

# 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

---

---

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

#### Formation, Training, Appointment and Activation of State and County Animal Response Teams

**I.D. No.** AAM-11-10-00014-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 add Part 69 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, section 410

**Subject:** Formation, training, appointment and activation of State and county animal response teams.

**Purpose:** To implement legislative directive by adopting a rule relating to the creation of State and county animal response teams.

**Text of proposed rule:** Part 69 Animal Response Teams

(Statutory authority: section 410 of the Agriculture and Markets Law)  
Section 69.1 Definitions.

For the purposes of this Part:

(a) *Animal response team* means a group of qualified volunteers, organized and deployed by the State or a county, to address emergencies and disasters affecting animals.

(b) *CART* means any county animal response team.

(c) *Commissioner* means the Commissioner of Agriculture and Markets.

(d) *E-SART* means the Empire State Animal Response Team of the State of New York, which is an association of recognized CARTS across the the State.

(e) *FEMA* means the Federal Emergency Management Agency.

(f) *ICS* means the Incident Command System of FEMA.

(g) *NIMS* means the National Incident Management System of FEMA.

(h) *State* means the State of New York.

(i) *Qualified volunteer* means a person who does not receive compensation for his or her services, who is an active member of an animal response team and has either been activated by directive of the commissioner or is acting in an official capacity of the animal response team pursuant to guidelines from the commissioner.

Section 69.2 Training of volunteers of animal response teams.

(a) In order to become a qualified volunteer, a person shall successfully complete the base-level training requirements established by E-SART and which may be amended by E-SART from time to time.

(b) The base-level training requirements include successful completion of on-line courses approved by E-SART. The courses shall include instruction in the following areas:

(i) E-SART orientation;

(ii) introduction to the Incident Command System (ICS);

(iii) responding to incidents;

(iv) introduction to the National Incident Management System (NIMS); and

(v) hazardous material (hazmat) awareness.

Section 69.3 Appointment of volunteers to animal response teams.

(a) Any person who successfully completes the on-line training requirements set forth in section 69.2 of this Part, as evidenced by certificates of completion from the course providers, and signs the E-SART Code of Conduct shall be deemed a qualified volunteer within the meaning of section 69.1 of this Part.

(b) The names, addresses and telephone numbers of all qualified volunteers who wish to serve on a CART shall be entered into the ServeNY database system, which is managed by the New York State Department of Health.

(c) Any qualified volunteer serving on a CART does so at the pleasure of Commissioner, his or her designee and the emergency manager of the county in which the qualified volunteer resides.

Section 69.4 Formation and activation of animal response teams.

(a) In the event of an emergency or disaster affecting animals in the State, the emergency manager of the county in which the emergency or disaster has occurred or is occurring may activate qualified volunteers in his or her county from the ServeNY database.

(b) The emergency manager activating qualified volunteers shall do so by using the ServeNY data base and shall generate a written log, advising the Commissioner of the identities of the volunteers activated.

(c) When the qualified volunteers are no longer needed, the emergency manager shall demobilize the volunteers through the ServeNY database, and shall notify the Commissioner, in writing, of the identities of the volunteers deactivated.

(d) Qualified volunteers appointed to an animal response team shall be deemed volunteer state employees for purposes of section 17 of the Public Officers Law and section 3 of the Workers' Compensation Law.

**Text of proposed rule and any required statements and analyses may be obtained from:** David Smith, DVM, Asst Director, Division of Animal Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502

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

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

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

#### Consensus Rule Making Determination

Section 410 of the Agriculture and Markets Law, effective July 7, 2008, provides that the Commissioner is authorized to establish State and county animal response teams to support the prevention of, preparedness for, response to, and recovery from emergencies and disasters affecting animals in New York State.

Establishment of animal response teams is part of the State Animal Response Team program or SART. SART was created in North Carolina in 1999, following Hurricane Floyd in which over three million companion animals and livestock were lost. Since then, North Carolina's SART program has been the model for animal response programs in 20 other states, including New York. The SART program is based on the federal National Incident Management System (NIMS) and Incident Command System (ICS). Developed and administered by the Department of Homeland Security - Federal Emergency Management Agency, NIMS is the administrative structure used by governmental and private entities in their incident management and emergency response activities. The NIMS framework offers both consistency and flexibility, thereby facilitating the disaster response efforts of these entities. This is accomplished through ICS, which is the standardized, on-scene incident management protocol used by governmental and private entities when responding to and managing emergencies.

Section 410 also directs that the Commissioner shall promulgate rules and regulations relating to the formation, training, appointment and activation of State and county animal response teams.

The proposed rule implements that legislative directive by (1) establishing base-level training requirements for animal response team volunteers which includes SART program orientation; introduction to NIMS and ICS; training in responding to incidents; and training on hazardous material (hazmat) awareness; (2) requiring volunteers who have successfully completed the training to sign a Code of Conduct; and (3) establishing a procedure for the formation, activation and demobilization of animal response teams through use of ServeNY, a database administered by the New York State Department of Health which contains the names of volunteers who have met the training requirements to serve on animal response teams. It is also submitted that the proposed rule is non-controversial since (1) the training is available free of charge, and (2) the requirements and procedures for training, appointment, formation and activation of animal response teams are consistent with those of the federal government as well as other states.

In light of the foregoing, the Department has determined that the proposed adoption of Part 69 of 1 NYCRR is a consensus rule within the meaning of paragraphs (b) and (c) of section 102(11) of the State Administrative Procedure Act in that no person is likely to object to the rule as written because it merely implements or conforms to non-discretionary statutory provisions and is otherwise non-controversial.

#### **Job Impact Statement**

##### **1. Nature of Impact:**

The proposed rule will not adversely impact any existing or prospective employment opportunities because the proposal merely implements a legislative directive to adopt a rule relating to the formation, training, appointment and activation of State and county animal response teams. Persons affected are interested volunteers who will receive training free of charge.

##### **2. Categories and Numbers Affected:**

Persons volunteering to participate on animal response teams will be affected. The actual number of such persons is unknown.

##### **3. Regions of Adverse Impact:**

The proposed rule has uniform statewide impact.

##### **4. Minimizing Adverse Impact:**

There is no identifiable adverse impact.

---



---

## Department of Environmental Conservation

---



---

### NOTICE OF ADOPTION

#### **Definition of Firearms**

**I.D. No.** ENV-37-09-00002-A

**Filing No.** 205

**Filing Date:** 2010-03-02

**Effective Date:** 2010-03-17

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

**Action taken:** Amendment of section 180.3 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 11-0303

**Subject:** Definition of firearms.

**Purpose:** To allow pellet rifles for some hunting.

**Text of final rule:** Section 180.3 of 6 NYCRR is repealed and a new section 180.3 of 6 NYCRR adopted as follows:

*Section 180.3. Definition and use of firearms, guns, and airguns.*

*For the purposes of the Fish and Wildlife Law and this Title:*

Subdivision (a) of 6 NYCRR section 180.3 is repealed and a new subdivision (a) and (b) of 6 NYCRR section 180.3 added:

(a) *The terms "firearm" or "gun" shall mean any rifle, pistol, shotgun or muzzleloading firearm which by force of gunpowder, or an airgun as defined in subdivision (b), that expels a missile or projectile capable of killing, wounding or otherwise inflicting physical damage upon fish, wildlife or other animals.*

(b) *The term "airgun" shall mean any implement which by the force of a spring, air or other non-ignited compressed gas expels a missile or projectile and has a rifled or smooth barrel, using ammunition no smaller than .17 caliber, producing projectile velocities of not less than 600 feet per second. For the purposes of the Fish and Wildlife Law, an implement meeting the above specifications shall be considered a firearm or gun, and may be used to take protected wildlife whenever such protected wildlife may legally be taken with a rimfire rifle.*

Subdivision (b) and (c) of 6 NYCRR section 180.3 are renumbered subdivision (c) and (d), respectively.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 180.3(a).

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

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

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

##### **1. Statutory authority:**

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Environmental Conservation Law 11-0303 grants the department authority to efficiently manage fish and wildlife resources of the state. This includes providing appropriate opportunity for hunting, and establishing regulations that provide for responsible hunting practices consistent with the management of wildlife populations. Within this authority, the department regulates the use of firearms for the purposes of implementing the Fish and Wildlife Law (Articles 11 and 13 of the ECL).

##### **2. Legislative objectives:**

The legislative objectives behind the statutory provisions listed above are to authorize the department to establish, by regulation, certain basic wildlife management tools, including hunting. Periodically, the department adjusts its hunting regulations in response to changes in hunting technology. By doing so, wildlife management tools are kept up to date.

##### **3. Needs and benefits:**

The department proposes to clearly allow the use of airguns for use in hunting (e.g., rabbits and squirrels). The popularity of these guns is growing in New York, largely because of technological advancements, and the relatively low cost of buying and operating an airgun.

Environmental Conservation Law section 11-0901 states that small game may only be taken with a longbow or gun. However, a "gun" is not defined in the ECL or in 6 NYCRR section 180.3 ("Definition of Firearms") so hunters do not have clear legal guidance allowing the use of air powered firearms. The department proposes amending the language of 6 NYCRR section 180.3 to clearly allow the use of airguns for hunting.

Airguns are powered in one of four ways: (1) CO<sub>2</sub> cartridges; (2) spring or lever-action to compress air in an internal cylinder; (3) a pneumatic pump to compress air in an internal cylinder; (4) a reservoir charged from an external high pressure tank. Airguns designed for small game fire a "pellet" possessing adequate downrange energy (a product of mass and velocity) fully capable of harvesting small game species. At suitable ranges (up to 50 yards), they are very effective in harvesting small game in a manner comparable to a .22 rimfire rifle. Rimfire rifles are commonly used for hunting squirrels and rabbits.

Airguns are an ideal implement for use by new/young hunters. They are often single shot guns, have virtually no recoil, and they do not have a loud "report." They are also inexpensive to buy and operate. For these reasons, airguns are frequently used in the department's hunter education courses to teach safe gun handling practices, and to develop shooting skills. This proposal would clearly allow the use of these guns for hunting as well.

## 4. Costs:

None, beyond normal administrative costs.

## 5. Local government mandates:

There are no local governmental mandates associated with this proposed regulation.

## 6. Paperwork:

No additional paperwork is associated with this proposed regulation.

## 7. Duplication:

There are no other regulations similar to this proposal.

## 8. Alternatives:

The only alternative considered was the “no action” alternative.

However, this was rejected because the lack of a clear definition for a “gun” will mean continuing confusion about the interpretation of our current laws and regulations.

## 9. Federal standards:

There are no federal standards pertaining to the use of airguns.

## 10. Compliance schedule:

Hunters will be able to comply with this regulation during the 2009-2010 hunting season, and the department will begin notifying interested hunters of the change as soon as the regulation is promulgated. A full explanation of the regulation change will be included in the 2010-2011 Official Guide to Hunting Laws and Regulations

**Revised Regulatory Flexibility Analysis**

The proposed regulation has no effect on small businesses or local governments. It simply clarifies that air-powered firearms or guns may be used for hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the department has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not needed.

**Revised Rural Area Flexibility Analysis**

The proposed regulation has no effect on rural areas. It simply clarifies that air-powered firearms or guns may be used for hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the department has determined that a Rural Area Flexibility Analysis is not needed.

**Revised Job Impact Statement**

The proposed regulation does not affect jobs. It simply clarifies that air-powered firearms or guns may be used for hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the department has determined that a Job Impact Statement is not needed.

**Assessment of Public Comment**

The department received comments on the proposal. A summary of the comments and the department’s response follow:

## Comment:

The threshold of 800 feet per second for pellet velocity is too high and should be lowered to 700 feet per second. Some pellet rifles use a heavier pellet (e.g., .25 caliber) and the higher mass but slower velocity of these projectiles yields suitable down range energy for responsibly harvesting small game species.

## Response:

The department agrees, and the revised text of the rule provides for a lower minimum velocity (600 feet per second) in recognition of the availability of airguns that have sufficient down range energy for hunting purposes but lower projectile velocities. From this comment and others, it is clear that manufacturers are designing a wide array of firearms that fire a pellet and are suitable for harvesting small game under suitable conditions (i.e., within a range appropriate for a specific firearm).

