

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-08-14-00008-A  
**Filing No.** 652  
**Filing Date:** 2014-07-17  
**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text or summary was published** in the February 26, 2014 issue of the Register, I.D. No. CVS-08-14-00008-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-08-14-00009-A  
**Filing No.** 651  
**Filing Date:** 2014-07-17  
**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text or summary was published** in the February 26, 2014 issue of the Register, I.D. No. CVS-08-14-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-08-14-00010-A  
**Filing No.** 653  
**Filing Date:** 2014-07-17  
**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text or summary was published** in the February 26, 2014 issue of the Register, I.D. No. CVS-08-14-00010-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-08-14-00011-A  
**Filing No.** 649  
**Filing Date:** 2014-07-17  
**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text or summary was published** in the February 26, 2014 issue of the Register, I.D. No. CVS-08-14-00011-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-08-14-00012-A  
**Filing No.** 650  
**Filing Date:** 2014-07-17  
**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class.

**Text or summary was published** in the February 26, 2014 issue of the Register, I.D. No. CVS-08-14-00012-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**Action taken:** Addition of Part 220 to Title 5 NYCRR.

**Statutory authority:** Economic Development Law, art. 21, sections 435-36; L. 2013, ch. 68

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

**Specific reasons underlying the finding of necessity:** On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

**Subject:** START-UP NY Program.

**Purpose:** Establish procedures for the implementation and execution of START-UP NY.

**Substance of emergency rule:** START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas, and report on important aspects of the START-UP NY program, including eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the Assembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans for the creation of Tax-Free NY Areas submitted by private universities and colleges, as well as certain plans from SUNY colleges, CUNY colleges, and community colleges, and designates Strategic State Assets affiliated with eligible New York colleges or universities. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating downstate must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commis-

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## Department of Economic Development

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### EMERGENCY RULE MAKING

**START-UP NY Program**

**I.D. No.** EDV-31-14-00001-E  
**Filing No.** 654  
**Filing Date:** 2014-07-17  
**Effective Date:** 2014-07-17

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

sioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free Area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review. The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. The Commissioner may approve an application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner within thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. The Commissioner shall render a final decision based upon the appeal officer's report, and provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning December 31, 2014. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records throughout their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business shall be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 14, 2014.

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Chung, NYS Department of Economic Development, 633 Third Avenue, New York, NY 10017, (212) 803-3783, email: jchung@esd.ny.gov

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform UPstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

##### **LEGISLATIVE OBJECTIVES:**

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

#### NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

The emergency regulations clarify several items. In Section 220.4(b), language was modified to clarify that the START-UP NY Approval Board reviews and approves Plans for approval as a Tax-Free NY Area from certain, not all, SUNY, CUNY, or community college campuses seeking designation of Tax-Free NY Areas as described in Section 220.5.

In Section 220.7 and 220.8, the regulations have been clarified to permit schools to submit information identifying the space or land proposed for designation in digital formats approved by the Commissioner. This change affords greater flexibility in view of the digital mapping software and other related resources available to different schools.

Section 220.10(k) was clarified to note that, upon receipt of an application from a business to participate in the START-UP NY Program, the Commissioner may approve the application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. If the Commissioner does not reject the application within 60 days, the business applicant is deemed accepted into the Program.

#### COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None.

#### LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

#### PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

#### DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

#### ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program participation requirements and is required by the legislation establishing the START-UP NY program.

#### FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

#### COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

#### *Regulatory Flexibility Analysis*

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

#### *Rural Area Flexibility Analysis*

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

#### *Job Impact Statement*

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further 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

### NOTICE OF ADOPTION

#### Hunting Black Bear

**I.D. No.** ENV-20-14-00001-A

**Filing No.** 660

**Filing Date:** 2014-07-22

**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of section 1.31 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0907

**Subject:** Hunting black bear.

**Purpose:** Expand bear hunting opportunities and increase harvests to help stabilize or reduce populations.

**Text or summary was published** in the May 21, 2014 issue of the Register, I.D. No. ENV-20-14-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jeremy Hurst, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: jehurst@gw.dec.state.ny.us

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The Department of Environmental Conservation (DEC or department) received comments from approximately 50 individuals on the proposed Eurasian boar regulation during the 45-day public comment period (December 11, 2013 – January 27, 2014). The proposed regulation would prohibit the taking of Eurasian boars by hunting or trapping in order to support eradication efforts of the DEC and the United States Department of Agriculture Wildlife Services (USDA). Some of the comments simply offered support or opposition to the proposed regulation, while others offered more detailed arguments for or against the proposal. A summary of the comments received during the comment period, along with the Department's response, follows.

Most of the individuals submitting comments agreed that Eurasian boar are a harmful and destructive invasive species and support the DEC's objective of not letting these animals get established in New York. However, many do not believe that the method of control proposed in the regulation is the best way to eradicate Eurasian boars.

