgate the proposed rules to comply with management measures and FMPs adopted by ASMFC and MAFMC. The proposed regulations are necessary to increase the size of lobster trap escape vents on all lobster traps used in New York State waters within Lobster Conservation Management Area 6 (Long Island Sound) to harvest lobsters. This increase in vent size corresponds to the increased minimum size limit which became effective January 1, 2010. New York's minimum size limit for lobsters increased to three and three-eighths inches carapace length and there must be a correlated increase in escape vent size. Addendum IV of Amendment 3 of the ASMFC American Lobster FMP requires corresponding escape vent size increases for any increase in minimum lobster size limit. The escape vent size increase is necessary to ensure that all sublegal size lobsters are able to get out of the trap and avoid being preyed upon by larger lobsters. Failure to implement this regulation in a timely fashion may result in a determination of non-compliance by ASMFC and by the Secretary of Commerce. New York State may then be subject to the imposition of a moratorium on the harvest of lobster within the state, which may result in significant adverse impacts to the State's economy.

The proposed regulations are also necessary to ensure New York State adopts regulations to protect coastal sharks that are consistent with provisions of the ASMFC FMP for coastal sharks and with Federal regulations. Failure to adopt these regulations may result in New York State being found non-compliant with the recommendations of the FMP for coastal sharks and subject to the imposition of a moratorium on the harvest of coastal sharks in New York State.

Lastly, the proposed rule is necessary to adopt fishery management measures that would reduce fishing pressure on the depleted weakfish stock. Furthermore, New York State must comply with the recent recommendations of the ASMFC Weakfish Management Board and provisions

in the ASMFC FMP for weakfish. Failure to comply with the FMP could result in a determination of non-compliance against New York State and possible weakfish fishery sanctions imposed by the Secretary of Commerce.

4. Costs:

(a) Cost to State government:

There are no new costs to State government resulting from this action.

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this proposed amendment. There may be minor costs associated with complying with gear modifications for lobster license holders. Lobster license holders in lobster conservation management area (LCMA) 6 will need to replace the escape vents on their traps if the vents are too small. The proposed rule may constrain the number of lobsters that commercial fishers may catch and will significantly reduce the number of weakfish that commercial fishers may keep. Consequently, the proposed rule may cause some reduction in the earnings of some commercial fishers.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying commercial and recreational anglers of the new rules.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any State or Federal requirement.

8. Alternatives:

Atlantic cod and haddock: No Action Alternative - If the regulations are not changed, then New York rules will remain less restrictive than the Federal rules for recreational cod fishing. This will promote confusion and noncompliance with Federal rules in New York because nearly all cod landed in New York are caught in Federal waters, but this cannot be proven at the dock.

American lobster: No Action Alternative - The ASMFC American Lobster FMP requires an increase in vent sizes for Southern New England. If New York does not implement this increase in vent size, the Secretary of Commerce may find the State non-compliant with the American lobster FMP and subject to fishery sanctions imposed by the Secretary of Commerce. Furthermore, the State may be subject to delayed implementation measures, which impose fishery closures based on the length of time the regulations are delayed. Any fishery sanctions imposed on New York State would cause significant economic hardship on state lobster harvesters. The estimated dollar value of New York's commercial lobster harvest was approximately $4.1 million in 2008 which is the last year of estimated value. This alternative was rejected.

Coastal sharks: No Action Alternative - ASMFC has adopted new management measures for coastal sharks. If New York State fails to amend 6 NYCRR Part 40 and to implement the recommendations of ASMFC, the State will be not in compliance with the management measures put into place by ASMFC. Failure to implement these measures will result in New York being out of compliance with the Fishery Management Plan for Coastal Sharks. The Secretary of Commerce may then implement a moratorium for fishing for coastal sharks in the State of New York. Consequently, this alternative was rejected.

Weakfish: No Action Alternative - The ASMFC Weakfish Management Board adopted new management measures that significantly reduced the amount of weakfish that could be harvested by commercial and recreational fishermen. If New York State fails to amend 6 NYCRR Part 40 and implement the recommendations of ASMFC, the State will be not in compliance with the management measures put into place by ASMFC and the FMP for Weakfish. ASMFC may then request the Secretary of Commerce to implement a moratorium for fishing for weakfish in New York. Consequently, this alternative was rejected.

9. Federal standards:

The amendments to 6 NYCRR Parts 40 and 44 are in compliance with the ASMFC and the Mid-Atlantic Fishery Management Council FMPs.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The proposed regulations will take effect upon filing with the Department of State after the 45-day public comment period.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

The Department of Environmental Conservation (DEC) has proposed a rule that will allow recreational anglers to fish for and land Atlantic cod in New York in accordance with Federal rules for the Atlantic cod fishery. The rule making will also propose to reduce the recreational minimum size limit for haddock from 19 inches to 18 inches. Currently, there is no possession limit for recreational anglers taking Atlantic cod taken from State waters. However, there is a 10-fish limit for cod taken from Federal waters. This proposed rule will specify a 10-fish limit for recreational anglers and specify that anglers on board Federally permitted party or charter vessels may possession any number. Once adopted, this rule will make New York State regulations for Atlantic cod and haddock consistent with Federal rules and clarify for recreational anglers the possession limits for cod. The number of recreational anglers in New York who could be affected by this rule making is unknown by DEC at this time, but the National Marine Fisheries Service has estimated that there were just over 1 million recreational anglers in New York in 2007.

The proposed rule will amend Part 44 and increase the size of lobster trap escape vents to correspond to the increased lobster minimum size limit which became effective January 1, 2010. This rule will allow sublegal lobsters to escape lobster traps and avoid predation by larger lobsters caught in the trap. In 2009, there were 329 New York State licensed commercial lobster harvesters who harvested lobsters in LMA 6.

DEC proposes to adopt regulations that implement management measures for coastal sharks. The proposed rule will identify which shark species are allowed to be taken in the commercial and recreational fisheries and which species are prohibited; specify size limits, possession limits, seasons and authorized fishing gear; detail landing requirements, requirements for harvest, dealer and display licenses and permits; define by-catch reduction measures; and specify an annual process for quota and trip limit determination. The proposed rule will implement current or proposed Federal rules for the management of sharks and will be consistent with the Federal rules.

The proposed rule making will reduce the recreational possession of weakfish to one (1) fish per angler per day, reduce the commercial daily trip limit to 100 pounds, reduce the commercial bycatch limit to 100 pounds during closed seasons, and will specify a 100 undersized fish per trip allowance for the finfish trawl fishery. This rule will reduce the number of weakfish that may be taken by commercial fishers and the income of commercial fishers who target weakfish may be reduced.

No local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule. There may be minor costs for lobster license holders associated with the modification of lobster pot vents in compliance with the proposed rule.

5. Economic and technological feasibility:

For the most part, the proposed regulations do not require any additional expenses for regulated parties or the adoption of new business techniques. There may be minor costs associated with complying with gear modifications for lobster license holders. The changes required by the proposed regulations may reduce the income of commercial food fish harvesters by reducing the amount of weakfish they may harvest. There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

Licensed lobster harvesters may reduce the costs of the required gear modification by modifying the vent size themselves rather than having it done by the trap manufacturer.

The failure to promulgate the proposed rules will result in New York not complying with the management measures adopted by MAFMC and ASMFC. New York may be found non-compliant with the FMPs for American lobster, coastal sharks or weakfish and ASMFC may request the Secretary of Commerce to impose a moratorium on fishing for any of the affected species in the State of New York.

Protection of the State's shark and weakfish resources is essential to the long-term benefit of commercial fishers and recreational anglers. These regulations are designed to protect the coastal shark and weakfish stocks from overfishing, allow the stock to rebuild and achieve long-term sustainability of the fisheries for future use. Any short-term losses in harvest and angler participation as a result of the promulgation of the proposed rules will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Lastly, failure to take actions required to protect the State's marine resources could cause the catastrophic collapse of a stock and have a severe impact on the commercial and recreational fishing industries dependent on that species. Any positive effect of adopting proper management measures may not be apparent for several years, not until the fishery stocks recover from depletion and become sustainable.

7. Small business and local government participation:

Provisions of the rule making have been presented to the Marine Resources Advisory Council by DEC at recent meetings. Members of the local fishing communities have had opportunities to discuss the ramifications of the rule making at that meeting.

There was no special effort to contact local governments because the proposed rule does not affect them.

Revised Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The American lobster, Atlantic cod, haddock, coastal shark and weakfish fisheries that are directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the State. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Revised Rural Area Flexibility Analysis is not required.

Revised Job Impact Statement

1. Nature of impact:

DEC is proposing to implement a rule that will allow recreational anglers to fish for and land Atlantic cod in New York in accordance with Federal rules for the Atlantic cod fishery. The rule making will also propose to reduce the recreational minimum size limit for haddock from 19 inches to 18 inches. This rule applies to only recreational anglers.

DEC is also proposing to adopt regulations to protect coastal sharks that are consistent with provisions of the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan (FMP) for coastal sharks and with Federal regulations. The proposed rule will be consistent with existing or proposed Federal rules. Jobs and incomes are not as likely to be impacted by this rule because most of the provisions of the proposed rule regulation are already in effect as a Federal rule and is referenced in current New York State regulations.

DEC is proposing to adopt fishery management measures that would reduce fishing pressure on the depleted weakfish stock. The rule will significantly reduce the amount of weakfish commercial fishers will be able to land and may reduce the income of fishers who target weakfish.

Lastly, DEC is proposing to amend Part 44 and increase the size of lobster trap escape vents on all lobster traps used in New York State waters within Lobster Conservation Management Area 6 (Long Island Sound) to harvest lobsters. This increase in vent size will allow sublegal lobsters to exit lobster traps and avoid predation by larger lobsters in the trap. This proposal is unlikely to impact jobs because New York State lobster harvesters are already subject to the increased minimum size for LCMA 6 (since January 1, 2010). This rule will merely require modification of gear already in use by the lobster harvesters.

2. Categories and numbers affected:

The proposed rule will allow recreational anglers to fish for and land Atlantic cod in New York in accordance with Federal rules for the Atlantic cod fishery. This will result in placing a 10-fish limit on the possession of cod; currently is no State limit. The number of recreational anglers in New York who could be affected by this rule making is unknown by DEC at this time, but the National Marine Fisheries Service has estimated that there were just over 1 million recreational anglers in New York in 2007.

DEC proposes to adopt regulations that implement management measures for coastal sharks and weakfish that will impact both commercial fishers and recreational anglers. In 2009, there were 1,049 State- licensed food fish harvesters in New York. The number of recreational anglers in New York who could be affected by this rule making is unknown by DEC at this time.

The proposed rule will increase the size of lobster trap escape vents to correspond to the increased lobster minimum size limit which became effective January 1, 2010. In 2009, there were 329 New York State licensed commercial lobster harvesters who harvested lobsters in Lobster Conservation Management Area 6 (Long Island Sound).

This Job Impact Statement does not include recreational anglers in this analysis, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area included all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the State, including Long Island Sound and the Hudson River up to the Tappan Zee Bridge. The Hudson River is not a usual habitat of Atlantic cod, American lobster, coastal sharks or adult weakfish.

4. Minimizing adverse impact:

The failure to promulgate the proposed rules will result in New York not complying with the management measures adopted by MAFMC and ASMFC. New York may be found non-compliant with the FMPs for American lobster, coastal sharks or weakfish and ASMFC may request the Secretary of Commerce to impose a moratorium on fishing for any of the affected species in the State of New York.

Protection of the State's shark and weakfish resources is essential to the long-term benefit of commercial fishers and recreational anglers. These regulations are designed to protect the coastal shark and weakfish stocks from overfishing, allow the stock to rebuild and achieve long-term sustainability of the fisheries for future use. Any short-term losses in harvest and angler participation as a result of the promulgation of the proposed rules will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Lastly, failure to take actions required to protect the State's marine resources could cause the catastrophic collapse of a stock and have a severe impact on the commercial and recreational fishing industries dependent on that species. Any positive effect of adopting proper management measures may not be apparent for several years, not until the fishery stocks recover from depletion and become sustainable.