## Comment:

A person hunting with an airgun should be allowed to hunt closer than 500 feet from a dwelling.

## Response:

Environmental Conservation Law (ECL) section 11-0931 does not allow the discharge of a firearm within 500 feet from a dwelling, farm building, school, factory, or church. Airguns, regardless of their velocity, are included in the existing definition of “firearm” for the purpose of the Fish and Wildlife Law (6 NYCRR section 180.3). The revised definition maintains the applicability of this provision for airguns meeting the requirements of implements that may be used to take small game.

## Comment:

Airguns should not be defined as a firearm because this would jeopardize the ability of a young person to use a “BB gun.” Classifying an airgun as a firearm could potentially jeopardize the use of airguns at shooting ranges by young persons.

## Response:

The specific reason for the proposal is to allow the use of airguns for the hunting of small game and upland game birds pursuant to ECL section 11-0901 which restricts the taking of “wild small game and wild upland game birds” to longbows and guns only. The final rule has been clarified to specifically define an “airgun.” Specifically, the new definition consid-

ers airguns a “firearm or gun” when hunting small game species if the taking of those species is allowed with a rimfire rifle. For example, the department’s final rule allows the use of airguns for taking squirrels, rabbits, and ruffed grouse but not pheasants or wild turkey because the ECL prohibits taking pheasants with rimfire ammunition, and department regulations require the use of shotshells for hunting wild turkey. New York’s Penal Law Article 265 clearly allows the use of airguns by persons less than 12 years old under prescribed circumstances, and the department’s proposal does not alter this fact. The definition of “firearm” in 6 NYCRR section 180.3 is applicable only to the Fish and Wildlife Law (ECL Articles 11 and 13) and regulations adopted under its authority, and in no way is applicable to the Penal Law or any other laws.

## Comment:

The present definitions of firearms and guns already provides for sufficient clarity to allow for hunting with all airguns without any new definitions. The present definition also allows hunters to use their discretion in determining what type of airgun to use.

## Response:

The department has proposed this regulation to define for the purpose of implementing the Fish and Wildlife Law to assure that there was no ambiguity on their use for hunting. Because the ECL restricts the hunting of small game and upland game birds to guns and longbows, and because “guns” were not previously defined, the department determined that the use of airguns was not clearly lawful. The proposal provides this clarity and in future editions of the department’s hunting guide, there will be clear statements that airguns are lawful for hunting small game and certain species of upland game birds. In the final wording of the rule, the department has changed the reference to a specific projectile velocity from 800 to 600 feet per second to provide hunters with a simple velocity threshold in choosing what type of airgun to use.

## Comment:

The proposed amendment contains language that arbitrarily restricts the use of traditional air-guns. Specifically, the requirement for a minimum velocity precludes several legitimate types of airgun, and the reference to “rifling” unnecessarily restricts the use of smooth bore guns.

## Response:

The department agrees, and the minimum velocity requirement has been changed to 600 feet per second. The department also agrees that the exclusion of smooth barreled airguns was unnecessarily constraining. The final regulation uses the term “rifled or smooth barrel” in the definition of an “airgun.”

## Comment:

The new proposed definition does not allow for the use of blowguns for small game hunting.

## Response:

This is correct. The department does not have the authority to allow blowguns for hunting. The ECL specifically states that only longbows and guns may be used for hunting small game and upland game birds. The department is unable to accommodate this comment.

## Comment:

The department’s proposed definition of “firearm” and “gun” differs from the approach taken in the New York State Penal Law. The department should avoid potential conflicts with the Penal Law in broadening the definition of a “firearm” to include an airgun.

## Response:

The proposed regulation simply addresses the use of airguns for “the purposes of the Fish and Wildlife Law” (Articles 11 and 13 of the ECL), and has no consequences for implementing and enforcing the Penal Law. The regulation simply clarifies that airguns, as defined, may be used for hunting small game.

## Comment:

The department should make sure that regulations pertaining to public use of specific management areas (e.g., Stewart State Forest and the Albany Pine Bush Preserve) that may be in conflict with the proposed regulation are updated to clearly allow the use of airguns for hunting.

## Response:

The department agrees and will work with the regional offices to identify regulations that may need updating or clarification for enforcement purposes.

The department has modified the text to provide greater clarity in the final regulation, and is adopting the regulation as so amended.

NOTICE OF ADOPTION

**Proposed Fishery Closures for Hudson River American Shad and Fishery Restrictions for the Delaware River American Shad**

**I.D. No.** ENV-46-09-00009-A

**Filing No.** 207

**Filing Date:** 2010-03-02

**Effective Date:** 2010-03-17

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

**Action taken:** Amendment of Parts 10, 11, 35, 36 and 40 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-0305, 11-0315, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 13-0105, 13-0339 and 13-0371

**Subject:** Proposed fishery closures for Hudson River American shad and fishery restrictions for the Delaware River American shad.

**Purpose:** To protect the Hudson River and Delaware River American shad stocks from further decline.

**Text of final rule:** Amendment of Part 10 of Title 6 NYCRR.

Part 10 of 6 NYCRR, entitled "Sportfishing" is amended to read as follows:

(Paragraphs 10.1(b)(1) through 10.1(b)(12) remain unchanged)  
Existing paragraph 10.1(b)(13) is amended to read as follows:  
(b) "Table A. Sportfishing regulations"

	Species	Open Season	Minimum length	Daily limit
(13)	American shad - in the Hudson River and tributaries north of the George Washington Bridge	[All year] Possession prohibited	[Any size]	[1]
	American shad - all other inland waters	All year	Any size	[6]3

(Paragraphs 10.1(b)(14) through 10.1(b)(19) remain unchanged)  
Amendment of Part 11 of Title 6 NYCRR.

Part 11 of 6 NYCRR, entitled "More than one species" is amended to read as follows:

(Section 11.1 remains unchanged)

Section 11.2 is amended to read as follows:

11.2. Taking, possessing, sale, offering or exposing for sale or trafficking in certain Hudson River and Delaware River fish.

Subdivision 11.2(a) through paragraph 11.2(b)(3) remains unchanged.

Addition of paragraph 11.2(b)(4) reads as follows:

(4) Take or possess American shad in the Hudson River and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor Malcolm Wilson Tappan Zee Bridge, and the Marine and Coastal District at any time.

Subdivision 11.2(c) through 11.2(d) remains unchanged.

Addition of subdivision 11.2(e) reads as follows:

(e) Possession and sale of American shad in the Hudson River, and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor Malcolm Wilson Tappan Zee Bridge, and the Marine and Coastal District.

(1) Any American shad inadvertently taken in the Hudson River, and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor Malcolm Wilson Tappan Zee Bridge, and the Marine and Coastal District must be returned to the water immediately without unnecessary injury.

(2) It is unlawful for any person to sell, import, traffic in or possess American shad in New York except that fish from other than New York waters that are accompanied by a bill of lading or sale denoting the State of origin.

(3) Any person violating any provision of this subdivision may be

subject to license revocation as provided in Part 175 of this Title as well as other applicable penalties as set forth in law.

Addition of subdivision 11.2(f) reads as follows:

(f) In the Delaware River, and its tributary waters upstream from Port Jervis, no person may:

Addition of paragraph 11.2(f)(1) reads as follows:

(1) Fish commercially for American shad in the New York waters of the Delaware River and its tributaries at any time. For the purposes of this paragraph, fish commercially means either: the possession, setting, tending, operating or maintaining of nets or other devices for which a license is required pursuant to section 11-1503 of the Environmental Conservation Law; or the sale, offering for sale, exposing for sale or transporting of such fish other than in the boat in which such fish were landed after being taken.

Amendment of Part 35 of Title 6 NYCRR.

Part 35 of 6NYCRR, entitled "Licenses" is amended to read as follows:

Existing subdivision 35.1(a) is amended to read as follows: Gear or operation scoop, dip and scap nets 10 feet square or under through gill nets per lineal foot remains the same.

(a) Schedule of license fees for commercial fishing in inland waters

Gear or operation	Residents	Nonresidents of the State
[Gill nets in Hudson and Delaware Rivers from March 15 to June 15, 600 feet or under]	[10.00]	[100.00]

Gill nets in Chaumont Bay and waters of Jefferson County within one-half mile of the shore between Horse Island and Tibbet's Light, 2,500 feet or under to inboard motor boat over 15 tons in Lakes Erie and Ontario remains the same.

Amendment of Part 36 of Title 6 NYCRR.

Part 36 of 6 NYCRR, entitled "Gear and operation of gear" is amended as follows:

Subdivision 36.1(a), paragraphs (1) through (3) remain unchanged.

Paragraph 36.1(a)(4) is rescinded.

[(4) It is unlawful for any person to take American shad for commercial purposes without having in possession either a valid gill net or shad and herring gill net Marine permit. Only one valid licensed gill net per fisher may be used to take American shad.]

Subdivision 36.1(b) through section 36.2 remain unchanged.

Subdivision 36.3(a) is amended to read as follows:

(a) [Shad and] *Anadromous alewife and blueback* herring may be taken with nets in the Hudson River from March 15th to June 15th. This subdivision is subject to additional emergency restrictions of the department pursuant to section 11-0315 of the Environmental Conservation Law.

Subdivision 36.3(b) through subparagraph 36.3(c)(2)(iii) remain unchanged.

Subparagraph 36.3(c)(2)(iv) is rescinded:

[(iv) Gill nets having a stretched mesh equal to 5 2 inches stretched mesh, inside measure, through the net, may be possessed and used in or on that section of the Hudson River between the Rip VanWinkle Bridge and the George Washington Bridge.]

Subparagraph 36.3(c)(2)(v) is renumbered as subparagraph 36.3(c)(2)(iv).

Subparagraph 36.3(c)(3)(i) remains unchanged.

Subparagraph 36.3(c)(3)(ii) is rescinded.

[(ii) gill nets equal to 5½ inches stretched mesh, inside measure, through the net, may be used to take American shad.]

Paragraph 36.3(c)(4) is amended to read as follows:

(4) Escapement period. During the [shad and] *anadromous alewife and blueback* herring season, from March 15th to June 15th, both dates inclusive, no nets shall be set, placed or drawn or allowed to remain in, or possessed on the waters of the Hudson River below the dam at Troy between 6 a.m. prevailing time on Friday and 6 p.m. prevailing time on the following Saturday; provided, however, that:

Subparagraphs 36.3(c)(4)(i) and 36.3(c)(4)(ii) remain the same.

Subparagraph 36.3(c)(4)(iii) is rescinded.

[(iii) Shad closure. Gill nets equal to 5½ inches stretched mesh, inside measure, through the net, may not be set in or possessed on the waters of the Hudson River below the Rip VanWinkle Bridge to the George Washington Bridge between 6 a.m. prevailing time on Wednesday and 6 p.m. prevailing time on the following Saturday.]

Paragraphs 36.3(c)(5) through 36.3(c)(7) remain unchanged.

Amendment of Part 40 of Title 6 NYCRR.

Part 40 of 6 NYCRR, entitled "Marine Fish" is amended as follows:

Existing subdivision 40.1(f) is amended to read as follows: Species striped bass through black sea bass remain the same. Species American shad is amended to read as follows:  
 40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
American shad	[All year] Possession prohibited	[No minimum size limit]	[1]

Species hickory shad through prohibited sharks remain the same. Existing subdivision 40.1(i) is amended to read as follows: Species striped bass through black sea bass remain the same. Species American shad is amended to read as follows:  
 40.1(i) Table B – Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit
American shad	[All year] Possession prohibited	[No minimum length]	[No more than 5 percent of the total weight of all foodfish landed per trip]

Species oyster toadfish through prohibited sharks remain the same. Addition of subdivision 40.1(w) reads as follows:  
 (w) *American shad commercial fishing--special regulations.*  
 (1) *Any American shad inadvertently taken in New York must be returned to the water immediately without unnecessary injury.*  
 (2) *It is unlawful for any person to sell, import, traffic in or possess American shad or American shad products in New York except for fish or products from other than New York waters that are accompanied by a bill of lading or sale denoting the State of origin.*  
 (3) *Any person violating any provision of these regulations may be subject to license revocation as provided in Part 175 of this Title as well as other applicable penalties as set forth in law.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 11.2(b)(4), (e) and 36.3(c)(2)(iv).  
**Text of rule and any required statements and analyses may be obtained from:** Kathryn Hattala, Environmental Conservation, 21 South Putt Corners Rd., New Paltz, NY 12561, (845) 256-3071, email: kahattal@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.

