

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 Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Provision of the Health Benefit Plan for Active and Retired New York State Employees

I.D. No. CVS-50-11-00005-P

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

Proposed Action: Amendment of sections 73.3(b) and 73.12 of Title 4 NYCRR.

Statutory authority: Civil Service Law, sections 160(1), 161-a and 167(8)

Subject: Provision of the health benefit plan for active and retired New York State employees.

Purpose: To conform 4 NYCRR 73.12 with Chapter 491 of the Laws of 2011.

Text of proposed rule: RESOLVED, That the first paragraph of subdivision (b) of section 73.3 of Title 4 NYCRR is hereby amended to read as follows:

73.3(b) Rate of contribution.

The rate of contribution of New York State on account of the coverage of its employees, post retirees and their dependents shall be 100 percent of the charge on account of individual coverage and 75 percent of the charge on account of dependent coverage, except that for the [optional benefit plans] *Health Maintenance Organization options* the State's contribution shall not exceed the same dollar amount as is paid by the State under the basic benefit plan. *Effective October 1, 2011, for those employees employed in a title allocated or equated to salary grade 9 or below, the State's rate of contribution for such employees and their dependents enrolled in the Empire Plan or a Health Maintenance Organization shall*

be 88 percent of the charge on account of individual coverage and 73 percent of the charge on account of dependent coverage; provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan. For employees employed in a title allocated or equated to salary grade 10 or above, the State's rate of contribution for such employees and their dependents enrolled in the Empire Plan or a Health Maintenance Organization shall be 84 percent of the charge on account of individual coverage and 69 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan. Effective October 1, 2011, the rate of contribution on account of the coverage of post retirees shall be as follows:

(i) *for retirees who retired on or after January 1, 1983, and employees retiring prior to January 1, 2012, New York State shall contribute 88 percent of the charge on account of individual coverage and 73 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan;*

(ii) *for employees retiring on or after January 1, 2012, from a title allocated or equated to salary grade 9 or below, New York State shall contribute 88 percent of the charge on account of individual coverage and 73 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan;*

(iii) *for employees retiring on or after January 1, 2012, from a title allocated or equated to salary grade 10 or above, New York State shall contribute 84 percent of the charge on account of individual coverage and 69 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan.*

The rate of contribution of a participating employer on account of the coverage of its employees, post retirees and their dependents shall be not less than 50 percent of the charge on account of individual coverage and 35 percent of the charge on account of dependent coverage. A participating employer may elect to pay higher rates of contribution for the coverage of its employees, retired employees and their dependents; provided, however, that if a participating employer so elects to pay a higher or lower rate of contribution for its retired employees or their dependents, or both, than that paid by the State for its retired employees or their dependents, or both, amounts withheld from the retirement allowances of its retired employees for their share of premium or subscription charges, if any, shall, if the president so requires, be paid to such participating employer which shall pay into the health insurance fund the full cost of premium or subscription charges for the coverage of such retired employees and their dependents; and provided that notice of such election shall be furnished to the Department of Civil Service not less than 60 days prior to the date on which it is proposed to make such higher rate of contribution effective. The contributions payable by a prior retiree shall be equal to the contributions payable by active employees and post retirees having similar coverages; the employer's contributions shall be the difference between the contributions of the prior retiree and the total charges on account of coverage for such prior retiree. Notwithstanding the foregoing provisions:

FURTHER, Section 73.12 of Title 4 NYCRR is hereby amended to read as follows:

The provisions of this Chapter, insofar as they apply to employees in

the negotiating units established pursuant to article 14 of the Civil Service Law and their dependents, shall be continued; provided, however, that during periods of time when there is in effect an agreement between the State and an employee organization reached pursuant to the provision of said article 14, the provisions of such agreement and the provisions of this Chapter shall both be applicable. In the event the provisions of the agreement are different from the provisions of this Chapter, the provisions of the agreement shall be controlling. The president may, upon [certification] approval by the Director of [Employee Relations] the Budget, provide for the [supplementation of benefits] extension of the negotiated provisions of such agreement, in whole or in part, [provided hereinabove for] to officers and employees not in a negotiating unit within the meaning of article 14 of the Civil Service Law and may extend provisions regarding the modified state cost of premium or subscription charges to such employees or retirees.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

1. **Statutory Authority:** Section 160(1) of the Civil Service Law authorizes the President of the State Civil Service Commission to establish regulations concerning the eligibility of active and retired employees to participate in the health benefit plan authorized by Article XI of the Civil Service Law. Section 161-a of the Civil Service Law authorizes the President of the State Civil Service Commission to implement those provisions of a collective bargaining agreement between the state and an employee organization which provide for health benefits in a manner consistent with the terms thereof, and to extend such benefits in whole or in part to employees not subject to the provisions of such agreement. Section 167(8) of the Civil Service Law provides that notwithstanding any inconsistent provision of law, where and to the extent that a collective bargaining agreement between the State and an employee organization provides that the cost of premium or subscription charges for eligible employees covered by such agreement may be modified pursuant to the terms of such agreement, the President of the State Civil Service Commission, upon approval of the Director of the Budget, may extend the modified State cost of premiums or subscription charges for employees not subject to a collective bargaining agreement and retirees and shall promulgate the necessary rules or regulations to implement this provision.

2. **Legislative Objectives:** The President of the State Civil Service Commission has been granted broad authority to prescribe regulations concerning the administration of the health benefit plan authorized by Article XI of the Civil Service Law. Consistent with such authority, the President is amending the Rules and Regulations of the Department of Civil Service with respect to the extension of health plan benefits provided to active and retired employees not subject to collective bargaining.

3. **Needs and Benefits:** Chapter 491 of the Laws of 2011 implements the terms of a collective bargaining agreement covering members of the Administrative Services Unit, the Institutional Services Unit, and Operational Services Unit, and the Division of Military and Naval Affairs Unit represented by the Civil Service Employees Association (CSEA). The Chapter also establishes terms and conditions of employment for employees designated as Management/Confidential (M/C) and other unrepresented employees. The Chapter provides that modified state cost of premium or subscription charges for health insurance coverage may be extended to M/C and other unrepresented employees and retirees. The Chapter also provides M/C and other unrepresented employees with compensation increases, payments, and benefits comparable to negotiated increases and benefits for represented employees. This rule ensures that the President implements these essential benefits and provisions in a timely fashion for M/C and other unrepresented employees and retirees in the manner required by the Chapter and in accordance with the State's obligations.

4. Costs:

a. **Cost to regulated parties for the implementation of and continuing compliance with the rule:** This rule conforms the Regulations of the Department of Civil Service with Chapter 491 of the Laws of 2011 and relevant provisions of such law will be implemented through ministerial acts performed by the New York State Department of Civil Service as administrator of the New York State Health Insurance Program. There are no specific costs associated with implementation of and continuing compliance with this rule.

b. **Costs to the agency, the State and local governments for the implementation and continuation of the rule:** This rule conforms the

Regulations of the Department of Civil Service with Chapter 491 of the Laws of 2011 and will be implemented through ministerial acts performed by the New York State Department of Civil Service as administrator of the New York State Health Insurance Program. There are no specific costs to New York State associated with implementation and continuation of this rule and, as the proposal applies only to certain State employees and retirees, it will not impose any costs upon local governments.

c. **The information, including the source(s) of such information, and methodology upon which the cost analysis is based:** Preliminary estimates regarding administrative costs associated with providing the subject benefits to M/C and other unrepresented employees and retirees have been evaluated by the Department of Civil Service.

5. **Local Government Mandates:** The proposal applies only to certain State Classified Service employees and retirees and will not impose any mandates upon local governments.

6. **Paperwork:** The proposal will not require any new or additional application or reporting forms.

7. **Duplication:** The proposal does not duplicate or conflict with any State or federal requirements.

8. **Alternatives:** This rule reflects the only appropriate method of implementing the provisions of Chapter 491 of the Laws of 2011 with respect to providing M/C and other unrepresented employees and retirees with the health plan benefits in the manner required by the Chapter timely and in accordance with the State's obligations.

9. **Federal Standards:** This proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. **Compliance Schedule:** Compliance commenced automatically upon the effective date of the emergency adoption of this regulation which is now proposed for permanent adoption.

Regulatory Flexibility Analysis

Since this rule serves only to provide for essential health plan benefits for certain M/C and other unrepresented employees and retirees, it has no economic impact and places no reporting, recordkeeping or other compliance requirements upon small businesses, as defined by Section 102(8) of the State Administrative Procedure Act, or any local government. Therefore, a Regulatory Flexibility Analysis (RFA) is not required by Section 202-b of such Act.

Rural Area Flexibility Analysis

Since this rule serves only to provide for essential health plan benefits for certain M/C and other unrepresented employees and retirees, without regard to the geographic distribution of personal residences or work locations of such employees and retirees, this rule will not impose any adverse economic impact or create reporting, recordkeeping or other compliance requirements for public and private entities in rural areas, as defined in Section 102(10) of State Administrative Procedure Act. Therefore, a Rural Area Flexibility Analysis (RAFA) is not required by Section 202-bb of such Act.

Job Impact Statement

By modifying Title 4 NYCRR to provide for essential health plan benefits for certain M/C and other unrepresented employees and retirees, this rule will positively impact jobs or employment opportunities for covered employees, as set forth in Section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by Section 201-a of such Act.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-50-11-00008-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the positions of Research and Collections Technician (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-50-11-00009-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by deleting therefrom the position of Deputy Secretary of State for Communications and Community Affairs.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-50-11-00010-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor, by increasing the number of positions of Immigrant Workers Specialist 1 from 2 to 15 and Immigrant Workers Specialist 2 from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-50-11-00011-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: Delete subheadings in the exempt and non-competitive classes; classify and delete positions in the non-competitive and exempt classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department by deleting therefrom the subheading "State Consumer Protection Board," and the positions of Associate Counsel (2), Chief Consumer Protection Board Program (4), Consumer Protection Board Utility Intervenor (5), Counsel, Director of Consumer Education, Director Investigations, Director Public Information, Executive Deputy Director, Legislative Coordinator, Secretary (3) and Special Assistant (3); and, in the Department of State, by decreasing the number of positions of Community Coordinator from 4 to 3 and Special Assistant from 19 to 16 and by deleting therefrom the positions of Assistant Director of Code Enforcement and Administration and Confidential Investigator and by increasing the number of posi-

tions of Associate Counsel from 1 to 2 and Secretary from 2 to 5 and by adding thereto the positions of Chief Consumer Protection Board Program (2), Consumer Protection Board Utility Intervenor (3), Director Consumer Education, Director Investigations, Executive Deputy Director and Legislative Coordinator; and,

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department by deleting therefrom the subheading "State Consumer Protection Board," and the positions of øInformation Technology Specialist 4 (1), øPrincipal Econometrician (1), øSecretary 1 (1) and øSenior Attorney (2); and, in the Department of State, by deleting therefrom the subheading "Division of the State Athletic Commission," and the positions of Boxing Inspector, Medical Consultant, Athletic Commission (part-time) (1), øMedical Director (1), øSecretary 2 (1) and Supervising Boxing Inspector; and, in the Department of State, by decreasing the number of positions of øSecretary 2 from 7 to 6 and by deleting therefrom the positions of øAssistant Counsel (1), øLocal Government Liaison (1) and State Fire Instructor (part-time) and by adding thereto the positions of øMedical Director (1) (in the State Athletic Commission), øSecretary 1 (1) and øSenior Attorney (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-50-11-00012-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the positions of Refuse Derived Fuel Plant Mechanical Specialist (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Mark Worden, Associate

Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Probation State Aid Block Grant Funding

I.D. No. CJS-37-11-00018-A

Filing No. 1271

Filing Date: 2011-11-23

Effective Date: 2011-12-14

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

Action taken: Repeal of Part 345; and addition of new Part 345 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 243(1) and 246; L. 2011, chs. 53 and 57

Subject: Probation State Aid Block Grant Funding.

Purpose: To conform probation state aid rule with new statutory provisions with respect to block grant funding.

Text or summary was published in the September 14, 2011 issue of the Register, I.D. No. CJS-37-11-00018-EP.

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

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, NYS Division of Criminal Justice Services, Four Tower Place, Albany, New York 12203-3764, (518) 457-8413, email: linda.valenti@dcjs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles

I.D. No. CJS-40-11-00003-A

Filing No. 1274

Filing Date: 2011-11-28

Effective Date: 2011-12-14

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

Action taken: Amendment of sections 349.1, 349.3, 349.5, 349.6 and 349.7 of Title 9 NYCRR.

Statutory authority: Family Court Act, section 176; Criminal Procedure Law, section 410.80(1); and Executive Law, section 243(1); L. 2010, ch. 56; L. 2011, ch. 97

Subject: Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles.

Purpose: To implement legal requirements of Chapter 97 of the Laws of 2011 and conform with other statutory changes.

Text or summary was published in the October 5, 2011 issue of the Register, I.D. No. CJS-40-11-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, New York State Division of Criminal Justice Services, Four Tower Place, Albany, New York 12203-3764, (518) 457-8413, email: linda.valenti@dcjs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tuition Assistance Program

I.D. No. EDU-50-11-00007-P

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

Proposed Action: Amendment of sections 145-2.1, 145-2.2 and 145-2.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 661

Subject: Tuition Assistance Program.

Purpose: Revise and clarify the criteria for determining student eligibility to participate in the tuition assistance program.

Text of proposed rule: 1. Section 145-2.1 of the Regulations of the Commissioner of Education is amended, effective March 7, 2012, to read as follows:

§ 145-2.1 Full-time and part-time study and remedial workload.

(a) For programs at degree-granting institutions which measure study in terms of credit hours or a comparable measure, the following definitions shall apply:

(1)(i) For State student financial aid programs, except the supplemental tuition assistance program (STAP), full-time study, where required by law, shall mean enrollment in *credit-bearing courses applicable to the students' program of study*, for at least 12 semester hours for a semester of not less than 15 weeks or 100 calendar days, inclusive of examination periods; or eight semester hours a quarter; or, in programs not organized on a semester or quarter basis, 24 semester hours for an academic year of not more than 12 months or the equivalent, as determined by the commissioner.

(ii) A student shall be considered full-time for a program organized on an academic-year basis only if the student has filed a plan of study with the institution for the entire academic year. Except as otherwise defined in paragraph (4) of this subdivision; part-time study, for general awards, other than tuition awards for [Vietnam] veterans and tuition awards for part-time undergraduate students, and for academic performance awards, shall mean enrollment in *credit-bearing courses applicable to the students' program*, for at least 6, but less than 12, semester hours or the equivalent for a semester of not less than 15 weeks or 100 calendar days inclusive of examination periods; or at least four, but less than eight, semester hours a quarter.

(iii) The definition of the term semester hour shall be that provided in section 50.1(o) of this Title. Independent or individualized study, practice teaching, graduate assistantships, thesis or dissertation research, preparation for language or qualifying examinations, and noncredit or remedial courses, may all be considered as contributing toward full-time or part-time study on an hour-for-hour equivalent basis, if the student effort required is the same as would be required for a credit-bearing course in conformity with section 50.1(o) of this Title, and if required or approved by the school, in a plan of study prefiled by the student with the school, as an integral part of the student's program. Credit for independent or

individualized study shall be computed in accordance with full-time or part-time requirements. Effective for academic terms beginning after January 1, 1978, a student carrying a full-time program that includes noncredit remedial courses shall carry at least six semester hours a semester, except that in the first semester of study such a student need carry only three semester hours. Effective for academic terms beginning on or after July 1, 1984, a student carrying a part-time program that includes noncredit remedial courses shall carry at least three semester hours a semester. A combination of such credit and remedial work shall equal the minimum student effort requirement for full-time study or part-time study, respectively, in nonremedial programs. However, courses taken solely to meet teacher certification, licensing, or other external requirements, and not recommended or required by the school as an integral part of the student's program, shall not contribute to full-time or part-time study.

(iv) Except as otherwise provided in subdivision (e) of this section, when determining full-time or part-time status, credit-bearing courses must be applicable to the student's program of study as a general education requirement, major requirement, or specified or free elective. Credit-bearing courses not applicable to the student's program of study cannot be included as part of the minimum full-time or part-time study requirement.