Assessment of Public Comment

The Department of Environmental Conservation proposed several amendments to 6 NYCRR Part 40 and Part 44. The department received public comment on the proposal to revise 6 NYCRR paragraph 40.1(j)(8) to change the income criteria for qualification for a full share of striped bass tags in the striped bass commercial fishery. No comments were received on any other portion of the regulatory proposal.

There were written comments from 34 persons, including a Member of the New York State Assembly and a U.S. Congressman representing fishermen in their districts. Comments were received orally either over the phone or in person from seventeen persons officially, though many others made unofficial comments to department staff. Of these comments, five were either in favor of the proposal or recommended a slightly different version of the proposal, while 43 were opposed to the proposal. Two others made suggestions that could not be interpreted as either for or against the proposal.

Comments in favor:

- The proposal is fair, and would give full shares to fishermen who work full-time;
- Active fishermen should get more tags.

Comments in opposition:

- It is difficult or impossible to meet the $15,000 income criterion because of disability or age-related inability to catch enough fish;
- The rule change would result in financial hardship from the loss of full shares of tags;
- There should be consideration given to older fishermen;
- Fish prices fluctuate, so no guarantees of specific amount of fishing income;
- The rule change allows people with jobs other than fishing to get a full share of tags;
- It discriminates against those seniors on a fixed income, relying on Social Security and fishing income alone;
- It disadvantages one sector of the fishing community, the aged;
- Older fishermen with full shares should be ''grandfathered'' into the program even though they may not make the $15,000;
- The proposal favors off-shore fishermen over small inshore operators and baymen;
- The proposal would force some fishermen to seek other employment;
- The department should get the non-legitimate fishermen out of the striped bass fishery;
- Fishermen 70 years and older should get a full share of tags, if they can fill them in person;
- Those fishermen without their own boat have to share their earnings with the boat owners, reducing their take and making $15,000 an impossible target;
- There should be an exemption for fishermen who make 100 percent of their income from fishing but do not make $15,000;
- The limits placed by the department on other fisheries make it difficult to make enough money from fishing to meet the $15,000 requirement.

Other comments:

- Income from party and charter businesses should not be qualifying income from fishing;
- Part-time fishermen should be excluded from the striped bass fishery;
- The current management system is flawed and there should not be two classes of permits, only one;
- The proposal should be for either $15,000 or 80 percent of income;
- The proposal should be for either $15,000 or 75 percent of income.

Department's response: The department was strongly advised by the Attorney General of the State of New York to do away with a specific percentage of income as a criterion for determining eligibility for a full-share permit in the striped bass limited entry commercial fishery. This advice was given pursuant to a determination that the analysis of all the required

tax documentation by department staff was problematic. Hence, this proposal substituted a simple fixed dollar amount of $15,000 of income for 50 percent as the criterion. The proposal was developed through consultation with the department's Marine Resources Advisory Council, certain members of which presumably represent the needs of the commercial fishermen of New York State.

There is no conservation benefit to using one criterion or the other. Strictly from an administrative standpoint, it would be simpler for the department to do away with the differential shares system and simply give all permit holders an equal share of tags. The department maintains this system as a means of addressing the needs of the fishing industry as articulated to it through the Marine Resources Advisory Council.

This information notwithstanding, the department believes it was not the intent of this rule to deprive commercial fishermen of a means of making their living. From the nature and volume of comment in the negative, it is apparent that, for a significant portion of striped bass permit holders, the rule may do just that. There may be some significant detrimental economic impacts to some fishermen, and those impacts may affect older fishermen disproportionately.

Department of Health

EMERGENCY RULE MAKING

Hospital Inpatient Reimbursement

I.D. No. HLT-25-10-00003-E
Filing No. 600
Filing Date: 2010-06-02
Effective Date: 2010-06-02

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

Action taken: Amendment of Subpart 86-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803, 2807, 2807-c, 2807-k, 3612 and 3614

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to meet the statutory timeframes prescribed by Chapter 58 of the Laws of 2009 related to implementing a new hospital inpatient reimbursement system based on All-Patient-Refined-Diagnosis-Related-Groups (APR-DRGs). The APR-DRG methodology addresses the inadequacies of the current system by using an updated and more reliable cost base and a patient classification system that incorporates patient severity of illness and risk of mortality subclasses, reflecting the variable costs associated with each individual patient being treated. Paragraph (b) of subdivision 35 of section 2807-c of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority to issue emergency regulations in order to compute hospital inpatient rates in accordance with the new methodology by December 1, 2009.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of this new reimbursement system that is a cornerstone to health care reform.

Subject: Hospital Inpatient Reimbursement.

Purpose: Modifies current reimbursement for hospital inpatient services due to the implementation of APR DRGs and rebasing of hospital inpatient rates.

Substance of emergency rule: The amendments to sections 86-1.2 through 86-1.89 of Title 10 (Health) NYCRR are required to implement a new payment methodology for certain hospital inpatient fee-for-service Medicaid services based on All Patient Refined-Diagnostic Related Groups (APR-DRGs). The new payment methodology proposed by these amendments provides a more transparent and simplified reimbursement system that drives reimbursement consistent with efficiency, quality and public health priorities. It develops one statewide operating base rate using an updated and more reliable cost base rather than current regional and peer group operating base rates which were determined by using extremely outdated costs. The APR-DRG payment system will incorporate patient severity of illness and risk of mortality subclasses to better match patient resource utilization and provide a more precise method for equitable reimbursement.

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 August 30, 2010.

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

Regulatory Impact Statement

Statutory Authority:

The requirement to implement a modernized Medicaid reimbursement system for hospital inpatient services based upon 2005 base year operating costs pursuant to regulations is set forth in section 2807-c(35) of the Public Health Law. In addition, section 2807-c(4)(e-2) of the Public Health Law requires new per diem rates of reimbursement be implemented for certain exempt units and hospitals based on updated reported operating costs. Section 2807-k(5-b)(a)(ii) and (iv); and (b)(i), (iv) and (v) requires schedules of payment to be set forth in regulations for supplemental indigent care distributions made to certain eligible hospitals.

Legislative Objectives:

After numerous discussions between the Executive, Legislature, hospital associations and other key stakeholders, the Legislature chose to create a new, modernized reimbursement methodology for the State's Medicaid hospital inpatient system. Pursuant to statute, the APR-DRG methodology was chosen as the new reimbursement system for these services.

Needs and Benefits:

The proposed regulations implement the provisions of Public Health Law section 2807-c(35) which requires a new hospital inpatient reimbursement system based on APR-DRGs and rebased costs. This methodology provides a more transparent and simplified reimbursement system that drives reimbursement consistent with efficiency, quality and public health priorities. This new payment methodology will also allow the Department to publish hospital rates more timely, and provide hospitals with greater predictability of their income streams.

The current reimbursement system for hospital inpatient services is extremely outdated, and does not effectively serve the interests of patients, providers, or the Medicaid system. Not only does the system's overall reimbursement greatly exceed the cost of providing such services, the methodology for allocating payments does not appropriately reflect the acuity of the patient, the quality of service, or the efficiency of the hospital. Over the years the current system has accrued numerous groupings, weightings, adjustments, and add-ons that have ultimately distorted the health care delivery system.

Per diem rates of payment by governmental agencies for inpatient services provided by a general hospital or a distinct unit of a general hospital for services in accord with physical medical rehabilitation and chemical dependency rehabilitation; services provided by critical access hospitals; inpatient services provided by specialty long term acute care hospitals; and services provided by facilities designated by the federal department of health and human services as exempt acute care children's hospitals are also developed using an outdated cost base which does not properly reflect current costs incurred for providing such services.

The APR-DRG methodology addresses the inadequacies of the current system by using an updated and more reliable cost base and a patient classification system that incorporates patient severity of illness and risk of mortality subclasses, reflecting the variable costs associated with each individual patient being treated. Utilizing an updated and more precise cost base will have the effect of reducing the total amount of Medicaid reimbursement paid to hospitals for inpatient services, which is found to be significantly overpaid. Accordingly, the State would be able to, consistent with budgetary constraints, reinvest these savings in primary and preventive care and

other traditionally under-paid ambulatory care services in order to improve the quality of patient care, ensure adequate access to these services, and avoid more costly inpatient admissions.

COSTS:

Costs to State Government:

Section 2807-c(35) of the Public Health Law requires that the rates of payment for hospital inpatient services result in a net state wide decrease in aggregate Medicaid payments of no less than $75 million for the period December 1, 2009 through March 31, 2010 and no less than $225 million for the period April 1, 2010 through March 31, 2011. Effective for annual periods beginning January 1, 2010, distributions to hospitals for indigent care pool DSH payments will be made as follows: $269.5 million will be distributed to hospitals, excluding major public hospitals, on a regional basis and within the amounts available for each region, to compensate each eligible hospital's proportional share of unmet need for calendar year 2007; $25 million will be distributed to hospitals, excluding major publics, having Medicaid discharges of 40% or greater as determined from date reported in the 2007 Institutional Cost Report. The distributions will be proportionately distributed based on each eligible facility's uninsured losses to such losses of all the eligible facilities; $16 million will be proportionately distributed to non-teaching hospitals based on each eligible facility's uninsured losses to such losses for all non-teaching hospitals statewide.

Costs of Local Government:

There will be no additional cost to local governments as a result of these amendments because local districts' share of Medicaid costs is statutorily capped.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

There are no local government mandates.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

No significant alternatives are available. The Department is required by the Public Health Law sections 2807-c(4)(e-2) and (35); 2807-k(5-b)(a)(ii) and (iv); and (b)(i), (iv), and (v) to promulgate implementing regulations.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment establishes the new APR-DRG reimbursement methodology for discharges on or after December 1, 2009; there is no period of time necessary for regulated parties to achieve compliance.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

In aggregate, health care providers subject to this regulation will see a decrease in average per discharge Medicaid funding, but this is not anticipated for all affected providers.

This rule will have no direct effect on Local Governments.

Compliance Requirements:

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. Some billing rate codes will change, but this will have a minimal impact on providers.

The rule should have no direct effect on Local Governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of these amendments to 86-1.2 through 86-1.89 there will be an anticipated decrease in statewide aggregate hospital Medicaid revenues for hospital inpatient services. Revenues will shift among individual hospitals.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements. The Legislature considered various alternatives for creating a new Medicaid hospital inpatient reimbursement methodology; however, the enacted budget adopted the APR-DRG methodology.

Small Business and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing hospitals and comments were solicited from all affected parties. Informational briefings were held with such associations.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, record keeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements. The Legislature considered various alternatives for creating a new Medicaid fee-for-service reimbursement methodology; however, the enacted budget adopted the APR-DRG methodology.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include members from rural areas.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations revise the reimbursement system for inpatient hospital services. The proposed regulations have no implications for job opportunities.

NOTICE OF ADOPTION

Ambulatory Patient Groups (APGs) Outpatient Rate Setting Methodology

I.D. No. HLT-12-10-00012-A

Filing No. 610

Filing Date: 2010-06-08

Effective Date: 2010-06-23

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

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

Subject: Ambulatory Patient Groups (APGs) Outpatient Rate Setting Methodology.

Purpose: To refine APG payment methodology regarding new APG weights, new procedure-based weights & minor changes in APG payment rules.

Text or summary was published in the March 24, 2010 issue of the Register, I.D. No. HLT-12-10-00012-P.

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

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

Assessment of Public Comment

On May 10, 2010 the Department received a written comment from the City of New York Department of Health and Mental Hygiene on Subpart 86-8 of 10 NYCRR. However, the comments pertained to suggested additional revisions to the regulations and did not directly address the proposed amendments to Subpart 86-8 10 NYCRR published in the NYS Register on March 24, 2010. The Department responded directly with the commenter regarding the suggested additional revisions to the regulations.

NOTICE OF ADOPTION

Palliative Care Certified Medical Schools and Residency Programs

I.D. No. HLT-15-10-00012-A

Filing No. 611

Filing Date: 2010-06-08

Effective Date: 2010-06-23

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

Action taken: Addition of Part 48 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-n

Subject: Palliative Care Certified Medical Schools and Residency Programs.