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

No changes were made to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

**Assessment of Public Comment**

Regulation change affecting the Hudson River and Marine District. Six individuals, one non-government environmental organization and the Hudson River Estuary Management Advisory fisheries subcommittee (HREMAFS) sent in written comments supporting the proposed closure. The Fish Subcommittee is comprised of ten individuals from varied backgrounds: scientific and academic communities, as well as recreational and commercial stakeholders. The majority consensus of the Fish subcommittee, with the exception of the commercial fisher, was to support the proposed regulations.

All positive comments recognized the critical status of the Hudson’s American shad stock and felt that it was essential that these fish be protected. They agreed that the proposed regulations were the only alternative the Department of Environmental Conservation (DEC or department) could take. The fish subcommittee also pointed out the need for continued implementation of the Hudson Shad Recovery Plan (see: www.dec.ny.gov/animals/6945.html) to address the issues identified that affect shad survival. They also requested development of fishery re-opening criteria and stressed the importance of continued annual monitoring of the stock.

Three individuals sent comments opposed to the proposed regulation. Two individuals sent in short letters attributing the shad decline to power plant impact and/or to striped bass predation. One a commercial fishing stakeholder sent in a detailed letter. His concerns are as follows:

- Comment: Over-fishing was not the cause of the decline;  
 Response: A coast-wide assessment of American shad stocks was

completed in 2007 by the Atlantic States Marine Fisheries Commission (ASMFC). This document concluded that excessive harvest from fishing both in the ocean and in the river was the primary reason for the decline of the Hudson’s shad stock. Other factors decline (habitat issues, pollution, power plant impacts, etc) undoubtedly contributed to the poor stock condition, but they were not the primary cause of the decline.

- Comment: The department did not follow State Environmental Quality Review (SEQR) procedures and hold a public hearing.  
 Response: A negative declaration, under SEQR, was filed with the Notice of Proposed rule-making. The proposed regulations are designed to provide conservation protection and will not cause any significant environmental effects. A public hearing was not held due to the poor attendance (12 individuals attended) at two public information meetings, prior to development of the proposed regulations.
- Comment: The Hudson River Estuary Management Committee (HREMAC) was not consulted prior to the announcement of the proposed closure.  
 Response: This is correct and was due to a mis-communication within the department. However, an Assistant Commissioner has since attended the HREMAC and apologized for this misstep. Department staff and HREMAC then held a long discussion on stock status of Hudson American shad and the reasons supporting the proposed regulations.
- Comment: The state of Connecticut protects and defends their shad fishermen and fishery.  
 Response: It is correct that the state of Connecticut has not closed their commercial shad fishery. However, the Connecticut shad stock is in much better shape than that in the Hudson and their commercial fishery has a much smaller effect on the stock relative to losses at fish passage facilities. There are many other differences between the two stocks and the rivers, but a more detailed comparison is not relevant to the proposed regulations.
- Comment: Predation by adult striped bass has caused the decline of adult and young shad. It occurs in the Connecticut River, so it must happen the same way in the Hudson.  
 Response: Department staff, in the above referenced 2007 ASMFC stock assessment, examined the issue of adult bass eating adult shad in the Hudson River. Examination of gut contents of nearly 2,000 striped bass indicated that only two small shad were consumed. It is not clear what predation rates occur for young shad in the Hudson. The department is currently obtaining samples to examine this. Other diet studies from other coastal states indicate the favored food item for striped bass are Atlantic menhaden or river herring, not American shad.
- Comment: Fishing restrictions implemented in 2008 did not change abundance of young shad so therefore reduced fishing effort and harvest does not affect abundance.  
 Response: The department implemented restrictions in 2008 because juvenile production, beginning in 2002, had already plummeted into what is known as “recruitment failure” (very few young produced by few adults). We did not close the fishery in 2008, because we hoped that there were enough spawning fish left to increase production of young if harvest was reduced. We also hoped that we could maintain some of the recreational and commercial fishing tradition of the Hudson Valley. Unfortunately, juvenile production dropped even further and abundance indices are now among the lowest observed in 29 years of sampling. Obviously, the adult population has become too small to respond without drastic reduction in mortality. If harvest continues, the fishers will only further erode what is left of the spawning adults.
- Comment: A quota fishery would work since fishermen caught fewer than 3,600 fish per year in recent years.  
 Response: A mean of over 7,000 American shad per year were reported harvested by Hudson River commercial fishermen in 2007 and 2008 (reported numbers do not account for under-reporting). The stock is entering in its eighth year of recruitment failure and these few fish are the fish that will be returning to spawn over the next few years in the river. They are all that remains to rebuild the stock. If harvest continues, production of young may altogether disappear. The department cannot accept this possibility.
- Comment: As an alternative to maintain a traditional fishery, the state should reopen a commercial striped bass fishery in the Hudson River.  
 Response: The department will reexamine the feasibility for a Hudson River striped bass fishery, but there are several obstacles that need to be met: 1) Department staff would have to determine current stock status and whether harvest on the spawning stock is acceptable; 2) the New York State Department of Health would have to examine the current contaminant levels and give their approval for sale of

striped bass from the Hudson; 3) Since New York's striped bass fishery is run by quota under an ASMFC management plan, DEC would have to negotiate with current fishery stakeholders, and other New York commercial fishers to equitably split the current quota; and 4) New York would have to obtain approval for a spawning ground fishery from ASMFC as required by the Interstate Striped Bass Management Plan. It should be noted that the New York delegation to ASMFC initiated a motion at the Winter 2010 meeting to initiate an addendum to increase the coastwide commercial quota which was passed by the Striped Bass Board; eight in favor, seven opposed.

- Comment: The current commercial fishery is symbolic, representing the heritage of a long standing tradition that will fade from view if it is closed.

Response: The department agrees that there is a long tradition associated with the Hudson shad fishery. The decision to close this long standing fishery was not made easily; however, if there are no fish there will be no fishery at all. Any delay in stock recovery will only lessen the ability for future generations to renew the tradition of a shad fishery on the Hudson.

Regulation change affecting the Delaware River.

No comments were received on the proposed regulations for the Delaware River.

---



---

## Insurance Department

---



---

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Standards for the Management of the New York State Retirement Systems

I.D. No. INS-11-10-00002-P

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

**Proposed Action:** Amendment of Part 136 of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 314, 7401(a) and 7402(n)

**Subject:** Standards for the management of the New York State Retirement Systems.

**Purpose:** To ban the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund.

**Public hearing(s) will be held at:** 10:00 a.m., April 28, 2010 at Insurance Department, 25 Beaver St., New York, NY.

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

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

**Text of proposed rule:** Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

[(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

[(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.]

[(f)](e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

[(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.]

[(g) OSC shall mean the Office of the State Comptroller.]

[(g)](h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

[(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.]

[(j)](k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4(d) is amended to read as follows:

[(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the

*Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit to[.]* an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] *Fund*. [., or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] *Retirement System's* financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] *Fund* to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund's] *Fund's* investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] *Fund* every three years by a qualified unaffiliated person.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew Mais, New York State 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:** Michael Maffei, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5023, email: mmaffei@ins.state.ny.us

**Public comment will be received until:** Five days after the last scheduled public hearing.

#### **Regulatory Impact Statement**

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law.

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

Section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with sections 310, 311 and 312 of the Insurance Law. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as a statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies. Section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Section 314 of the Insurance Law authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This amendment, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common

Retirement Fund ("the Fund"), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the amendment defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. Paperwork: No additional paperwork should result from the prohibition imposed by the amendment.

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

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

The standards set forth in the proposed amendment will be subject to comment and discussion at the public hearing required by Section 314 of the Insurance Law.

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

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as the amended regulation can be made permanent.

#### **Regulatory Flexibility Analysis**

1. Effect of the rule: This amendment strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund ("the Fund"), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insuf-

ficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the amendment defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the amendment. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This amendment will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The proposal will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the amendment is also directed to placement agents, who as a result of this proposal, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The amendment bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This amendment will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this amendment is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. The standards set forth in the amendment will be subject to additional comment and discussion at the public hearing required by Section 314 of the Insurance Law.

#### *Rural Area Flexibility Analysis*

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(13) will be affected by this proposal. The amendment bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The amendment does not adversely impact rural areas.

5. Rural area participation: Affected parties doing business in rural areas of the State, will have the opportunity to comment upon and discuss the rule at the public hearing required by Section 314 of the Insurance Law.

#### *Job Impact Statement*

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. The amendment bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The amendment may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

---

## Office of Mental Health

---

### NOTICE OF ADOPTION

#### Operation of Residential Programs for Adults

**I.D. No.** OMH-01-10-00004-A

**Filing No.** 175

**Filing Date:** 2010-02-26

**Effective Date:** 2010-03-17

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

**Action taken:** Amendment of Part 595 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09 and 31.04

**Subject:** Operation of Residential Programs for Adults.

**Purpose:** To correct an inaccurate reference within current regulation.

**Text or summary was published** in the January 6, 2010 issue of the Register, I.D. No. OMH-01-10-00004-P.

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

**Text of rule and any required statements and analyses may be obtained from:** 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.

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

#### Clinic Treatment Programs

**I.D. No.** OMH-11-10-00003-P

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

**Proposed Action:** Addition of Part 599 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.02, 31.04, 31.06, 31.07, 31.09, 31.11, 31.13, 31.19, 43.01, 43.02, art. 33; Social Services Law, sections 364, 364-a and 364-j

**Subject:** Clinic Treatment Programs.

**Purpose:** To establish standards for the certification, operation & reimbursement of clinic treatment programs serving adults and children.

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

This rulemaking will establish a new Part 599 of Title 14 NYCRR, governing the licensing, operation, and Medicaid fee-for-service funding of mental health clinics. The new rule will establish a modernized, more person-centered service delivery system, and a more equitable system of finances to properly support those services and create incentives for the delivery of high quality clinic care. The complete text of the rulemaking is available on the Office of Mental Health's website at [www.omh.state.ny.us](http://www.omh.state.ny.us).

#### Overview

New York State's mental health clinic system faces numerous and pressing financial and programmatic challenges. To address these challenges, the Office of Mental Health has been engaged in a multi-year initiative to restructure the way the State delivers and reimburses publicly supported mental health services. This clinic restructuring plan, which has been developed with input from numerous stakeholders, addresses the challenges by creating a defined and expanded range of clinic services; restructuring Medicaid rates to provide comparable payments for similar services; incentivizing services provided off-site, after hours, in languages other than English and by physicians and nurse practitioners in psychiatry; complying with Federal HIPAA billing requirements; and establishing a pool to compensate clinics for providing indigent care. These changes are necessary to improve service delivery and ensure the survival of a quality mental health clinic system in New York.

#### Requirements

The proposed rule would replace the existing requirements of Part 587 of Title 14 NYCRR, and phase out the existing requirements of Parts 588 and 592 of Title 14 NYCRR, insofar as they pertain to mental health clinic services. The proposed rule will establish the following:

1. A redefined and more responsive set of clinic treatment services with greater accountability for outcomes. Clinics will be required to offer services such as outreach, crisis response, and complex care management, which will enhance consumer engagement and support quality treatment.

2. A redesigned financing structure. Medicaid payment rates will be based on the efficient and economical provision of services to Medicaid clients. Payments will be comparable for similar services delivered by similar providers across service systems. Payments will also include adjustments for factors which influence the cost of providing services. Reimbursement under the previous methodology, including payment supplements under the Comprehensive Outpatient Provider (COPS) methodology, will be phased out over a four-year period.