Comment: Many of those opposed to the proposed regulation believe that public hunting is the best way to eradicate boars or public hunting used in conjunction with DEC/USDA shooting and trapping. Some stated that Eurasian boars are a cheap source of food for hunters and their families. A few do not believe that public hunting disrupts DEC/USDA eradication efforts or they suggested that simply marking the location of traps would prevent hunters from disrupting eradication efforts.

Response: While the DEC does recognize that many hunters enjoy the challenge of hunting Eurasian boar and some families rely on wild game to feed their families, the following are reasons why the DEC has adopted the proposed regulation to prohibit the hunting of Eurasian boars:

1.) DEC wants to eradicate all Eurasian boars in the wild. The most efficient way to eradicate them is by trapping the whole sounder (the name for a group of pigs) at one time. Trapping takes a lot of time, effort and money because boars are very wary and need to be slowly baited in and accustomed to the trap. When a hunter shoots at a boar, the animals in the sounder run off in all directions and rarely come back together again. So the hunter prevented us from trapping all those animals, made the boars harder to trap the next time (they learn to avoid traps if they are shot at around a trap), and instead of one large sounder we must now locate and eradicate two or more smaller sounders.

2.) Hunting is an inefficient and ineffective way to control or eradicate a population of Eurasian boars. Because of the boar's high survival and reproductive rate, hunters must take at least 67% of the population just to

stabilize the population. That is nearly impossible to do. Even in Texas where wild boar hunting is big business, hunters take less than 40% of the population each year.

3.) The leading contributing factor in the spread of wild boars in the U.S. is the illegal release of these animals by those who want to establish a boar population in areas where wild boars previously did not exist. In other words, they want their own local boar population so they can hunt them closer to home. If hunting is banned in New York it greatly decreases the incentive to illegally release boars into the state.

Prior to proposing this regulation DEC staff consulted biologists in a number of other states to help determine the most effective ways to eradicate free roaming Eurasian boars from New York. Biologists in Tennessee informed us that from 1949-1999, hunting of wild hogs was only allowed in the two areas of the state known to have wild hogs. In 1999, the Tennessee Wildlife Resources Agency made an attempt to control the wild hog population by opening a statewide wild hog season with no bag limit. During this period of unlimited hunting disjointed populations of hogs began to appear in areas of Tennessee where they had never existed before as the result of illegal stocking by individuals whose goal was to establish local hunting opportunities. Prior to the statewide open season wild hogs were present in 15 counties in Tennessee. Wild hogs are now present in nearly 80 of their 95 counties. In order to remove the incentive to relocate wild hogs, Tennessee enacted new regulations in 2011 that changed the classification of wild hogs from big game animal to a destructive species to be controlled by methods other than sport hunting.

In his letter of support for the proposed regulation, a biologist from the Kentucky Department of Fish and Wildlife Resources Captive Wildlife and Wild Pig Program stated: "I am providing comments in support of NYDEC's proposed rule regarding Eurasian boar. This foundation of effective regulation to eliminate incentive for the presence of free-ranging swine on New York's landscape follows in the footsteps of Kansas, Nebraska, and Tennessee implementing similar laws in recent years, and will provide further supporting precedence for the many states yet contending with controlling free-ranging swine in the presence of swine hunting. The sporting take of free-ranging swine is certainly an undermining force in the presence of coordinated eradication efforts, and may entrench the desire to maintain this invasive species on the landscape by those who come to enjoy pursuing them. I have read the proposed regulations pertaining to the ban on taking and hunting wild boar and support the regulation in its entirety as written. The regulation will have the effect of eliminating any incentive for someone to illegally import and release wild boar for the purpose of hunting."

Lastly, the Missouri Department of Conservation has stated "When implementing feral swine management, the objective is to capture the greatest number of individuals as quickly as possible. Swine are a gregarious species and tend to form sounders or family groups. When hunters shoot at them, individual swine in sounders disperse (Missouri Dept. of Conservation 2012). Not only are these large groups of swine then scattered across the landscape, they become more elusive and associate human presence with danger making it more difficult to manage them."

Comment: Several supported the proposed regulation in its entirety but felt it should also prohibit the harassment of Eurasian boars to further aid in eradication efforts.

Response: The proposed regulation states "No person shall hunt, trap, take or engage in any activity...that is likely to result in the taking of any free-ranging Eurasian boar..." The legal definition of "take" in ECL 11-0103 (13) includes "pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish, wildlife, game... and all lesser acts such as disturbing, harrying or worrying..." Therefore, it is not necessary to add harassment to the proposed regulation.

Comment: A number of individuals opposed the proposed regulation because they felt a landowner or farmer suffering damage from Eurasian boars should be able to shoot the offending animals.