Purpose: Defines palliative care certified medical schools & residency programs to award grants according to PHL, section 2807-n.

Text or summary was published in the April 14, 2010 issue of the Register, I.D. No. HLT-15-10-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York Higher Education Loan Program (NYHELPs)

I.D. No. ESC-25-10-00007-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 2213 of Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10) and 692(3)

Subject: The New York Higher Education Loan Program (NYHELPs).

Purpose: Amend several provisions of the regulation.

Substance of proposed rule (Full text is posted at the following State website:www.hesc.com/NYHELPs): 1. Section 2213.2. Borrower eligibility requirements. The amendment corrects erroneous references to subdivisions within the section and clarifies the reference to title IV loans.

2. Section 2213.5. Due diligence in originating, disbursing, and servicing program loans. The amendment (a) clarifies that a discharge may only be granted based upon the death or total and permanent disability of a student while that student is enrolled in college; (b) provides that a request for discharge may also be based on the death of the borrower while on active military duty to correspond with section 2213.20(e)(2); and (c) provides for disbursements in unequal installments to accommodate differences in college payment deadlines.

3. Section 2213.6. Application content. The amendment conforms the requirements contained in the regulation to federal regulation by reference.

4. Section 2213.10. Default fees. The amendment (a) provides that the corporation will determine a process for transfer of funds when payment of the college default fee is made by an entity other than the college; and (b) clarifies processing of the borrower default fee; no substantive change was made except to permit deposits into a separate account at SONYMA rather than the Corporation.

5. Section 2213.13. College certification requirements. The amendment (a) clarifies that when a college certifies student eligibility, such certification includes that the student is making satisfactory academic progress; and, (b) adds two additional certifications, which are: (i) the program loan doesn't exceed the student's unmet need and is within the annual loan limit; and, (ii) a program loan for a prior academic term doesn't exceed the student's unmet need, is within the annual loan limit and doesn't supplant or reimburse institutional aid.

6. Section 2213.14. Processing program loan proceeds. The amendment: (a) permits program loans to be disbursed in unequal disbursements; (b) clarifies when the college must credit the loan to the student's account; and (c) clarifies the process and requirements for a program loan for a prior academic term.

7. Section 2213.15. Processing program loan refunds. The amendment clarifies that any refund of fees will be determined for each disbursement rather than the entire program loan.

8. Section 2213.17. Disclosure requirements for participating lenders. The amendment conforms the requirements contained in the regulation to federal regulation by reference and clarifies the process for disseminating and collecting the required disclosure forms.

9. Section 2213.20. Program loan repayment. The amendment will

make deferments available to all borrowers in active duty status rather than limit this benefit to student borrower is active duty status. The amendment will also make deferments available based on the death of a borrower on active military duty in the event the borrower does not qualify for discharge. The rule also clarifies the requirement for a modified payment plan.

10. Section 2213.28. Incorporation by reference. The amendment updates the regulation to include version 2 of both the program's underwriting manual and the program's default avoidance and claim manual.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1315, Albany, NY 12255, (518) 474-5592, email: regcomments@hesc.org

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

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

Regulatory Impact Statement

1. Statutory authority:

Education Law § 691(10) provides that the New York State Higher Education Services Corporation (Corporation) shall have the power and duty to adopt rules and regulations to implement the New York Higher Education Loan Program (Program or NYHELPs).

Education Law § 652(2) includes in the Corporation's statutory purposes the improvement of the post-secondary educational opportunities of eligible students through the centralized administration and coordination of New York State's financial aid programs and those of other levels of government.

Education Law § 653(9) further empowers the Corporation's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the Corporation, including the promulgation of regulations.

Education Law § 655(4) authorizes the President of the Corporation (President) to propose regulations, subject to approval by the Board of Trustees, governing the application for, and the granting and administration of, student aid and loan programs, the repayment of loans or the guarantee of loans made by the Corporation, and administrative functions in support of New York State student aid programs. Under Education Law § 655(9), the Corporation's President is also authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out the President's powers, duties and functions. Finally, Education Law § 655(12) provides the President with the authority to perform such other acts as may be necessary or appropriate to effectively carry out the general objects and purposes of the Corporation.

2. Legislative objectives:

The Program, as enacted by Part J of Chapter 57 of the Laws of 2009, authorizes the Corporation to serve as the Program's administrator and empowers the Corporation to adopt rules and regulations to implement the Program.

3. Needs and benefits:

NYHELPs was enacted on April 7, 2009 to offer New York State students and families the option of an affordable private education loan to fill the gap between college costs and currently available State and federal student aid. The regulations implementing the Program were effective on November 4, 2009, which led to the sale of private activity bonds to underwrite the Program in mid-December, and the processing of the first applications on December 21, 2009.

As a new Program with no prior history, NYHELPs was structured to maximize the number of constituents served while offering the most favorable interest rate, and utilizing a relatively small pool of funds. As the Program matures, the Corporation continues to work with Program participants (especially colleges, students, and families) to enhance and streamline the process. The Corporation convened a college advisory group in early 2010 to obtain feedback regarding Program improvements that would benefit students and colleges. Additionally, the Corporation reviewed actual Program data to ascertain whether its constituency was being served as intended. As a result of these efforts, the Corporation identified several sections of the regulation that required clarification or revision. For example, the Corporation re-examined the regulatory provisions relating to the military. After consultation with the State of New York Mortgage Agency (SONYMA), it was decided to make deferments available to all borrowers in active duty status rather than limit this benefit to student borrowers in active duty status. In addition, the Corporation, upon consulting with SONYMA, will offer deferments based on the death of a borrower on active military duty in the event the borrower does not qualify for a discharge. The Corporation also identified programmatic changes to increase efficiency and reduce complexity for Program participants. For example, the proposed amendment to the rule provides for disbursements in unequal installments to accommodate differences in college payment deadlines. In addition, the proposed amendment conforms loan processing of ''back balances'' to industry standards.

Simultaneously, federal regulations applicable to the Program became effective and model forms were issued. To ensure compliance and consistency with these federal requirements, the Corporation identified sections of the regulation that required revision.

As a result, this rule provides for: (i) technical clean up; (ii) clarification of language, with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing and certification requirements; (v) deletion or combination of duplicative provisions; and, (vi) program flexibility.

4. Costs:

There is no anticipated cost to the Corporation, other state agencies, or local governments for the implementation of, or continuing compliance with, this rule. In fact, the proposed amendments to this rule will result in increased efficiency and reduced complexity, which could reduce costs.

5. Paperwork:

This rule will require additional college certifications and the processing of military deferments for borrowers who die while on active military duty. However, the use of electronic filing and online processing reduces any paperwork burden on Program participants.

6. Local government mandates:

No program, service, duty, or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

7. Duplication:

This rule deletes or combines duplicative provisions and conforms provisions to federal law and other provisions of the regulation.

8. Alternatives:

The 'no action' alternative was not a viable option for consideration. Continuation of the current provisions would perpetuate inconsistencies and misinterpretation.

9. Federal standards:

This proposal does not exceed any minimum standards of the federal government. In fact, the proposal conforms provisions to federal standards.

10. Compliance schedule:

The Corporation, students, colleges and any other parties impacted by this proposal will be able to comply with this rule immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. The Corporation finds that this rule will not impose reporting, record keeping or compliance requirements on small businesses or local governments. The regulation implements the New York Higher Education Loan Program (NYHELPs), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) technical clean up; (ii) clarification of language with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing and certification requirements; (v) deletion or combination of duplicative provisions; and, (vi) program flexibility.

The Corporation has determined that this rule will not impose an adverse economic impact or impose reporting or other compliance requirements on either small businesses or local governments; therefore, a full Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. The Corporation finds that this rule will not impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. The regulation implements the New York Higher Education Loan Program (NYHELPs), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) techni-

cal clean up; (ii) clarification of language with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing and certification requirements; (v) deletion or combination of duplicative provisions; and, (vi) program flexibility.

The Corporation has determined that this rule will not impose an adverse economic impact on public or private entities in rural areas and therefore a full Rural Area Flexibility Analysis is not required.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it could only have a positive impact or no impact on jobs and employment opportunities. The regulation implements the New York Higher Education Loan Program (NYHELPs), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) technical clean up; (ii) clarification of language with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing and certification requirements; (v) deletion or combination of duplicative provisions; and, (vi) program flexibility.

The Corporation has determined that this rule will have no substantial adverse impact on any private or public sector jobs or employment opportunities and therefore a full Job Impact Statement is not necessary.

Insurance Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Charges for Professional Health Services

I.D. No. INS-25-10-00017-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 Part 68 (Regulation 83) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5221 and art. 51

Subject: Charges for Professional Health Services.

Purpose: The proposed amendment adopts the new Workers Compensation Board Dental Fee Schedule.

Text of proposed rule: Part A of Appendix 17-C to Part 68 is repealed and the appendix heading Part A is reserved.

Text of proposed 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

Data, views or arguments may be submitted to: Buffy Cheung, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5587, email: bcheung@ins.state.ny.us

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

Consensus Rule Making Determination

Sections 201, 301, 2601, 5221 and Article 51 of the Insurance Law establish the superintendent's authority to promulgate regulations governing charges for professional health services under no-fault.

Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges, for professional health services payable as no-fault insurance benefits, in order to contain the costs of no-fault insurance. In order to contain costs, the superintendent is required to adopt those fee schedules that are promulgated by the Chairman of the Workers' Compensation Board.

For dental services rendered on or before March 1, 2009, reimbursement was made in accordance with the dental fee schedule previously established by the Insurance Department. No-fault insurance claims for dental services rendered prior to March 1, 2009 must continue to be reimbursed in accordance with the dental fee schedule previously established by the Insurance Department.

The Workers' Compensation Board adopted a dental fee schedule effective March 1, 2009. Pursuant to Chapter 892 of the Laws of 1977, this fee schedule is also applicable to automobile no-fault insurance claims for dental services rendered on or after March 1, 2009.

No person is likely to object to the rule. The rule repeals the fee schedule previously established by the Insurance Department for dental services, which was adopted by the Insurance Department because, at the time, there was no fee schedule for dental services established by the Workers' Compensation Board. The charges for these dental services are now covered by the fee schedule established by the Workers' Compensation Board.

Job Impact Statement

The proposed amendment, which is required by statute, should have no adverse impact on jobs or economic opportunities in New York State as the rule merely repeals the fee schedule previously established by the Insurance Department for dental services. The charges for these dental services are now covered by the fee schedule established by the Workers' Compensation Board.

Department of Labor

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Public Employees Occupational Safety and Health Standards

I.D. No. LAB-25-10-00006-P

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

Proposed Action: This is a consensus rule making to amend section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a(4)(a)

Subject: Public Employees Occupational Safety and Health Standards.

Purpose: To incorporate by reference updates to OSHA standards into the State Public Employee Occupational Safety and Health Standards.

Text of proposed rule: Regulation 12 NYCRR § 800.3 is amended to add the following subdivision:

(ds) Revising Standards Referenced in the Acetylene Standard; Final Rule-74 FR 40442-40447, August 11, 2009.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-1938, email: michael.paglialonga@labor.ny.gov

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 amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to that Act. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Office of Mental Health

NOTICE OF ADOPTION

Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health

I.D. No. OMH-15-10-00011-A
Filing No. 612
Filing Date: 2010-06-08
Effective Date: 2010-06-23

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

Action taken: Amendment of Part 577 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Subject: Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health.

Purpose: To reduce the growth of Medicaid reimbursement for licensed Article 31 private psychiatric hospitals.

Text or summary was published in the April 14, 2010 issue of the Register, I.D. No. OMH-15-10-00011-EP.

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.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Reimbursement of Free-Standing Respite (FSR) Centers and Eligibility for Respite

I.D. No. MRD-15-10-00013-A
Filing No. 613
Filing Date: 2010-06-08
Effective Date: 2010-06-23

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

Action taken: Amendment of sections 635-10.1(e), 635-10.4(g), 635-10.5(b) and (h), 671.1(i) and 686.13(k) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 43.02

Subject: Reimbursement of free-standing respite (FSR) centers and eligibility for respite.