3. A HIPAA-compliant procedure based payment system with modifiers to reflect variations in cost. Federal law requires the use of a HIPAA-compliant billing system. Services will be billed using HIPAA-compliant procedure codes with modifiers to reflect differences in resources and related costs for the various services.

4. Provisions for indigent care. New York State is requesting a Federal waiver that would expand reimbursement for indigent care to include freestanding OMH-licensed mental health clinics.

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

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

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

#### Regulatory Impact Statement

1. Statutory authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health the power

and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults diagnosed with mental illness or children diagnosed with emotional disturbance, pursuant to an operating certificate.

Section 31.02 of the Mental Hygiene Law prohibits the operation of outpatient programs providing services for persons with mental illness unless an operating certificate has been obtained from the Commissioner.

Sections 31.07, 31.09, 31.13 and 31.19 of the Mental Hygiene Law further authorize the Commissioner or his or her representatives to examine and inspect such programs to determine their suitability and proper operation. Section 31.16 authorizes the Commissioner to suspend, revoke or limit any operating certificate.

Section 31.11 of the Mental Hygiene Law requires every holder of an operating certificate to assist the Office of Mental Health in carrying out its regulatory functions by cooperating with the Commissioner in any inspection or investigation, permitting the Commissioner to inspect its facility, books and records, including recipients' records, and making such reports, uniform and otherwise, as are required by the Commissioner.

Section 31.06 of the Mental Hygiene Law requires every holder of an operating certificate to develop policies and training programs in regard to reporting child abuse or neglect.

Section 43.02(b) of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by the Office of Mental Health such financial, statistical and program information as the Commissioner may determine to be necessary.

Article 33 of the Mental Hygiene Law establishes basic rights of persons diagnosed with mental illness.

Section 364-j of the Social Services Law requires the establishment of managed care programs throughout the State and provides for the provision of special care services to enrollees in Medicaid managed care programs who require such services.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Section 43.01 of the Mental Hygiene Law gives the Commissioner authority to set rates for outpatient services at facilities operated by the Office of Mental Health. Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

Title XIX of the Federal Social Security Act, as identified in section 502.2(c) of such Title, authorizes Federal grants to states to fund medical assistance to needy persons in accordance with a State plan approved by the Federal Department of Health and Human Services.

2. Legislative objectives: Chapter 57 of the Laws of 2006 directed OMH to conduct a study of the mental health reimbursement system. The 2006-2007 enacted state budget language appropriated funds "[f]or services and expenses associated with a study to review the current system of financing and reimbursement of mental health services provided by clinic, continuing day treatment and day treatment programs licensed under article 31 of the mental hygiene law, and to make recommendations for changes designed to ensure that the financing and reimbursement system provides for the equitable reimbursement of providers of mental health services and is conducive to the provision of effective and high quality of services. Such study shall be coordinated by the commissioner of the Office of Mental Health and shall be completed and submitted to the legislature no later than March 1, 2007." Public Consulting Group, Inc. (PCG) was engaged by OMH to conduct this study.

In addition, the proposed rule furthers the legislative policy of providing high quality outpatient mental health services to individuals with mental illness in a cost-effective manner. The rule establishes a

redefined, more responsive set of clinic treatment services and greater accountability for outcomes from providers. The new rule will establish a modernized, more person-centered service delivery system, and a more equitable system of finances to properly support those services and create incentives for the delivery of high quality clinic care.

3. Needs and benefits: New York State's mental health clinic system faces numerous and pressing financial and programmatic challenges. Many of the issues were identified in the 2007 PCG report, entitled, "State of New York Office of Mental Health Provider Reimbursement System". The report explained that New York State uses a funding and reimbursement methodology for clinic, continuing day treatment (CDT) and day treatment programs that includes the use of a regional fee schedule for recognized services (the base rate) with the addition of provider-specific supplemental payments (known as add-ons) to compensate providers for the costs of providing services. This system was established in 1991, and at the time it served as a creative solution that provided the funding needed to meet the growing demand for and cost of these services. With the passage of time, however, the existing funding and reimbursement system has become antiquated and is not able to keep pace adequately with the needs of the providers and their consumers.

Based on this study, PCG concluded that the current system of financing outpatient mental health services using an add-on structure should be replaced with a more equitable system of payment. The current system is outdated, inequitably funded and is based on a rate structure that has outlived its usefulness.

The financing structure that has been used for nearly two decades has resulted in provider payments that vary considerably, and these payment variations cannot be uniformly explained by differences in case mix or service intensity. At times the same service is reimbursed at different rates based solely on a facility's license. Overall, reimbursement for facilities licensed by OMH is divorced from reimbursement for facilities providing the same or similar services under licenses from the Department of Health (DOH), the Office of Alcoholism and Substance Abuse Services (OASAS) or the Office of Mental Retardation and Developmental Disabilities (OMRDD). This discrepancy in reimbursement methodology is striking given that, in some instances, the same individuals are served by all of these facilities. The report concluded that the nature of the current reimbursement system is in part of a function of reimbursement and licensing freezes around which providers have learned to work. The report further concluded that a complete overhaul of the current payment system is necessary.

To address these challenges, the Office of Mental Health has been engaged in a multi-year initiative to restructure the way the State delivers and reimburses publicly supported mental health services. This clinic restructuring plan, which has been developed with input from numerous stakeholders, addresses the challenges by creating an expanded range of clinic services and restructuring Medicaid rates to provide comparable payments for similar services. In addition, the proposal adjusts rates of payments to encourage the provision of mental health clinic services off-site, after regular business hours, in languages other than English and by physicians and nurse practitioners in psychiatry. The proposal also allows for clinics to participate with diagnostic and treatment centers licensed by the New York State Department of Health in a Federally-participating pool of funds to compensate for the provision of indigent care. The new reimbursement structure accompanying the program restructuring will help bring New York State into compliance with Federal HIPAA billing requirements. These changes are necessary to improve service delivery and ensure the survival of a quality mental health clinic system in New York.

The proposed rule would replace the existing requirements of Part 587 of Title 14 NYCRR, and phase out the existing requirements of Parts 588 and 592 of Title 14 NYCRR, insofar as they pertain to mental health clinic services. The proposed rule will establish the following:

A redefined and more responsive set of clinic treatment services with greater accountability for outcomes. Clinics will be required to offer services such as outreach, crisis response, and complex care management, which will enhance consumer engagement and support quality treatment.

A redesigned financing structure. Medicaid payment rates will be based on the efficient and economical provision of services to Medicaid clients. Payments will be comparable for similar services delivered by similar providers across service systems. Payments will also include adjustments for factors which influence the cost of providing services. Reimbursement under the previous methodology, including payment supplements under the Comprehensive Outpatient Provider (COPS) methodology, will be phased out over a four-year period.

A HIPAA-compliant procedure based payment system with modifiers to reflect variations in cost. Federal law requires the use of a HIPAA-compliant billing system. Services will be billed using HIPAA-compliant procedure codes with modifiers to reflect differences in resources and related costs for the various services.

Provisions for indigent care. New York State is requesting a Federal waiver that would expand reimbursement for indigent care to include freestanding OMH-licensed mental health clinics.

#### 4. Costs:

a. Costs to regulated parties: The costs, benefits, and impact on regulated parties will vary considerably. For some providers, there may be a modest and time-limited cost associated with modification of the Medicaid billing system to accommodate the new procedure codes being implemented. For other providers, their current system will already accommodate these changes. The significant cost and cost-related elements affecting the impact of the rulemaking on providers of clinic services, and their opportunity to offset any negative impact of the rulemaking, include: (1) the provider's costs; (2) the average annual volume of procedures delivered by each clinical staff person; (3) the provider's supplemental COPS rate (per Part 592 of Title 14 NYCRR); and (4) the provider's willingness and ability to respond to the incentives and disincentives offered by the new rule. Modeling of the impact of the regulations on providers with different profiles of behavior revealed the following:

Scenario 1: Assuming no change in behavior, an average provider (in terms of cost/unit of service and productivity) with a COPS reimbursement of \$80/visit or less will break even financially under the new clinic model.

Scenario 2: Assuming no change in behavior, a low cost, high productivity provider with a COPS reimbursement of \$80/visit or less will break even financially under the new clinic model.

Scenario 3: Assuming no change in behavior, a high cost, low productivity provider with a COPS reimbursement of \$80/visit or less - a provider that loses money under the existing clinic model - will continue to lose money but at no greater rate than they currently are losing money.

Scenario 4: Assuming no change in behavior, a low cost, high productivity provider with a low COPS rate will see revenues increase under the new clinic model. Such providers would eliminate their current financial loss.

Scenario 5: Assuming no change in behavior, a high cost, low productivity provider with a high COPS rate will see revenues decline under the new clinic model.

Scenario 6: Assuming no change in behavior, a low cost, high productivity provider with a low COPS rate and low Medicaid Fee-for-Service (FFS) percentage will see revenues increase under the new clinic model. Such providers would eliminate their current financial loss.

Scenario 7: Assuming no change in behavior, providers with high cost, low productivity, a high COPS rate, and a low Medicaid FFS percentage will see revenues decline under the new clinic model.

Scenario 8: Assuming no change in behavior, a low cost, high productivity provider with a low COPS rate and high Medicaid FFS percentage will see revenues increase under the new clinic model. Such providers will almost entirely eliminate their current financial loss.

Scenario 9: Assuming no change in behavior, providers with high cost, low productivity, a high COPS rate, and a high Medicaid FFS percentage will see revenues decline under the new clinic model.

As is demonstrated above, the only groups that lose financially have low productivity (scenarios 5, 7, 9). Therefore, providers in these

groups have the chance to significantly mitigate their losses by improving their productivity. This is an outcome OMH wishes to encourage.

b. Costs to the agency and the state: The future cost to OMH and the state will be minimal. OMH has nearly completed an adaptation of its existing rate history and transmittal system to conform to HIPAA billing requirements for clinics. The costs to complete system modifications, to train OMH field staff to monitor regulatory compliance by non-state clinics, to train OMH's outpatient clinical staff to comply with the proposed rulemaking and to convert OMH's own billing system to submit Medicaid claims under the new system will not require additional state appropriations. The Department of Health is already reprogramming the state's eMedNY system to accommodate a similar system for hospitals and Diagnostic and Treatment Centers. OMH will need to convert its own billing system to comply with the new payment mechanism, but the cost will be minimal and time limited.

c. Costs to local governments: Counties must be classified by their roles with regard to mental health services to determine financial impact.

i. Counties as Local Governmental Units. There is no financial impact.

ii. Counties as funders of mental health services. There is no financial impact.

iii. Counties as providers. Counties can choose to operate licensed mental health clinics. Currently there are 39 counties serving as mental health clinic operators, with a wide variation in the rates paid to providers for comparable services provided to similar populations. The proposed regulations will phase in a reimbursement structure that more rationally reimburses providers by paying similar rates for similar services. As a result, the financial impact varies. Under clinic restructuring, some county-operated clinics will receive higher reimbursement than under the current system. Other clinics will see their rates reduced. Some counties that lose revenues may offset or eliminate these losses by increasing productivity or by delivering various new services allowed and funded under clinic restructuring. System-wide, however, counties should break even as the service prices for county-operated clinics are approximately the average unit cost for the efficiently operating programs.

5. Local government mandates: This regulatory proposal will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: There should not be additional paperwork requirements associated with this rulemaking.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may affect this rule.

8. Alternatives: The alternative that was considered was maintaining the current system of mental health clinic financing and delivery. That alternative was rejected because the structure of the finance system ensured that the cost would exceed what is permissible under Federal Medicaid law. This would have necessitated across-the-board reductions in Medicaid fees which would have had a negative impact upon the ability of some providers to continue operation and provide quality mental health services. Further, the services available under the existing system were not responsive to the needs of the service population. In addition, the current system is non-compliant with the requirements of HIPAA, which mandates the use of procedure codes for billing systems.