(2)

(3)

(4) For purposes of section 661(d)(4) of the Education Law, for a student with a disability, as defined in 42 USC 12102 (2) (United States Code, 1994 edition, volume 23; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; 1995-available at the office of Higher [and Professional] Education, Education Building Annex, Room 979, Albany, NY 12234), part-time study or attendance shall mean enrollment in *credit-bearing courses applicable to the students' program*, for at least three but less than 12 semester hours per semester or the equivalent, or at least two but less than eight semester hours per quarter.

(b)

(c)

(d)

(e) [Where full-time or part-time study is required, it shall be required during the final semester in the same manner as for any other semester of study, even if not necessary in order to complete graduation requirements, except that full-time study shall not be required for recipients of Regents college scholarships during their last semester of eligibility if part-time study during such semester would be sufficient to complete the approved course of study.] *A student will be deemed to meet the full-time or part-time study requirement in their last semester of eligibility if the student takes at least one course needed to meet their graduation requirements and the student enrolls in and completes at least 12 semester hours or its equivalent.*

(f)

(g)

2. Section 145-2.2 of the Regulations of the Commissioner of Education is amended, effective March 7, 2012, to read as follows:

§ 145-2.2 Academic requirements; program pursuit and academic progress.

(a)

(b) State awards first received during academic year 1981-1982, and thereafter.

(1) Part-time study, academic requirements. For the purposes of articles 13 and 14 of the Education Law, part-time students who receive their first State award during the 1981-1982 academic year and thereafter shall maintain good academic standing by complying with the requirements in subparagraph (i) of this paragraph.

(i)

(ii)

(iii)

(iv) Except as provided for in subparagraph (v) of this paragraph, to determine whether a student receiving an award is making satisfactory progress toward the successful completion of his or her program's academic requirements, each institution shall use at a minimum, the academic progress standards established in section 665 of the Education Law, as applicable. However, institutions may establish and apply [a] stricter [standard] standards of satisfactory academic progress provided such standards [which includes] include the required levels of achievement to be measured at stated intervals. Criteria for achievement shall include, but need not be limited to:

(a)

(b)

(v) The provisions of subparagraphs (iii) and (iv) of this paragraph may be waived once for an undergraduate student and once for a graduate student if an institution certifies, and maintains documentation, that such waiver is in the best interests of the student. Prior approval by the com-

missioner of the criteria and procedures used by an institution to consider and grant waivers shall not be required; *however, the institution must make its criteria and procedures for waivers available to students and the public, either in writing or on its website.* The commissioner may review such criteria and procedures in use, and require an institution to revise those found to be not acceptable.

(2) . . .

3. Section 145-2.4 of the Regulations of the Commissioner of Education shall be amended, effective March 7, 2012, to read as follows:

§ 145-2.4 Matriculated status.

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) [Students enrolled under permit from other institutions where they are matriculated may be certified as matriculated by the school attended.] *Students enrolled in a degree granting institution other than the institution in which they are matriculated must be certified as eligible for tuition assistance by the matriculating institution. The courses and program of study at the attending institution must be consistent with the matriculating institution's approved program of study at the time of enrollment and attendance. In order to certify eligibility for State financial aid, the matriculating institution must receive all grades and tuition costs from the school attended.*

(f) *Matriculated students may defer declaration of a specific major and still be considered to be enrolled in one or more of an institution's approved programs provided that the matriculating institution approves the student's deferment. For State financial aid purposes, a student must declare a major within 30 days of the end of the institution's add/drop period of the sophomore year in a 2-year program or within 30 days of the end of the add/drop period of the junior year of a baccalaureate program so that the student is able to complete the requirements for the degree within the timeframe specified in the academic program as registered with the Commissioner. In each case, the cumulative transcript for the student must designate the student's enrollment in a program that has been registered by the State Education Department and appears on the Inventory of Registered Programs as a program eligible for State student aid. While a declaration must be made at specified points as noted above, students are; of course, free to change their choice of major during their program of study.*

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, NYS Education Department, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-2183, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: John D'Agati, Deputy Commissioner of Education, NYS Education Department, 89 Washington Avenue, Room 979 EBA, Albany, NY 12234, (518) 486-3633, email: jdagati@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Part 2 of Article 14 of the Education Law establishes the Tuition Assistance Program to advance the cause of education by providing financial aid awards for all students who are enrolled in approved programs under eligibility guidelines proscribed by the law and the regulations.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments carry out the legislative objectives set forth in the aforementioned statutes in that it will revise and clarify the current criteria for determining student eligibility for the Tuition Assistance Program.

3. NEEDS AND BENEFITS:

The proposed rule is needed in order to update the current criteria for determining student eligibility for the Tuition Assistance Program by: (1) specifying that the course enrollments, in order to be eligible for coverage by TAP, must be applicable to the student's declared program; (2) clarifying that 100 calendar days would be used in computing 15 weeks of the academic semester; (3) clarifying the definition of "veteran" for the purposes of the regulation; (4) relating the standards in Section 145-2.2 to those in Section 665 of the Education Law regarding satisfactory academic progress, in an effort to achieve regulatory consistency while still providing institutional flexibility in applying a higher standard; (5) allowing a one time waiver of subparagraphs (iii) and (v) of subdivision (b) of Section 145-2.2 of the Commissioner's regulations; (6) explaining that a cross-enrolled student must be certified by an eligible degree granting institution participating in TAP, which must be the student's home institu-

tion for eligibility of financial aid; (7) clarifying issues related to cross enrollment, the declaration of a major, and eligibility for TAP during the process of changing a major.

The proposed amendments were developed by a statewide task force of representatives from the State University of New York, The City University of New York, the Commission on Independent Colleges and Universities, the Association of Proprietary Colleges, the Higher Education Services Corporation, the Division of the Budget, the New York State Financial Aid Administrators Association, and the Office of the State Comptroller. This task force met and reached a consensus on the proposed amendments to the TAP regulations to clarify and simplify their provisions in order to improve institutional compliance with their requirements.

4. COSTS:

a. Costs to the State government. The proposed amendments will not impose additional costs on State government. The amendment simply updates the TAP regulations to clarify and simplify their provisions in order to improve institutional compliance with their requirements. State funding for this program is determined by an annual legislative appropriation, which determines the number of students that may participate.

b. Costs to local government. None.

c. Costs to private regulatory parties. The proposed amendments will not impose any capital costs on the colleges, universities, and other institutions of higher education that participate in the Tuition Assistance Program.

d. Costs to the regulatory agency. None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment revises and clarifies the eligibility requirements for the tuition assistance program. The proposed amendment will not affect local governments in New York State. The measure will not impose any adverse economic impact, reporting, recording or any other compliance requirements on local governments.

6. PAPERWORK:

The proposed amendment does not include any new reporting requirements for regulated parties. The paperwork requirements for institutions of higher education that participate in the program will not change. In addition, the amendment will not increase the paperwork requirements for students who apply to participate in the Tuition Assistance Program.

7. DUPLICATION:

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

8. ALTERNATIVES:

In developing the proposed amendment, the State Education Department consulted with a Work Group that comprised of representatives from the State University of New York, The City University of New York, the Commission on Independent Colleges and Universities, the Association of Proprietary Colleges, the Higher Education Services Corporation, the Division of the Budget, the New York State Financial Aid Administrators Association, and the Office of the State Comptroller. The proposed amendment represents the result of that consultation. There are no viable alternatives to the proposed amendment.

9. FEDERAL STANDARDS:

The proposed amendment concerns the eligibility criteria for a State student aid program and there are no federal standards applicable to the administration of State student financial aid programs.

10. COMPLIANCE SCHEDULE:

Institutions of higher education participating in the Tuition Assistance Program must comply with the regulation on its effective date. No additional period of time is necessary to permit regulated parties to meet the requirements of the proposed amendment.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment clarifies the eligibility requirements for the tuition assistance program. State Education Department data indicate that 20 of the eligible 39 proprietary colleges in the State (51 percent) are small businesses with 100 or fewer employees.

2. COMPLIANCE REQUIREMENTS:

The proposed rule is needed in order to update the current criteria for determining student eligibility for the Tuition Assistance Program by: (1) specifying that the course enrollments, in order to be eligible for coverage by TAP, must be applicable to the student's declared program; (2) clarifying that 100 calendar days would be used in computing 15 weeks of the academic semester; (3) clarifying the definition of "veteran" for the purposes of the regulation; (4) relating the standards in Section 145-2.2 to those in Section 665 of the Education Law regarding satisfactory academic progress, in an effort to achieve regulatory consistency while still providing institutional flexibility in applying a higher standard; (5) allowing a one time waiver of subparagraphs (iii) and (v) of subdivision (b) of Section 145-2.2 of the Commissioner's regulations; (6) explaining that a cross-enrolled student must be certified by an eligible degree granting

institution participating in TAP, which must be the student's home institution for eligibility of financial aid; and (7) clarifying issues related to cross enrollment, the declaration of a major, and eligibility for TAP during the process of changing a major.

3. PROFESSIONAL SERVICES:

The proposed amendment will not require eligible institutions that are classified as small businesses to hire professional services to comply.

4. COMPLIANCE COSTS:

The proposed amendment will not impose any capital costs on eligible institutions that are classified as small businesses.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any technological requirements on eligible institutions that are classified as small businesses. See above "Compliance Costs" for the economic impact of the amendment.

6. MINIMIZING ADVERSE IMPACT:

Paragraph (e) of subdivision (4) of section 661 of the Education Law, as added by Chapter 57 of the Laws of 2007, applies equally to all institutions eligible to participate in State student aid programs. Consequently, the State Education Department believes that the proposed amendment must apply uniformly to all such institutions.

7. SMALL BUSINESS PARTICIPATION:

Before drafting the proposed amendment, the State Education Department convened a Work Group comprised of persons from all four sectors of higher education knowledgeable about student financial aid and about academic affairs, including proprietary colleges that are classified as small businesses. The comments they provided were taken into account in drafting the proposed amendment.

(b) Local Governments:

The proposed amendment will not affect local governments in New York State. The measure will not impose any adverse economic impact, reporting, recordkeeping, or any other compliance requirements on local governments. Because it is evident from the nature of the proposed amendment that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one was not prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment clarifies the eligibility requirements for the tuition assistance program. The proposed amendment applies only to institutions eligible to participate in State student financial aid programs, including such institutions located in the State's 44 rural counties with fewer than 200,000 inhabitants and 71 towns in urban counties with a population density of 150 per square mile or less.

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

The purpose of the proposed amendment is to clarify the eligibility requirements for the tuition assistance program. The proposed rule is needed in order to update the current criteria for determining student eligibility for the Tuition Assistance Program by: (1) specifying that the course enrollments, in order to be eligible for coverage by TAP, must be applicable to the student's declared program; (2) clarifying that 100 calendar days would be used in computing 15 weeks of the academic semester; (3) clarifying the definition of "veteran" for the purposes of the regulation; (4) relating the standards in Section 145-2.2 to those in Section 665 of the Education Law regarding satisfactory academic progress, in an effort to achieve regulatory consistency while still providing institutional flexibility in applying a higher standard; (5) allowing a one time waiver of subparagraphs (iii) and (v) of subdivision (b) of Section 145-2.2 of the Commissioner's regulations; (6) explaining that a cross-enrolled student must be certified by an eligible degree granting institution participating in TAP, which must be the student's home institution for eligibility of financial aid; and (7) clarifying issues related to cross enrollment, the declaration of a major, and eligibility for TAP during the process of changing a major.

3. COSTS:

The amendment will not impose any additional costs on eligible institutions, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes no exception for eligible institutions that are located in rural areas. Paragraph (e) of subdivision (4) of section 661 of the Education Law applies equally to all institutions eligible to participate in State student aid programs. Consequently, the State Education Department believes that the proposed amendment, which clarifies the eligibility requirements for the tuition assistance program must apply uniformly to all such institutions, including those located in rural areas and that it would be inappropriate to establish different standards for eligible institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

Before drafting the proposed amendment, the State Education Depart-

ment convened a Work Group comprised of persons from all four sectors of higher education knowledgeable about student financial aid and about academic affairs. The group included representatives of eligible institutions located in rural areas, as well as of the Association of Proprietary Colleges, the Commission on Independent Colleges and Universities, and the State University of New York system administration, many of whose institutions or campuses are located in rural areas. The comments they provided were taken into consideration when drafting the proposed amendment.

Job Impact Statement

The proposed amendments concern criteria for determining student eligibility to participate in the Tuition Assistance Program, a program of student financial aid assistance administered by the Higher Education Services Corporation. The amendment will not affect jobs and employment opportunities in New York State.

Because it is evident from the nature of this amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Conforming the Requirement for Best Available Retrofit Technology to Recent Statutory Changes and Court Decisions

I.D. No. ENV-50-11-00003-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 248 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0323, 71-2103 and 71-2105

Subject: Conforming the requirement for best available retrofit technology to recent statutory changes and court decisions.

Purpose: To make Part 248 consistent with the amendments to New York Environmental Conservation Law section 19-0323 and recent Court decisions.

Public hearing(s) will be held at: 2:00 p.m., Jan. 17, 2012 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; 2:00 p.m. Jan. 18, 2012 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY; and 2:00 p.m., January 19, 2012 at Department of Environmental Conservation, Region 8 Office Conference Rm., 6274 E. Avon-Lima Rd. (Rtes. 5 and 20), Avon, 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: Subdivision 248-1.1(a) through Paragraph 248-1.1(b)(9) remain unchanged.

Paragraph 248-1.1(b)(10) is revised as follows:

(10) "Contractor" means [any person or entity that contracts directly or indirectly with a regulated entity to provide labor, services, materials and/or equipment on behalf of the regulated entity. Contractor includes but is not limited to prime contractor, subcontractor, and any contractor(s) hired by such subcontractor] *prime contractor*.

Paragraphs 248-1.1(b)(11) through (19) remain unchanged.

Paragraphs 248-1.1(b)(20) is revised as follows:

(20) "On behalf of" means: [to provide, by a contractor, labor, services, materials and/or equipment to a regulated entity which are integral to the performance of regulated entity work by a regulated entity.] *all heavy duty vehicles used to perform regulated entity work by a prime contractor. Those vehicles include, but are not limited to, heavy duty vehicles owned, operated or leased by a prime contractor.*

Paragraphs 248-1.1(b)(21) through (22) remain unchanged.

Paragraph 248-1.1(b)(23) is revised as follows:

(23) "Prime contractor" means any person or entity [which] *that* contracts directly with [a] *the* regulated entity *to perform regulated entity work ("prime contract")* and who is responsible for the completion of the contract with the regulated entity. *This definition shall not include subcontractors.*

Paragraphs 248-1.1(b)(24) through (25) remain unchanged.

Paragraph 248-1.1(b)(26) is revised as follows:

(26) "Regulated entity work" means [work or services performed or provided by the regulated entity.] *labor, services, material and/or equipment that is provided by the regulated entity through its employees or prime contractors except it does not include labor, services, materials and/or equipment provided by:*

- (i) *a shipping company (including overnight delivery companies); or*
- (ii) *a manufacturer or delivery company that does not deliver materials or equipment to the regulated entity on a regular and frequent basis.*

Paragraph 248-1.1(b)(27) through Subdivision 248-3.1(d) remain unchanged.

Subdivisions 248-3.1(e) through Paragraph 248-3.1(f)(1) are revised as follows:

(e) *On or after December 31, 2012, [All] all diesel powered heavy duty vehicles owned by, operated by, or leased by each BART regulated entity or which are owned by, operated by, or leased by a contractor and used to provide labor, services, materials and/or equipment on behalf of a BART regulated entity to perform the regulated entity work shall utilize and maintain [the best available retrofit technology according to the following schedule:*

(1) *at least 33 percent of all such vehicles shall have BART by December 31, 2008;*

(2) *at least 66 percent of all such vehicles shall have BART by December 31, 2009;*

(3) *all such vehicles shall have BART by December 31, 2010.]*

BART.