Purpose: To clarify reimbursement for FSR centers and to change respite eligibility related to live in staff in CRs and IRAs.

Text of final rule: • Subdivision 635-10.1(e) is amended as follows:

(e) Only section 635-10.4(b)(2) and (c) - [(g)] *(f)* of this Subpart are applicable to eligible persons receiving waiver community residential habilitation services in facilities operated by providers of services pursuant to Part 671 of this Title.

• Subdivision 635-10.4(g) is amended as follows:

(g) Respite services are broadly defined as the provision of intermittent, temporary substitute care of a person on behalf of a primary caregiver who is either a family member, a legal guardian, an advocate, *or* a family care provider [or community residence live-in staff]. It is a means of providing relief from the responsibilities of daily caregiving.

(1) Respite may be provided only to persons living at home [,] *or* in family care [, or in community residences (including IRAs) with live-in staff].

(2) Respite may be provided in any setting that is operated [,] *or* certified [, or approved] by OMRDD [, including a private residence]. *Respite may also be provided in a setting that is not operated or certified by OMRDD, including a private residence.*

Note: Paragraphs (3) - (5) remain unchanged.

[(6)] [Free-standing respite shall comply with all existing contract stipulations for this service.]

Note: Paragraph (7) is renumbered to be paragraph (6).

• Paragraph 635-10.5(b)(1) is amended as follows:

(1) The following shall apply to residential habilitation services provided *by an individualized residential alternative (IRA), provided as at home residential habilitation and family care residential habilitation* [on or after July 1, 2002]. *(Note: for reimbursement of respite services provided in an IRA see subdivision (h) of this section.)*

• Paragraph 635-10.5(h)(3) is amended as follows:

(3) Prices for [the reimbursement of waiver] respite services shall be determined through a budget review.

• Subparagraphs 635-10.5(h)(3)(ii), (iii) & (iv) are amended as follows:

[(ii)] [The unit of service for respite other than that for determining the unit capital price for a non-state-operated free-standing respite center shall be one hour equaling 60 minutes and may be claimed in 15-minute increments, as documented.]

[(iii)] [The unit price for respite other than that delivered at a non-state-operated free-standing respite center shall be determined by dividing the OMRDD approved total annual budgeted costs by the corresponding projected hours of utilization.]

[(iv)] [The unit price for respite delivered at a non-state-operated free-standing respite center shall consist of an operating price and a capital price.]

[(a)] [The unit operating price for a non-state-operated free-standing respite center shall be determined by dividing the approved annual budgeted operating costs by the corresponding projected hours of utilization.]

(ii) There shall be only an operating price for respite services other than those delivered by a non-State operated free-standing respite center. There shall be an operating price and a capital price for respite services delivered by a non-State operated free-standing respite center certified as an IRA.

(iii) For operating prices:

(a) The unit of service shall be one hour equaling 60 minutes.

(b) The provider may claim reimbursement in 15 minute increments, as the service is documented.

(c) OMRDD shall determine the price by dividing the OMRDD approved total annual budgeted costs by the corresponding projected hours of utilization. OMRDD shall approve budgeted costs if they are reasonable, related to respite services and consistent with efficiency, economy and quality of care.

(iv) For capital prices:

[(b)]*(a)* The [unit capital] price [for a non-state-operated free-standing respite center] shall be determined by dividing the approved annual budgeted capital costs by 12 [and shall be paid monthly]. Capital costs [for a non-state-operated free-standing respite center] shall be determined in accordance with Subpart 635-6 of this Title, except that the provider may be reimbursed for debt service in lieu of depreciation and interest, in which case only OMRDD approval is required.

(b) Capital prices shall be paid monthly.

Paragraph 635-10.5(h)(5) is amended as follows:

(5) Reimbursement for respite services delivered at a free-standing respite center to [a consumer] *an individual* living in a family care home shall not be billed to Medicaid by the free-standing respite center.

Renumbered paragraph 635.10.5(h)(8) is amended as follows:

(8) The [reimbursement] price determined in accordance with this subdivision shall not be considered final unless approved by the Director of the State Division of the Budget.

Subdivision 671.1(i) is amended as follows:

(i) Nothing herein shall be interpreted to preclude a person from being eligible for and, receiving the HCBS waiver services set forth at Subpart 635-10 in section 635-10.4(b)(2) and (c)-[(g)] *(f)* of this Title in different authorized facilities, or from more than one provider of services as long as the providers coordinate the development of the person's plan(s) of services and take steps to ensure that there is no duplication of payment for the same service delivered at the same time by the same staff. The latter shall not be interpreted to mean that the person may not receive comparable services targeted toward achievement of similar outcomes (see glossary) in different authorized facility classes or locations, or using similar activities, interventions, or therapies.

Subdivision 686.13(k) is amended as follows:

(k) Computation of the reimbursable costs for the facility class known as the individualized residential alternative (IRA).

(1) *For reimbursement of residential habilitation provided for*

residents by an IRA with a certified capacity which does not consist of only temporary use beds see subdivision 635-10.5(b).

(2) In addition to the IRA price for residential habilitation, another [A] portion of the [applicable IRA] price *for an IRA with a certified capacity which does not consist of only temporary use beds* includes allowable room, board and protective oversight costs. This portion of the price shall be determined by taking into account total allowable room, board and protective oversight costs. The price shall be net of income and lower income housing assistance.

(Note: Subparagraphs (1)(i) - (x) are renumbered as subparagraphs (2)(i) - (x) and are unchanged.)

(3) For an IRA that provides respite services to individuals who do not reside in it, reimbursement of those services is in accordance with subdivision 635-10.5(h).

(i) An IRA, other than a free-standing respite center, may provide respite services to individuals who do not reside in it by utilizing temporary use beds and/or vacant certified beds.

(ii) Respite services may also be provided in IRAs which are free-standing respite centers. These facilities have a certified capacity which consists only of temporary use beds.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 671.1(i).

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director of Regulatory Affairs, OMRDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

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

The text of the regulations was revised to include a conforming change in subdivision 671.1(i). The reference to respite services for individuals who live in community residences has been deleted. The new conforming change is similar to a conforming change made to subdivision 635-10.1(e) in the proposed regulations. The revision merely conforms the language in subdivision 671.1(i) to the changes made in subdivision 635-10.4(g), which deleted CR staff from the list of caregivers who are eligible to receive respite services. This minor change does not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Dealers and Transporters, Motor Vehicle Inspection and Repair Shops

I.D. No. MTV-04-10-00011-A

Filing No. 602

Filing Date: 2010-06-03

Effective Date: 2010-06-23

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

Action taken: Amendment of Parts 78, 79 and 82 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 303(h), 398-e and 415

Subject: Dealers and Transporters, Motor Vehicle Inspection and Repair Shops.

Purpose: Conform regulations with statutory increase of penalties imposed to certified inspectors, repair shops and dealers.

Text or summary was published in the January 27, 2010 issue of the Register, I.D. No. MTV-04-10-00011-P.

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

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

Assessment of Public Comment

Initially a negative public comment was received from the Gasoline & Automotive Service Dealers Association. However, that comment was withdrawn.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reassignment of the 2-1-1 Abbreviated Dialing Code

I.D. No. PSC-25-10-00012-P

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

Proposed Action: The PSC is considering the petition filed by 2-1-1 New York Inc. requesting the reassignment of the 2-1-1 abbreviated dialing code from the 2-1-1 New York Collaborative to the petitioner.

Statutory authority: Public Service Law, sections 5 and 91

Subject: Reassignment of the 2-1-1 abbreviated dialing code.

Purpose: Consideration of petition to reassign the 2-1-1 abbreviated dialing code.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition filed by 2-1-1 New York Inc. requesting the reassignment of the 2-1-1 abbreviated dialing code to the petitioner from the 2-1-1 New York Collaborative to whom the 2-1-1 code was initially assigned by the Public Service Commission in Case 00-C-1749. The Commission may reassign the code or take other action to insure its viability.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-C-0268SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Classification (SC) No. 4

I.D. No. PSC-25-10-00013-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in rates, charges, rules and regulations contained in its Schedule for Electric Service, PSC No. 220—Electricity.

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

Subject: Service Classification (SC) No. 4.

Purpose: To improve the organization and completeness of SC No. 4 without altering the provisions.

Substance of proposed rule: The Commission is considering a filing by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk or the company) to revise Service Classification (SC) No. 4—Untransformed Service to Certain Customers Taking Power from Projects of the New York Power Authority. The company proposes to improve the organization and completeness of SC No. 4 without altering the provi-

sions and without any impact on customer's bills. The proposed filing has an effective date of September 1, 2010. The Commission may adopt, reject, or modify, in whole or in part, Niagara Mohawk's proposal.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-0258SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Lightened and Incidental Regulation of a Gas Pipeline

I.D. No. PSC-25-10-00014-P

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

Proposed Action: The Commission is considering a petition from Inergy Pipeline East, LLC requesting that the gas pipeline it intends to purchase from New York State Electric & Gas Corporation be subject to lightened and incidental regulation.

Statutory authority: Public Service Law, sections 2(10), (11), 5(1)(b), 64, 65, 66, (13), 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened and incidental regulation of a gas pipeline.

Purpose: Consideration of lightened and incidental regulation of a gas pipeline.

Substance of proposed rule: The Public Service Commission is considering a petition from Inergy Pipeline East, LLC requesting that the gas pipeline it intends to purchase from New York State Electric & Gas Corporation be subject to lightened and incidental regulation. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-0146SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Allow NYWC to Defer and Amortize, for Future Rate Recognition, Pension Settlement Payout Losses Incurred in 2009

I.D. No. PSC-25-10-00015-P

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

Proposed Action: The Commission is considering a petition filed by New York Water Service Corporation (NYWC) requesting deferral accounting and amortization of pension settlement losses.

Statutory authority: Public Service Law, section 89-c(1)

Subject: To allow NYWC to defer and amortize, for future rate recognition, pension settlement payout losses incurred in 2009.

Purpose: Consideration of NYWC's petition to defer and amortize, for future rate recognition, pension payout losses incurred in 2009.

Substance of proposed rule: The Commission is considering a filing by New York Water Service Corporation to defer and amortize, for future rate recognition, pension settlement payout losses incurred in 2009. The Commission may adopt, reject, or modify, in whole or in part, the proposal.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-W-0263SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Approval of the Transfer of Ownership of the Seneca Lake Gas Storage Facility and Related Equipment

I.D. No. PSC-25-10-00016-P

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

Proposed Action: The Commission is considering a petition from New York State Electric & Gas Corporation and others requesting approval of the transfer of the Seneca Lake Gas Storage Facility and related equipment to Inergy Midstream LLC.

Statutory authority: Public Service Law, section 70

Subject: Approval of the transfer of ownership of the Seneca Lake Gas Storage Facility and related equipment.

Purpose: Consideration of approval of the transfer of ownership of the Seneca Lake Gas Storage Facility and related equipment.

Substance of proposed rule: The Public Service Commission is considering a petition from New York State Electric & Gas Corporation (NYSEG), Inergy Midsteam LLC (Inergy) and others requesting approval of the transfer of the Seneca Lake Gas Storage Facility, related gas pipelines and appurtenant equipment from NYSEG to Inergy subsidiaries. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-M-0143SP1)

Racing and Wagering Board

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Types of Harness Races to be Offered

I.D. No. RWB-25-10-00009-P

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

Proposed Action: Amendment of section 4108.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 301 and 307

Subject: Types of harness races to be offered.

Purpose: To permit restriction of entries in races to horses that have competed in New York for the majority of their most recent starts.