9. Federal standards: The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulatory amendment would be effective immediately upon adoption.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: The rulemaking will have statewide impact. Currently there are 176 providers operating 516 OMH-licensed clinic programs. Of these providers, 39 are counties. In addition, there are 137 non-county not-for-profit clinic providers across New York State. Counties have three major roles with regard to mental health services

- oversight, administration of state and county funding, and direct service delivery. Their role as a local governmental unit gives them responsibility for the oversight of their county mental health system, coordination with other county health, human services and legal systems and planning for countywide mental health needs. Many counties also choose to fund and/or directly provide community mental health services. County roles must be separated in order to determine the financial impact of these proposed new clinic regulations.

Counties as Local Governmental Units. There is no financial impact as clinic restructuring does not impact state aid grants.

Counties as funders of mental health services. There is no financial impact (for the same reason as noted above). This regulation does not impose any additional Medicaid costs upon the counties. First, the regulation is not anticipated to increase the overall costs of mental health services provided. Second, the county share of Medicaid is capped, so any unanticipated increase in overall costs would not be borne by the counties.

Counties as providers. Counties can choose to operate licensed mental health clinics. The costs, benefits, and impact among counties operating clinics will vary considerably. For some counties, there may be a modest and time-limited cost associated with modification of their data collection and Medicaid billing systems to accommodate the new procedure codes being implemented. For other counties, their current systems are already configured to accommodate the standardized CPT procedure coding. These costs are not quantifiable, but are not truly a cost of the regulation. Rather, they are a required cost in order for providers to become HIPAA compliant. Such costs would have been incurred regardless of the promulgation of this rule.

The most significant financial impact of these regulations pertains to the county's status as a provider of mental health services, and the revenues associated with the provision of such services. The main factors influencing the impact of the rulemaking on counties, and their opportunity to offset any negative impact include:

The county's operating costs (and average cost per procedure);

The average annual volume of procedures delivered by each clinical staff person (productivity);

The value of the county's supplemental COPS rate (per Part 592 of Title 14 NYCRR); and

The county's willingness and ability to respond to the incentives and disincentives offered by the rule.

2. Compliance requirements: There will be no additional record-keeping or compliance requirements as a result of this rulemaking.

3. Professional services: Professional services may be required for some providers to comply with new billing provisions. It is expected that such costs, if any, will be modest and time limited.

4. Compliance costs: There will be no capital costs associated with this rulemaking. There may be modest cost savings as a result of increased flexibility in the use of space permitted under this rule.

5. Economic and technological feasibility: Some providers may be required to implement modest modifications to their Medicaid billing system to accommodate the new procedure codes being implemented. For other providers, their current system will already accommodate these changes.

6. Minimizing adverse impact: These regulations are designed to minimize adverse impacts on clinic operators by facilitating compliance with federal Medicaid laws and by increasing consistency with current private insurance/managed care and Medicaid billing practices. Additionally the new system will be financially phased in over several years to give providers time to adapt.

7. Small business and local government participation: Clinic restructuring and the development of this proposed rulemaking has taken place over a two-year period of time. During this time, to engage the stakeholder community, OMH established a Clinic Restructuring Advisory Workgroup consisting of a broadly representative range of local government officials, mental health providers, and mental health advocates. The workgroup met approximately 40 times and involved the active participation and input of 14 stakeholder groups and 55 stakeholders.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: The proposed rulemaking will have statewide applicability.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There will be no additional recordkeeping or compliance requirements as a result of this rulemaking. Professional services may be required for some providers to comply with new billing provisions. It is expected that such costs, if any, will be modest and time limited.

3. Costs: Costs are impossible to quantify, since the impact will vary by provider. For some providers, there may be a modest and time limited cost associated with modification of the Medicaid billing system to accommodate the new procedure codes being implemented. For other providers, their current system will already accommodate these changes. Any increased costs associated with this rule will be more than offset by the increase in rates for rural providers that will be established.

4. Minimizing adverse impact: The Medicaid base rate for rural providers will be increased from \$63.55 to approximately double the current rate. Additionally, the Office of Mental Health (OMH) has held several trainings and webinars to prepare stakeholders for the transition. OMH has also released a projection model to enable providers to plan their financial and programmatic transitions. OMH has done several trainings around the State to assist providers in understanding and using this tool.

5. Rural area participation: Clinic restructuring and the development of this proposed rulemaking has taken place over a two-year period of time. During this time, to engage the stakeholder community, OMH established a Clinic Restructuring Advisory Workgroup consisting of a broadly representative range of local government officials, mental health providers, and mental health advocates, including representation by numerous individuals from rural areas. The workgroup met approximately 40 times and involved the active participation and input of 14 stakeholder groups and 55 stakeholders.

**Job Impact Statement**

A Job Impact Statement is not submitted with this notice because the purpose of rulemaking is to establish an improved mental health delivery system and a more equitable system of financing. There will be no adverse impact on jobs and employment opportunities as a result of this rulemaking.

---



---

## Office of Mental Retardation and Developmental Disabilities

---



---

### NOTICE OF ADOPTION

#### Appeals Process for Certain Disqualified Individuals with Developmental Disabilities Who Wish to Purchase or Possess a Firearm

**I.D. No.** MRD-01-10-00007-A

**Filing No.** 206

**Filing Date:** 2010-03-02

**Effective Date:** 2010-03-17

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

**Action taken:** Addition of Part 643 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.09(b) and (f)

**Subject:** Appeals process for certain disqualified individuals with developmental disabilities who wish to purchase or possess a firearm.

**Purpose:** To establish a process so a person who is disqualified from being able to purchase a firearm can appeal the disqualification.

**Text of final rule:** 14 NYCRR is amended by the addition of a new Part 643 as follows:

PART 643

CERTIFICATE OF RELIEF FROM DISABILITIES (PROHIBITIONS)  
RELATED TO FIREARMS POSSESSION

(Statutory authority: Mental Hygiene Law Sections 13.09(b) and 13.09(f))

*Section 643.1 Background and intent.*

(a) The federal Brady Handgun Violence Prevention Act of 1993 ("Brady Act"), as amended, among other provisions, prohibits any person from selling or otherwise disposing of any firearm or ammunition to any person who has been involuntarily "committed to a mental institution" (18 U.S.C. Section 922(d)(4)) and further prohibits any person who has been involuntarily "committed to a mental institution" from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce (18 U.S.C. Section 922(g)(4)).

(b) Under the federal NICS Improvement Amendments Act of 2007, Public Law 110-180, Section 105, the Brady Act (18 U.S.C. Sec. 922 et seq.) was amended to mandate that states must report certain persons disqualified from receiving or possessing firearms to the National Instant Criminal Background Check System (NICS). Upon being contacted by a federal firearm licensee prior to transferring a firearm to an unlicensed person, NICS will provide information on whether a person is prohibited from receiving or possessing a firearm under state or federal law. NICS contains records concerning certain events, such as criminal convictions and mental health adjudications and findings that may disqualify a person from purchasing a firearm. The 2007 amendments also require the establishment of a "certificate of relief from disabilities" process on both the federal and state levels to permit a person who has been or may be disqualified from possessing a firearm pursuant to 18 U.S.C. Sections 922(d)(4) and (g)(4) to petition for relief from that disability.

(c) Section 13.09(f) of the Mental Hygiene Law authorizes the Office of Mental Retardation and Developmental Disabilities (OMRDD), in cooperation with the NYS Unified Court System and other state agencies, to collect, retain, modify or transmit data or records for inclusion in NICS for the purpose of responding to NICS queries regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 U.S.C. 921(a)(3). The records which OMRDD is authorized by law to collect, retain, modify, or transmit, include information identifying persons who have been involuntarily committed to an OMRDD facility pursuant to Article 15 of the Mental Hygiene Law, Article 730 or Section 330.20 of the Criminal Procedure Law, or Sections 322.2 or 353.4 of the Family Court Act. In accordance with the above-referenced federal law, Mental Hygiene Law Section 13.09(f) also requires OMRDD to promulgate regulations establishing a "certificate of relief from disabilities" process for those persons whose records were provided to the Division of Criminal Justice Services or the Federal Bureau of Investigation by OMRDD pursuant to Mental Hygiene Law Section 13.09(f), and who have been or may be disqualified from purchasing and/or possessing a firearm pursuant to 18 U.S.C. Sections 922(d)(4) and (g)(4).

(d) The purpose of these regulations is to establish the required administrative "certificate of relief from disabilities" process for persons whose records were submitted to NICS by OMRDD in accordance with Section 13.09(f) of the Mental Hygiene Law. Such relief will be based on a determination of whether the person's record and reputation are such that he/she will not be likely to act in a manner dangerous to public safety and where granting the relief would not be contrary to the public interest.

*Section 643.2 Applicability.*

This Part applies to any person who has been or may be disqualified from possessing a firearm pursuant to 18 USC Sections 922(d)(4) and (g)(4), due to being involuntarily committed to an OMRDD facility pursuant to Article 15 of the Mental Hygiene Law, or Article 730 or Section 330.20 of the Criminal Procedure Law, or Sections 322.2 or 353.4 of the Family Court Act and whose records were submitted to NICS by OMRDD in accordance with Section 13.09(f) of the Mental Hygiene Law.

*Section 643.3 Process.*

(a) Request for relief.

(1) An individual who has been or may be disqualified from attempting to purchase or otherwise possess a firearm in accordance with the provisions of Section 13.09(f) of the Mental Hygiene Law and whose records were submitted to NICS by OMRDD, may request administrative review by OMRDD to have his or her civil rights restored for such limited purpose.

(2) A request for relief shall be made on forms developed by OMRDD, which shall be available on OMRDD's public web site. At a minimum, the forms shall require the applicant to answer all of the following questions under penalty of perjury:

(i) Is the applicant under indictment for, or ever been convicted of, a crime punishable by imprisonment for more than one year?

- (ii) Is the applicant a fugitive from justice?
- (iii) Is the applicant an unlawful user of, or is addicted to, any controlled substance?
- (iv) Has the applicant been adjudicated as having a mental disability or committed to a mental institution, including but not limited to involuntary commitment to an OMRDD facility (pursuant to Article 15 of the Mental Hygiene Law, or Article 730 or Section 330.20 of the Criminal Procedure Law, or Sections 322.2 or 353.4 of the Family Court Act)? (Note: "adjudicated as having a mental disability" has the same meaning as the term "adjudicated as a mental defective" is defined in 27 C.F.R. 478.11. "Committed to a mental institution" has the same meaning as the term is defined in the cited federal regulation.)
- (v) Is the applicant an illegal alien, or has he/she been admitted to the United States under a nonimmigrant visa?
- (vi) Was the applicant discharged from the U.S. Armed Forces under dishonorable conditions?
- (vii) Has the applicant renounced U.S. citizenship?
- (viii) Is the applicant subject or ever been subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child?
- (ix) Has the applicant been convicted in any court of a misdemeanor crime of domestic violence?
- (3) In addition to the forms provided, the applicant shall be required to submit further information in support of the request for relief. The information must include, but is not limited to:
- (i) true and certified copies of medical/clinical records detailing the applicant's psychiatric and/or intellectual or developmental disability history, which shall include records pertaining to the involuntary commitment to an OMRDD facility, which is the subject of the request for relief;
- (ii) true and certified copies of medical/clinical records from all of the applicant's current treatment and service providers, if the applicant is receiving treatment or services;
- (iii) a true and certified copy of all criminal history information maintained on file at the New York State Division of Criminal Justice Services and the Federal Bureau of Investigation pertaining to the applicant, or a copy of a response from such Division and Bureau indicating that there is no criminal history information on file;
- (iv) notarized letters of reference from current and past employers, family members or personal friends, which may include affidavits from character witnesses or the applicant, or other character evidence;
- (v) any further information pertinent to the determination specifically requested by OMRDD. Such documents requested by OMRDD shall be certified copies of original documents.
- (4) The applicant must provide a psychiatric evaluation performed no earlier than 90 calendar days from the date the request for relief was submitted to OMRDD, conducted by a qualified psychiatrist as defined in Section 9.01 of the Mental Hygiene Law. The evaluation must include an opinion, and a basis for that opinion, as to whether or not the applicant's record and reputation are such that the applicant will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief to allow for firearms possession would be contrary to the public interest.
- (5) The applicant must also provide an evaluation by a licensed psychologist which includes current IQ and adaptive behavior assessment.
- (6) OMRDD reserves the right to request that the applicant undergo a clinical evaluation and risk assessment as determined by the Commissioner or his/her designee(s). The evaluation must be performed 45 calendar days from the date OMRDD requests the evaluation, unless OMRDD allows an extension of time.
- (7) The request for relief must include a valid authorization form permitting OMRDD to obtain and/or review health and other information from any health, mental health, alcohol/substance abuse providers, or providers of services for persons with developmental disabilities with respect to care and services provided prior to the date of the application, for the purposes of reviewing the application for relief. Such authorization must comply with applicable federal or state laws governing the privacy of health information, including but not limited to, as relevant, 45 CFR Parts 160 and 164, 42 CFR Part 2, Public Health Law Section 17 and Article 27-F, and Mental Hygiene Law Section 33.13.
- (8) It is the responsibility of the applicant to ensure that all required information accompanies the request for relief at the time it is submitted to OMRDD. Unless specifically requested by OMRDD, information provided after receipt by OMRDD of the initial request for relief will not be considered. Information specifically requested by OMRDD must be received by OMRDD within 60 days of the date requested in order for it to be considered. Failure to meet this time frame will result in a denial of the certificate of relief.