(f) In order to comply with the requirements of Subdivision 248-3.1(e), the BART regulated entity or contractor shall first perform a HDV inventory according to a department prescribed format. The BART regulated entity or contractor shall then select one of the following [two] *three* options for each of its inventoried HDVs:

(1) Option 1 - Replacement or Retirement

Paragraph 248-3.1(f)(1) through Clause 248-3.1(f)(2)(ii) ("i") remain unchanged.

A new Paragraph 248-3.1(f)(3) is added as follows:

(3) *Option 3 - Heavy Duty Vehicle/Engine Useful Life Waiver*

Provisions for obtaining a heavy duty vehicle/engine useful life waiver are described in Subdivision 248-4.1(c) of this Part.

Subdivision 248-3.1(g) through Paragraph 248-4.1(a)(1) remain unchanged.

Paragraph 248-4.1(b)(1) through 248-7.1(a) are revised as follows:

(b) Application for Waiver of BART Requirements

(1) Regulated entities and contractors may apply for a waiver from the BART requirements of this Part. All waiver applications submitted to the department shall be provided in a format as prescribed by the department. Such application shall be submitted by the state agency commissioner or other responsible person of the regulated entity or contractor. If, through the BART evaluation and selection process noted in Paragraph 248-3.1(f)(2) of this Part above, it is determined by the BART regulated entity or contractor that none of the PM reduction classification level technologies are applicable or available for a specific covered vehicle, such BART regulated entity or contractor may submit an application for a waiver for the commissioner's approval. *A copy of the department's approval of a vehicle waiver shall be kept with the vehicle and provided to the department upon request.* Any application for a waiver of BART requirements shall contain the following information:

(i) the name and address of the BART regulated entity or contractor applying for approval of the waiver including the name and phone number of the responsible party;

(ii) the name and identification number of the subject contract, if applicable;

(iii) identification of the specific heavy duty covered vehicle or engine that is the subject of the waiver application;

(iv) the name of the engine manufacturer, engine model year, engine family, and engine series;

(v) VIN, if applicable;

(vi) identification of the required BART; and

(vii) an explanation as to why the BART is not available or not applicable. Such explanation shall include all documentation generated in the BART evaluation and selection process described in Paragraph 248-3.1(f)(2) of this Part.

(c) *Heavy Duty Vehicle/Engine Useful Life Waiver*

(1) *The department shall issue a waiver of the requirements of this part to a BART regulated entity or contractor upon receipt of request from such entity or contractor provided that such vehicle will be permanently taken out of service in New York State on or before December 31, 2013. The waiver form will be prescribed by the department. A copy of a department issued waiver for a vehicle shall be kept with the vehicle and provided to the department upon request.*

[(c)] (d) Applications and forms shall be sent to:

Director, Bureau of Mobile Sources & Technology Development
Division of Air Resources

New York State Department of Environmental Conservation

625 Broadway

Albany, NY 12233-3255

[(d)] (e) The commissioner will make a determination whether to approve the waiver of BART or ULSD requirements no later than 90 days after receipt of the application.

[(e)] (f) *Waivers issued by the department pursuant to Subdivisions 248-4.1(a) and 248-4.1(b) shall expire one year after issuance, unless the BART or ULSD regulated entity or contractor submits a renewal application and the commissioner approves such application, in accordance with the provisions set forth in this subdivision. Any such application for renewal shall be submitted no later than 30 days prior to the expiration date of the approval.*

248-5.1 Vehicle and Equipment Labeling Requirements

(a) For each covered vehicle that has BART installed or that received a [BART] waiver pursuant to Subdivisions 248-4.1(b) and 248-4.1(c), a label shall be affixed to the vehicle in plain view in the form of a legible and durable label. Each label shall contain the following information:

(1) for those vehicles that have BART installed:

(i) name of the BART regulated entity or contractor whose vehicle received BART;

(ii) vehicle identification number (if appropriate) and engine serial number;

(iii) specific BART product name installed on the vehicle;

(iv) date of installation of the BART product;

(v) PM reduction classification level number;

(vi) vehicle or engine model year;

(vii) name of the engine manufacturer, family and series;

(viii) engine horsepower; and

(ix) if CARB verified technology, the CARB designated diesel emission control strategy family name.

(2) for those vehicles that have received a [BART] waiver pursuant to Subdivisions 248-4.1(b) and 248-4.1(c):

(i) name of the BART regulated entity or contractor receiving the waiver;

(ii) date waiver issued;

(iii) vehicle identification number (if appropriate) and engine serial number;

(iv) vehicle or engine model year; and

(v) name of the engine manufacturer.

In lieu of a waiver label, a copy of the department issued waiver can be kept with the vehicle.

(3) the label shall be maintained in a manner that retains its legibility for the entire life of the vehicle.

(b) For each vehicle that has BART installed, a label shall be placed on/near the fuel fill line of such vehicle stating "use ULSD fuel only" unless the selected BART does not require the use of ULSD.

248-6.1 Reporting Requirements

(a) On or before November 1, 2008 and every year thereafter, regulated entities subject to the requirements of this Part shall report to the department on the use of ULSD and BART as described in Subdivision 248-6.1(b) of this Part for all vehicles, including covered vehicles operated on behalf of regulated entities. Contractors shall report required information as described in Subdivision 248-6.1(b) of this Part to the regulated entity on a schedule to be determined by the regulated entity.

(b) Regulated Entity Reporting

(1) Regulated entities shall report to the department on an annual basis. The regulated entity shall perform a HDV inventory to be submitted with the annual report *for the regulated entity fleet*. [An] *A vehicle inventory format and an annual report format* will be prescribed by the department. The inventory shall be performed within 30 days after the effective date of this Part and updated in order to determine compliance with the BART requirements of Subdivision 248-3.1(e) of this Part. Based on the information contained in the inventory, the regulated entity shall submit the first annual report to the department by November 1, 2008.

Thereafter, and based on updated inventory information, annual reports shall be submitted to the department by November 1st of each year. *The regulated entity submittal to the department shall include the regulated entity's vehicle inventory and annual report, along with the regulated entity's contractors annual reports.* [The annual report shall distinguish between the regulated entity vehicles and the contractor vehicles.] The information contained in the annual report submitted by the regulated entity shall include, but not be limited to:

- (i) contact information
 - (a) For the regulated entity, include the name of the regulated entity, contact person and work phone number;
 - (b) For the contractor, include the name of the contractor, contact person and work phone number;
- (ii) For the regulated entity vehicles and certain contractor vehicles. For vehicles owned or operated by contractors, the following only applies to covered vehicles that perform work on the contract site. *Contractors shall submit their vehicle inventory and annual report to their contracting agency (regulated entity) on a schedule to be determined by the regulated entity.*
 - (a) the number of diesel fuel-powered motor vehicles owned or operated;
 - (b) the number of such motor vehicles that were powered by ULSD;
 - (c) the total number of on road diesel fuel-powered motor vehicles owned or operated having a GVWR of more than 8,500 pounds;
 - (d) the total number of off road vehicles owned or operated;
 - (e) the number of such on road and off road vehicles that utilized BART, including a breakdown by BART installation date, vehicle model, VIN (if applicable), engine year and the type and classification level of technology used for each vehicle including the CARB designated diesel emission control strategy family name, if applicable;
 - (f) the number of such motor vehicles that are *originally equipped* or have been replaced/repowered with an engine certified to the applicable 2007 USEPA standard for particulate matter as set forth in section 86.007-11 of Title 40 of the Code of Federal Regulations (see Table 1, Section 200.9 of this Title) or to any subsequent USEPA standard for particulate matter that is at least as stringent;
 - (g) the number of such vehicles that have been replaced with alternative fuel vehicles;
 - (h) the number of inventoried HDVs retired;
 - (i) identification of all ULSD waivers, findings, and renewals of such findings, which, for each waiver, shall include, but not be limited to, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated by such regulated entity; and specific information concerning the availability of ULSD;
 - (j) the identification of BART waivers and *useful life waivers* issued by the department to the regulated entity and contractor;
 - (k) the quantity of ULSD used;
 - (l) a statement of compliance indicating the percent of inventoried HDVs with option 1 or option 2 technologies installed by the indicated compliance dates so as to determine compliance with Subdivision 248-3.1(e) of this Part requirements; and
 - (m) (l) any other such information or report format that the department deems necessary.

248-7.1 Recordkeeping Requirements

(a) BART regulated entities and contractors subject to the requirements of this Part shall maintain the following records in hard-copy format or as electronic records where the vehicle is primarily located/garaged. *The department's inventory form may be used for this purpose.* The BART regulated entity or contractor shall provide the following records where applicable for each inventoried HDV upon request by the department or an authorized representative for all HDVs subject to compliance with this Part:

Paragraphs 248-7.1(a)(1) through (10) remain unchanged.

Paragraph 248-7.1(a)(11) through Subdivision 248-7.1(a)(13) are revised as follows:

(11) *useful life waiver and date issued, if applicable:*

(i) *a copy of the issued waiver shall be kept with the vehicle to which it is applicable.*

[(11)] (12) fuel characteristic type including biodiesel, on road specification diesel, non road diesel, other; and

[(12)] (13) the quantity of ULSD used.

The remainder of Part 248 remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: James Bologna, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: 248DERA@gw.dec.state.ny.us

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

Public comment will be received until: January 26, 2012.

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

Summary of Regulatory Impact Statement

In 2006, the Legislature passed and the Governor enacted the "Diesel Emissions Reduction Act of 2006" (DERA). The legislation charged the Department with implementing a regulatory program that would require the use of ULSD fuel and BART for any diesel powered heavy duty vehicle (HDV) that is owned by, operated by or on behalf of, or leased by a state agency and state and regional public authority. The Department subsequently promulgated Part 248, effective as of July 30, 2009, to implement DERA. The Department's initial part 248 regulation included within the program requirements trucks owned by sub-contractors (to contractors) that provided services to State agencies and authorities.

That aspect of the regulation was subsequently challenged in a CPLR Article 78 proceeding. Although Supreme Court (Saratoga County) initially upheld the regulations, the Appellate Division reversed, finding that the Legislature "did not intend to impose DERA's requirements on vehicles other than those used by prime contractors under direct contract with State agencies and public authorities." *Matter of N.Y. Constr. Material Ass'n v. DEC*, 83 A.D.2d 1323, 1328 (3d Dep't 2011); see also *Riccelli Enterprises, Inc. v. Grannis*, 30 Misc. 3d 573, 579 (Sup. Ct. Onondaga Co. 2010) (regulations are "ultra vires" ... due to the improper expansion of the meaning of the term "on behalf of" in the regulations).

Additionally, the Legislature amended ECL section 19-0323 in calendar years 2010 and 2011, in three ways: (i) to provide an extended time frame until December 31, 2012 for all applicable vehicles to comply with the DERA BART requirement; (ii) to allow for a waiver of the DERA requirements to otherwise applicable vehicles that are permanently taken out of service in New York State on or before December 31, 2013; and (iii) to eliminate the 33 percent and 66 percent phase-in deadlines for BART compliance of December 31, 2008 and December 31, 2009 respectively. *See* L.2010, ch. 59, pt. C. Section 1 and Enacted Budget SFY 2011-2012, S2810-C/A 4010-C, Part BB. Although the Legislature extended the BART compliance date and added the waiver provision, it nevertheless maintained the retrofit requirement for existing vehicles, making plain its continued interest in reducing emissions from heavy duty vehicles owned by or operated on behalf of the State.

The purpose of this rulemaking is to make Part 248 consistent with both the court decisions in *Matter of N.Y. Constr. Material Ass'n* and *Riccelli Enterprises, Inc.* and the amendments to DERA signed into law in 2010 and 2011.

These revisions to Part 248 would make it consistent with the amendments to ECL section 19-0323 and recent court decisions by changing the definition of "prime contractor", "on behalf of", and "regulated entity work"; and further by changing the existing BART compliance schedule and adding a useful life waiver provision. "Prime contractor" will mean a person or entity that contracts directly with the regulated entity to perform regulated entity work and who is responsible for the completion of the contract with the regulated entity. As noted, recent court decisions require the Department to exclude subcontractors from applicability. This rulemaking will revise the BART compliance schedule and include a useful life waiver provision as permitted by ECL section 19-0323. The Department will include a useful life waiver provision which allows the Department to issue a waiver of the requirements of this Part to a BART regulated entity or contractor upon receipt of request from such entity or contractor provided that such vehicle will be permanently taken out of service in New York State on or before December 31, 2013. The addition of a useful life waiver will provide additional regulatory flexibility to subject entities. The Department is also proposing several minor clarifications to the BART waiver application requirements, the vehicle and equipment labeling requirements, and the reporting and record keeping requirements. These clarifications should assist the regulated entity and contractor in complying with the Part 248 requirements.

The Department has continued to evaluate the costs of various retrofit devices and recently assessed several sources to update cost information. Included in this analysis was actual cost data obtained by the Department from certain state agencies. The Department also considered cost data included in the October 2009 report entitled "Retrofitting Emission Controls for Diesel Powered Vehicles," issued by the Manufacturers of Emission Controls Association (MECA). A more detailed discussion relating to costs can be found in the Regulatory Impact Statement. Prime contractors will incur costs associated with the purchase of the retrofit device and administrative costs similar to many of those costs for state agencies and public authorities. Only the contractor's vehicles which are actu-

ally used on behalf of the state agency/public authority work (not necessarily the contractor's entire fleet) and while in use on the state project whether on or off state property are subject to the Part 248 requirements. Subcontractors will no longer be required to comply with DERA and are therefore no longer required to incur costs for this regulation. No additional costs are expected to be accrued by the Department for the administration of the proposed revision to Part 248.

It is important to note that this rulemaking, which proposes to maintain existing requirements except as to subcontractors and to the extent waived (as allowed under the 2010 DERA amendments), would if anything have a positive direct economic effect as compared to the effect that was anticipated from the existing requirements under Part 248. Indeed, although Part 248 would remain applicable to those heavy duty vehicles used by or on behalf of a state agency, state public authority, or regional public authority, requirements as to subcontractors would be removed. Of course, prime contractors like state government entities, would remain subject to both the ULSD requirements effective February 12, 2007 and the BART requirements.

As noted in the 2009 rulemaking, the population of prime contractor vehicles affected by the proposed amended regulation is unknown. As with that rulemaking, the Department remains unable to provide a specific estimate of the number of contract solicitations or awards that will occur because of the difficulty in predicting the number of affected prime contractors at this time. Additionally, the Department expects the cost impact to those affected contractors to be similar to the impacts on government entities which, in turn, may result in somewhat higher bids proposed by prime contractors on state and public authority contract work to compensate for increased costs due to these regulatory requirements. Nevertheless, this rulemaking maintains existing requirements on prime contractors and thus is not expected to have any negative impact on such prime contractors.

Because this rulemaking maintains existing requirements as to State agencies and authorities, as well as to prime contractors, the rulemaking itself would not be expected to have a negative impact on businesses or employment. Indeed, as already noted, the rulemaking proposes to remove trucks owned or operated by sub-contractors from coverage and thus, if anything, may have a positive direct impact on subcontractors.

Regulatory Flexibility Analysis

1. Effect of rule:

As defined in the proposed regulation, "on behalf of" means "all heavy duty vehicles used to perform regulated entity work by a prime contractor. Those vehicles include, but are not limited to, heavy duty vehicles owned, operated or leased by a prime contractor."

As defined in the regulation, "Prime contractor means any person or entity that contracts directly with the regulated entity to perform regulated entity work ("prime contract") and who is responsible for the completion of the contract with the regulated entity. This definition shall not include subcontractors." Prime contractors could include affected small businesses and some local governments. Prime contractors include anyone that performs work for the state or public authority whether on or off state/public authority property. Regulated entities include affected state agencies and state and regional public authorities.

2. Compliance requirements:

Affected small businesses and contracted local governments continue to be required to comply with the ULSD and BART. The ULSD requirement was effective February 12, 2007. Affected small businesses and contracted local governments will be required to install BART on their applicable HDV's on or before December 31, 2012. A useful life waiver provision will be included in the regulation which allows the Department to issue a waiver of the requirements of this part to a BART regulated entity or prime contractor upon receipt of request from such entity or prime contractor provided that such vehicle will be permanently taken out of service in New York State on or before December 31, 2013 pursuant to recent revisions to ECL Section 19-0323.