Response: There are provisions in the proposed regulation that would allow the taking of Eurasian boars that are a nuisance or damaging property or crops. The proposed regulation states "Exceptions. This section shall not apply... to any other person permitted to take Eurasian boar pursuant to Environmental Conservation Law section 11-0521 or section 11-0523." Environmental Conservation Law (ECL) 11-0521 allows the DEC to issue a permit to a landowner to take a Eurasian boar whenever it becomes a nuisance, destructive to public or private property or a threat to public health or welfare. ECL 11-0523 allows farmers to take Eurasian boars without a permit when the animals are a nuisance or injuring their property.

Comment: A few people opposed the regulation because they believe the DEC should offer a bounty on Eurasian boar to encourage and reward hunters to shoot these animals.

Response: The DEC cannot pay for hunters to take wildlife since bounties, except in cases where the Health Department recognizes an immediate health hazard, are unlawful in New York. ECL § 11-0531 (Bounties

prohibited) states that it is unlawful to pay bounties on the taking of wildlife. If bounties were legal, there would be no way to prove that a Eurasian boar was taken in the wild in New York and the State could end up paying bounties on boars shot at enclosed shooting facilities or in another state. Paying bounties would also increase the incentive for someone to release boars into the wild.

Comment: Others opposed the regulation because they believed it would make it illegal to shoot boars at an enclosed shooting facility.

Response: The proposed regulation would have no impact on the shooting of Eurasian boars inside the fence of an enclosed shooting facility. The regulation only pertains to the taking of free-ranging Eurasian boar. "Free-ranging" means any Eurasian boar that is not lawfully possessed within a completely enclosed or fenced facility from which the animal cannot escape to the wild. Furthermore, ECL 11-0514 prohibits the possession of Eurasian boars on or after September 1, 2015. Shooting boars at an enclosed shooting facility will be prohibited after that date.

Comment: Some opposition was because of a concern that DEC does not have the staff or resources to support an eradication effort due to budget and staffing cuts in recent years or they do not want their state tax dollars used to eradicate Eurasian boars. At least one stated DEC should hire specialists or consultants to eradicate Eurasian boar.

Response: DEC has had budget and staff cuts in recent years. However, the Eurasian boar eradication program is a joint effort between the DEC and USDA. USDA is working under a contract with DEC funded by the Environmental Protection Fund (Invasive Species Control). DEC is also working with funds provided by the U.S. Fish and Wildlife Service (USFWS) under the Federal Aid in Wildlife Restoration Act. USFWS funds are used to eradicate Eurasian boar to minimize the impacts of these animals on native birds and mammals in New York.

Comment: Some people providing comments expressed concern that this proposed regulation was an attempt to restrict people's rights to own/use guns or to hunt and/or there were already too many regulations and they oppose all new regulations regardless of the subject.

Response: The proposed regulation would prohibit hunting and trapping of one species, the Eurasian boar. It does not affect the hunting of any other species in New York. The regulation does not prohibit the ownership or use of guns. This regulation is necessary to ensure that Eurasian boars do not become established in the wild in New York, as a complementary measure to the recently enacted Eurasian boar law.

Some people submitted questions about the proposed regulation and did not state support or opposition to the proposed regulation.

Comment: One questioned how regulations can be proposed that could offer protection for unprotected wildlife.

Response: Under ECL 11-0103, free ranging Eurasian boars are considered "unprotected wildlife." Unprotected wildlife can be taken at any time in any manner. However, allowing the unrestricted take of Eurasian boars is in direct conflict with eradication and prevention strategies. Therefore, the DEC is prohibiting the taking of free-ranging Eurasian boars using the "general powers" authority provided by ECL 11-0303(2).

Comment: Another asked if the proposed regulation prohibited hunting of free-ranging pigs other than Eurasian boars.

Response: This regulation only prohibits the hunting and trapping of free-ranging Eurasian boars. However, this does not mean hunters can shoot free-ranging domestic, farm pigs and pot-bellied pigs. These animals are regulated by the NYS Department of Agriculture and Markets (DAM) and there are no legal provisions that allow the hunting of them.

Three organizations provided comments on the proposed regulation. The Farm Bureau of New York, The Nature Conservancy in New York (TNC) and the New York City Department of Environmental Protection, Bureau of Water Supply (NYC DEP) all supported the proposed regulation.

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

### Petroleum Bulk Storage (PBS) and Used Oil Management

I.D. No. ENV-31-14-00006-P

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

**Proposed Action:** Repeal of Parts 612, 613, 614; addition of new Part 613; and amendment of Subpart 374-2 and section 370.1(e)(2) of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 17-0301, 17-0303, 17-0501, 17-1001 through 17-1017 and 17-1743; art. 23, title 23, art. 27, titles 7 and 9; Navigation Law, sections 173, 175, 176, 178 and 191

**Subject:** Petroleum Bulk Storage (PBS) and Used Oil Management.

**Purpose:** Promulgation of the new Part 613 will harmonize existing State requirements (found at current Parts 612, 613, and 614 to be repealed) with overlapping federal requirements (found at 40 CFR Part 280) so that similar sets of regulatory requirements will govern petroleum bulk storage (PBS) facilities in the State. Additionally, the requirements for all new tank systems will be updated to reflect the technology and practices that are the current state of the art for the manufacture, installation, and maintenance of PBS tank systems.