Text of proposed rule: Section 4108.8 is hereby amended to read:

4108.8. Types of races to be offered.

(a) In presenting a program of racing, the racing secretary shall use the following types of races only:

(1) [(a)] stakes and futurities;

(2) [(b)] early closing events;

(3) [(c)] overnight events:

(i) [(1)] conditioned races;

(ii) [(2)] claiming races;

(iii) [(3)] preferred races limited to the fastest horses at the meeting. These may be open races, free-for-all races, invitational races, conditioned races. Horses to be eligible in such races shall be posted in the declaration room, and listed with the presiding judge. Horses so listed shall not be eligible to conditioned races unless such conditions specifically include horses on the preferred list. Not more than 12 such preferred races may be conducted during a racing week. Purses offered for such preferred races shall be at least 25 percent higher than the highest purse offered for other conditioned races or letter class races scheduled the same racing week. A two or three year old horse may not be used in such races, without the consent of the owner, unless such horse has won three races at the track during the year or has lifetime earnings of $ 15,000;

(iv) [(4)] classified races but only with the express written permission of the commission and only if the track offers and schedules sufficient claiming races to give those horses authorized for claiming races and intended to be so raced an equal opportunity to race; and

(v) [(5)] invitational races for two or three year olds.

(b) Notwithstanding any preference requirements set forth in Rules 4108.9 and 4111.9(a), the racing secretary may offer condition races or claiming races that limit entries only to horses that have competed at licensed New York State tracks for the majority of their most recent starts. The racing secretary may establish the limitation for each race. The limitation shall not exceed seventy-five percent of the most recent starts for an individual race. At least one race must be carded in the same class without the New York limitation on the same or the next race date for each race that is carded with the New York limitation.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law §§ 101, 301 and 307. Section 101.1 vests the Racing and Wagering Board with general jurisdiction over all horse racing activities and over the corporations, persons, and associations engaged in pari-mutuel horse racing. Section 301.2 provides that the Board shall supervise all harness race meetings and adopt rules and regulations. Section 307(2)(a) provides that every pari-mutuel harness race meeting shall be subject to the rules and regulations of the Board.

2. Legislative objectives: To enable the Board to authorize and regulate the conduct of pari-mutuel horse racing in a manner consistent with promoting agriculture in New York and raising revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to provide racing opportunities for year-round New York horsemen in the face of an influx of out-of-state horses at certain times of the year. Existing preference requirements in Board Rules 4108.9 and 4111.9(a) provide preference (priority consideration for racing) to those horses that have not raced for a longer period of time in the current year compared with other entrants for a specific race. Consequently, implementation of these New York-restricted races without consideration of the preference date cannot be accomplished without rule change. New York horsemen are seeking additional racing opportunities, not always available in light of preference date requirements, in situations where there is an abundance of available horses at certain times of the year. Implementation of this concept (offering condition races or claiming races that limit entries only to horses that have competed at licensed New York State tracks for the majority of their most recent starts) would provide additional racing opportunities for horses/horsemen that/who compete regularly in New York. Equivalent racing opportunities for those who do not compete on this basis will be available because at least one race must be programmed in the same class on the same or next race date without the New York limitation, which cannot exceed seventy-five percent of the most recent starts for an individual race. Further, this concept may result in the programming of additional races, which will create additional wagering opportunities with corresponding increases in revenues for purses, pari-mutuel taxes, and regulatory fees.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no direct costs.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: This amendment merely authorizes consideration of the local racing history of horses as a factor in establishing race conditions.

5. Local government mandates: None.

6. Paperwork: None. There are no new requirements.

7. Duplication: None.

8. Alternatives: The Board did not consider any significant alternatives. The existing preference date requirement may at times operate to the disadvantage of horsemen who regularly compete at New York tracks. In order to address this concern, while balancing the needs of all horsemen and the desire to preserve the most competitive racing, it was determined to authorize use of a New York-based restriction while requiring a like number of non-restricted races. Support for this concept was received during pre-proposal solicitation of comments from the industry. The Board considered percentages other than the maximum 75% of races; it determined that use of 75% provides a fair measure based upon both preference and fairness.

9. Federal standards: None.

10. Compliance schedule: The rule will become effective upon adoption in the *State Register*.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement since the amendment expands the Board's current rule on types of races to be offered. This amendment provides preference requirements to horses that have consistently competed at New York State racetracks. However, an equivalent number of races without this preference must be carded in order to provide racing opportunities for those whose horses do not satisfy this requirement. Accordingly, there is no adverse economic impact for New York horsemen. In addition, this rule does not affect small business, local governments, jobs or rural areas. Further, this proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. Due to the straightforward nature of the rulemaking, there is no need for the development of a small business regulation guide to assist in compliance. These provisions are clear as to what preference requirements can be utilized when creating a restricted race and what is necessary for racing secretaries to comply with the rule.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Specifications for Thoroughbred Whip

I.D. No. RWB-25-10-00010-P

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

Proposed Action: Amendment of section 4035.9 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 205 and 218

Subject: Specifications for thoroughbred whip.

Purpose: Replace the whip with a padded riding crop, similar to English use, which is more humane to the horse.

Text of proposed rule: 9 NYCRR § 4035.9 Use of [whips] *riding crops*

(a) [No whip shall weigh more than one-half (1/2) pound. No whip shall be used unless it has affixed to the end a closed ''popper'' made of leather or other material approved by the stewards, not less than one and one-quarter (1 1/4) inches in width, and not over four (4) inches in length, and be ''feathered'' above the ''popper'' with not less than three (3) rows of ''feathers'' made of leather or other material approved by the stewards, each feather not less than one (1) inch in length. No whip shall exceed thirty-one (31) inches in length. All whips are subject to inspection and approval by the stewards.] *All riding crops are subject to inspection and approval by the stewards and the clerk of scales.*

(1) Riding crops shall have a shaft and a flap and will be allowed in flat racing including training only as follows:

(A) Maximum weight of eight ounces;

(B) Maximum length including flap of 30 inches;

(C) Minimum diameter of the shaft of one-half inch; and

(D) Shaft contact area must be smooth, with no protrusions or raised surface, and covered by shock absorbing material that gives a compression factor of at least one-millimeter throughout its circumference.

(2) The flap is the only allowable attachment to the shaft and must meet these specifications:

(A) Length beyond the end of the shaft a maximum of one inch;

(B) Width a minimum of 0.8 inch and a maximum of 1.6 inches;

(C) No reinforcements or additions beyond the end of the shaft;

(D) No binding within seven inches of the end of the shaft; and

(E) Shock absorbing characteristics similar to those of the contact area of the shaft.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law §§ 101, 205, and 218 authorize the New York State Racing and Wagering Board (''Board'') to prescribe and promulgate reasonable rules and regulations for the rules of racing conducted by licensed thoroughbred racetracks. Section 101(1) creates the Board and provides it with general jurisdiction over all horse racing activities and all pari-mutuel betting activities, both on-track and off-track, in the state, and over the corporations, associations, and persons engaged therein. Section 205 authorizes the Board to license any corporation or association desiring to conduct a thoroughbred race meeting and specifies that each licensee shall be subject to such reasonable rules and regulations as may be prescribed by the Board to govern the rules of the race, which historically includes the type of equipment that may be used by the jockeys. Section 218 authorizes three stewards, including the official steward of the Board, to supervise each thoroughbred (''running'') race meeting and to exercise such powers and duties as may be prescribed by Board rules.

2. Legislative objectives: To enable the Board to assure the public's confidence and preserve the integrity of racing at pari-mutuel betting tracks, to enhance interest and participation by fans and bettors, and to facilitate participation in the sport by human and equine athletes, by providing a set of reasonable, humane, and standardized rules for all participants in our thoroughbred horse races.

3. Needs and benefits: This rulemaking is necessary to conform the New York rule to the model rule adopted by the Association of Racing Commissioners, International (''RCI'') in December 2008. The RCI model rule came after the tragedy of 2008 Kentucky Derby in which the horse Eight Belles broke down after the finish line. Industry leaders surveyed public opinion and found that fans were deeply concerned about horse health. The Jockey Club suggested replacing American whips with English riding crops, which are smaller and well-padded, and more humane to the horse. It provided samples to jockeys and jockey organizations, who suggested a somewhat larger version because our jockeys have a shorter reach. Our stewards contributed a study of whip sizes at the 2008 Saratoga meet. Initial complaints and concerns about durability have been resolved as a plentiful supply of modified riding crops, with improved construction, are now available. Jockeys' initial concerns about effect on race performance have dissipated. Their rides reportedly go well, with any loss of force offset by the louder ''pop'' made by the riding crop. Within a few months, a broad consensus was reached and The Jockey Club proposal was supported by the Jockey Guild and the National Horseman's Benevolent and Protective Association. It was unanimously recommended by the Model Rules Committee and adopted by RCI in December 2008.

The use of riding crops has been adopted through rule making in Delaware (CDR 3-1000-1001 (10.9.3, 10.9.4), Illinois (11 Ill. Adm. Code 1411), Indiana (71 IAC 7.5-6-1(a)), Kentucky (810 KAR 1:012(10)(10), and Massachusetts (205 CMR 4.11(6)(a)(1)). It has been in force as a house rule, since October 1, 2009, at a broad cross-section of leading North American thoroughbred racetracks: Del Mar, Hollywood Park, Delaware Park, Calder Race Course, Arlington Park, Churchill Downs, Keeneland, Fair Grounds, Monmouth Park, Aqueduct, Belmont, Saratoga, Philadelphia Park, and Woodbine.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The only costs that may be imposed on jockeys will be the cost to replace any remaining whips with riding crops. All NYRA jockeys are already using padded riding crops; Finger Lakes reports that 75% of its jockey community are using them and the others are willing to comply. Whips are equipment that routinely wear out and need to be replaced, typically at least once a year. The riding crops cost on average between $60 and $100, roughly double the cost of an old whip, according to the Jockey Guild. The longevity of the riding crops depends on how often the jockey strikes the horse. The new poppers (pad attached to the end of the shaft) wear out more quickly, but jockeys are learning how to replace just the new popper and availability is improving of riding crops with more durable coverings.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: There are no costs to local governments because the New York State Racing and Wagering Board is solely responsible for the regulation of horseracing. There will be no new costs to the Racing and Wagering Board in relation to the supervision of race meetings to require that the jockeys use correct equipment. All races are viewed by the stewards who can see what type of whips are being used. The state steward is also able to conduct inspections of the equipment of all of the jockeys; the equipment is kept in the jockey room and can be readily produced and examined. Inspection of riding crops will not differ from inspection of whips.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: This information was compiled by Racing and Wagering Board staff based on interviews with jockeys, the stewards' knowledge of racing equipment and conditions, information from industry stakeholders (The Jockey Club and Jockey Guild), and common information available to the public.

5. Local government mandates: None. See above.

6. Paperwork: None. The existing paperwork system for equipment rule compliance will be used.

7. Duplication: None.

8. Alternatives:

a) The Board did not consider any significant alternatives to the ARCI Model Rule approach. The model rule would afford uniformity among the various racing jurisdictions, and the Board could not identify any compelling reason to deviate from the general standards

included in the model rule. Failure to amend the existing rule would defeat uniformity and result in potential loss of interest in horse racing by fans and bettors. Most jockeys who race in New York, our racetracks, and other racetracks that feature the highest quality races in North America already use or have house rules favoring the riding crops.

As a result of the Board's preliminary public comment solicitation period, the Board made no amendments to the rule. The only comment, received from Finger Lakes Racing & Gaming, stated its full support and provided the information that its jockeys use and/or are amenable to using riding crops.

9. Federal standards: None.

10. Compliance schedule: The rule will become effective upon adoption in the State Register. There are no significant compliance requirements imposed on regulated parties. Similarly, given the fact that the Board already supervises the equipment used by jockeys in horse races, the Board is ready to move forward with implementation of this rule once it is published in the State Register as a Notice of Adoption. Contact person: Rick Goodell, Assistant Counsel, NYS Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305 (518) 395-5400.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement since the amendment conforms the Board's equipment rule, by replacing whips with riding crops, to what a majority of jockeys are already using pursuant to house rules at the New York thoroughbred racetracks. In addition, this rule does not affect small business, local governments, jobs or rural areas. Further, this proposal will not impose an adverse economic impact on reporting, record keeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. Due to the straightforward nature of the rulemaking, there is no need for the development of a small business regulation guide to assist in compliance. These provisions are clear as to what the permissible equipment is and what is necessary to comply with the rule.