3. Professional services:

No specific professional services are required by this revision to Part 248.

4. Compliance costs:

The Regulatory Impact Statement addresses compliance costs in detail on a per vehicle basis. We adopt those costs for purpose of this document.

5. Economic and technological feasibility:

The economic feasibility for both affected small businesses and contracted local governments to comply with the proposed regulatory requirements is difficult to determine and unknown since the total cost to comply with the proposed regulation is unknown. Total cost is based on the number of affected HDVs and the specific retrofit device to be installed on those HDVs which are currently unknown. Affected small businesses and contracted local governments also have the option to replace an existing HDV with a 2007 or newer HDV, replace with an alternative fuel HDV, or retire the HDV in lieu of retrofitting the HDV with a BART de-

vice, or obtain a useful life waiver or BART device waiver for the vehicle, which adds more uncertainty as to the total cost to comply with the regulation. The specific option that affected small businesses and contracted local governments will choose to comply with the regulatory requirements is unknown. The proposed revisions to Part 248 may reduce the cost for small businesses given that subcontractors will no longer be subject to the regulation. There are specific capital costs for the retrofit devices as mentioned in the RIS. As a result of incurred costs by affected small businesses to comply with the regulatory requirements, businesses may elect to reduce the number of their employees to cover the costs of purchasing/installing BART devices on their affected HDVs or place higher bids on state contracts. Affected local governments may also elect to reduce the number of their employees to cover the costs of the BART devices. Affected small businesses may also choose not to bid on state agency/public authority projects and local governments may choose not to enter or renew contracts with state agencies/public authorities.

6. Minimizing adverse impacts:

The legislation and proposed revised regulation include provisions for an HDV owner/operator to apply for a waiver from the ULSD or BART requirement in certain instances. If specified criteria are met as proposed in the regulation, the department will issue a waiver.

7. Small business and local government participation:

A stakeholder meeting has been held and formal hearings will be held once the proposed revised regulation is published for public comment. One stakeholder meeting was held on July 7, 2011 with those representing regulatory affected entities including various contractor associations and state agencies/public authorities to discuss the legislation and proposed revised regulatory requirements.

8. Cure period:

Pursuant to NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to comply with changes to state legislation and recent court decisions. The court decisions required the Department to remove a class of entities previously subject to Part 248, specifically subcontractors, thereby removing those entities from any penalties for violations of Part 248. In addition, changes are being made to conform with more generous deadlines imposed upon the program by State legislation.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural area:

Environmental Conservation Law (ECL) section 19-0323 and Part 248 specifically exempt those heavy duty vehicles (HDVs) defined under subparagraph 401.7(E)(2) and subdivision 401.13 of the New York State Vehicle and Traffic Law. Those exempt vehicles include agricultural and farm registered/plated heavy duty vehicles. The proposed revised regulation will apply in rural areas. Work may be conducted on behalf of the state in rural areas. As defined in the proposed revised regulation, "on behalf of" means all heavy duty vehicles used to perform regulated entity work by a prime contractor. Those vehicles include, but are not limited to, heavy duty vehicles owned, operated or leased by a prime contractor. However, vehicles used exclusively as snowplows under contract with a regulated entity are specifically exempt from the heavy duty vehicle definition in the proposed revised regulation. Prime contractors located in rural areas will be subject to the requirements in the regulation. The proposed revision will remove subcontractors from applicability. Since the department can not make a reputable estimate of the number of contract solicitations or awards that will occur in rural areas, it is difficult to predict the number of affected prime contractors at this time.

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

There are no reporting, recordkeeping or other compliance requirements associated with the proposed revisions to Part 248 for those HDVs identified as exempted agricultural or farm vehicles. Additionally, owners/operators of exempt vehicles will not need to submit any paperwork to prove that the vehicle is an exempted vehicle.

Owners/operators of exempt vehicles are not required to obtain any professional services to comply with the proposed revised regulation. Prime contractors working on behalf of the state will be subject to the reporting, recordkeeping and other compliance requirements as noted in the regulation. A useful life waiver provision will be included in the regulation which allows the Department to issue a waiver of the requirements of this part to a BART regulated entity or prime contractor upon receipt of request from such entity or prime contractor provided that such vehicle will be permanently taken out of service in New York State on or before December 31, 2013 pursuant to recent revisions to ECL section 19-0323.

3. Costs:

Since agricultural and farm vehicles are largely exempt from the proposed revisions to Part 248, there are no costs incurred by owners/operators to comply with this regulation. Costs to prime contractors are

unknown at this time since it ultimately will depend on the prime contractor selected best available retrofit technology (BART) device installed on each affected prime contractor vehicle. Estimated costs for the BART devices are described in more detail in the Regulatory Impact Statement and incorporated here.

4. Minimizing adverse impact:

There will be no adverse impact on rural areas as a result of this proposed revised regulation. The regulation specifically exempts agricultural and farm HDVs used exclusively for agricultural purposes.

5. Rural area participation:

The department plans on holding public hearings at various locations throughout New York State. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments on the proposed revisions to the regulation.

Job Impact Statement

1. Nature of impact:

We are revising 6 NYCRR Part 248, "Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology for Heavy Duty Vehicles" (Part 248). This rule will continue to potentially impact job and employment opportunities, both negatively and positively.

2. Categories and numbers affected:

The revised regulation requires that covered vehicles have best available retrofit technology (BART) installed on or before December 31, 2012. This proposed revision will eliminate subcontractors from regulatory applicability.

BART refers to retrofit equipment, verified by EPA or the California Air Resources Board (CARB), including diesel particulate filters (DPFs), diesel oxidation catalysts (DOCs), or other devices that reduce particulate matter contained in diesel exhaust. In lieu of retrofitting HDVs, regulated entities and contractors have the option to comply with BART by replacing a HDV engine/vehicle with either a MY 2007 heavy duty vehicle (or subsequent model year vehicle), or replace with an alternative fuel vehicle, or retire the vehicle/engine. Other BART compliance options include obtaining a useful life waiver or a BART device waiver for the vehicle. Contractors may include affected small businesses and local governments. We are proposing to revise the definition "on behalf of" to read: "all heavy duty vehicles used to perform regulated entity work by a prime contractor. Those vehicles include, but are not limited to, heavy duty vehicles owned, operated or leased by a prime contractor." The regulatory requirements will continue to affect several categories of businesses and employment including BART device (DPF and DOC) manufacturers, device substrate manufacturers, authorized installers/distributors of verified BART devices, new engine/vehicle (post model year 2006) manufacturers, and contractors of state agencies/public authorities.

This rulemaking maintains existing requirements as to prime contractors (i.e., prime contractors like state government entities, would remain subject to both the ULSD requirements effective February 12, 2007 and the BART requirements) and thus is not expected to have any negative impacts on such prime contractors. It is conceivable that prime contractors may elect to reduce the number of their employees to cover the costs of purchasing/installing BART devices on their affected HDVs. As noted in the 2009 rulemaking, the population of prime contractor vehicles affected by the proposed amended regulation is unknown. As with that rulemaking, the Department remains unable to provide a specific estimate of the number of contract solicitations or awards that will occur because of the difficulty in predicting the number of affected prime contractors at this time. The Department expects the cost impact to those affected contractors to be similar to the impacts on government entities which, in turn, may result in somewhat higher bids proposed by prime contractors on state and public authority contract work to compensate for the increased cost to comply with the ULSD and BART requirements on their affected vehicles. But such increased costs will primarily occur only until December 31, 2012, when all affected HDVs are required to be BART compliant. Costs associated with regulatory compliance may preclude or prevent some businesses from bidding on state agency/public authority contracts. Again, there would be no reason to expect these impacts to change from those associated with the existing regulation.

As noted in the 2009 rulemaking, businesses and employment expected to continue to be positively impacted as a result of the existing regulation include BART device manufacturers, device substrate manufacturers, authorized installers/ distributors of verified BART devices, new engine/vehicle manufacturers and alternative fuel engine/vehicle manufacturers. However, these positive impacts may be reduced by this rulemaking. Both the addition of useful life waivers and the subtraction of subcontractors from applicability will reduce the number of vehicles required to retrofit. Businesses that may be created or continue to expand include those that manufacture, install, repair, or clean retrofit technologies. Again, since the proposed revised regulation deletes subcontractors from applicability, the

degree to which these businesses are positively impacted may be slightly less appreciable as there is the potential for less retrofits which could negatively impact those BART device manufacturers and vendors.

The rulemaking proposes to remove trucks owned or operated by subcontractors from applicability and therefore should have a positive direct impact on subcontractors.

3. Regions of adverse impact:

Statewide.

4. Minimizing adverse impact:

DERA, including recent amendments, provides for waivers related to BART devices. In addition to the previously permitted waiver where BART is not applicable or available for a specific engine application, Part 248 is being revised to allow the department to issue a useful life waiver for a specific vehicle/engine upon request in lieu of retrofitting a vehicle pursuant to amended ECL 19-0323. However, the applicant must certify that the vehicle will be taken out of service in New York State by December 31, 2013. Waivers may be issued by the department only if specific regulatory criteria are met. This will reduce the number of vehicles required to be retrofit.

5. Self employment opportunities:

Entrepreneurial opportunities will continue to exist for those willing to become authorized representatives of BART device manufacturers in order to provide technical support for and any required maintenance of the device.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Sewage Sludge Incineration Units

I.D. No. ENV-50-11-00004-P

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

Proposed Action: Amendment of Parts 200 and 219 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105; Clean Air Act; sections 111 and 129; and 40 CFR 60, subpart Mmmm

Subject: Sewage sludge incineration units.

Purpose: To regulate the emission of air contaminants from existing sewage sludge incineration units.

Public hearing(s) will be held at: 2:00 p.m., Jan. 17, 2012 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; 2:00 p.m., Jan. 18, 2012 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY; and 2:00 p.m., Jan. 19, 2012 at Department of Environmental Conservation, Region 8 Office Conference Rm., 6274 E. Avon-Lima Rd. (Rtes. 5 and 20), Avon, 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: Existing Sections 200.1 through 200.8 remain unchanged.

Existing Section 200.9, Table 1 is amended by adding the following:

Regulation	Referenced Material	Availability
219-9.1	40 CFR Part 60, Subpart Mmmm (March 21, 2011)	*
219-9.2	40 CFR Part 60, Subpart Mmmm (March 21, 2011)	*
219-9.3	40 CFR Part 60, Subpart Mmmm (March 21, 2011)	*
219-9.3(a)(1)(iv)	40 CFR Part 60.5175 (March 21, 2011)	*
219-9.3(a)(2)	40 CFR Part 60, Subpart Mmmm (March 21, 2011)	*
219-9.3(b)(1)(iv)	40 CFR Part 60.5175 (March 21, 2011)	*

Regulation	Referenced Material	Availability
219-9.3(b)(5)	40 CFR Part 60, Subpart Mmmm (March 21, 2011)	*

Existing Section 200.10, Table 2 is amended by adding the following entry after the listing for EEEE and FFFF*, and before the listing for Appendix A:

40 CFR 60 Subpart	Source Category	Page numbers in July 1, 2003 Edition of 40 CFR 60 or Federal Register Citation
MMMM	Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units	60 FR 15429 -15454 March 21, 2011

Existing Sections 200.11 through 200.16 remain unchanged.
Existing Section 219-1.1 through Subdivision 219-1.2(g) remains unchanged.

New Subdivision 219-1.2(h) is added as follows:

(h) Subpart 219-9, Emission Guidelines and Compliance Schedules for Existing Sewage Sludge Incineration Units.

(1) Subpart 219-9 of this Part applies to existing sewage sludge incineration units located at wastewater treatment facilities.

(2) Subpart 219-9 of this Part applies statewide.

Existing Subparts 219-2 through 219-8 remain unchanged.

A new Subpart 219-9 is added as follows:

Section 219-9.1 Applicability.

The federal requirements of 40 CFR part 60, subpart Mmmm, incorporated by reference in 6 NYCRR Part 200 (see Table 2, Section 200.10 of this Title), apply to sewage sludge incineration (SSI) units, located at wastewater treatment facilities, designed to treat domestic sewage sludge, the construction of which commenced on or before October 14, 2010.

Section 219-9.2 Definitions.

(a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Parts 200 and 201 of this Title, and 40 CFR part 60, subpart Mmmm apply (see Table 2, Section 200.10 of this Title).

(b) For the purpose of this Subpart, the following definitions apply:

(1) 'Fluidized bed incinerator' means an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

(2) 'Multiple hearth incinerator' means a circular steel furnace that contains a number of solid refractory hearths and a central rotating shaft; rabble arms that are designed to slowly rake the sludge on the hearth are attached to the rotating shaft. Dewatered sludge enters at the top and proceeds downward through the furnace from hearth to hearth, pushed along by the rabble arms.

(3) 'Sewage sludge' means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incineration unit or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(4) 'Sewage sludge incineration (SSI) unit' means an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. Sewage sludge incineration unit designs include fluidized bed and multiple hearth. A SSI unit also includes, but is not limited to, the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, bottom ash system, and all ash handling systems connected to the bottom ash handling system. The combustion unit bottom ash system ends at the truck loading station or similar equipment that transfers the ash to final disposal. The SSI unit does not include air pollution control equipment or the stack.

(5) 'State Plan approval' means the effective date of EPA's approval of New York State's SSI State Plan.

Section 219-9.3 Compliance/Closure Schedules.

Owners or operators of applicable SSI units must achieve full compliance with the requirements of 40 CFR part 60, subpart Mmmm (see Table 2, Section 200.10 of this Title), and this Subpart by either complying with one of the two schedules specified in Subdivisions (a) and (b) of this Section, or permanently closing the SSI unit as specified in Subdivision (c) of this Section.

(a) 'One year compliance schedule'. If compliance will be achieved less

than one year after State Plan approval, the two increments of progress specified in Paragraphs (1) and (2) of this Subdivision must be met.

(1) Submit a final control plan to the Department's appropriate regional air pollution control engineer for review and approval by the earlier of the following two dates: three months after State Plan approval, or September 21, 2012. The final control plan must include:

(i) A description of the proposed air pollution control devices that will be installed and process changes that will be used to comply with the emission limits, standards and other requirements of this Subpart;

(ii) The type(s) of waste that is(are) proposed to be combusted, if waste other than sewage sludge is combusted in the unit;

(iii) The maximum design capacity of the SSI;

(iv) If applicable, the petition for site-specific operating limits pursuant to 40 CFR part 60.5175 (see Table 2, Section 200.10 of this Title).

(2) Achieve full compliance with approved final control plan and requirements of 40 CFR part 60, subpart Mmmm (see Table 2, Section 200.10 of this Title), by the earlier of the following two dates: 12 months after State Plan approval, or June 21, 2013.

(b) 'Extended compliance schedule'. If compliance will be achieved more than one year after State Plan approval, the five increments of progress specified in Paragraphs (1) through (5) of this Section must be met.

(1) Submit a final control plan which contains an extended compliance schedule to the Department's appropriate regional air pollution control engineer for review and approval by the earlier of the following two dates: three months after State Plan approval, or September 21, 2012.

The final control plan must include:

(i) A description of the proposed air pollution control devices that will be installed and process changes that will be used to comply with the emission limits, standards and other requirements of this Subpart;

(ii) The type(s) of waste that is(are) proposed to be combusted if waste other than sewage sludge is combusted in the unit;

(iii) The maximum design capacity of the SSI;

(iv) If applicable, the petition for site-specific operating limits under 40 CFR part 60.5175 (see Table 2, Section 200.10 of this Title).

(2) Contracts must be awarded and purchase orders must be issued for emission control systems, installation, and process modifications and the acquisition of required component parts by the earlier of the following two dates: nine months after State Plan approval, or March 21, 2013.

(3) Process changes and the on-site construction or installation of emission control equipment must be initiated by the earlier of the following two dates: 15 months after State Plan approval, or September 21, 2013.

(4) Process changes and on-site construction or installation of emission control equipment must be completed by the earlier of the following two dates: 32 months after State Plan approval, or by November 21, 2015.