The provisions of Subpart 374-2 and section 370.1(e)(2) must be revised in order to (1) address changes to definitions and cross-references being made in proposed Part 613; and (2) account for changes made to the corresponding federal regulation, 40 CFR Part 279.

**Public hearing(s) will be held at:** 3:00 p.m. and 7:00 p.m., October 14, 2014 at Empire State Plaza, Meeting Rm. 6, Albany, NY; 3:00 p.m. and 7:00 p.m., October 16, 2014 at RIT Inn and Conference Center, 5257 W. Henrietta Rd., Henrietta, NY; and 3:00 p.m. and 7:00 p.m., October 23, 2014 at St. Francis College, Founders Hall, 180 Remsen St., Brooklyn, 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.

**Substance of proposed rule (Full text is not posted on a State website):** The New York State Department of Environmental Conservation (Department) proposes to repeal 6 NYCRR Parts 612 through 614 and replace them with a new 6 NYCRR Part 613, which will regulate the handling and storage of petroleum in underground and aboveground storage tank systems.

To conform to changes in proposed Part 613, corresponding changes to definitions and cross-references are being made to the Standards for the Management of Used Oil, established at 6 NYCRR Subpart 374-2. Changes to Subpart 374-2 also include corrections, clarifications, and updates to add certain federal provisions. The revisions include federally driven corrections or clarifications, and updates to testing requirements to make it easier and more cost-effective for the regulated community to comply with certain sampling and analysis requirements. Changes are also being made to 6 NYCRR section 370.1(e)(2) to update references to federal regulations.

The Express Terms for the proposed rules are summarized below.

Subpart 613-1: General Provisions

Subpart 613-1 contains provisions covering the purpose of the rule, applicability, definitions, recordkeeping requirements, and standards incorporated by reference. This subpart also contains provisions concerning access to records and facilities, preemption and approval of local laws or ordinances, variances, registration, and severability.

Subpart 613-2: UST Systems Subject to Both Subtitle I and Title 10

Subpart 613-2 addresses underground storage tank (UST) systems that are subject to State regulation pursuant to Title 10 of Environmental Conservation Law Article 17, sections 17-1001 through 1017, entitled "Control of the Bulk Storage of Petroleum" (Title 10), and federal regulation pursuant to Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 USC sections 6991 through 6991m, entitled "Regulation of Underground Storage Tanks" (Subtitle I). This subpart harmonizes the State's UST system requirements with the federal requirements found in 40 Code of Federal Regulations (CFR) Part 280, entitled "Technical Standards and Corrective Action for Owners and Operators of Underground Storage Tanks." This subpart contains requirements concerning: design, construction, and installation; general operating practices; inspection and leak detection; spill reporting, investigation, and confirmation; tank system closure; and operator training.

Subpart 613-3: UST Systems Subject Only to Title 10

Subpart 613-3 addresses UST systems that are only subject to Title 10. The structure of this subpart reflects that of Subpart 613-2 and contains similar requirements. This subpart consolidates the UST system requirements from existing 6 NYCRR Parts 612 through 614, but it does not include requirements from 40 CFR Part 280. The only structural difference between Subparts 613-3 and 613-2 is that 613-3 does not contain requirements for operator training.

Subpart 613-4: AST Systems

Subpart 613-4 addresses aboveground storage tank (AST) systems. Like Subpart 613-3, it has a structure that reflects Subpart 613-2. This subpart consolidates the AST system requirements from existing 6 NYCRR Parts 612 through 614. The substantive provisions are markedly different from Subparts 613-2 and 613-3 because the technologies and practices applicable to AST systems are different from those applicable to UST

systems. This Subpart contains requirements concerning: design, construction, and installation; general operating practices; inspection and leak detection; spill reporting, investigation, and confirmation; and tank system closure.

#### Subpart 613-5: Delivery Prohibition

Subpart 613-5 contains the requirements concerning delivery prohibition. The provisions of this subpart establish the circumstances and process for imposing a delivery prohibition; required notifications; and the process for termination of a delivery prohibition.

#### Subpart 613-6: Release Response and Corrective Action

This subpart contains requirements concerning initial spill response, initial spill abatement measures; site check; initial site characterization; free product removal; investigations for soil and groundwater cleanup; corrective action plans; and public participation.

#### Section 370.1(e)(2): Reference to the Code of Federal Regulations

Section 370.1(e)(2) lists standards incorporated by reference. Revisions are made to update references to 40 CFR Parts 112, 279, 280 and 761 for the purposes of Subparts 360-14 and 374-2.

#### Subpart 374-2: Standards for the Management of Used Oil

Subpart 374-2 is being revised to (1) implement amendments to Title 10, which expressly subjects used oil tanks to PBS; (2) revise definitions based upon and cross-references pertaining to revisions in the proposed Part 613; and (3) incorporate amendments to 40 CFR Part 279, entitled, "Standards for the Management of Used Oil," promulgated between July 30, 2003 and July 14, 2006. Revisions to adopt significant federal amendments are provided below.