Department of State

EMERGENCY RULE MAKING

Cease and Desist Zones for the Counties of Queens and the Bronx

I.D. No. DOS-25-10-00008-E

Filing No. 606

Filing Date: 2010-06-08

Effective Date: 2010-06-08

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

Action taken: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h

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

Specific reasons underlying the finding of necessity: The Department of State held public hearings on May 28, May 29 and June 8, 2009 to determine whether this rulemaking should be proposed. At the public hearings, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeated solicitation to list their homes for sale. The Department of State held the record open after the public hearing to afford others the opportunity to submit written testimony and proof. The testimony and evidence submitted to the Department of State amply demonstrates that some residents within the proposed geographic area are the subject of intense and repeated solicitation to list their homes for sale. This rule making will benefit residents of the defined area by providing a mechanism for them to notify the Department of State that they do not wish to be solicited. The Department of State has determined that these, and other residents, are in need of emergency protection.

Subject: Cease and desist zones for the Counties of Queens and the Bronx.

Purpose: To adopt cease and desist zones for the Counties of Queens and the Bronx.

Text of proposed rule: An Amendment to 19 NYCRR section 175.17(c)(2) is adopted to read as follows:

(c)(2) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	August 1, [2009] *2014*

Within the County of Bronx as follows:

[All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 9, 10, 11 and 12, and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly and northwesterly along East River to Bronx River; thence northwesterly and northerly along Bronx River to Sheridan Expressway; thence northeasterly along Sheridan Expressway to Cross Bronx Expressway; thence southeasterly and easterly along Cross Bronx Expressway to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.]

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 10, 11 and 12 and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly along East River to Westchester Creek; thence northerly, northwesterly and northeasterly along Westchester Creek to East Tremont Ave; thence southwesterly, northwesterly and westerly along East Tremont Ave to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone	Expiration Date
[County of Queens	August 1, 2009]
County of Queens	*August 1, 2014*

Within the County of Queens as follows:

All that area of land in the County of Queens, City of New York, otherwise known as Bayside, Bellerose, Queens Village, Rockaways, South Ozone Park, Woodhaven and Whitestone bounded and described as follows:

Bayside: Located in northern Queens. Francis Lewis Boulevard to the west, 233rd Street to the east, Grand Central Parkway to the South and Cross Island Parkway to the north and bounded by the geographical boundaries of the following zip codes: 11361, 11359, 11360, and 11364.

Bellerose: Little Neck Parkway to the east, Grand Central Parkway to the west, the Credmoor State Hospital grounds to the north and Braddock and Jamaica Avenues to the south and bounded by the geographical boundary of the zip code 11426.

Queens Village: Nassau County and Belmont Park to the east, Cambria Heights and St. Albans to the south. Hollis to the West, and Bellerose and Holliswood to the north and bounded by the geographical boundaries of the following zip codes: 11427, 11428 and 11429.

Rockaways: Located in southern Queens. 11 miles long peninsula with Jamaica Bay to the north, the Atlantic Ocean to the south and Nassau County to the east and bounded by the geographical boundaries of the following zip codes: 11690, 11691, 11692, 11693, 11694, 11695 and 11697.

South Ozone Park: Van Wyck Expressway to the east, Aqueduct Race Track to the west, Liberty Ave to the north and Conduit Avenue and Belt Parkway to the south and bounded by the geographical boundaries of the zip code 11420.

Woodhaven: Forest Park and Park Lane South to the north, Richmond Hill to the east, Ozone Park and Atlantic Avenue to the south and borough of Brooklyn to the west and bounded by the geographical boundaries of the zip code 11421.

Whitestone: Located in northern Queens between the East River to the north and 25th Avenue to the south, Whitestone Bridge to the west and the

Throgs Neck Bridge to the east and bounded by the geographical boundaries of the zip code 11357.

Cease and Desist Zone
(Mill Basin/Brooklyn)

Zone	Expiration Date
County of Kings (Brooklyn)	November 30, 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to Kings Highway; thence southwesterly along Kings Highway to Ocean Avenue; thence southerly along Ocean Avenue to Shore Parkway; thence northeasterly, southeasterly, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; thence northwesterly along Paerdegat Basin and northern prolongation of Paerdegat Basin to Flatlands Avenue and the point of beginning.

Cease and Desist Zone
(Canarsie)

Zone	Expiration Date
County of Kings (Brooklyn)	May 31, 2008

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection of Stanley Street and East 108th Street; thence southeasterly along East 108th Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Shore (Belt) Parkway; thence southwesterly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

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 September 5, 2010.

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

Regulatory Impact Statement

1. Statutory authority:

Real Property Law (RPL) section 442-h(3)(a) permits the Department of State (DOS) to adopt rules establishing cease and desist zones for defined geographic areas if it is determined that some owners of residential real property within a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale. RPL section 442-h(3)(c) provides that a cease and desist zone shall be effective for a maximum of five years, after which the Secretary of State may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. The entire County of Queens and a portion of Bronx County (Community Districts 9, 10, 11 &12) were previously subject to cease and desist rules, which rules expired on August 1, 2009.

The Department held three public hearings to determine if the rules should be readopted; two in Queens County and one in the Bronx. Based on the testimony received at these public hearings and additional documentation submitted to the Department after the close of said hearings, the Secretary has determined that some homeowners residing in portions of the Bronx are subject to intense and repeated solicitation. The Secretary also determined that, while insufficient evidence exists to readopt a cease and desist order for all of Queens County, certain portions still are subject to repeat and intense solicitation and should, properly, be protected by a cease and desist rule.

2. Legislative objectives:

In enacting RPL section 442-h, the Legislature highlighted the problems faced by some residents from intense and repeated solicitation to list their homes for sale. Recognizing that not all homeowners who are the subject of this solicitation are desirous of being solicited, the Legislature authorized the Secretary to determine if a cease and desist zone should be established. Upon the establishment of such a zone, a homeowner may file with the Secretary a statement of desire not to be solicited. Thereafter, the Secretary will publish a list of the names and addresses of the persons who have filed the statement, and brokers and salespersons are then prohibited from soliciting persons on that list. That list is commonly referred to as a ''cease and desist list.''

RPL section 442-h was designed to protect the public. This proposed rule furthers the objectives of the Legislature. If adopted, the proposed rule would establish cease and desist zones for two areas that have demonstrated that some residents are subject to intense and repeated solicitation to sell their homes.

3. Needs and benefits:

Prior to proposing this rule, the Department held three public hearings. At these hearings, testimony was taken and evidence submitted about the real estate climate in Bronx and Queens and, specifically, about solicitations received by residents to sell or list their homes. Subsequent to the close of these hearings, which were held on May 28, 2009, May 29, 2009 and June 8, 2009, the Department of State continued to receive additional evidence from residents of Queens and the Bronx. The Department received testimony and evidence from elected officials, local representatives and homeowners within the proposed cease and desist zones. All comments received advocated for the adoption of the proposed rule, citing the need to curb the aggressive solicitation practices in the affected communities.

The evidence received by the Department, establishes that some homeowners within the proposed zones have received frequent mailings, unwanted flyers, telephone calls, and door-to-door solicitation soliciting the sale or listing of their property.

As of August 1, 2004, when the prior cease and desist zones were implemented, DOS had received 442 complaints from Queens and Bronx alleging violations of the cease and desist rule. The number of complaints received by the Department coupled with the testimony and evidence submitted to DOS, amply demonstrate that some residents within the proposed geographic areas are the subject of intense and repeated solicitation. This rule will benefit residents of the defined areas by providing a mechanism for them to notify DOS that they do not wish to be solicited.

4. Costs:

a. Costs to regulated parties:

The costs to real estate brokers and salespersons are minimal. DOS licenses approximately 10,956 real estate licensees in Queens and 2,641 in Bronx. DOS maintains copies of the cease and desist lists on its website. This list is available for all to view, at no cost. Additionally, DOS will mail a copy of the list to any person desiring a copy for the minimal cost of $10.00.

b. Costs to the Department of State:

DOS anticipates that the cost and implementation of this rule will be minimal, and administration of this rule will be accomplished using existing resources. The estimated costs are as follows:

Printing owners statements	$2,200
Mailing owners statements	$640
Processing statements:	
Staff: SG-13:	$37,072
SG-23:	$58,406
10 weeks:	$7,129-$11,231
Data entry:	
Staff: SG-6	$25,146
SG-9:	$29,595
SG-13:	$37,072
10 days:	$688-$1,015

The costs for printing and mailing the cease and desist list are unknown. DOS anticipates that most licensees will access the list, at no cost, on its website. For those few who want to purchase a paper copy, DOS will likely print a copy, on an order-by-order basis, on existing equipment. The mail-

ing costs will be dependent on the number of copies that are ordered. However, DOS expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

DOS expects that revenues from the sale of the list will be incidental to the costs of preparing, printing and mailing.

c. Costs to State and local governments:

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

5. Local government mandates:

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

6. Paperwork:

Homeowners who do not want to be solicited will have to file an 'owner's statement' with DOS. The owner's statement will indicate the owner's desire not to be solicited and will set forth the owner's name and the address of the property within the cease and desist zone. DOS will provide homeowners with a standard form, although use of the form is not mandatory. Owner's statements will be provided to community leaders for distribution to their constituents. In addition, owner's statements will be available from DOS on request, as well as being available on its website. DOS will prepare a cease and desist list containing the names and addresses of all of the homeowners who filed an owner's statement. The list will be available, at no cost, on its website. The list will also be sold to the public, including real estate brokers and salespersons. The price will be $10 per copy. Besides any request for cease and desist lists that they submit by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

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

8. Alternatives:

DOS did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to RPL section 442-h(2)(a). However, DOS concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone.

DOS also considered allowing the prior cease and desist order to expire in August 2009, and to not readopt new zones for Queens and Bronx Counties. It was determined, however, that to do so would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitation to sell their homes.

9. Federal standards:

There are no federal standards addressing the subject of this rule making.

10. Compliance schedule:

The rule will be effective 90 days after adoption to provide time for real estate licensees to become aware of, and comply, with the new regulation.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule would adopt two cease and desist zones to permit homeowners within the defined areas of Queens and Bronx counties to file an Owners' Statement with the Department of State indicating that they do not wish to be solicited to sell or list their property for sale. Real estate licensees would then be prohibited from soliciting a property listing from those residents. The defined cease and desist zones would be Queens County and four communities in the Bronx. This rule will apply to all real estate licensees but would primarily effect the 10,956 real estate licensees in Queens and 2,641 licensees in Bronx who do business in the defined geographic zones. Many of these licensees are small businesses or are associated with small businesses. Real estate brokers and salespersons will remain free, however, to solicit listings from those residents in the defined zone who have not filed Owners' Statements with the Department of State and to participate in regulated transactions within the zone. Insofar as the proposed rule making seeks to adopt cease and desist zones that are similar to zones that were previously in place, but expired on August 1, 2009, it is not anticipated that the solicitation limitations will place an undue financial burden or impose a hardship on real estate brokers and salespersons.

The rule does not apply to local governments.

2. Compliance requirements:

The Department of State (DOS) publishes and makes available a list of residents within cease and desist zones who have notified the Department that they do not wish to be solicited by real estate brokers and salespersons. These lists are made available to real estate brokers and salespersons. To comply with the rule, these licensees need only refer to the list prior to soliciting listings from homeowners within the defined cease and desist zone.

3. Professional services:

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

4. Compliance costs:

Licensees will not incur any significant compliance costs associated with this rule. DOS publishes a free list of all cease and desist lists on its website at no cost. Licensees who desire a hard copy of the lists may notify DOS and receive a copy of the list by mail for a cost of $10.00.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of the implementation of this rule.

6. Minimizing adverse economic impact:

DOS did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to RPL section 442-h(2)(a). However, DOS concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone.

DOS also considered allowing the prior cease and desist order to expire in August 2009, and to not readopt new zones for Queens and Bronx Counties. It was determined, however, that to do so would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitation to sell their homes.