(5) Full compliance with the approved final control plan and requirements of 40 CFR part 60, subpart Mmmm (see Table 2, Section 200.10 of this Title), must be achieved by the earlier of the following two dates: 36 months after State Plan approval, or March 21, 2016.

(c) 'Final Closure Schedule'. Owners or Operators of an applicable SSI unit that plan to cease operation must submit a closure notification, including the planned date of closure, to the Department's appropriate regional air pollution control engineer for approval by the earlier of the following two dates: three months after State Plan approval, or September 21, 2012. Permanent closure of an applicable SSI unit must occur by the earlier of the following two dates: 36 months after State Plan approval, or March 21, 2016.

Section 219-9.4 Title V Permit Application Compliance Schedule.

Owners or Operators of an applicable SSI unit not subject to an earlier permit application deadline must submit a complete Title V permit application to the Department for review and approval by the earlier of the following two dates: 12 months after State Plan approval, or March 21, 2014.

Text of proposed rule and any required statements and analyses may be obtained from: John Henkes, New York State Department of Environmental Conservation, 625 Broadway, 2nd Floor, Albany, NY 12233-3254, (518) 402-8403, email: 219incin@gw.dec.state.ny.us

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

Public comment will be received until: January 26, 2012.

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

This regulation is being proposed pursuant to Sections 111 and 129 of

the Federal Clean Air Act (Act), and 40 CFR 60, Subpart M “Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units” (Guidelines) enacted by the Environmental Protection Agency (EPA) on March 21, 2011. New York State’s statutory authority for these regulations is found in the Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

Section 1-0101. This Section outlines the policy declaration for the Department regarding the protection of New York State’s environment and natural resources including the control of “air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.” Section 1-0101 further requires that it is the policy of the State to coordinate the State’s environmental plans, functions, powers and programs with those of the federal government and other regions and manage air resources to the end that the State may fulfill its responsibility as trustee of the environment for present and future generations. This Section provides that it is the policy of the State to foster, promote, create and maintain conditions by which man and nature can thrive in harmony by providing that care is taken for air resources that are shared with other states.

Section 3-0301. This Section states that it shall be the responsibility of the Department to carry out the environmental policy of the State. In furtherance of that mandate, Section 3-0301(1)(a) gives the Commissioner authority to “[c]oordinate and develop policies, planning and programs related to the environment of the State and regions thereof...” Section 3-0301(1)(b) directs the Commissioner to promote and coordinate management of, among other things, air resources “to assure their protection, enhancement, provision, allocation, and balanced utilization consistent with the environmental policy of the State and take into account the cumulative impact upon all of such resources in making any determination in connection with any license, order, permit, certification or other similar action or promulgating any rule or regulation, standard or criterion.” Pursuant to ECL Section 3-0301(1)(i), the Commissioner is charged with promoting and protecting the air resources of New York including providing for the prevention and abatement of air pollution. Section 3-0301(2)(a) permits the Commissioner to adopt rules and regulations to carry out the purposes and provisions of the ECL. Section 3-0301(2)(g) allows the Commissioner to enter and inspect sources of air pollution and to verify compliance. Section 3-0301(2)(m) gives the Commissioner authority to “adopt such rules, regulations, and procedures as may be necessary, convenient, or desirable to effectuate the purposes of this chapter.”

Section 3-0303. This Section requires that the Department formulate and, from time to time, revise a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the State. In formulating this plan and any revisions, the Department is required to conduct public hearings, cooperate with other departments, agencies and government officials, and any other interested parties, and obtain assistance and data as may be necessary from any department, division, board, bureau, commission or other agency of the State or political subdivision or any public authority to enable the Department to carry out its responsibilities.

Section 19-0103. This Section is a declaration of the State’s policy with specific reference to air pollution. “It is declared to be the policy of the State of New York to maintain a reasonable degree of purity of the air resources of the State. . . and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution.”

Section 19-0105. This Section sets out the purpose of Article 19 of the ECL, “to safeguard the air resources of the State from pollution” consistent with the policy expressed in Section 19-0103 and in accordance with other provisions of Article 19.

Section 19-0107. This Section provides definitions to be used in the application of the requirements of Article 19 of the ECL.

Section 19-0301. This Section states that consistent with the policy of the State as it is declared in Section 19-0103, the Department shall have power to formulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling or prohibiting air pollution, requires that permits be obtained from the Department, and establishes the degree of air pollution or air contamination that may be permitted.

Section 19-0302. This Section states that permit applications, renewals, modifications, suspensions and revocations will be governed by rules and regulations adopted by the Department, and that permits issued may not include performance, emission or control standards more stringent than any established by the Act or by EPA unless such standards are authorized by rules or regulations.

Section 19-0303. This Section provides that a code, rule or regulation or any amendment or repeal thereof will not be adopted until after a public hearing is held and may not become effective until filed with the Secretary of State. The Department may also recognize the difference in the State’s air quality areas in its rulemaking. Finally, this section prescribes

procedures for adopting any code, rule or regulation which contains a requirement that is more stringent than the Act or regulations issued pursuant to the Act by the EPA.

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

Sections 71-2103 and 71-2105 set forth the civil and criminal penalty structures for violations of Article 19.

LEGISLATIVE OBJECTIVES:

Article 1 of the ECL was adopted to establish that the policy of the State will be to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well being. Additionally, Article 1 directs that the State improve and coordinate the environmental programs of the State to manage the basic resources of water, land, and air.

Article 3 of the ECL establishes the organization, functions, powers, duties and jurisdiction of the Department. Additionally, it requires the formulation of an environmental plan for the management and protection of the environment and natural resources of the State, and the submission of periodic revisions of such plan to the governor and to the Department of State.

Article 19 of the ECL was adopted for the purpose of safeguarding the air resources of the State from pollution in accordance with Article 1. To facilitate this purpose, the Legislature bestowed general and specific powers and duties on the Department, including the power to formulate, adopt, promulgate, amend, and repeal regulations for preventing, controlling or prohibiting air pollution.

The proposed amendments to Part 200 and Subpart 219-1, and the new proposed Subpart 219-9 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York will make the State’s requirements for existing sewage sludge incineration (SSI) units consistent with recent federally promulgated Guidelines for SSI units, as required by the Act. Failure to do so will result in the imposition of a federal plan for the State’s SSI units, and the possibility of sanctions imposed by EPA for New York State’s failure to file a SSI State Plan.

NEEDS AND BENEFITS:

Existing SSI units are currently regulated by the Department’s Part 212, “General Process Emission Sources” and federal 40 CFR Part 503, Subpart E “Incineration” and 40 CFR Part 60, Subpart O “Standards of Performance for Sewage Treatment Plants”. These existing regulations do not address levels of control appropriate for effectively regulating incineration of sewage sludge at existing SSI units. There have been advances in technology and in our understanding of the potential adverse environmental effects of incineration at SSI units since the State and federal regulations were first developed. Furthermore, as mandated by Sections 111 and 129 of the Act, the EPA promulgated Guidelines for existing SSI units in 40 CFR Part 60, Subpart M on March 21, 2011. The Guidelines are more stringent than existing State and federal regulations. Accordingly, New York State is required by the Act to submit to EPA by March 21, 2012, a SSI State Plan to implement and enforce the Guidelines requirements. Failure to do so may result in sanctions imposed against the State by EPA.

To comply with this federal Act mandate, DEC proposes to adopt a new Subpart 219-9 which would apply statewide to wastewater treatment facilities (WWTF) that operate SSI units constructed on or before October 14, 2010. Subpart 219-9 will be entitled “Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units”. Subpart 219-9 will incorporate by reference all the federal requirements set forth in the Guidelines and in doing so, will establish more stringent requirements for affected existing SSI units in the state. By adopting these Guidelines, Subpart 219-9 will establish a clear and environmentally sound set of criteria for affected existing SSI units. These criteria will provide a basis for WWTF owners or operators to decide whether to retain, replace or modify their existing SSI units. The criteria will also address public concerns about incineration of sewage sludge.

As a result of implementing these Guidelines, EPA estimates that nationwide SSI emissions for the following pollutants will be reduced as follows: particulate matter by 17 percent, cadmium by 55 percent, lead by 47 percent, sulfur dioxide by 61 percent, and hydrogen chloride by 65 percent. Reductions in nitrogen oxides, carbon monoxide, mercury, and dioxin/furans are expected to be minimal due to the Department’s industrial pre-treatment program and solid waste management requirements. Implementation of the Guidelines will also generate up to date stack testing information on existing SSI units.

The background information documents that support the EPA proposal and promulgation of the Guidelines for this action can be found in a single EPA established docket under Docket ID No. EPA-HQ- OAR-2009-0559. This docket includes previous actions including the standards proposed on October 14, 2010 (75 FR 63260) and a supplemental notice issued on

November 5, 2010 (75 FR 68296). All documents in the docket are listed on EPA's website at <http://www.regulations.gov>.

COSTS:

Adoption of Subpart 219-9 will entail additional administrative costs for both state and local governments where operation of existing SSI units continues. For some WWTFs there will be additional review required to determine compliance with the mandatory emission limits and stack testing requirements. The cost of complying with the requirements or finding acceptable alternatives for disposal of sewage sludge will be highly variable. These costs will accrue irrespective of whether this regulation is promulgated, since the Act mandates that EPA impose the requirements on affected SSI units if the State fails to regulate.

Implementation of Subpart 219-9 will result in varying economic impacts for municipalities which choose to continue to incinerate their sewage sludge in an affected SSI unit(s). To determine how much improvement over current emission controls was necessary, EPA compared average pollutant concentration values used to calculate baseline annual emissions for each SSI unit to the proposed emissions limits, and percentages were calculated to quantify the amount of improvement needed for the SSI unit to meet the proposed limits. EPA subcategorized the existing SSI units into two main groups: multiple hearth (MH) units and fluidized bed (FB) units. Based on these factors, pollutant-specific control methods were chosen by EPA for SSI units requiring more than 10 percent improvement to meet the proposed limits.

EPA's cost estimates include detailed costs for emission controls if required, stack testing, monitoring, and reporting and recordkeeping. On a nationwide basis, EPA estimates that the capital cost for all existing SSI units to meet the proposed Maximum Achievable Control Technology (MACT) floor emission limits of the Guidelines is approximately \$55.0 million. Total nationwide annual cost for controls for all existing SSI units is about \$17.8 million/yr.

There are currently over 600 WWTFs in New York State. Of those, only 12 WWTFs currently operate or have the ability to operate one or more SSI units. In EPA's studies, 10 of the State's 12 existing WWTFs that operate SSI units were included in the cost analysis. These 10 WWTFs operate a total of 18 SSI units. Of the 18 units, EPA projects that 11 would not need any additional control equipment to comply with the Guidelines. For these, only monitoring, record keeping and reporting requirements are considered added costs. The added costs include a total capital investment estimated to be \$61,250 per SSI unit and an annual cost of \$31,000 per SSI unit. The remaining seven SSI units (located at four facilities: Poughkeepsie (T) Arlington WWTP, Southtowns Sewage Treatment Plant (STP), Bird Island STP and the Town of Tonawanda Sewer District #2 STP) are expected to need packed bed scrubbers as added air emission controls to comply with the Guidelines requirements for sulfur dioxide (SO₂) and/or hydrogen chloride (HCL) requirements. EPA estimates that the cost for adding the packed bed scrubbers ranges from approximately \$375,000 to \$4,700,000 per SSI unit, based primarily on the unit's capacity, with annual costs ranging from \$89,000 to \$1,000,000 per SSI unit.

The actual needs and costs to an individual WWTF will become more accurate once the individual WWTF owner/operator performs a detailed evaluation of its facility's ability to meet the proposed requirements of Subpart 219-9. In its estimates, EPA also compared the total operating costs for the SSI units, including the costs associated with implementing the Guidelines, with the cost of landfilling the sewage sludge. Using average cost factors for the facilities that only require added monitoring, recordkeeping and reporting requirements, the cost for continuing the SSI unit operations was typically two to three times less expensive than landfilling. Again, using nationwide average cost factors for the SSI units requiring the addition of packed bed scrubbers, the difference between landfilling and continuing SSI unit operations ranged from 50 percent of the cost of landfilling to slightly more expensive than landfilling for SSI units 1 and 2 of the Bird Island wastewater treatment facility in Buffalo.

PAPERWORK:

Subpart 219-9 will require WWTF owners or operators of SSI units to make submittals to the Department including stack testing reports, continuous emission monitoring reports, a plan to optimize operation and avoid excess emissions, and a report of data summaries for affected SSI units. Continuous monitoring of emissions for some pollutants is required and must be supported by records of measurements and other required information. Accordingly, summaries of these records must be submitted to the Department. In addition, WWTF owners or operators who elect to upgrade affected existing SSI units to meet the new requirements must submit compliance schedules and apply for and obtain 6 NYCRR Part 201 Title V operating permits. Such documents must be prepared by professional engineers licensed in New York State.

LOCAL GOVERNMENT MANDATES:

The 12 WWTFs that operate SSI units in the State are owned by municipalities. Local municipalities which choose to continue to incinerate sewage sludge will be mandated to meet the requirements of Subpart

219-9. A municipality that chooses to close its SSI unit(s) will need to find an alternative method of disposal for the sewage sludge. In either case the municipality will need to address these actions in its budget process by passing the costs onto the public or the other municipalities served by the SSI unit(s).

DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATIONS AND LAWS:

This proposal does not duplicate any other federal or state regulations or statutes. The State, by federal law, must promulgate this regulation as part of a plan to implement the Guidelines for existing SSI units.

ALTERNATIVES:

Adoption of revisions to Part 200 and Subpart 219-1 and new Subpart 219-9 is necessary to meet federal requirements and, as such, there are no viable alternatives to this rulemaking. If the Department takes no action EPA may choose to sanction the state as a result of its failure to file a State Plan. In addition, if the Department does not have an "approved" State Plan by March 21, 2013, EPA is required to implement a federal plan. Furthermore, if New York State fails to meet the federal deadlines and promulgate this regulation, citizen suits may be filed against the EPA to force it to take action against the State.

FEDERAL STANDARDS:

Proposed Subpart 219-9 incorporates the Guidelines as promulgated by EPA in 40 CFR Part 60, Subpart Mmmm on March 21, 2011. Additional increments of progress (construction milestones) have been added to the compliance schedule of Section 219-9.3 to further assist WWTF facilities to meet the compliance schedule.

COMPLIANCE SCHEDULE:

Subpart 219-9 includes a compliance schedule that requires all existing WWTF owners or operators of SSI units to achieve final compliance as expeditiously as practicable following EPA approval of New York State's SSI State Plan but no later than the earlier of the following: March 21, 2016 or three years after the effective date of EPA's approval of New York State's SSI State Plan. For compliance schedules that extend more than one year following the effective date of State Plan approval by EPA, the schedule includes dates for enforceable increments of progress including: submission of a final control plan, award contracts, initiate on-site construction, complete on-site construction and achieve final compliance.

In addition, if an existing SSI unit is not subject to an earlier permit application deadline, the SSI unit owner or operator (permittee) must submit a complete Title V permit application by the earlier of the following: 12 months after the effective date of the EPA approved SSI State Plan that implements the Guidelines; or March 21, 2014.

If the State fails to receive EPA approval of its State Plan by March 21, 2013, a Federal Plan will go into effect. WWTFs subject to the Federal Plan will have until March 21, 2016 to demonstrate compliance.

Regulatory Flexibility Analysis

EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS:

The New York State Department of Environmental Conservation (Department) proposes to add a new Subpart 219-9 to Part 219 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Revisions are also being proposed to Part 200, General Provisions, and Subpart 219-1, Incineration - General. Proposed Subpart 219-9 is being added to address recently promulgated federal requirements entitled: Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units (Guidelines) found at 40 CFR Part 60, Subpart Mmmm. Revisions are also being made to the reference tables found in Part 200. Specifically, Subpart 200.9 Table 1 and Subpart 200.10 Table 2 are being amended to add and formally incorporate by reference the Federal requirements of 40 CFR Part 60, Subpart Mmmm. Subpart 219-1, which provides definitions and outlines the applicability requirements of the various Part 219 Subparts, is also being amended to include the proposed requirements of Subpart 219-9.