Clarifications and corrections are being made to adopt EPA's July 30, 2003 rule (68 FR 44659-44665) with respect to mixtures of used oil and polychlorinated biphenyls (PCBs) and their applicability to the federal Toxic Substances Control Act and its implementing regulations, 40 CFR 761. The regulation of mixtures of used oil and hazardous waste from conditionally exempt small quantity generator hazardous waste are also clarified. Changes are also made to the recordkeeping requirements for used oil marketers.

Testing and monitoring requirements are amended, in order to allow more flexibility when conducting RCRA related sampling & analysis by providing appropriate analytical methods for RCRA applications. These changes are made to conform with EPA's June 14, 2005 rule as amended on August 1, 2005 (70 FR 34548-34592, and 70 FR 44150-44151). Corrections are being made to the used oil regulations, including spelling, printing omissions, typographical errors, and incorrect cross-references to conform with EPA's July 14, 2006 rule (71 FR 40254-40280).

In addition, typographical errors and inconsistencies between State and federal regulations are being corrected along with some modifications to areas where the State is different from federal requirements. These changes are summarized below.

Provisions are proposed to be added to the used oil regulations, pertaining to used oil acceptance requirements for "service establishments" and "retail establishments." Proposed Part 613, which is independently applicable to many used oil tanks, contains a provision that a tank that does not meet certain minimal standards may be "tagged," which means that delivery of used oil into the tank would be prohibited. Subpart 374-2 is being clarified to indicate that if the used oil tank at a service or retail establishment is tagged, then the owner or operator must provide alternate container or tank storage to receive used oil from household do-it-yourselfers. Such temporary storage must be designed and operated in compliance with all applicable used oil storage requirements.

Most of the Department's used oil regulations are contained within 6 NYCRR Subparts 374-2 and 360-14. Proposed Part 613 includes registration and management standards for PBS tanks that are also applicable to used oil tanks.

**Text of proposed rule and any required statements and analyses may be obtained from:** Russ Brauksieck, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@dec.ny.gov

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

**Public comment will be received until:** 60 days after publication of this notice.

**Additional matter required by statute:** Negative Declaration, Coastal Assessment Form, and Short Environmental Assessment Form have been completed for this proposed rule making.

#### Summary of Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY

##### Petroleum Bulk Storage

The State law authority that empowers the Department of Environmental Conservation (Department) to regulate the storage, handling, and cleanup of petroleum is found in Article 12 of the Navigation Law (NL), sections 170 through 197 (Article 12) and Title 10 of Environmental Conservation Law (ECL) Article 17, sections 17-1001 through 17-1017 (Title

10). The Department is authorized to adopt regulations to implement the provisions of the ECL and the NL under ECL sections 3-0301(2)(a) and (m) and NL section 191, respectively. ECL Articles 3 and 17 provide authority regarding access to facilities, premises, and records. The Department's existing rules with respect to petroleum bulk storage (PBS) are found at 6 NYCRR Parts 612 through 614.

Under Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 USC sections 6991 through 6991m (Subtitle I), the U.S. Environmental Protection Agency (EPA) is authorized to regulate PBS underground storage tanks (USTs). EPA's implementing rule is found at 40 Code of Federal Regulations (CFR) Part 280.

##### Used Oil Management

Article 3, Title 3; Article 17, Title 10; Article 23, Title 23; Article 27, Titles 7 and 9; Article 70; and Article 71, Titles 27 and 35 of the ECL authorize the proposed changes to 6 NYCRR Part 370 and Subpart 374-2. The Department is authorized to promulgate regulations and standards applicable to the generation, storage, transportation, treatment and disposal of hazardous waste, as necessary to protect public health and the environment. Pursuant to ECL section 27-0900, these regulations and standards must be at least as stringent as those established by EPA under RCRA, Subtitle C (42 USC sections 6921 through 6939e).

##### 2. LEGISLATIVE OBJECTIVES

##### Petroleum Bulk Storage

The legislative objectives inherent in the statutory authority are the safe storage and handling of petroleum to minimize the threats to public health and the environment that come from the release of petroleum to the environment. The repeal of the existing rules and the adoption of proposed Part 613 would meet these legislative objectives and reflect statutory changes that were made to Title 10 in 2008 (see Ch. 334, L. 2008), which allow for State consistency with new federal requirements enacted as revisions to RCRA Subtitle I during 2005.

##### Used Oil Management

ECL Articles 3, 23 and 27 authorize the Department to promote resource recovery and preserve and enhance the State's air, water and land resources. Article 23 authorizes the Department to implement regulations governing used oil collectors, re-refiners and retention facilities, in conformance with ECL Article 27. Article 27 requires the promulgation of regulations governing the operation of solid waste management and hazardous waste management facilities. Pursuant to ECL section 27-0900, the hazardous waste management regulations must be at least as broad and as stringent as those established by EPA under RCRA.