(b) Scope of review.

(1) The Commissioner or his/her designee(s) shall perform an administrative review of the request for relief, which shall include a review of all information submitted by the applicant in accordance with subdivision (a) of this Section. The person(s) who conducts the review will not be the individual(s) who gathered the information for the administrative request for relief.

(2) Failure of the applicant to provide required or requested information may be the sole basis for denial of the certificate of relief.

(3) The scope of the review shall be to determine whether the applicant will not be likely to act in a manner dangerous to public safety and granting the relief will not be contrary to the public interest.

(c) Decision.

(1) After review of the application in accordance with subdivision (b) of this section, the Commissioner or his/her designee(s) shall prepare a written determination, which shall include:

- (i) a summary of the information utilized in reaching the decision;
- (ii) a summary of the applicant's criminal history (if any);
- (iii) a summary of the psychiatric evaluation prepared to support the request for relief;
- (iv) a summary of the applicant's mental health and intellectual/developmental disabilities history;
- (v) a summary of the circumstances surrounding the firearms disability imposed by 18 USC Sections 922(d)(4) and (g)(4);
- (vi) an opinion as to whether or not the applicant's record and reputation are such that the applicant will or will not be likely to act in a manner dangerous to public safety and whether or not the granting of the relief would be contrary to the public interest; and
- (vii) a determination as to whether or not the relief is granted.

(2) OMRDD shall provide a copy of the written determination to the applicant without undue delay. In addition to a copy of the written determination:

- (i) if the relief is granted:
- (a) the applicant must be provided with written notice that while the certificate of relief removes the disability from Federal firearms prohibitions (disabilities) imposed under 18 U.S.C. Sections 922(d)(4) and (g)(4), the determination does not otherwise qualify the applicant to purchase or possess a firearm, and does not fulfill the requirements of the background check pursuant to the Brady Handgun Violence Prevention Act of 1993 (Pub. L. 103-159), as amended; and
- (b) OMRDD must notify NICS that the certificate of relief has been granted; or
- (ii) if the relief is denied:
- (a) the applicant must be notified of the right to have the decision reviewed in accordance with applicable State law; and
- (b) OMRDD must further advise that the applicant cannot apply again for a request for relief until a year after the date of the written determination to deny the relief requested.

Section 643.4 Records.

OMRDD, on being made aware that the basis under which a record was made available by OMRDD to NICS does not apply or no longer applies, shall, as soon as practicable:

- (a) update, correct, modify or remove the record from any database that the Federal or State government maintains and makes available to NICS, consistent with the rules pertaining to that database; and
- (b) notify the United States Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 643.3(c)(1).

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Dir., Regulatory Affairs Unit, OMRDD, 44 Holland Ave., Albany, NY 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**

The proposed regulation contained a requirement in paragraph 643.3(a)(4) that the applicant submit a psychiatric evaluation to OMRDD with the petition for relief from disabilities. A subsequent provision in subparagraph 643.3(c)(1)(iii) referenced the psychiatric evaluation and included the phrase, "if any." Since the psychiatric evaluation is required, the phrase is unnecessary and is deleted in the final regulations.

This minor technical change does not necessitate revision to the previously published Regulatory Impact Statement.

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

The proposed regulation contained a requirement in paragraph 643.3(a)(4) that the applicant submit a psychiatric evaluation to OMRDD with the petition for relief from disabilities. A subsequent provision in subparagraph 643.3(c)(1)(iii) referenced the psychiatric evaluation and included the phrase, "if any." Since the psychiatric evaluation is required, the phrase is unnecessary and is deleted in the final regulations.

This minor technical change does not necessitate revision to the previously published statement regarding the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

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

The proposed regulation contained a requirement in paragraph 643.3(a)(4) that the applicant submit a psychiatric evaluation to OMRDD with the petition for relief from disabilities. A subsequent provision in subparagraph 643.3(c)(1)(iii) referenced the psychiatric evaluation and included the phrase, "if any." Since the psychiatric evaluation is required, the phrase is unnecessary and is deleted in the final regulations.

This minor technical change does not necessitate revision to the previously published statement regarding the Rural Area Flexibility Analysis.

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

The proposed regulation contained a requirement in paragraph 643.3(a)(4) that the applicant submit a psychiatric evaluation to OMRDD with the petition for relief from disabilities. A subsequent provision in subparagraph 643.3(c)(1)(iii) referenced the psychiatric evaluation and included the phrase, "if any." Since the psychiatric evaluation is required, the phrase is unnecessary and is deleted in the final regulations.

This minor technical change does not necessitate revision to the previously published statement regarding the Job Impact Statement.

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

OMRDD received one letter of comment from a state legislator regarding the addition of Part 643 to Title 14 NYCRR. The comments and responses are as follows:

**Comment:** The writer supports the requirement that the applicant for a certificate of relief from disabilities must submit a psychiatric evaluation to OMRDD.

**Response:** OMRDD appreciates the writer's support and has maintained this requirement in the final regulations.

**Issue:** The writer suggested that the rule be amended to include a provision for notification of the licensing officer responsible for issuing any license to possess a firearm in the appropriate jurisdiction or notification of some other person if appropriate.

**Response:** OMRDD agrees that notification to licensing officers may be beneficial to evaluating a petition for a certificate of relief from disabilities in many instances. OMRDD therefore plans to incorporate this suggestion in the implementation of the process for granting certificates, and will make such requests in appropriate circumstances. However, OMRDD does not consider that it is necessary to amend the regulations in order to accommodate this suggestion and, therefore, has not changed the regulation in this regard. Under Section 643.3(a)(3)(v) of the regulations, OMRDD has the authority to require applicants to submit "any further information pertinent to the determination specifically requested by OMRDD," including any information which relates to the determination of whether the applicant for gun ownership or possession will or will not be likely to act in a manner dangerous to public safety or would be contrary to the public interest. In those instances in which such information could be potentially helpful in making a final determination on the petition, such information could include verification that the applicant has notified local licensing officers or other persons of the petition for a certificate of relief. There are certain instances in which it would not be appropriate or necessary to require such notification, such as those instances in which an applicant is misidentified within the NICS system, and who, in an effort to purchase/own a firearm, must petition

for relief. Therefore, OMRDD will not require applicants to make such notifications in every instance.

**Comment:** The writer observed that a reference to the required psychiatric evaluation includes the phrase, "if any," and suggests the removal of the phrase from the regulation as it is unnecessary and may be confusing.

**Response:** OMRDD agrees and has removed the phrase in the final regulations.

---



---

## Office of Parks, Recreation and Historic Preservation

---



---

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

#### **Access Pass - a Program That Waives Base Patron Fees for New York State Residents with Certain Disabilities**

**I.D. No.** PKR-11-10-00012-P

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

**Proposed Action:** Repeal of Part 382 and addition of new Part 382 to Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, sections 3.09(8), 13.15(1), (3) and 13.19

**Subject:** The Access Pass - a program that waives base patron fees for New York State residents with certain disabilities.

**Purpose:** To conform the Access Pass Program to statutory requirements in PRHPL Section 13.19 and reduce its annual cost.

**Text of proposed rule:** Part 382 of 9 NYCRR is repealed and a new Part 382 is added as follows:

#### Part 382 ACCESS PASS

##### *Section 382.1 Definitions.*

*Whenever used in this Part:*

(a) *Access Pass shall mean the authorization issued under this Part to an individual who qualifies for free use of a park facility under the jurisdiction of the Office of Parks, Recreation and Historic Preservation or the Department of Environmental Conservation.*

(b) *Commissioner shall mean the commissioner of Parks, Recreation and Historic Preservation.*

(c) *Department shall mean the Department of Environmental Conservation.*

(d) *Free use shall mean waiver of the base fees (excluding amenities) assessed by the office or the department at a park facility.*

(e) *Office shall mean the Office of Parks, Recreation and Historic Preservation.*

(f) *Park facility shall mean a campsite, cabin, park, other public place of recreation or historic site under the jurisdiction of the office or the department.*

(g) *Person who has a mental disability shall mean a person who is eligible to receive services from a program licensed, operated, certified or funded by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.*

(h) *Person who is blind shall mean a person who has a central visual acuity of 20/200 or less or limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees in the better eye with the use of a correcting lens.*

(i) *Person who is deaf shall mean a person with profound hearing loss causing the person to primarily rely on visual communications (sign language, lip reading, gestures) and assistive technology.*

(j) *Person who is nonambulatory shall mean a person who is permanently disabled, requires use of a wheelchair and who has severely limited mobility.*

(k) *Person who has an amputated arm or leg shall mean a person who has a fully or partially amputated or congenitally absent arm or leg, excluding the extremities of the hands and feet.*

(l) *Physician's certification shall mean a physician's attestation on a*

form provided by the office that the applicant is a person who has an amputated arm or leg or a person who is blind, deaf or nonambulatory. The certification must be made within six months of the application date by a physician currently practicing in and licensed to practice by New York State. The certification must accompany the first application, and may be required to accompany subsequent renewal applications.

(m) Resident shall mean a person whose primary residence or whose legal guardian's primary residence is located within New York State as identified by copies of the following documents that must accompany the application: the New York State tax return (IT 201) for the preceding tax year or a valid New York State driver's license or a New York State non-driver's identification card that show the person's name and a New York State address.

(n) Veteran who has a disability shall mean any veteran of the wars of the United States with a 40 percent or greater disability as certified by the United States Veterans Administration, or who has at any time been awarded by the Federal government an allowance towards the purchase of an automobile or who is eligible for such an award.

#### Section 382.2 Free use of park facilities.

(a) Any resident of the State who is (1) a person who is blind, deaf, or nonambulatory; (2) a person who has an amputated arm or leg; (3) a veteran who has a disability; or (4) a person who has a mental disability shall be entitled to receive an Access Pass from the office that shall provide for free use of a park facility defined in this Part upon the same terms and conditions as apply to the general public.

(b) Subdivision (a) of this section shall not apply to any park facility operated by a concessionaire pursuant to a license agreement with the office or the department, nor shall it be interpreted to require the waiver of any fee charged by an agent of the office or the department for services rendered to the public.

(c) The commissioner shall create a written application for a person to request an Access Pass, which shall be available on line on the office's public website (<http://www.nysparks.state.ny.us>), and at all regional park headquarters and such other places as the commissioner may designate. The commissioner shall require a physician's certification and any other proof necessary to establish the eligibility of any person to receive an Access Pass. No person shall be deemed eligible to receive or shall receive free use of a park facility defined in this Part prior to receiving an Access Pass. No person who has been issued an Access Pass shall make it available for use by any other person.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Building 1, 19th Floor, Albany, New York 12238, (518) 486-2921, email: [rulemaking@oprhp.state.ny.us](mailto:rulemaking@oprhp.state.ny.us)

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

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

#### Regulatory Impact Statement

This Regulatory Impact Statement (RIS) describes and analyzes proposed changes to 9 NYCRR Part 382 (rule) – known as the “Access Pass” program that waives base patron fees for New York State residents with certain disabilities who use campsites, cabins, parks, other public places of recreation or historic sites under the jurisdiction of the Office of Parks, Recreation and Historic Preservation (State Parks or OPRHP) or the Department of Environmental Conservation (DEC).