The proposed revisions to Parts 219 and 200 are not expected to have an effect on small business but will have an effect on local governments. Subpart 219-9 will regulate the emission of air contaminants from New York State's 12 existing wastewater treatment facilities (WWTF) that operate sewage sludge incineration (SSI) units, constructed on or before October 14, 2010, which are dedicated to the incineration of dewatered sewage sludge. These WWTFs are all owned by local municipalities.

The SSI units are owned and operated primarily by larger municipalities who often take dewatered sludge from surrounding communities (e.g., Albany County Sewer District accepts and incinerates dewatered sludge from 25 nearby, smaller municipal WWTFs). It is expected that the impact of proposed Subpart 219-9 on the 12 municipal WWTFs will have a far reaching affect. Both the existing WWTFs that operate SSI units and the smaller municipal WWTFs they provide service to will need to examine their sewage sludge disposal options.

COMPLIANCE REQUIREMENTS:

The Department expects that small businesses will not be subject to the

proposed requirements. Local governments with SSI units will be subject to these proposed added requirements. Affected SSI units will have added performance testing, operator training, monitoring, recordkeeping and reporting requirements and will be subject to emission limitation requirements for nine (9) pollutants (particulate matter (PM), sulfur dioxide (SO₂), hydrogen chloride (HCL), nitrogen oxides (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins/furans).

PROFESSIONAL SERVICES:

Local governments may face additional costs related to professional services for cost analysis, emission testing, and the design of additional control equipment if necessary.

COMPLIANCE COSTS:

The Department expects that small businesses will not be subject to the proposed requirements and accordingly, there should not be compliance costs for small businesses. There are, however, compliance costs expected for local governments with existing SSI units. An Environmental Protection Agency (EPA) study included a cost analysis of 10 of New York State's 12 WWTF's that operate SSI units. According to this study, these 10 WWTFs operate a total of 18 SSI units. Of the 18 units, EPA projects that 11 would not need any additional control equipment to comply with the Guidelines. The added costs for these 11 units would only include monitoring, recordkeeping and reporting requirements at an estimated total capital investment of \$61,250 per SSI unit, and an annual cost of \$31,000 per SSI unit.

EPA projects that the remaining seven SSI units (located at four facilities: Poughkeepsie (T) Arlington WWTP, Southtowns Sewage Treatment Plant (STP), Bird Island STP and the Town of Tonawanda Sewer District #2 STP) are expected to need packed bed scrubbers as added air emission controls to comply with the Guidelines requirements for sulfur dioxide (SO₂) and/or hydrogen chloride (HCL) requirements. EPA estimates that the cost for adding the packed bed scrubbers ranges from approximately \$375,000 to \$4,700,000 per SSI unit, based primarily on the unit's capacity, with annual costs ranging from \$89,000 to \$1,000,000 per SSI unit. Specific costs for the 12 municipalities with existing SSI units cannot be established until these municipalities complete a detailed evaluation of their WWTFs' SSI unit(s) and perform an individual cost analysis.

MINIMIZING ADVERSE IMPACT:

The expected adverse effect of this regulation is the increased cost of compliance with the regulations, or added cost for alternative sewage sludge disposal. Development of Subpart 219-9 is a direct mandate of the federal Clean Air Act (Act). Compliance costs will accrue irrespective of whether this regulation is promulgated or not, since the Act mandates that EPA impose the requirements on affected SSI units if New York State fails to do so.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

A letter discussing the Department's proposed amendments to Parts 219 and 200, a Notice of Operational Intent Form, and a copy of an EPA Fact Sheet for the Guidelines were sent to the 12 directly affected WWTF owners. In addition, the Department responded to inquiries regarding these mailings by telephone and e-mail, and held a meeting with a local municipality. EPA, in the development of its Guidelines, held public hearings on a national level. Public hearings will be held to obtain comments on the Departments proposed amendments to Parts 219 and 200 and participation by affected parties will be sought through these hearings.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The Department expects that small businesses will not be affected by new Subpart 219-9. For local governments needing to upgrade their controls, technological feasibility is not an issue. Control technologies for the limits imposed are well established and readily available. There are economic issues that local governments will need to address. Before they can decide whether to close down or comply with the added requirements, engineering studies will need to be conducted which were not in their budgets. If the compliance requirements are too costly, the economics may be such that other disposal options become more cost-effective. In either case, costs to local governments will increase and need to be addressed.

CURE PERIOD:

In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to comply with federal Clean Air Act requirements, requiring the incorporation and implementation of federal emission guidelines for existing Sewage Sludge Incineration (SSI) units. The proposed rule provides increments of progress (construction milestones) to assist facilities in meeting the federal compliance schedule.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED:

The New York State Department of Environmental Conservation

(Department) proposes to add a new Subpart 219 9 to Part 219 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Revisions are also being proposed to Part 200, General Provisions, and Subpart 219-1, Incineration - General. Proposed Subpart 219-9 is being added to address recently promulgated federal requirements entitled: Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units (Guidelines) found at 40 CFR Part 60, Subpart M. Revisions are also being made to the reference tables found in Part 200. Specifically, Subpart 200.9 Table 1 and Subpart 200.10 Table 2 are being amended to add and formally incorporate by reference the Federal requirements of 40 CFR Part 60, Subpart M. Subpart 219-1, which provides definitions and outlines the applicability requirements of the various Part 219 Subparts, is also being amended to include the proposed requirements of Subpart 219-9.

New Subpart 219-9 will regulate the emission of air contaminants from New York State's 12 existing wastewater treatment facilities (WWTF) that operate sewage sludge incineration (SSI) units, constructed on or before October 14, 2010. These WWTF's are all owned by local municipalities. Three of these WWTFs are located in counties which are considered rural (Herkimer, Jefferson and Warren). The remaining WWTFs are not in rural areas but may incinerate sewage sludge generated in surrounding communities which are considered rural.

COMPLIANCE REQUIREMENTS:

For WWTFs which choose to continue operation of their SSI unit(s), Subpart 219-9 will require new reporting, monitoring and recordkeeping requirements to ensure compliance with new emission limitations and other operating requirements. Testing and monitoring requirements will be required for dioxins/furans, particulate matter, opacity, cadmium, lead, mercury, sulfur dioxide, and hydrogen chloride. The new requirements of Subpart 219-9 may also require the installation of additional pollution control equipment and likely result in the need for professional engineering services for the planning, design and construction of the control equipment.

COSTS:

The costs of complying with the requirements or finding acceptable alternative means for disposal of sewage sludge will be highly variable. Implementation of Subpart 219-9 will result in an economic impact for municipalities which choose to continue to incinerate sewage sludge in an affected SSI unit. EPA estimates that the added costs for the WWTFs needing additional monitoring, recordkeeping and reporting requirements will include a total capital investment of \$61,250 per SSI unit and an annual cost of \$31,000 per SSI unit. Additional capital costs will be incurred for SSI units that require packed bed scrubbers as added air emission controls to comply with new emission limitations for sulfur dioxide (SO₂) and/or hydrogen chloride (HCL). EPA estimates these capital costs to range from approximately \$375,000 to \$4,700,000 per SSI unit (dependent primarily on the SSI unit(s) capacity), and annual costs to range from \$89,000 to 1,000,000 per SSI unit. Specific costs for the 12 municipalities with existing SSI units cannot be established until these municipalities complete a detailed evaluation of their WWTFs' SSI unit(s) and perform an individual cost analysis.

MINIMIZING ADVERSE IMPACT:

The anticipated adverse effect of new Subpart 219-9 is the increased cost of compliance, or increased sewage sludge disposal costs. Development of Subpart 219-9 is a direct mandate of the federal Clean Air Act (Act). Compliance costs will accrue irrespective of whether this regulation is promulgated or not, since the Act mandates that EPA impose the requirements on affected SSI units if New York State fails to regulate.

RURAL AREA PARTICIPATION:

At least three of the 12 existing WWTFs are located in rural areas; and the impact from the remaining nine WWTFs may also have a further reaching impact on other surrounding (possibly rural) areas that they serve. Proposed Subpart 219-9 is the result of an EPA directive, which must be adhered-to in framing requirements. This limits the Department's flexibility in terms of emission limits selected and requirements imposed. EPA, in the development of its requirements, held public hearings on a national level. The Department canvassed and provided correspondence to all affected WWTFs regarding EPA's Guidelines and the Department's proposed amendments to Parts 219 and 200. Public hearings will be held to obtain comments on the proposed rulemaking and participation by affected parties will be sought through these hearings.

Job Impact Statement

NATURE OF IMPACT:

The New York State Department of Environmental Conservation (Department) proposes to add a new Subpart 219 9 to Part 219 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Revisions are also being proposed to Part 200, General Provisions, and Subpart 219-1, Incineration - General. Proposed Subpart 219-9 is being added to address recently promulgated federal requirements entitled: Emission Guidelines and Compliance Times for Existing

Sewage Sludge Incineration Units (Guidelines) found at 40 CFR Part 60, Subpart MMMM. Revisions are also being made to the reference tables found in Part 200. Specifically, Subpart 200.9 Table 1 and Subpart 200.10 Table 2 are being amended to add and incorporate by reference the Federal requirements of 40 CFR Part 60, Subpart MMMM. Subpart 219-1, which provides definitions and outlines the applicability requirements of the various Part 219 Subparts, is also being amended to include the proposed requirements of Subpart 219-9. The proposed rulemaking revisions will apply statewide. The additions and amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State.

New Subpart 219-9 may require New York's 12 existing wastewater treatment facilities (WWTF) that operate sewage sludge incineration units, constructed on or before October 14, 2010, to add various levels of air pollution control equipment, or upgrade existing controls for compliance. This may create short term (1-3 year) employment opportunities in the state.

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED:

It is expected that there will be a need for professional engineering design services and short term construction jobs. Since only 12 existing WWTFs are directly affected by Subpart 219-9, and not all are expected to need additional controls, a minimal increase in jobs and employment opportunities is expected.

REGIONS OF ADVERSE IMPACT:

Subpart 219-9 is not expected to have any adverse impacts on jobs or employment opportunities. Therefore, there are not any regions of the state where the proposed rule would have a disproportionate adverse impact on jobs or employment opportunities.

MINIMIZING ADVERSE IMPACT:

Subpart 219-9 is not expected to have any adverse impacts on existing jobs.

SELF EMPLOYMENT OPPORTUNITIES:

Subpart 219-9 is not expected to have any measurable impact on opportunities for self-employment.

(iii) factors deemed appropriate by the commissioner.

Such written proposal shall be submitted to the department 60 days prior to the requested effective date of the temporary rate adjustment. The temporary rate adjustment shall consist of the various *operating* rate components of [the surviving entity] *that portion of the facility originally associated with the surviving provider number and shall be in effect for a specified period of time as approved by the commissioner.* At the end of the specified timeframe, the hospital will be reimbursed in accordance with the statewide methodology set forth in this Subpart. *The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved as a result of the ongoing consolidation efforts and may also require that the hospital submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 20, 2012.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-c (35)(b) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for general hospital inpatient services. Such inpatient rate regulations are set forth in Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, Paragraph (1) of subdivision (b) of section 1.31 will be amended to eliminate the requirement that the merger, acquisition or consolidation needs to occur on or after the year the rate is based upon. The current base year for hospital inpatient rate purposes is 2005, as required pursuant to PHL § 2807-c(35)(a). Thus, the proposed amendment will permit temporary rate adjustments in connection regard to mergers, acquisitions and/or consolidations that occurred prior to 2005, provided that the hospital is engaged in an ongoing process of consolidation and/or restructuring related to such merger, acquisition and/or consolidation. The temporary rate adjustment will also be revised to consist of the operating rate components of that portion of the facility originally associated with the surviving provider number and shall be in effect for a specified period of time as approved by the Commissioner. This regulation is necessary in order to provide needed relief to providers who meet the criteria.

The existing section 86-1.31(b) requires hospitals seeking temporary rate adjustments to submit a written proposal demonstrating how the temporary additional reimbursement will be utilized to enhance the facility's long-term efficiency and quality of care. The proposed amendments permits the Commissioner to establish benchmarks and goals concerning the facility's implementation of its proposal as a condition for receipt of the temporary rate adjustment. Such hospitals may also be required to submit such periodic reports concerning the achieving of such benchmarks and goals as the Commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the Commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

This regulation can promote the elimination of underutilized services or the consolidation of others. Hospitals can identify the persistent inefficiencies and resource limitations within their system so that scarce health care dollars are not at risk. Teaching programs can be integrated to better serve patients. The combination hospitals licensed under Article 28, where such a combination is consistent with the public need, could create a new, more economical entity and may result in the potential reduction of excess beds and/or improved service delivery. The additional reimbursement provided by this adjustment can support any resulting hospital in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. Hospitals are currently required to file annual certified cost reports and submit claim

Department of Health

EMERGENCY RULE MAKING

Hospital Temporary Rate Adjustments

I.D. No. HLT-50-11-00001-E

Filing No. 1269

Filing Date: 2011-11-23

Effective Date: 2011-11-23

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

Action taken: Amendment of section 86-1.31 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

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

Specific reasons underlying the finding of necessity: Paragraph (b) of subdivision 35 of section 2807-c of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority, effective for periods on and after December 1, 2009, to issue emergency regulations in order to compute hospital inpatient rates as authorized in accordance with the provisions of such subdivision 35.

Subject: Hospital Temporary Rate Adjustments.

Purpose: No longer require that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon.

Text of emergency rule: Paragraph (1) of subdivision (b) of section 86-1.31 is amended to read as follows:

(1) The commissioner may grant approval of a temporary adjustment to rates calculated pursuant to this section for hospitals subject to mergers, acquisitions or consolidations [occurring on or after the year the rate is based upon,] provided such hospitals demonstrate through submission of a written proposal that the merger, acquisition or consolidation will result in an improvement to:

- (i) cost effectiveness of service delivery;
- (ii) quality of care; and

forms for Medicaid reimbursement. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

The estimated net aggregate increase in gross Medicaid expenditures attributable to this proposed initiative for State fiscal year 2010/2011 is \$2.6 million, which on a full annual basis would increase to \$7.9 million. This estimate is based on current cost projections concerning existing mergers, acquisitions and/or consolidations which may qualify for a temporary rate adjustment in accordance with the specified criteria.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

Since meeting benchmarks and goals is required in order to receive this temporary rate adjustment, a hospital is required to submit periodic reports, as determined by the Commissioner, concerning the achievement of such benchmarks and goals.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state or local regulations.

Alternatives:

No significant alternatives are available. Any potential hospital projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not go forward or would have to be attempted with existing facility resources.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for hospitals subject to mergers, acquisitions or consolidations for inpatient payment rates for rate periods on and after December 2, 2010.

Regulatory Flexibility Analysis

Effect of Rule:

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

No health care providers subject to this regulation will see a decrease in average per discharge Medicaid funding as a result of this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

Hospitals that receive the temporary rate adjustment under this regulation will be required to submit periodic reports demonstrating their progress against benchmarks and goals established by the Commissioner.

The rule will have no direct effect on local governments.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corre-

sponding proposed State plan amendment. The Notice further invited the public to review and comment on the related proposed State plan amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

For hospitals that receive the temporary rate adjustment, periodic reports must be submitted which demonstrate the achievement of benchmarks and goals set by the Commissioner.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

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

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation eliminates the requirement that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon in such cases where a hospital receives a temporary adjustment to rates as a result of a merger, acquisition or consolidation. The proposed regulation has no implications for job opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

October 2011 Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-50-11-00015-P

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

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

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

Subject: October 2011 Ambulatory Patient Groups (APGs) Payment Methodology.

Purpose: To refine the APG payment methodology.

Text of proposed rule: Subdivision (r) of section 86-8.2 is hereby repealed.