7. Small business and local government participation:

On May 28, 2009, May 29, 2009 and June 8, 2009, the Department held public hearings in Queens and the Bronx to consider proposing this rule making. The hearings were publicized in advance and were open to all interested parties. Representatives of local community boards, State and local elected officials, and consumers attended and provided evidence of the need to extend and expand the then-existing cease and desist zone. In addition, DOS kept the hearing record open in order to permit individuals and businesses to submit written testimony and evidence after the open public hearing.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule does not apply to rural areas and, rather, applies only to defined geographic area within the County of Bronx and all of Queens County.

2. Reporting, recordkeeping and other compliance requirements:

This rule, which applies only to urban Bronx and Queens Counties, does not impose any reporting and recordkeeping requirements on licensees located within rural areas.

3. Costs:

The rule does not impose any costs on rural areas.

4. Minimizing adverse impact:

Insofar as the rule does not impose any costs on rural areas, no alternatives to minimize adverse impacts were considered by the Department of State.

5. Rural area participation:

Insofar as the rule does not apply to rural areas, rural area participation was not solicited by the Department of State.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. The rule merely prohibits real estate brokers and salespersons from soliciting real estate listings from residents of a defined geographic zone who have notified the Department of State that they do not wish to be solicited. Real estate brokers and salespersons will remain free to solicit other residents within the defined zone and to engage in real estate transactions within and outside of the defined geographic area.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Cease and Desist Zones for Queens and Bronx Counties

I.D. No. DOS-25-10-00011-P

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

Proposed Action: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h

Subject: Cease and desist zones for Queens and Bronx Counties.

Purpose: To adopt cease and desist zones for the Counties of Queens and the Bronx.

Text of proposed rule: An Amendment to 19 NYCRR section 175.17(c)(2) is adopted to read as follows:

(c)(2) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	August 1, [2009] *2014*

Within the County of Bronx as follows:

[All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 9, 10, 11 and 12, and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly and northwesterly along East River to Bronx River; thence northwesterly and northerly along Bronx River to Sheridan Expressway; thence northeasterly along Sheridan Expressway to Cross Bronx Expressway; thence southeasterly and easterly along Cross Bronx Expressway to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.]

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 10, 11 and 12 and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly along East River to Westchester Creek; thence northerly, northwesterly and northeasterly along Westchester Creek to East Tremont Ave; thence southwesterly, northwesterly and westerly along East Tremont Ave to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone	Expiration Date
[County of Queens	August 1, 2009]
County of Queens	*August 1, 2014*

Within the County of Queens as follows:

All that area of land in the County of Queens, City of New York, otherwise known as Bayside, Bellerose, Queens Village, Rockaways, South Ozone Park, Woodhaven and Whitestone bounded and described as follows:

Bayside: Located in northern Queens. Francis Lewis Boulevard to the west, 233rd Street to the east, Grand Central Parkway to the South and Cross Island Parkway to the north and bounded by the geographical boundaries of the following zip codes: 11361, 11359, 11360, and 11364.

Bellerose: Little Neck Parkway to the east, Grand Central Parkway to the west, the Credmoor State Hospital grounds to the north and Braddock and Jamaica Avenues to the south and bounded by the geographical boundary of the zip code 11426.

Queens Village: Nassau County and Belmont Park to the east, Cambria Heights and St. Albans to the south. Hollis to the West, and Bellerose and Holliswood to the north and bounded by the geographical boundaries of the following zip codes: 11427, 11428 and 11429.

Rockaways: Located in southern Queens. 11 miles long peninsula with Jamaica Bay to the north, the Atlantic Ocean to the south and Nassau County to the east and bounded by the geographical boundaries of the following zip codes: 11690, 11691, 11692, 11693, 11694, 11695 and 11697.

South Ozone Park: Van Wyck Expressway to the east, Aqueduct Race Track to the west, Liberty Ave to the north and Conduit Avenue and Belt Parkway to the south and bounded by the geographical boundaries of the zip code 11420.

Woodhaven: Forest Park and Park Lane South to the north, Richmond Hill to the east, Ozone Park and Atlantic Avenue to the south and borough of Brooklyn to the west and bounded by the geographical boundaries of the zip code 11421.

Whitestone: Located in northern Queens between the East River to the north and 25th Avenue to the south, Whitestone Bridge to the west and the Throgs Neck Bridge to the east and bounded by the geographical boundaries of the zip code 11357.

Cease and Desist Zone
(Mill Basin/Brooklyn)

Zone	Expiration Date
County of Kings (Brooklyn)	November 30, 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to Kings Highway; thence southwesterly along Kings Highway to Ocean Avenue; thence southerly along Ocean Avenue to Shore Parkway; thence northeasterly, southeasterly, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; thence northwesterly along Paerdegat Basin and northern prolongation of Paerdegat Basin to Flatlands Avenue and the point of beginning.

Cease and Desist Zone
(Canarsie)

Zone	Expiration Date
County of Kings (Brooklyn)	May 31, 2008

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection of Stanley Street and East 108th Street; thence southeasterly along East 108th Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Shore (Belt) Parkway; thence southwesterly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

Text of proposed rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Division of Licensing Services, Alfred E Smith Office Building, 80 South Swan Street, P.O. Box 22001, Albany, NY 12231, (518) 473-2728, email: whitney.clark@dos.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Real Property Law (RPL) section 442-h(3)(a) permits the Department of State (DOS) to adopt rules establishing cease and desist zones for defined geographic areas if it is determined that some owners of residential real property within a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale. RPL section 442-h(3)(c) provides that a cease and desist zone shall be effective for a maximum of five years, after which the Secretary of State may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. The entire County of Queens and a portion of Bronx County (Community Districts 9, 10, 11 &12) were previously subject to cease and desist rules, which rules expired on August 1, 2009.

The Department held three public hearings to determine if the rules should be readopted; two in Queens County and one in the Bronx. Based on the testimony received at these public hearings and additional documentation submitted to the Department after the close of said hearings, the Secretary has determined that some homeowners residing in portions of the Bronx are subject to intense and repeated solicitation. The Secretary also determined that, while insufficient evidence exists to readopt a cease and desist order for all of Queens County, certain portions still are subject

to repeat and intense solicitation and should, properly, be protected by a cease and desist rule.

2. Legislative objectives:

In enacting RPL section 442-h, the Legislature highlighted the problems faced by some residents from intense and repeated solicitation to list their homes for sale. Recognizing that not all homeowners who are the subject of this solicitation are desirous of being solicited, the Legislature authorized the Secretary to determine if a cease and desist zone should be established. Upon the establishment of such a zone, a homeowner may file with the Secretary a statement of desire not to be solicited. Thereafter, the Secretary will publish a list of the names and addresses of the persons who have filed the statement, and brokers and salespersons are then prohibited from soliciting persons on that list. That list is commonly referred to as a ''cease and desist list.''

RPL section 442-h was designed to protect the public. This proposed rule furthers the objectives of the Legislature. If adopted, the proposed rule would establish cease and desist zones for two areas that have demonstrated that some residents are subject to intense and repeated solicitation to sell their homes.

3. Needs and benefits:

Prior to proposing this rule, the Department held three public hearings. At these hearings, testimony was taken and evidence submitted about the real estate climate in Bronx and Queens and, specifically, about solicitations received by residents to sell or list their homes. Subsequent to the close of these hearings, which were held on May 28, 2009, May 29, 2009 and June 8, 2009, the Department of State continued to receive additional evidence from residents of Queens and the Bronx. The Department received testimony and evidence from elected officials, local representatives and homeowners within the proposed cease and desist zones. All comments received advocated for the adoption of the proposed rule, citing the need to curb the aggressive solicitation practices in the affected communities.

The evidence received by the Department, establishes that some homeowners within the proposed zones have received frequent mailings, unwanted flyers, telephone calls, and door-to-door solicitation soliciting the sale or listing of their property.

As of August 1, 2004, when the prior cease and desist zones were implemented, DOS had received 442 complaints from Queens and Bronx alleging violations of the cease and desist rule. The number of complaints received by the Department coupled with the testimony and evidence submitted to DOS, amply demonstrate that some residents within the proposed geographic areas are the subject of intense and repeated solicitation. This rule will benefit residents of the defined areas by providing a mechanism for them to notify DOS that they do not wish to be solicited.

4. Costs:

a. Costs to regulated parties:

The costs to real estate brokers and salespersons are minimal. DOS licenses approximately 10,956 real estate licensees in Queens and 2,641 in Bronx. DOS maintains copies of the cease and desist lists on its website. This list is available for all to view, at no cost. Additionally, DOS will mail a copy of the list to any person desiring a copy for the minimal cost of $10.00.

b. Costs to the Department of State:

DOS anticipates that the cost and implementation of this rule will be minimal, and administration of this rule will be accomplished using existing resources. The estimated costs are as follows:

Printing owners statements	$2,200
Mailing owners statements	$640
Processing statements:	
Staff: SG-13:	$37,072
SG-23:	$58,406
10 weeks:	$7,129-$11,231
Data entry:	
Staff: SG-6	$25,146
SG-9:	$29,595
SG-13:	$37,072
10 days:	$688-$1,015

The costs for printing and mailing the cease and desist list are unknown. DOS anticipates that most licensees will access the list, at no cost, on its website. For those few who want to purchase a paper copy, DOS will likely print a copy, on an order-by-order basis, on existing equipment. The mailing costs will be dependent on the number of copies that are ordered. However, DOS expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

DOS expects that revenues from the sale of the list will be incidental to the costs of preparing, printing and mailing.

c. Costs to State and local governments:

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

5. Local government mandates:

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

6. Paperwork:

Homeowners who do not want to be solicited will have to file an 'owner's statement' with DOS. The owner's statement will indicate the owner's desire not to be solicited and will set forth the owner's name and the address of the property within the cease and desist zone. DOS will provide homeowners with a standard form, although use of the form is not mandatory. Owner's statements will be provided to community leaders for distribution to their constituents. In addition, owner's statements will be available from DOS on request, as well as being available on its website. DOS will prepare a cease and desist list containing the names and addresses of all of the homeowners who filed an owner's statement. The list will be available, at no cost, on its website. The list will also be sold to the public, including real estate brokers and salespersons. The price will be $10 per copy. Besides any request for cease and desist lists that they submit by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

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

8. Alternatives:

DOS did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to RPL section 442-h(2)(a). However, DOS concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone.

DOS also considered allowing the prior cease and desist order to expire in August 2009, and to not readopt new zones for Queens and Bronx Counties. It was determined, however, that to do so would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitation to sell their homes.

9. Federal standards:

There are no federal standards addressing the subject of this rule making.

10. Compliance schedule:

The rule will be effective 90 days after adoption to provide time for real estate licensees to become aware of, and comply, with the new regulation.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule would adopt two cease and desist zones to permit homeowners within the defined areas of Queens and Bronx counties to file an Owners' Statement with the Department of State indicating that they do not wish to be solicited to sell or list their property for sale. Real estate licensees would then be prohibited from soliciting a property listing from those residents. The defined cease and desist zones would be Queens County and four communities in the Bronx. This rule will apply to all real estate licensees but would primarily effect the 10,956 real estate licensees in Queens and 2,641 licensees in Bronx who do business in the defined geographic zones. Many of these licensees are small businesses or are associated with small businesses. Real estate brokers and salespersons will remain free, however, to solicit listings from those residents in the defined zone who have not filed Owners' Statements with the Department of State and to participate in regulated transactions within the zone. Insofar as the proposed rule making seeks to adopt cease and desist zones that are similar to zones that were previously in place, but expired on August 1, 2009, it is not anticipated that the solicitation limitations will place an undue financial burden or impose a hardship on real estate brokers and salespersons.

The rule does not apply to local governments.

2. Compliance requirements:

The Department of State (DOS) publishes and makes available a list of residents within cease and desist zones who have notified the Department that they do not wish to be solicited by real estate brokers and salespersons. These lists are made available to real estate brokers and salespersons. To comply with the rule, these licensees need only refer to the list prior to soliciting listings from homeowners within the defined cease and desist zone.

3. Professional services:

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

4. Compliance costs:

Licensees will not incur any significant compliance costs associated with this rule. DOS publishes a free list of all cease and desist lists on its website at no cost. Licensees who desire a hard copy of the lists may notify DOS and receive a copy of the list by mail for a cost of $10.00.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of the implementation of this rule.