##### 1. Statutory Authority:

Section 13.19 of the Parks, Recreation and Historic Preservation Law (PRHPL) provides as follows:

§ 13.19 Free use of campsites. Notwithstanding the provisions of any other law, any person who is blind, non-ambulatory, or an amputee or any veteran of the wars of the United States, who has at any time been awarded by the federal government an allowance towards the purchase of an automobile or is eligible for such an award shall be permitted to use any of the public campsites, parks and other public places of recreation in this state, upon the same terms and conditions as apply to the general public, but without the payment of any fees or other charges for the use of such campsites, parks and other public places of recreation.

Additionally, the Commissioner of State Parks has general authority to repeal and adopt regulations under PRHPL § 3.09(8). State Parks also has general authority to adopt fees under PRHPL § 13.15(1), and to decrease fees with the director of the budget's approval under PRHPL § 13.15(3).

##### 2. Legislative Objectives:

In the original enactment of PRHPL § 13.19 and the first amendments in the early 1970s, the State Legislature provided free use of state campsites and parks to veterans who were amputees or who had received or were eligible for a federal allowance to purchase a car.

In 1977, the Legislature extended the benefit to non-veterans who are blind, non-ambulatory or amputees.

State Parks created the Access Pass to implement PRHPL § 13.19. The Agency adopted the existing Part 382 regulation in 1978 and extended the benefit to other groups of people with disabilities that are not listed in § 13.19: recipients of social security disability or supplemental security income; persons with developmental disabilities; persons who are deaf; and persons who are semi-ambulatory or require assistance for walking.

The rule repeals the existing regulation and proposes a new Part 382 that removes two of the eight categories that currently receive the waiver of base fees under the existing regulation: a) individuals who are semi-ambulatory; and b) individuals receiving social security disability or supplemental security income.

The proposed rule also incorporates “individuals first” language throughout (as required by Chapter 455 of the Laws of 2007) and makes technical revisions to some of the definitions of categories of individuals with disabilities.

This rule recognizes advances in State policy since the original Access Pass regulation was adopted more than thirty years ago. Today, New York's focus is not on providing free access to individuals with disabilities, but rather ensuring equal access. Equal access means that accommodations are implemented to assure, to the greatest extent possible, that people with disabilities can participate in the services, programs and activities enjoyed by non-disabled users of public facilities. Over the past several decades, State Parks and DEC have made significant capital investments and have taken advantage of technological innovation, consistent with the Americans with Disabilities Act, to facilitate equal access to their recreational facilities.

Under the rule the Access Pass program would continue to provide free access to individuals who are blind, deaf, non-ambulatory, amputees, disabled veterans or who have a mental disability.

##### 3. Needs and Benefits:

The proposed new Part 382 is required and appropriate for the following reasons:

A. The existing regulation is more than thirty years old. OPRHP has concluded that Part 382 should be revised to reflect changed circumstances since its original adoption three decades ago.

B. Social Security Disability (SSD) is not included in the statutory list of categories eligible to receive free access to park facilities. SSD is a broad federal occupational designation that relates to individuals' abilities to function in the workplace; it is too broad a category for identifying individuals who qualify for the waiver of base fees at campsites, cabins, parks and other recreational facilities under the existing State law. To the extent that individuals previously qualifying under the Social Security Disability criteria have one of the six specific disabilities retained in the new rule, they remain eligible for an Access Pass under those specific categories.

C. Supplemental Security Income (SSI) also is not included in the statutory list of categories of individuals eligible to receive a waiver of base fees at park facilities. SSI provides support to individuals with limited income and resources who are disabled, blind, or age 65 or older. To the extent that individuals previously qualifying under the SSI criteria have one of the six specific disabilities retained in the new rule they remain eligible for an Access Pass under those specific categories. Also, individuals age 62 or older currently qualify for free entrance on weekdays to state parks and historic sites under OPRHP's existing Golden Park Program. The Golden Park Program, however, does not provide entrance on weekends, nor does it provide a waiver of base fees and charges at campsites or cabins.

D. Individuals who are semi-ambulatory require a cane, crutches, walker, leg braces, joint replacement, or other mobility aid. Over the past several decades, OPRHP has made significant capital investments to improve access to state parks pursuant to the Americans with Disabilities Act. These improvements have greatly improved access for people who are semi-ambulatory.

E. Statewide, current Access Pass holders play an average of 57,000 rounds of free golf in state parks each year, which equates to \$1.55 million annually. While individuals with serious disabilities can and do play golf, the sheer number of free golf rounds indicates potential abuse of the current system and necessitated a more in-depth review of the underlying rationale and statutory basis for the scope of the current Access Pass program.

F. The State's fiscal situation requires State Parks to absorb large reductions to our annual operating budget, requiring the Agency to either close or implement public service reductions at 100 state parks and historic sites across the state. To mitigate service reductions, the Agency is continually reviewing the fees charged for all park amenities, and is seeking ways to reduce the cost of delivering public services – including this proposed rule that reduces the annual cost of the Access Pass program.

OPRHP's enacted FY2009-10 budget includes a \$1 million reduction in

the cost of the Access Pass program. If we fail to realize these savings, the Agency will need to further cut public services in our facilities to make up the \$1 million shortfall.

#### 4. Costs:

Approximately 34,000 individuals currently hold an Access Pass. The two discretionary eligibility categories OPRHP proposes to eliminate from the Access Pass program would affect recipients of Social Security Disability/SSI and individuals who are semi-ambulatory. These groups account for 65% of all Access Pass holders.

Individual potential costs to "regulated" parties are the patron fees that individuals who no longer qualify for the waiver will be required to pay if they choose to continue visiting State recreational facilities without the Access Pass (note: State Parks is currently advancing a separate rule-making that includes the increased fees used below to calculate costs and savings). They break down as follows:

Campsites – Base fees are \$13-15 per campsite per night.

Cabins – Base fees range from \$145 to \$255 per cabin per week.

Golf – Fees range from \$7 to \$60 per person for 18-hole courses, and from \$11 to \$28 for 9-hole courses.

Park Entrance Vehicle Use Fees – Day use fees are assessed per vehicle, ranging from \$6 to \$8 dollars per car depending on the recreational amenities offered at a particular facility.

State Park fees are modest and would continue to provide affordable outdoor recreation opportunities to all New York residents.

Currently, Access Pass holders receive approximately \$3,000,000 in waived fees and charges for use of state recreational facilities, as follows:

Camping = \$1,085,000

OPRHP campsites \$ 484,703

OPRHP cabins \$ 251,432

DEC campsites \$ 350,603

Access Pass users do not pay the base rate portion of the nightly campsite fee nor the weekly cabin fee.

Golf = \$1,550,000

Golf course fees are assessed and reported per round of golf, per individual. New York State resident fees range from \$7-\$60 for 18-hole courses and \$11-\$28 for 9-hole courses including variations for weekend/weekday and senior/junior rates. Total annual number of Access Pass user rounds equals 57,435 (43,245 for 18-hole usage + 14,190 for 9-hole usage). That figure was multiplied by an average fee to determine the estimated value.

Park Entrance Vehicle Use Fees = \$395,000

(\$314,385 OPRHP + \$80,019 DEC)

Entrance fees for day use of State Parks and boat launches are \$6 to \$8 per vehicle. Those figures were multiplied by the entrance fees for each facility to obtain the estimated value.

#### Conclusion

Approximately 65% of existing Access Pass holders qualify under the two categories proposed for elimination. Some of these individuals may be eligible for the Access Pass under one of the six remaining categories or they will be eligible for the Golden Park Program that provides individuals age 62 and above with free park entrance on weekdays. A conservative estimate, therefore, is that the State could realize \$1 million to \$1.5 million in increased revenue from the proposed rule, which is roughly 50% of the \$3 million in waived fees under the current Access Pass program. This assumes that many former Access Pass holders would continue to visit State Parks, and now would pay the required fees, and that new patrons would utilize camping, cabin rentals, and golf tee times that previously had been reserved by Access Pass holders no longer eligible for the program.

#### 5. Local Government Mandates:

The rule would not impose any additional program, service, duty or responsibility beyond those imposed by State and federal statutes.

#### 6. Paperwork:

This rule does not create any new paperwork requirements. Eligible applicants would continue to submit applications on forms supplied by State Parks and would continue to be required to submit supplemental material.

#### 7. Duplication:

The rule does not duplicate, overlap or conflict with State and federal requirements.

#### 8. Alternatives:

State Parks provided a draft version of the Access Pass rule to five involved state agencies and nine non-profit organizations active in disability and parks issues.

As a result of the informal input from many of these organizations, State Parks changed the rule to use "people first" language throughout as required by Chapter 455 of the Laws of 2007, and updated the definitions for categories of persons with disabilities. OPRHP also accepted the recommendation to retain Access Pass eligibility for persons receiving services through OMH and OMRDD.

OPRHP rejected recommendations to continue to offer the Access Pass

to individuals eligible for SSD and/or SSI because including these categories does not meet the legislative objectives of PRHPL § 13.19. State Parks also rejected revising the fees structure to assess differential fees depending on the nature of a person's disability because this approach also does not meet the legislative objectives of PRHPL § 13.19.

Finally, OPRHP considered but rejected re-defining the statutory phrase "other public places of recreation" to exclude cabin and golf course usage from the Access Pass program. At this time, State Parks' goal is to continue to maintain the range of public recreation programs available under the Access Pass within the fiscal constraints facing the agency.

#### 9. Federal Standards:

The rule does not exceed any minimum standards of the federal government for the same or similar subject areas and is necessary to conform to the controlling statute.

#### 10. Compliance Schedule:

The changes to the Access Pass program will become effective immediately upon adoption of the regulation. OPRHP proposes to implement the changes in advance of the 2010 summer operating season.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

#### Rural Area Flexibility Analysis

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

#### Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rule will not have an impact on jobs and employment opportunities.

---



---

## Public Service Commission

---



---

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

#### Water Rates and Charges

I.D. No. PSC-11-10-00005-P

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

**Proposed Action:** On October 27, 2009, Garrow Water Works Company, Inc. (Garrow) filed a petition requesting authority to increase its annual revenues by approximately \$17,279 or 200% to become effective June 1, 2010.

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

**Subject:** Water rates and charges.

**Purpose:** For approval to increase Garrow Water Works Company, Inc.'s annual revenues by about \$17,279 or 200%.

**Substance of proposed rule:** On October 27, 2009, Garrow Water Works Company, Inc. (Garrow or the company) filed a petition requesting the Public Service Commission to approve a financing agreement of approximately \$150,000 with TD Bank, NA, in order to make water system improvements, and to institute a customer surcharge to support the financing. The customer surcharge will vary between \$300 and \$400 depending on whether the loan to finance the improvements will be over a 10 or 15 year period.

Subsequently, on February 22, 2010, and as part of the ongoing case, Garrow filed, to become effective on June 1, 2010, tariff amendments (Leaf No. 10, Revision 1, Leaf No. 12, Revision 1 and Leaf No. 13, Revision 1) to its electronic tariff schedule P.S.C. No. 1 – Water. The filed amendments reflects new rates to produce additional annual revenues of about \$17,279 or 200%, a decrease in its Service Classification No. 2 rate and new restoration of service charges. The company provides unmetered water service to approximately 47 residential customers, located in the Town of Schuyler Falls, Clinton County. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under Commission Documents –

Tariffs. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(09-W-0775SP2)

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

**Interconnection of the Networks between Verizon New York Inc. and MetTel for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-11-10-00006-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a modification filed by Verizon New York Inc. and Manhattan Telecommunications Corp. d/b/a MetTel, to revise the Interconnection Agreement effective on March 15, 2008.