##### 3. NEEDS AND BENEFITS

##### Petroleum Bulk Storage

The adoption of this proposed rule would ensure that the Department continues to receive grant funds which are vital to implementation and enforcement of the State's PBS program.

Many regulated entities with UST systems should find it easier and less expensive to comply with State regulatory requirements because they would be more consistent with federal regulatory requirements. The Department anticipates that this would result in increased compliance.

Some important definitions are added or clarified in the proposed rule, including: "UST system," (equivalent to 40 CFR Part 280); classes of operators; various forms of tank capacity; "facility;" "farm" (same as "farm tank" in 40 CFR Part 280); "petroleum" (incorporates federal concept of a complex blend of hydrocarbons); and "petroleum mixture."

Under proposed Subpart 613-2, operators and tank system owners must designate operators for every UST system or group of UST systems. There are three operator classes (A, B and C) to enable training to be focused on the particular level of knowledge required.

Consistent with federal requirements, there would be three key components to the operator training program: training, assessment of knowledge, and verification. Under proposed section 613-2.5, training could be accomplished by any method selected by the operator (self-study, online, or in-person classes). The Department will develop a test to allow operators to demonstrate their understanding of the equipment and practices necessary for the safe operation of UST systems.

The new requirements of proposed Subpart 613-5 would allow the Department to prohibit deliveries of petroleum to tank systems that are in significant non-compliance with the proposed rule.

##### Used Oil Management

Most of the Department's used oil regulations are contained in 6 NYCRR Subparts 374-2 and 360-14. Proposed Part 613 includes standards for PBS tank systems that are applicable to tanks storing used oil. The provisions of section 370.1(e)(2) and Subpart 374-2 are revised to address changes to definitions and cross-references related to proposed Part 613. In addition, revisions are proposed to account for changes to 40 CFR Part 279.

The proposed rule incorporates into State regulations revisions made to federal regulations between July 30, 2003 and April 13, 2012.

##### 4. COSTS

#### Petroleum Bulk Storage

There would be costs incurred by facilities subject to the operator training requirements of proposed section 613-2.5. Within 30 days of assuming his or her duties, every Class A and B operator must adequately perform on an assessment of knowledge of regulatory requirements applicable to the relevant operator class. Before assuming his or her duties, every Class C operator must be trained and tested by the Class A or B operator. Operators of tanks that are not regulated under 40 CFR Part 280 are exempt from this requirement. The Department will develop tests for Class A and B operators and training materials, for which there will be no charge. Costs for Class A and B operators would be limited to costs associated with the time to prepare and take the test. Retesting or new operator designation would be required within 30 days of a Department determination that the relevant underground tank system is significantly out of compliance.

The proposed rule would eliminate or reduce costs incurred by certain facilities under existing rules, due to: (1) elimination of the requirement to perform inventory monitoring for tank systems which store motor fuel or kerosene that will not be sold; (2) introduction of a uniform records retention schedule with three time periods (three years, five years, or the life of the facility) depending upon the record type; and (3) elimination of periodic tank testing for UST systems subject to regulation under 40 CFR Part 280.

The Department would incur costs to develop and administer the operator training and delivery prohibition. Approximately \$5,000 would be needed to procure tags and associated materials to implement the delivery prohibition requirements. The amount of staff time needed to accomplish these tasks cannot be determined until the implementation details have been finalized. This will be accomplished while the rule making process is being completed. The Department would continue to partially cover its personal and non-personal costs through registration application fees. The proposed rule does not impose any costs on state agencies or local governments.

#### Used Oil Management

These proposed amendments would not result in any additional costs to the regulated community. Actual requirements for used oil handlers based upon the revised definitions would remain the same. EPA's cost analyses of these regulatory amendments noted no added expenses to the regulated community (68 FR 44663 – 44665, 70 FR 34552 -34553, 71 FR 40257).

Implementation of the proposed revisions to the used oil regulations would not result in additional costs to the Department, because they do not create new regulatory programs, expand existing regulatory programs, or increase the universe of the regulated community.

Conformance with these amendments would not impose additional costs on other State agencies or local governments.

#### 5. LOCAL GOVERNMENT MANDATES

No additional recordkeeping, reporting, or other requirements would be imposed on local governments.

#### 6. PAPERWORK

The proposed rules contain no substantive changes to existing reporting and record keeping requirements. Facilities would be required to retain records of operator training once the requirement for training goes into effect.

#### 7. DUPLICATION

##### Petroleum Bulk Storage

One of the main goals of this proposed rule is to reduce duplication. The proposed rule represents a harmonization of existing State PBS and federal UST program requirements which use inconsistent terminology.