6. Minimizing adverse economic impact:

DOS did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to RPL section 442-h(2)(a). However, DOS concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone.

DOS also considered allowing the prior cease and desist order to expire in August 2009, and to not readopt new zones for Queens and Bronx Counties. It was determined, however, that to do so would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitation to sell their homes.

7. Small business and local government participation:

On May 28, 2009, May 29, 2009 and June 8, 2009, the Department held public hearings in Queens and the Bronx to consider proposing this rule making. The hearings were publicized in advance and were open to all interested parties. Representatives of local community boards, State and local elected officials, and consumers attended and provided evidence of the need to extend and expand the then-existing cease and desist zone. In addition, DOS kept the hearing record open in order to permit individuals and businesses to submit written testimony and evidence after the open public hearing.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule does not apply to rural areas and, rather, applies only to defined geographic area within the County of Bronx and all of Queens County.

2. Reporting, recordkeeping and other compliance requirements:

This rule, which applies only to urban Bronx and Queens Counties, does not impose any reporting and recordkeeping requirements on licensees located within rural areas.

3. Costs:

The rule does not impose any costs on rural areas.

4. Minimizing adverse impact:

Insofar as the rule does not impose any costs on rural areas, no alternatives to minimize adverse impacts were considered by the Department of State.

5. Rural area participation:

Insofar as the rule does not apply to rural areas, rural area participation was not solicited by the Department of State.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. The rule merely prohibits real estate brokers and salespersons from soliciting real estate listings from residents of a defined geographic zone who have notified the Department of State that they do not wish to be solicited. Real estate brokers and salespersons will remain free to solicit other residents within the defined zone and to engage in real estate transactions within and outside of the defined geographic area.

State University of New York

NOTICE OF ADOPTION

Alterations in Traffic Patterns, Speed Restrictions and Street Names

I.D. No. SUN-15-10-00006-A

Filing No. 605

Filing Date: 2010-06-07

Effective Date: 2010-06-23

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 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Alterations in traffic patterns, speed restrictions and street names.

Purpose: To more clearly designate traffic flow and control as well as new street designations.

Text or summary was published in the April 14, 2010 issue of the Register, I.D. No. SUN-15-10-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Lynette M. Phillips, Esq., State University of New York at Stony Brook, 328 Administration Building, Stony Brook, New York 11794-1212, (631) 632-6110, email: Lynette.Phillips@sunysb.edu

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

EMERGENCY RULE MAKING

Economic Development and Job Creation Throughout New York State and Preservation of Public Health and Public Safety

I.D. No. UDC-25-10-00002-E

Filing No. 598

Filing Date: 2010-06-02

Effective Date: 2010-06-02

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

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

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 2006, ch. 109

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of the Rule to address dangers posed by vacant, abandoned, surplus or condemned buildings.

Subject: Economic development and job creation throughout New York State and preservation of public health and public safety.

Purpose: The Rule provides the framework for administration of the Restore New York's Communities Initiative.

Text of emergency rule: *RESTORE NEW YORK'S COMMUNITIES INITIATIVE*

Section 4245.1 Purpose

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

Section 4245.2 Definitions

For purposes of these regulations, the terms below will have the following meanings:

(a) ''deconstruction'' shall mean the careful disassembly of buildings of architectural or historic significance with the intent to rehabilitate, reconstruct the building or salvage the material disassembled from the building;

(b) ''economically distressed community'' shall mean communities determined by the Commissioner of Economic Development based on

criteria that are indicative of economic distress including numbers of persons receiving public assistance, poverty rates, unemployment rates, rate of employment decline, population loss, per capita income change, decline in economic activity and private investment to the extent that they are measurable at the municipal level and such other criteria indicators as the Commissioner deems appropriate to be in need of economic assistance;

(c) ''municipality'' shall mean a municipal subdivision that is a city, town, or village;

(d) ''property assessment list'' shall mean a list (in such form as the Corporation may require) compiled by a municipality containing description (location, size and residential or commercial nature of each building, and whether the building is proposed to be demolished, deconstructed, rehabilitated or reconstructed) and an assessment of whether each building is vacant, abandoned, surplus or condemned within its jurisdiction;

(e) ''reconstruction'' shall mean the construction of a new building which is similar in architecture, size and purpose to a previously existing building at such location, provided, however, to the extent possible, all such reconstruction program real property shall be architecturally consistent with nearby and adjacent properties or in a manner consistent with a local revitalization or urban development plan;

(f) ''rehabilitation'' shall mean structural repairs, mechanical systems repair or replacement, repairs related to deferred maintenance, emergency repairs, energy efficiency upgrades, accessibility improvements, mitigation of lead based paint hazards, and other repairs which result in a significant improvement to the property, provided, however, to the extent possible, all such rehabilitation program real property shall be architecturally consistent with nearby and adjacent properties or in a manner consistent with a local revitalization or urban development plan;

Section 4245.3 Request for Proposals

The Corporation may, within available appropriations, issue requests for proposals to municipalities at least once per fiscal year to provide grants to municipalities, for demolition, deconstruction, reconstruction, and rehabilitation projects set forth in a property assessment list submitted by the municipality.

Section 4245.4 Eligibility

(a) To be eligible for the demolition and deconstruction program or rehabilitation and reconstruction program assistance, as described in sections 4245.5 and 4245.6 of this Part, municipalities must conduct an assessment of vacant, abandoned, surplus or condemned buildings in communities within their jurisdiction. Such real property may include both residential and commercial real properties. Such properties shall be selected for the purpose of revitalizing urban centers, encouraging commercial investment and adding value to the municipal housing stock. Such information shall be set forth in the property assessment list. Such properties shall be published in a local daily newspaper for no less than three consecutive days. Additionally, the municipality shall conduct a public hearing in the municipality where the buildings identified on the property assessment list are located. Such public hearing shall be held before the Corporation accepts an application.

(b) No full-time employee of the State or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the State shall be eligible to receive assistance under this initiative, nor shall any business, the majority ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

Section 4245.5 Demolition and Deconstruction Projects

Demolition and deconstruction projects for real property in need of demolition or deconstruction on the property assessment list may receive grants of up to twenty thousand dollars per residential real property. The Corporation shall determine the cost of demolition and deconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly, and such costs and maximum grant award amounts shall be made available to eligible municipalities. The Corporation shall also consider geographic differences in the cost of demolition and deconstruction in the establishment of maximum grant awards.

Section 4245.6 Rehabilitation and Reconstruction Projects

Rehabilitation and reconstruction projects for real property in need of rehabilitation or reconstruction on the property assessment list may receive grants of up to one hundred thousand dollars per residential real property. The Corporation shall determine the cost of rehabilitation and reconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly, and such costs and maximum grant award amounts shall be made available to eligible municipalities. The Corporation shall also consider geographic differences in the cost of rehabilitation and reconstruction in the establishment of maximum grant awards. Provided, however, to the extent possible, all such rehabilitation and reconstruction projects real property shall be rehabilitated or reconstructed in a manner that is architecturally consistent with nearby and adjacent properties or consistent with a local revitalization or urban development plan. Provided, further, such grants may be used for site development needs including but not limited to water, sewer and parking as specified in the grant agreement entered into between the Corporation and the municipality.

Section 4245.7 Required Considerations and Priorities

In considering the awarding of initiative grant assistance, the Corporation:

(a) shall review all qualified applications to determine the awards to be made pursuant to sections 4245.5 and 4245.6 of this Part and shall, to the fullest extent possible, provide such assistance in a geographically proportionate manner throughout the State based on the qualified applications received pursuant to this section.

(b) shall give priority in granting such assistance to eligible properties that have approved applications or are receiving grants pursuant to other state or federal redevelopment, remediation or planning programs including, but not limited to, the brownfield opportunity areas program adopted pursuant to section 970-r of the General Municipal Law or empire zone development plans pursuant to article 18-B of the General Municipal Law.

(c) shall give priority to properties in economically distressed communities.

Section 4245.8 Required Matching Contribution

A municipality that is granted an award or awards under this section shall provide a matching contribution of no less than ten percent of the aggregated award or awards amount. Such matching contribution may be in the form of a financial and/or in kind contribution by the municipality, a government entity, or a private entity. In establishing the matching contribution, a municipality's financial contribution may include grants from federal, state and local entities. In kind contributions may include but shall not be limited to the efforts of municipalities to conduct an inventory and assessment of vacant, abandoned, surplus, condemned, and deteriorated properties and to manage and administer grants pursuant to sections 4245.5 and 4245.6 of this Part.

Section 4245.9 Application and Approval Process

(a) Promptly after receipt of the application, including the property assessment list, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Part. Applications shall be processed in full compliance with the applicable provisions of section 16-n of the Act as it may be in effect from time to time.

(b) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the demolition or deconstruction or rehabilitation or reconstruction of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board (''PACB''), which also generally meets once a month, in accordance with PACB requirements and policies. Notwithstanding the foregoing, no initia-

tive project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4245.10 Confidentiality

To the extent permitted by law and regulations, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting initiative assistance from the Corporation, which is submitted by or on behalf of such person or entity to the Corporation in connection with an application for initiative assistance, shall be confidential and exempt from public disclosures.

Section 4245.11 Affirmative action and non-discrimination

Program applications shall be reviewed by the Corporation's Affirmative Action Department, which shall, in consultation with the applicant and/or proposed recipient of the Program assistance and any other relevant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the Public Authorities Law, article 15-A of the Executive Law, and section 6254(11) of the Unconsolidated Laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 30, 2010.

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

Regulatory Impact Statement

1. Statutory Authority:

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

2. Legislative Objective:

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

3. Need and Benefits:

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

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

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

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

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

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

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

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

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

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

4. Costs:

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

5. Local Government Mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

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

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

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

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

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

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

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

5. Economic Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Participation:

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations (IMEs)

I.D. No. WCB-25-10-00005-E
Filing No. 603
Filing Date: 2010-06-04
Effective Date: 2010-06-05

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. Memorandum of Decisions issued by Panels of three members of the Workers' Compensation Board (Board) have interpreted the current regulation as requiring reports of independent medical examinations be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays to receive the report, and the U.S. Postal Service is not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is not accepted into evidence and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, the workers' compensation insurance carrier/self-insured employer, the claimant's treating provider, the claimant's representative and the claimant it is not possible to send the report by facsimile or electronic means. The Decisions have greatly, negatively impacted the professionals who conduct independent medical examinations and the entities that arrange and facilitate these exams, as well as the workers' compensation insurance carriers and self-insured employers. When untimely reports are not accepted into evidence, the insurance carriers and self-insured employers are prevented from adequately defending their position in a workers' compensation claim. Accordingly, emergency adoption of this rule is necessary.

Subject: Filing written reports of Independent Medical Examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the Board and furnished to all others.

Text of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 1, 2010.

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

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make

administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that ''10 days'' meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term ''filed'' is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word ''filed''.

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word ''filed''.

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word ''filed''.

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as

municipal employers in self-insured programs for workers' compensation coverage in New York State. Any independent medical exams conducted at their request must be filed by the physician, chiropractor, psychologist or podiatrist conducting the exam or by an independent medical examination (IME) entity. Workers' Compensation Law § 137(1)(a) does not permit self-insured employers or insurance carriers to file these reports, therefore there is no direct action a self-insured local government must or can take with respect to this rule. However, self-insured local governments are concerned about the timely filing of an IME report as one filed late will not be admissible as evidence in a workers' compensation proceeding. This rule makes it easier for a report to be timely filed as it expands the timeframe from 10 calendar days to 10 business days. Small businesses that are self-insured will also be affected by this rule in the same manner as self-insured local governments.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

This rule requires the filing of IME reports within 10 business days rather than 10 calendar days. Prior to this rule medical providers authorized to conduct IMEs and IME entities hired to perform administrative functions for IME examiners, such as filing the report with the Board, had less time to file such reports. Self-insured local governments and small employers, who are not authorized or registered with the Chair to perform IMEs or related administrative services, are not required to take any action to comply with this rule. As noted above, WCL § 137(1)(a) does not permit self-insured employers or insurance carriers to file IME reports with the Board. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

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

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.