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

**Subject:** Interconnection of the networks between Verizon New York Inc. and MetTel for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon New York Inc. and MetTel.

**Substance of proposed rule:** The Commission approved an Interconnection Agreement between Verizon New York Inc. and Manhattan Telecommunications Corporation d/b/a MetTel in March 2008. The companies subsequently have jointly filed amendments to clarify the line acquisition incentive. The Commission is considering these changes.

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

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

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

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

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

(00-01371SP5)

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

**Interconnection of the Networks between PAETEC and Empire Telephone Corp. for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-11-10-00007-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a

proposal filed by PAETEC Communications, Inc. for approval of a Mutual Traffic Exchange Agreement with Empire Telephone Corp., executed on January 5, 2010.

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

**Subject:** Interconnection of the networks between PAETEC and Empire Telephone Corp. for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between PAETEC and Empire Telephone Corp.

**Substance of proposed rule:** PAETEC Communications, Inc. and Empire Telephone Corp. have reached a negotiated agreement whereby PAETEC Communications, Inc. and Empire Telephone Corp. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

(10-00118SP1)

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

**Interconnection of the Networks between Verizon and Smart Call, LLC for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-11-10-00008-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with Smart Call, LLC, executed on December 15, 2009.

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

**Subject:** Interconnection of the networks between Verizon and Smart Call, LLC for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon and Smart Call, LLC.

**Substance of proposed rule:** Verizon New York Inc. and Smart Call, LLC have reached a negotiated agreement whereby Verizon New York Inc. and Smart Call, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

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

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

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

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

(10-00147SP1)

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

**AES ES Westover, LLC's Proposed \$17 Million Energy Storage System Financing and Its Petition for Lightened Regulation**

**I.D. No.** PSC-11-10-00009-P

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

**Proposed Action:** The Commission is considering a petition from AES ES Westover, LLC for a lightened regulatory regime, and approval of financing totaling not more than \$17 million to fund the second phase of a 20 MW energy storage system in Union and Johnson City, NY.

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

**Subject:** AES ES Westover, LLC's proposed \$17 million energy storage system financing and its petition for lightened regulation.

**Purpose:** Consideration of AES ES Westover, LLC's petition for approval of a \$17 million proposed financing and lightened regulation.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering a petition from AES ES Westover, LLC (the Company). The Company requests lightened regulation for a 20 MW energy storage system utilizing advanced battery technology (the Project). The Project is to be located on the site of an existing electric generating facility that is owned by an affiliate of the Company in the Town of Union and Johnson City, New York. Additionally, the Company requests approval of \$17 million in financing for the second phase of the Project. The Commission may grant, deny or modify, in whole or in part, the petition filed by the Company, and may also consider related matters.

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

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

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

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

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

(10-E-0042SP1)

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

**Water Rates and Charges**

**I.D. No.** PSC-11-10-00010-P

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

**Proposed Action:** On March 1, Crystal Water Supply Co. (Crystal) filed a petition requesting authority to increase its annual revenues by approximately \$42,000 or 106% to become effective July 1, 2010.

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

**Subject:** Water rates and charges.

**Purpose:** For approval to increase Crystal Water Supply Co.'s annual revenues by about \$42,000 or 106%.

**Substance of proposed rule:** On March 1, 2010, Crystal Water Supply Co. (Crystal or the company) filed, to become effective on July 1, 2010, tariff amendments (Leaf No. 12, Revision 1, and Capital Improvement Surcharge Statement, Statement No. 1) to its electronic tariff schedule P.S.C. No. 1 – Water. The filed amendments reflect new rates to produce additional annual revenues of about \$42,000 or 106% and the establishment of a one-time \$50,000 capital improvement surcharge. The Capital Improvement Surcharge would cover the partial cost of improvements

presently mandated by the Sullivan County Department of Health. It would commence with the customer billing of July 1, 2010, by means of a one-time surcharge of \$333.33 per customer and would end when the amount of the surcharge is collected. The company provides unmetered water service to approximately 150 residential customers, located in the Town of Thompson, Sullivan County. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under Commission Documents – Tariffs. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(10-W-0094SP1)

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

**Niagara Mohawk's EEPS "Fast Track" Residential Electric HVAC Program**

**I.D. No.** PSC-11-10-00011-P

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

**Proposed Action:** The Commission is considering a petition for rehearing dated February 19, 2010 regarding Niagara Mohawk Power Corporation's (Niagara Mohawk) Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Residential Electric HVAC Program.

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

**Subject:** Niagara Mohawk's EEPS "Fast Track" Residential Electric HVAC Program.

**Purpose:** To encourage cost effective electric energy conservation in the State.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action regarding the relief requested by Niagara Mohawk Power Corporation (Niagara Mohawk) in a Petition dated February 19, 2010 regarding the utility's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Residential Electric HVAC Program. Niagara Mohawk seeks rehearing of an order in Case 08-E-1014 entitled "Order Rejecting Niagara Mohawk Power Corporation's Proposed Residential High Efficiency Central Air Conditioning Program for 2010 and 2011" issued by the Public Service Commission on January 20, 2010.

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

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

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

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

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

(08-E-1014SP3)

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

**Orange and Rockland's EEPS "Fast Track" Residential Electric HVAC Program**

**I.D. No.** PSC-11-10-00013-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 petition for clarification or rehearing dated February 19, 2010 regarding Orange and Rockland Utilities, Inc.'s Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Residential Electric HVAC Program.

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

**Subject:** Orange and Rockland's EEPS "Fast Track" Residential Electric HVAC Program.

**Purpose:** To encourage cost effective electric energy conservation in the State.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action regarding the relief requested by Orange and Rockland Utilities, Inc. (O&R) in a Petition dated February 19, 2010 regarding the application of utility incentives to O&R's Energy Efficiency Portfolio Standard (EEPS) "Fast Track" Residential Electric HVAC Program. O&R seeks clarification, or in the alternative, rehearing of an order in Case 08-E-1003 entitled "Order Rejecting Orange and Rockland Utilities, Inc.'s Proposed Residential High Efficiency Central Air Conditioning Program for 2010 and 2011" issued by the Public Service Commission on January 20, 2010.

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

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

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

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

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

(08-E-1003SP3)

---

## Susquehanna River Basin Commission

---

### INFORMATION NOTICE

Notice of Actions Taken at December 17, 2009, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on December 17, 2009, in Lancaster, Pennsylvania, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: 1) approved and tabled certain water resources projects; 2) rescinded approval for a water resources project; 3) approved settlement involving a water resources project; 4) tabled a request for extension from Sunnyside Ethanol, LLC until its March 2010 meeting; 5) adopted a revised Regulatory Program Fee Schedule to take effect on January 1, 2010; and 6) amended its comprehensive plan. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: December 17, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net); or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-

2436; e-mail: [srichardson@srbc.net](mailto:srichardson@srbc.net). Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: 1) a report on Pennsylvania's current involvement in Marcellus Gas Drilling regulation and Chesapeake Bay clean-up by Pennsylvania Department of Environmental Protection Secretary John Hanger; 2) information on hydrologic conditions in the basin indicating a mostly normal status; 3) adoption of a resolution urging the U.S. Congress to provide adequate funding to the Susquehanna Flood Forecast & Warning System (SFFWS) for FY 2011; 4) adoption of a Water Resources Program for FY 2010/2011 along with a presentation by the Executive Director focusing on the Priority Management Area (PMA) of Coordination, Cooperation and Public Information; 5) adoption of a Low Flow Monitoring Plan designed to help the Commission follow low flow events occurring throughout the basin; 6) approval/ratification of several grants and contracts related to water resources management, approval of a contract for compensation and benefits review, and approval for deployment of the Remote Water Quality Monitoring Network project; and 7) acceptance of the Fiscal Year 2009 Annual Independent Audit Report. The Commission also heard counsel's report on legal matters affecting the Commission.

The Commission convened a public hearing and took the following actions:

**Public Hearing – Compliance Actions**

The Commission approved a settlement in lieu of civil penalties for the following project:

1. Tyco Electronics Corporation, Lickdale Facility - \$25,000

**Public Hearing – Projects Approved**

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River – Hicks), Great Bend Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.750 mgd.

2. Project Sponsor and Facility: East Resources, Inc. (Susquehanna River – Welles), Sheshequin Township, Bradford County, Pa. Surface water withdrawal of up to 0.850 mgd.

3. Project Sponsor and Facility: Eastern American Energy Corporation (West Branch Susquehanna River – Moore), Goshen Township, Clearfield County, Pa. Surface water withdrawal of up to 2.000 mgd.

4. Project Sponsor and Facility: Fortuna Energy Inc. (Fall Brook – Tioga State Forest C.O.P.), Ward Township, Tioga County, Pa. Surface water withdrawal of up to 0.999 mgd.

5. Project Sponsor and Facility: Fortuna Energy Inc. (Fellows Creek – Tioga State Forest C.O.P.), Ward Township, Tioga County, Pa. Surface water withdrawal of up to 0.999 mgd.

6. Project Sponsor and Facility: Fortuna Energy Inc. (Susquehanna River – Thrush), Sheshequin Township, Bradford County, Pa. Modification to increase surface water withdrawal from 0.250 mgd up to 2.000 mgd (Docket No. 20080909).

7. Project Sponsor and Facility: Montgomery Water and Sewer Authority, Clinton Township, Lycoming County, Pa. Groundwater withdrawal of up to 0.200 mgd from Well 2R.

8. Project Sponsor and Facility: Nissin Foods (USA) Co., Inc., East Hempfield Township, Lancaster County, Pa. Modification to increase consumptive water use from 0.090 mgd up to 0.150 mgd (Docket No. 20021021).

9. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek – Reichenbach), Lewis Township, Lycoming County, Pa. Surface water withdrawal of up to 1.500 mgd.

10. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek – Wascher), Lewis Township, Lycoming County, Pa. Surface water withdrawal of up to 1.500 mgd.

11. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek – Schaefer), McIntyre Township, Lycoming County, Pa. Surface water withdrawal of up to 1.500 mgd.

12. Project Sponsor and Facility: Sunbury Generation LP, Monroe Township and Shamokin Dam Borough, Snyder County, Pa. Modification for use of up to 0.100 mgd of the approved surface water withdrawal by natural gas companies (Docket No. 20081222).

**Public Hearing – Project Tabled**

1. Project Sponsor and Facility: Southwestern Energy Company (Lycoming Creek – Parent), McIntyre Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

**Public Hearing – Rescission of Project Approval**

1. Project Sponsor: Eastern American Energy Corporation. Pad ID: Whitetail Gun and Rod Club #1, ABR-20090418, Goshen Township, Clearfield County, Pa.

The Commission also authorized the executive director to hereafter rescind approvals granted under 18 CFR Section 806.22.

Public Hearing – Request for Extension from Sunnyside Ethanol, LLC  
 The Commission tabled until its March 2010 meeting a request from Sunnyside Ethanol, LLC (Docket No. 20061203), Curwensville Borough, Clearfield County, Pa., for a two-year extension of its three-year time limit to commence water use following Commission approval.

Public Hearing – Regulatory Program Fee Schedule  
 The Commission adopted a revised Regulatory Program Fee Schedule. The revisions adjust categorical fees, make format changes, and include a new compliance and monitoring fee table to apply only to projects approved or modified after December 31, 2009. Future revisions to the fee schedule will be made on a fiscal year basis.

Public Hearing – Comprehensive Plan Amendments  
 The Commission amended its comprehensive plan to include the newly adopted Water Resources Program (FY 2010/2011), the Low Flow Monitoring Plan, and all projects approved by the Commission during 2009. Future revisions to the comprehensive plan will be made on a fiscal year basis.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: February 24, 2010.

Stephanie L. Richardson

Secretary to the Commission

---



---

## 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-11-10-00004-E

**Filing No.** 204

**Filing Date:** 2010-03-01

**Effective Date:** 2010-03-01

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 initiative 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 May 29, 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, recordkeeping 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.