##### Used Oil Management

The proposed amendments would not result in a duplication of State regulations. Changes to cross-references and definitions would better align the used oil regulations with the State PBS regulations, by correcting cross-references to the PBS regulations and reducing conflicting requirements. By adopting the recent federal regulations, New York would not only retain authorization, but also reduce duplicative State and federal regulation of used oil in the State.

#### 8. ALTERNATIVES

##### Petroleum Bulk Storage

The Department considered three alternatives when developing proposed Part 613: (1) no action, (2) a single-phase revision of all PBS regulatory requirements, and (3) a two-phase revision.

The Department declines to take no action because: (1) existing rules should, with respect to new tank systems, be updated to reflect the state of the art technologies and practices for the installation and operation of facilities; (2) existing rules do not adhere to the 2008 revisions to Title 10; (3) the rule making should increase compliance because many facilities with UST systems would find it easier and less expensive to comply with State and federal regulatory requirements that are more consistent and (4) the rule making would ensure the Department does not lose crucial federal funding.

The Department's second alternative was to propose a rule that includes

more stringent requirements, including a requirement that all existing facilities (Category 1 and Category 2 tank systems in proposed rule) be upgraded to new tank system standards or be closed. The Department declined to pursue this alternative for a number of reasons, including the high likelihood that the Department will be obligated to undertake a second rule making to incorporate the presently uncertain revisions to the applicable federal requirements once the currently pending federal rule making is completed.

##### Used Oil Management

For the federal changes which increase stringency, amending Subpart 374-2 is the only viable alternative available for assuring that the Department's regulations remain at least as stringent as the federal rules. The no-action alternative would result in the State's loss of authorization to administer the used oil program in lieu of EPA's implementation of the federal program. If this were to occur, the regulated community would need to satisfy two sets of regulations (i.e., federal and pre-existing State) and the Department would suffer a loss of federal grant monies.

#### 9. FEDERAL STANDARDS

##### Petroleum Bulk Storage

The proposed rule might be viewed as exceeding the requirements of 40 CFR Part 280 because it incorporates technology and operating standards that are proposed as compliance options in the pending federal rule making. 40 CFR Part 280 includes additional standards for new tank systems but they are presented only as guidance. However, because the standards incorporated into the proposed rule are widely-followed standards for new tank systems, the Department believes these standards do not exceed minimum federal standards.

##### Used Oil Management

The proposed changes would increase consistency between state and federal regulations and between the State's PBS and used oil regulations.

#### 10. COMPLIANCE SCHEDULE

##### Petroleum Bulk Storage

Operators of certain underground tanks would need to complete operator training and testing requirements within one year of the effective date of the rule. With regard to all other requirements, the regulated community would be required to comply upon adoption of the proposed rule.

##### Used Oil Management

The regulated community would be required to comply upon adoption of the proposed rule.

#### *Regulatory Flexibility Analysis*

##### 1. EFFECT OF RULE

The proposed rules would apply statewide in all 62 counties of New York State (State). Proposed Part 613 represents a consolidation of existing State and federal requirements. None of the revisions to the proposed rules include any substantive changes to existing requirements concerning petroleum bulk storage (PBS) or used oil.

The New York State Department of Environmental Conservation (Department) does not collect data with respect to the number of the persons employed by the owner or operator of any subject facility. The Department does not presently collect data on the industrial classification of a registered facility. The Department does not have data on the corporate structures that may exist for a particular facility owner or operator which may have a bearing on determining how many persons are employed by the owner or operator. The Department only collects information regarding the name, address, and contact information for the owner and operator of each registered facility. Due to this lack of data, the Department is unable to make an estimate of how many small businesses comply with the existing PBS rules (6 NYCRR Parts 612 through 614) or would be required to comply with proposed Part 613.

The most common types of subject facilities are apartment/office buildings, retail gasoline sales, vehicle repair shops, schools, trucking or fleet operations, and municipalities. There are approximately 38,500 registered facilities in the Department's PBS database. The Department believes that the great majority of the owners and operators of these facilities would likely be properly categorized as small businesses.

The Department does collect data on whether registered facilities are owned by local governments. There are approximately 4,435 PBS facilities identified as registered by local governments. The Department believes that the types of facilities registered by local governments tend to be vehicle fleet fueling locations for municipal vehicle pools and school district transportation departments.

##### 2. COMPLIANCE REQUIREMENTS

The proposed rules contain no substantive changes to requirements that are imposed on subject facilities under existing statutory and regulatory authorities.

##### 3. PROFESSIONAL SERVICES

No new or additional professional services are likely to be needed by facilities owned by small businesses or local governments to comply with the proposed rules.

##### 4. COMPLIANCE COSTS

Under proposed Part 613, operators and tank system owners must designate operators for every underground storage tank (UST) system or group of UST systems that is subject to the requirements of Subpart 613-2. There would be three operator classes (A, B and C) to enable training to be focused on the particular level of knowledge required.