Section 86-8.7 is hereby repealed effective October 1, 2011 and a new section 86-8.7 is added to read as follows:

(a) *The table of APG Weights, Procedure Based Weights and units, and APG Fee Schedule Fees and units for each effective period are published on the New York State Department of Health website at: http://www.health.state.ny.us/health_care/medicaid/rates/apg/docs/apg_payment_components.xls*

Subdivision (c) of section 86-8.9 is repealed and a new subdivision (c) is added, to read as follows:

(c) *Drugs purchased under the 340B drug benefit program and billed under the APG reimbursement methodology shall be reimbursed at a reduced rate comparable to the reduced cost of drugs purchased through the 340B drug benefit program.*

Subdivision (d) of section 86-8.9 is amended to read as follows:

* * *

94 CARDIAC REHABILITATION
274 PHYSICAL THERAPY, GROUP
275 SPEECH THERAPY AND EVALUATION, GROUP
322 MEDICATION ADMINISTRATION AND OBSERVATION
414 LEVEL I IMMUNIZATION AND ALLERGY IMMUNOTHERAPY
415 LEVEL II IMMUNIZATION
416 LEVEL III IMMUNIZATION
428 PATIENT EDUCATION, INDIVIDUAL
429 PATIENT EDUCATION, GROUP
451 SMOKING CESSATION TREATMENT

Subdivision (h) of section 86-8.10 is amended to read as follows:

* * *

065 RESPIRATORY THERAPY
066 PULMONARY REHABILITATION
117 HOME INFUSION
190 ARTIFICIAL FERTILIZATION
311 FULL DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
313 HALF DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
314 HALF DAY PARTIAL HOSPITALIZATION FOR MENTAL ILLNESS
319 ACTIVITY THERAPY
371 ORTHODONTICS
430 CLASS I CHEMOTHERAPY DRUGS
431 CLASS II CHEMOTHERAPY DRUGS
432 CLASS III CHEMOTHERAPY DRUGS
433 CLASS IV CHEMOTHERAPY DRUGS
434 CLASS V CHEMOTHERAPY DRUGS
441 CLASS VI CHEMOTHERAPY DRUGS
443 CLASS VII CHEMOTHERAPY DRUGS
452 DIABETES SUPPLIES
453 MOTORIZED WHEELCHAIR
454 TPN FORMULAE
456 MOTORIZED WHEELCHAIR ACCESSORIES
465 CLASS XIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY

999 UNASSIGNED

Subdivision (i) of section 86-8.10 is amended to read as follows:

* * *

281 MAGNETIC RESONANCE ANGIOGRAPHY - HEAD AND/OR NECK

282 MAGNETIC RESONANCE ANGIOGRAPHY - CHEST
283 MAGNETIC RESONANCE ANGIOGRAPHY - OTHER SITES
284 MYELOGRAPHY
285 MISCELLANEOUS RADIOLOGICAL PROCEDURES WITH CONTRAST
286 MAMMOGRAPHY
287 DIGESTIVE RADIOLOGY
288 DIAGNOSTIC ULTRASOUND EXCEPT OBSTETRICAL AND VASCULAR OF LOWER EXTREMITIES
289 VASCULAR DIAGNOSTIC ULTRASOUND OF LOWER EXTREMITIES
290 PET SCANS
291 BONE DENSITOMETRY
292 MRI - ABDOMEN
293 MRI - JOINTS
294 MRI - BACK
295 MRI - CHEST
296 MRI - OTHER
297 MRI - BRAIN
298 CAT SCAN BACK
299 CAT SCAN - BRAIN
300 CAT SCAN - ABDOMEN
301 CAT SCAN - OTHER
302 ANGIOGRAPHY, OTHER
303 ANGIOGRAPHY, CEREBRAL
330 LEVEL I DIAGNOSTIC NUCLEAR MEDICINE
331 LEVEL II DIAGNOSTIC NUCLEAR MEDICINE
332 LEVEL III DIAGNOSTIC NUCLEAR MEDICINE
373 LEVEL I DENTAL FILM
374 LEVEL II DENTAL FILM
375 DENTAL ANESTHESIA
380 ANESTHESIA
390 LEVEL I PATHOLOGY
391 LEVEL II PATHOLOGY
392 PAP SMEARS
393 BLOOD AND TISSUE TYPING
394 LEVEL I IMMUNOLOGY TESTS
395 LEVEL II IMMUNOLOGY TESTS
396 LEVEL I MICROBIOLOGY TESTS
397 LEVEL II MICROBIOLOGY TESTS
398 LEVEL I ENDOCRINOLOGY TESTS
399 LEVEL II ENDOCRINOLOGY TESTS
400 LEVEL I CHEMISTRY TESTS
401 LEVEL II CHEMISTRY TESTS
402 BASIC CHEMISTRY TESTS
403 ORGAN OR DISEASE ORIENTED PANELS
404 TOXICOLOGY TESTS
405 THERAPEUTIC DRUG MONITORING
406 LEVEL I CLOTTING TESTS
407 LEVEL II CLOTTING TESTS
408 LEVEL I HEMATOLOGY TESTS
409 LEVEL II HEMATOLOGY TESTS
410 URINALYSIS
411 BLOOD AND URINE DIPSTICK TESTS
413 CARDIOGRAM
435 CLASS I PHARMACOTHERAPY
436 CLASS II PHARMACOTHERAPY
437 CLASS III PHARMACOTHERAPY
438 CLASS IV PHARMACOTHERAPY
439 CLASS V PHARMACOTHERAPY
440 CLASS VI PHARMACOTHERAPY
444 CLASS VII PHARMACOTHERAPY
448 AFTER HOURS SERVICES
[451 SMOKING CESSATION TREATMENT]
455 IMPLANTED TISSUE OF ANY TYPE
457 VENIPUNCTURE
460 CLASS VIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
461 CLASS IX COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
462 CLASS X COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
463 CLASS XI COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
464 CLASS XII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY

470 OBSTETRICAL ULTRASOUND
 471 PLAIN FILM
 472 ULTRASOUND GUIDANCE
 473 CT GUIDANCE
 490 INCIDENTAL TO MEDICAL, SIGNIFICANT PROCEDURE OR THERAPY VISIT

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

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

Statutory Authority:

Authority for the promulgation of these regulations is contained in section 2807(2-a)(e) of the Public Health Law, as amended by Part C of Chapter 58 of the Laws of 2008 and Part C of Chapter 58 of the Laws of 2009, which authorize the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Legislative Objective:

The Legislature's mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through Ambulatory Patient Groups ("APGs"). The APGs refer to the Enhanced Ambulatory Patient Grouping classification system which is owned and maintained by 3M Health Information Systems. The Enhanced Ambulatory Group classification system and the clinical logic underlying that classification system, the EAPG software, and the Definitions Manual associated with that classification system, are all proprietary to 3M Health Information Systems. APG-based Medicaid Fee For Service payment systems have been implemented in several states including: Massachusetts, New Hampshire, and Maryland.

Needs and Benefits:

This amendment replaces the actual APG weights, APG procedure based weights, and the APG fee schedule amounts listed in section 86-8.7 with a link to the New York State Department of Health website where all of the APG weights, APG procedure based weights, and the APG fee schedule amounts are posted for all periods. Removing this specificity from the regulation text obviates the need for quarterly amendments to the APG regulation.

COSTS

Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:

There will be no additional costs to providers as a result of these amendments.

Costs to Local Governments:

There will be no additional costs to local governments as a result of these amendments.

Costs to State Governments:

There will be no additional costs to NYS as a result of these amendments.

Costs to the Department of Health:

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

Local Government Mandates:

There are no local government mandates.

Paperwork:

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

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

These regulations are in conformance with Public Health Law section 2807(2-a)(e). Although the 2009 amendments to PHL 2807(2-a) authorize the Commissioner to adopt rules to establish alternative payment methodologies or to continue to utilize existing payment methodologies where the APG is not yet appropriate or practical for certain services, the utilization of the APG methodology is in its relative infancy and is otherwise continually monitored, adjusted and evaluated for appropriateness by the Department and the providers. This rulemaking is in response to this continually evaluative process.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective upon publication of the Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b(1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by the Department's issuance in the State Register of a federal public notice on October 5, 2011.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb(2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Opportunity for Rural Area Participation:

Local governments and small businesses were given notice of these proposals by the Department's issuance in the State Register of a federal public notice on October 5, 2011.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

Department of Law

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Determining When Funds Escrowed in Connection With the Offer or Sale of Cooperative Interests in Realty May Be Released

I.D. No. LAW-50-11-00002-P

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

Proposed Action: Amendment of sections 18.3, 20.3, 21.3, 22.3, 23.3, 24.3 and 25.3 of Title 13 NYCRR.

Statutory authority: General Business Law, sections 352-e(2)(b) and (6)

Subject: Determining when funds escrowed in connection with the offer or sale of cooperative interests in realty may be released.

Purpose: Elimination of the Attorney General's role in adjudicating such disputes.

Substance of proposed rule (Full text is posted at the following State website:

http://www.ag.ny.gov/bureaus/real_estate_finance/rulemaking.html): The proposed amendments eliminate the Attorney General's role in adjudicating contractual disputes between sponsors of cooperatives, condominiums, homeowners' associations, timeshares, and senior residential communities and contract vendees, thereby leaving such matters to be adjudicated in court, as is done in the case of analogous disputes concerning contracts to purchase private homes and transactions between non-sponsor sellers and purchasers.

Text of proposed rule and any required statements and analyses may be obtained from: Lewis A. Polishook, Chief Counsel for Real Estate Finance, New York State Department of Law, 120 Broadway, New York, NY 10271, (212) 416-8372, email: lewis.polishook@ag.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority. New York General Business Law ("GBL") Section 352-e(6) authorizes the Attorney General to adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the legislative mandates of Section 352-e of the General Business Law. GBL § 352-e(2-b) further authorizes the Attorney General to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this subdivision, including, but not limited to, determining when escrow funds may be released."

2. Legislative Objectives. GBL 352-e requires that, "[i]n the case of offerings of cooperatives, condominiums, interest in homeowners association and other cooperative interests in realty, . . . the attorney general may refuse to issue a letter of acceptance unless the offering statement, prospectus or plan shall provide that all deposits, down payments or advances made by purchasers of residential units shall be held in a special escrow account" or other appropriate form of secu-

urity "pending delivery of the completed apartment or unit and a deed or lease whichever is applicable." The Attorney General has promulgated detailed regulations, codified at 13 NYCRR §§ 18.3(p), 20.3(o)(3), 21.3(l), 22.3(k), 23.3(q), and 24.3(m) concerning escrow accounts or other suitable substitutes. Although the statute authorizes the Attorney General to issue regulations concerning "when escrow funds may be released," it does not direct the Attorney General to be the arbiter of such disputes.

3. Needs and Benefits. In 1992, the Attorney General amended Title 13, Parts 18, 20, 21, 22, 23, and 24 to require sponsors, and permit purchasers and escrow agents, to apply to the Attorney General for a determination on the disposition of a down payment and any interest earned thereon in connection with the purchase of residential units. At the time, the vast majority of offering plans involved the conversion of tenanted buildings from rental to cooperative or condominium ownership. The escrow deposits in such offerings were generally for small sums, and disputes over the release of these funds generally involved the question of whether the sponsor had complied with the requirements set forth in the procedure to purchase section of the offering plan. Primarily, those disputes involved procedural requirements such as whether the sponsor gave proper notification that the funds had been deposited into escrow, adequately noticed the closing date, or properly demanded payment.

In recent years, however, the down payment disputes submitted to the Attorney General have both broadened in their scope and multiplied in number. In particular, the individualized and fact-specific nature of these disputes has required the expenditure of significant resources in areas not exclusively within the province of the Attorney General's jurisdiction. For example, purchasers submitting disputes often contend that the units as constructed materially deviate from representations in the offering plan or are defective in ways not apparent without review by an engineer. Other disputes raise contested factual issues as to representations sponsors or selling agents allegedly made to purchasers and whether the unit was in fact ready for occupancy. Some disputes concern compliance with statutes over which the Attorney General has no jurisdiction, such as the federal Interstate Land Sales Full Disclosure Act and the Building Code of the City of New York. Furthermore, the submitted disputes more often than not involve deposits of hundreds of thousands, and sometimes millions of dollars, with the purchasers being persons of substantial means. The severe downturn in the real estate market in 2008 accelerated the volume of disputes submitted to the Attorney General from 15 disputes in 2005 to a high of 473 in 2009.

Unlike the limited scope of disputes envisioned by the 1992 regulation, most of the down payment disputes involving cooperatives, condominiums, interests in homeowners' associations, timeshares, and senior residential communities that have been submitted to the Attorney General in recent years involve fact-specific issues similar to those regularly addressed as part of an adversarial process in courts of law. The Attorney General believes that such disputes more appropriately should be addressed by the court system, which has the capacity and procedures necessary for conducting evidentiary hearings that traditionally form the core of the judicial system.

Over the years, escalating real estate prices have obviated another intended purpose of the 1992 regulation: Providing a means of legal redress for purchasers and sellers who, because of personal economic circumstances or the amount in controversy, would not have ready access to legal representation or judicial relief. The Attorney General notes in this regard that the cost of purchasing cooperatives, condominiums and interests in homeowners' associations is comparable to and often higher than the cost of purchasing private homes. Contracts for the purchase and sale of private homes typically require that the parties or escrow agent seek a judicial or arbitral determination as to the entitlement to escrowed funds. The Attorney General's proposed regulations would leave purchasers and sellers of cooperatives, condominiums, interests in homeowners' associations, timeshares, and interests in senior residential communities similarly situated to purchasers and sellers of private homes - a result congruous with their similar costs.

The proposed regulations will also apply to existing offering plans and purchase agreements, all of which currently provide that in case

of a dispute the escrow agent will hold the escrowed funds pending a joint written direction by the parties, a judicial order, or a determination by the Attorney General. Notwithstanding the reference to determinations by the Attorney General in such existing plans or agreements, the Attorney General will no longer make such determinations on applications submitted after this regulation takes effect and will issue further guidance via policy memorandum as to the amendment of such existing plans.

4. Costs. The proposed regulations impose no additional costs to either the regulated parties or local and state governments. Purchasers and sellers might incur increased filing and attorneys' fees in connection with participating in court proceedings. However, the Attorney General notes that retaining counsel in connection with the submission of applications for the disposition of down payments is costly, and, under the current system, the losing party may still pursue judicial review of such determinations pursuant to Article 78 of the New York Civil Practice Law and Rules ("Article 78"), which adds to the cost of the dispute determination process. As a result of this change, the courts may experience a slight increase in case load as a result of disputes being filed in court rather than before the Attorney General. Again, however, some of these matters are already brought in court as petitions for review pursuant to Article 78.

The adoption of the rule will impose no additional costs on the Department of Law.

5. Local Government Mandates. The proposed regulations do not impose any programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district. However, local courts may experience a minimal increase in the number of cases filed as a result of the proposed regulations.

6. Paperwork. There are no additional reporting or paperwork requirements as a result of the proposed regulations.

7. Duplication. The proposed regulations will not duplicate any existing state or federal rule.

8. Alternatives. The Attorney General has considered alternatives, including preserving the existing regulation or limiting the dispute resolution function to cases that fall below a jurisdictional maximum dollar amount. As the accompanying reasons underlying the Attorney General's finding of necessity make clear, the Attorney General believes that maintenance of the status quo is unnecessary for disputes involving more expensive properties. Moreover, the vast majority of disputes concerning cooperative interests in realty submitted to the Attorney General in recent years are more amenable to resolution in a judicial forum, because of the nature of the issues, the amounts in controversy, and the fact that the parties in most of the disputes currently before the Department of Law are ordinarily represented by counsel highly capable of litigating the matter in court as part of the adversarial process.

The Attorney General also considered and rejected preserving the dispute resolution function for disputes involving sums that fall under a jurisdictional maximum dollar amount. The Attorney General rejected that possibility for two reasons. First, any jurisdictional limit would be arbitrary, especially given the different percentages of the total purchase price required as a deposit in different contracts. For example, a \$100,000 deposit could represent either 10 percent of the purchase price of a million-dollar unit or 25 percent of the purchase price of a \$400,000 unit. Although the sum in dispute is the same, the purchasers of those two units are not similarly situated. Second, the Attorney General believes that dispute resolution for transactions concerning the sale and purchase of private homes or transactions between non-sponsor sellers of cooperatives, condominiums, homeowners' associations, timeshares, and interests in senior residential communities are currently resolved in the courts regardless of amount in dispute, and that those fora provide a reasonably efficient system for dispute resolution. Third, courts have the capacity and procedures necessary for conducting evidentiary hearings that traditionally form the core of the judicial system. Finally, for very small sums, the courts of limited jurisdiction are available for ease of access and lower cost.

Finally, the Attorney General considered applying the proposed regulations retroactively to all pending applications. However, the Attorney General has determined that because the parties to such disputes

have already expended significant time and effort in presenting their positions to the Attorney General, it would not be appropriate to require those parties to start anew in litigation. Accordingly, the proposed regulations will apply only to disputes submitted after the regulations become effective.

9. Federal Standards. The proposed regulations do not exceed any minimum standards of the federal government for the same or similar subject.

10. Compliance Schedule. The proposed regulations will go into effect upon the publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

1. Effect of rule. The proposed regulations change the forum for resolving disputes concerning the disposition of down payments, and do not impact the factual or legal determinations that may be made in those disputes. Parties are already spending substantial sums for attorney representation in connection with disputes concerning the disposition of down payments that have been submitted to the Attorney General for determination. Certain attorneys have represented multiple purchasers before the Attorney General, and may now bring these disputes on behalf of their clients in a court of law. Local governments will not be affected in any way. However, local courts may experience a minimal increase in case loads.

2. Compliance requirements. The proposed regulations simply change the forum for certain dispute determinations from the Department of Law to a court of law. They require no new obligations in terms of reporting or record keeping.

3. Professional services. When submitting or opposing an application for a determination, almost all sponsors (even the smallest sponsoring entities) and most purchasers have retained attorneys to prepare the required submission and responses thereto. The proposed regulations, which change the designated forum from the Department of Law to a court of law, should require no material additional professional services.

4. Compliance costs. Sponsors and purchasers may incur some additional costs, such as filing fees and attorneys' fees for court appearances. As a result of this change, the courts may experience a slight increase in case load as a result of disputes being filed in court rather than before the Attorney General. Again, however, some of these matters are already brought in court as petitions for review pursuant to Article 78.

5. Economic and technological feasibility. The proposed regulations contain no technological requirements and impose no new demonstrable costs on regulated small businesses.

6. Minimizing adverse impact. The change in regulation should have minimal impact. Purchasers and sellers may still seek neutral adjudication of their disputes, albeit in a different forum. To further minimize the impact of the instant regulatory change, the amendment will not affect applications submitted to the Attorney General before the Attorney General proposed the instant amendments.

7. Small business and local government participation. To ensure that small businesses have an opportunity to participate in the rule making process, copies of the proposed regulations will be sent to members of the Bar who represent purchasers and offerors of cooperatives, condominiums, interests in homeowners' associations, timeshares, or interests in senior residential communities for review and comment. Copies of the proposed regulations will also be posted on the website of the Attorney General of the State of New York. Local courts may experience a minimal increase in the number of cases filed as a result of the proposed regulations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas. The proposed regulations apply uniformly throughout the state, including all rural areas. Executive Law, Article 19-F Rural Affairs Act, Section 481(7) defines a rural area as a county with a population of less than 200,000. New York currently has 44 rural areas. However, because the vast majority of the offering plans submitted to the Attorney General that are affected by the proposed regulations are for properties in New York City and its suburbs, the impact of the regulations on both rural sponsors and rural purchasers should be minimal.

2. Reporting, recordkeeping, and other compliance requirements. The proposed regulations simply change the forum for dispute determination in connection with the sale of many cooperatives, condominiums, interests in homeowners' associations, timeshares, or senior residential communities from the Department of Law to a court of law. They do not require new obligations in terms of reporting or record keeping.

3. Costs. Because rural sponsors do not frequently avail themselves of the Attorney General's dispute determination procedures, there should be minimal additional costs incurred by regulated parties, including those located in rural areas, in complying with the proposed regulations. There will be no variation in costs for entities in rural areas. However, the courts, including those located in rural areas, may experience a minimal increase in case load as a result of disputes being filed in court rather than before the Attorney General.

4. Minimizing adverse impact. The change in regulation should have minimal impact, especially on rural areas, as the Attorney General has received virtually no applications for adjudication of disputes concerning cooperatives, condominiums, homeowners' associations, timeshares, or senior residential communities located in rural areas. Moreover, purchasers and sellers may still seek neutral adjudication of their disputes, albeit in a different forum. To further minimize the impact of the instant regulatory change, the amendment will not affect applications submitted to the Attorney General before the Attorney General proposed the instant amendments.

5. Rural area participation. To ensure that entities in rural areas have an opportunity to participate in the rule making process, copies of the proposed regulations will be sent to members of the Bar who represent sponsors of condominiums, cooperatives, homeowners' associations, timeshares, and senior residential communities for review and comment. Copies of the proposed rules will also be posted on the website of the Attorney General of the State of New York.

Job Impact Statement

1. Nature of impact. The proposed regulations will have no impact on jobs and employment opportunities. The only tangential effect on employment will be that attorneys who formerly submitted applications to the Attorney General will now file such matters as lawsuits in court.

2. Categories and numbers affected. Attorneys will be affected by the proposed amendments in terms of where they file matters but there should be no impact on the employment of attorneys; it is impossible to estimate the number of attorneys that might submit such disputes to the Attorney General or file them in court.

3. Regions of adverse impact. The proposed amendments will have no adverse impact on any region. The Attorney General notes that the vast majority of disputes submitted in the past concern condominiums and homeowners' associations located in New York City.

4. Minimizing adverse impact. The proposed amendments should have minimal impact. Purchasers and sellers may still seek neutral adjudication of their disputes, albeit in a different forum. To further minimize the impact of the instant regulatory change, the amendments will not affect applications submitted to the Attorney General before the Attorney General proposed the instant amendments.

5. Self employment opportunities. As noted above, the proposed amendments will affect the practice, but not the employment, of attorneys, some of whom are self-employed.

Action taken: On 11/17/11, the PSC adopted an order approving the petition of Westbeth Corp. HDfC, Inc. to submeter electricity at 463 West Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Westbeth Corp. HDfC, Inc. to submeter electricity at 463 West Street, New York, New York.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving the petition of Westbeth Corp. HDfC, Inc. to submeter electricity at 463 West Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-E-0728SA1)

NOTICE OF ADOPTION

Denying the Petition for Rehearing

I.D. No. PSC-39-10-00018-A

Filing Date: 2011-11-23

Effective Date: 2011-11-23

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

Action taken: On 11/17/11, the PSC adopted an order denying Retail Energy Supply Association's petition for rehearing of the Commission's July 19, 2010 order.

Statutory authority: Public Service Law, section 66(1)

Subject: Denying the petition for rehearing.

Purpose: To deny the petition for rehearing.

Substance of final rule: The Commission, on November 17, 2011 adopted an order denying Retail Energy Supply Association's petition for rehearing of the Commission's July 19, 2010 order regarding the provision to customers of remote access to their utility account numbers.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-M-1343SA19)

NOTICE OF ADOPTION

Binghamton University's Modification to NYSEG's Economic Development Program

I.D. No. PSC-12-11-00006-A

Filing Date: 2011-11-23

Effective Date: 2011-11-23

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

Action taken: On 11/17/11, the PSC adopted an order approving in part, the petition of Binghamton University for a modification to New York State Electric & Gas Corporation's (NYSEG) economic development program.

Public Service Commission

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00013-A

Filing Date: 2011-11-23

Effective Date: 2011-11-23

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

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

Subject: Binghamton University's modification to NYSEG's economic development program.

Purpose: To approve Binghamton University's modification to NYSEG's economic development program.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving, in part, the petition of Binghamton University for a modification to New York State Electric & Gas Corporation's (NYSEG) economic development program which would allow Binghamton University and other colleges and universities in the NYSEG service territory to apply for economic development grants, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-M-0060SA1)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Sections 894.1 to 894.4

I.D. No. PSC-26-11-00011-A

Filing Date: 2011-11-23

Effective Date: 2011-11-23

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

Action taken: On 11/17/11, the PSC adopted an order approving the Town of Halcott's petition for a waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3 and 894.4 for a cable television franchise with The Heart of the Catskills Comm., Inc. d/b/a MTC Cable.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 to 894.4.

Purpose: To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 for an initial cable television franchise.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving the Town of Halcott's (Greene County) request for waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3 and 894.4 for a cable television franchise with The Heart of the Catskills Communication, Inc. d/b/a MTC Cable, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-V-0314SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Establish a Remedy to Provide Safe, Adequate, and Reliable Service to Customers of Painted Apron Water Company, Inc.

I.D. No. PSC-50-11-00006-P

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

Proposed Action: Due to inadequate service and absence of a system

operator, the PSC is considering whether to approve, modify, or reject, in whole or in part, appointment of a temporary system operator and other remedies against Painted Apron Water Company, Inc.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 25, 89-b(1), 89-c(b), (4), 89(j) and 112-a

Subject: To establish a remedy to provide safe, adequate, and reliable service to customers of Painted Apron Water Company, Inc.

Purpose: Assuring the provision of safe, adequate, and reliable service to the customers of Painted Apron Water Company, Inc.

Substance of proposed rule: Due to inadequate service and absence of a system operator, the Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, appointment of a temporary system operator and other remedies against Painted Apron Water Company, Inc.

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

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

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.

(11-W-0640SP1)

Racing and Wagering Board

NOTICE OF ADOPTION

Inspection of Harness Racing Sulkies

I.D. No. RWB-35-11-00002-A

Filing No. 1278

Filing Date: 2011-11-29

Effective Date: 2011-12-14

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

Action taken: Amendment of section 4116.10 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 301(1)

Subject: Inspection of harness racing sulkies.

Purpose: This rule require that sulkies involved in an accident during a race are removed from service and inspected by the manufacturer.

Text or summary was published in the August 31, 2011 issue of the Register, I.D. No. RWB-35-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: John J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Free Unlicensed Bingo

I.D. No. RWB-35-11-00004-A

Filing No. 1279

Filing Date: 2011-11-29

Effective Date: 2011-12-14

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

Action taken: Amendment of sections 5815.14 and 5820.55 of Title 9 NYCRR.

Statutory authority: Executive Law, section 435(a)

Subject: Free unlicensed bingo.

Purpose: To allow for the conduct of free bingo by more players for entertainment or recreational purposes without a license.

Text or summary was published in the August 31, 2011 issue of the Register, I.D. No. RWB-35-11-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: John J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Electronic Application Procedure to Open an Advanced Deposit Wagering Account

I.D. No. RWB-35-11-00008-A

Filing No. 1277

Filing Date: 2011-11-29

Effective Date: 2011-12-14

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

Action taken: Amendment of section 5300.4(a)(4)-(5) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 235, 301, 305, 401, 405, 520 and 1002

Subject: Electronic application procedure to open an advanced deposit wagering account.

Purpose: To provide guidelines and procedures for online applications for advanced deposit wagering accounts.

Text or summary was published in the August 31, 2011 issue of the Register, I.D. No. RWB-35-11-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: John J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-36-11-00002-A

Filing No. 1276

Filing Date: 2011-11-29

Effective Date: 2011-11-29

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period October 1, 2011 through December 31, 2011.

Text or summary was published in the September 7, 2011 issue of the Register, I.D. No. TAF-36-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-50-11-00013-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2012 through March 31, 2012.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxiv) October - December 2011					
16.0	24.0	41.0	16.0	24.0	39.25
(lxv) January - March 2012					
16.0	24.0	41.8	16.0	24.0	40.05

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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

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

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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sales Tax Collection Charts

I.D. No. TAF-50-11-00014-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 amend section 530.1 of Title 20 NYCRR. This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules.

Statutory authority: Tax Law, sections 171, subd. First, 1111(d), 1142(1) and (8) and 1250 (not subdivided)

Subject: Sales tax collection charts.

Purpose: To update regulatory language to more accurately reflect existing statutes and Department practice.

Text of proposed rule: Section 1. Section 530.1 of the regulations is amended to read as follows:

530.1 Collection of tax. (Tax Law, [section] *sections 1111(d) and 1132(b)*) (a) Every person required to collect the tax shall collect the tax due from the [purchaser] *customer*, with respect to any receipt, *gallon of motor fuel or diesel motor fuel*, amusement charge, or hotel room rent subject to tax under article 28 or pursuant to article 29 of the Tax Law. When necessary, tax due shall be rounded up or down. Generally, where the tax to be paid includes a fraction of one cent, the fraction shall not be paid where it is less than one-half cent and a full cent shall be paid where the fraction is one-half cent or more. However, no tax shall be collected from the customer upon sales of tangible personal property which produce a *combined State and local* tax of five mills or less as stated in section 1132(b) of the Tax Law.

(b) *With respect to the collection of tax on receipts from the retail sale of motor fuel and diesel motor fuel at a retail gas station as described in section 1111(m) of the Tax Law, [The] the department [will] may make available [tax] charts or schedules showing the [tax amounts] amount of tax due per gallon [required to be collected for the various amounts of taxable sales in accordance with the rounding methodology, as well as specific charts or schedules for motor fuel or diesel motor fuel sold at retail] based on pump prices per gallon and tax rates.*

“Cross-reference:” See Part 532 of this Title for more information about collection of tax.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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

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

Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 5, 2011, State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 2001 and 2006, and a notice of the Department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. This information was also posted to the Department's Web site (<http://www.tax.ny.gov/rulemaker/regulations/fiveyearrev.htm>) on December 30, 2010. Comments from the public concerning the continuation or modification of these rules were invited until February 22, 2011.

No public comments were received by the Department concerning the 2001 amendments to Part 530 (Amount to be Collected, formerly entitled Tax Rates) of the Sales and Use Taxes Regulations. Part 530 was amended to repeal the tax rates and bracket schedules which indicated the amount of sales tax to be collected for various amounts of sales prices and tax rates, and replace them with standard methodology for rounding the amount of sales tax to be collected to the nearest penny. This rule was adopted by the Commissioner on June 12, 2001, and published in the State Register on June 27, 2001 (I.D. # TAF-17-01 00002 A). The rule was previously reviewed as part of the Department's 2006 Rule Review published in the State Register on January 4, 2006. As a result of that review of the 2001 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on October 25, 2006. Subsequent to the 2006 statutory five-year review, amendments to update and simplify Part 530 of the Sales and Use Taxes Regulations by eliminating obsolete and unnecessary tax rates that are set by and pursuant to the Tax Law were adopted on February 14, 2007, and published in the State Register on March 7, 2007 (I.D. # TAF-47-06-00012-A). However, certain provisions of the 2001 rule were not amended in 2007 and, therefore, remain subject to review in 2011.

The Department has determined as a result of its 2011 review that the provisions of the rule adopted in 2001 that relate to the tax collection “charts or schedules” are dated and cannot be continued without modification. Certain charts that showed the sales tax to be collected on sales amounts of less than ten dollars are now obsolete. They were discontinued by the Department in 2009 because there is no special rule for small sales amounts, i.e., straight mathematical rounding is applicable to all sales amounts. Therefore, this rule updates section 530.1 of the regulations by eliminating reference to these charts. Other non controversial technical and clarifying changes in section 530.1 have also been made in this rule.

Not every amendment that was made in 2001 is being amended by this rule; for example, the rule does not affect the standard methodology for rounding the amount of sales tax to be collected to the nearest penny that is prescribed in the regulations. Therefore, these 2001 amendments remain valid and are continued without modification.

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because the rule

merely repeals regulatory provisions that are no longer applicable to any person and makes technical and clarifying changes to section 530.1 of the Sales and Use Taxes Regulations concerning the collection of tax and use of the Department's tax collection charts. These changes are not controversial in nature. They eliminate obsolete provisions in section 530.1 and bring it into conformity with existing statutes and Department practice.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs and employment opportunities. The purpose of the rule is simply to update section 530.1 of the Sales and Use Taxes Regulations by making technical and clarifying changes concerning the collection of tax and use of the Department's tax collection charts. These changes eliminate obsolete provisions in section 530.1 and bring it into conformity with existing statutes and Department practice. Accordingly, a job impact statement is not required for this rulemaking.