Consistent with federal requirements, there would be three key components of the operator training program: training, assessment of knowledge, and verification. Under proposed section 613-2.5, training could be accomplished by any method selected by the operator (self-study, online, or in-person classes). The New York State Department of Environmental Conservation will develop training materials and an examination to allow for operators to demonstrate their understanding of the equipment and practices necessary for the safe operation of UST systems. It is anticipated that the exam would primarily be administered online. The Department recognizes that online testing may not be a viable option for some operators and therefore proposes to provide in-person exam options.

There would be costs incurred by facilities subject to the operator training requirements of proposed section 613-2.5. Within 30 days of assuming his or her duties, every Class A and B operator must adequately perform on an assessment of knowledge of regulatory requirements applicable to the relevant operator class. Before assuming his or her duties, every Class C operator must be trained and tested by the Class A or B operator. Operators of heating oil tank systems (and other tank systems that are not regulated under 40 CFR Part 280) are exempt from this requirement. Self-study can be conducted at no cost and training courses are optional. The Department will develop tests for Class A and B operators. The Department will also develop training materials and make them publicly available. There will be no charge for the training materials or for an operator to take the test. Costs for Class A and B operators would be limited to costs associated with the time to prepare and take the test. Retesting or new operator designation would be required within 30 days of a Department determination that the relevant UST system is significantly out of compliance.

The proposed rule would eliminate or reduce costs that are incurred under the existing rules by certain facilities. These cost reductions are attributable to the following features of the proposed rule: (1) the elimination of the requirement to perform inventory monitoring for tank systems which store motor fuel or kerosene that will not be sold; (2) the introduction of a uniform records retention schedule with three time periods (three years, five years, or the life of the facility) depending upon the record type; and (3) the elimination of periodic tank testing for UST systems that were upgraded in accordance with 40 CFR Part 280.

Small businesses and local governments would not incur any additional costs, either initial capital costs or annual compliance costs, to comply with the changes to section 370.1(e)(2) or Subpart 374-2 affecting used oil management. Some changes would make the State regulations consistent with federal regulations.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The proposed rules contain no substantive changes to requirements that are imposed on subject facilities under existing statutory and regulatory authorities. Implementation of the proposed rules would be economically and technologically feasible for small businesses and local governments.

#### 6. MINIMIZING ADVERSE IMPACT

Because proposed Part 613 represents a harmonization of existing State and federal requirements involving PBS, the Department does not believe that the proposed rule would have an adverse economic impact on small businesses or local governments. Since changes to section 370.1(e)(2) or Subpart 374-2 pertaining to used oil management would make State regulations consistent with federal regulations, this proposed rule would also not have an adverse economic impact on small businesses or local governments.

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

The Department continues to provide statewide outreach to regulated parties and interested persons, including small businesses and local governments. In 2011, 2012, and 2013, the Department made presentations to various petroleum associations (for example, Empire State Petroleum Association, New York State Conference of Mayors and Municipal Officials (NYCOM), and New York State Automobile Dealers Association) at conference venues. The Department also continues to post relevant information on its website to assist the owners and operators of subject facilities with understanding and implementing the requirements of the PBS Program. And, the Department maintains listservs to which persons may subscribe so that they can receive information about new developments regarding the PBS, hazardous waste and used oil management programs.

Pursuant to ECL section 17-1013, a State Petroleum Bulk Storage Advisory Council (Council) was created within the Department to advise the Department on the proposal, preparation, and revision of the regulations written to implement necessary requirements for PBS facilities. Included

in the Council's membership are small business owners and local governments (through NYCOM). Council members have professional training or experience to analyze and interpret content of the PBS regulations. As drafts of proposed Part 613 were prepared, the Department shared the drafts with the Council and convened meetings or conference calls to discuss the Council's comments and answer any questions.

The Department has an ongoing education program for vehicle maintenance shops subject to the requirements of Subpart 374-2. As part of this program, workshops are conducted with trade associations throughout the State upon request. In addition, the Department has a guidance manual available that explains the regulatory requirements for vehicle maintenance shops and an accompanying self-audit checklist. The Department also maintains information on its website.

#### 8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

State Administrative Procedure Act (SAPA) section 202-b(1-a) provides as follows:

In developing a rule for which a regulatory flexibility analysis is required and which involves the establishment or modification of a violation or of penalties associated with a violation, the agency shall: (a) include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement; or (b) include in the regulatory flexibility analysis an explanation of why no such cure period was included in the rule.

Proposed Subpart 613-5 would provide for the possible imposition of a delivery prohibition on any tank system for which the Department finds a Tier 1 or Tier 2 condition exists. The statutory basis for imposition of a delivery prohibition is found in ECL section 17-1007(4) as amended during 2008. The Department considers a delivery prohibition to be a penalty within the meaning of SAPA section 202-b(1-a).

The delivery prohibition would only be imposed without prior notice and opportunity for hearing when the Department finds that a Tier 1 condition exists with respect to a tank system. Tier 1 conditions would be regulatory violations that constitute imminent and serious threats to public health and the environment. Tier 1 conditions would include: (1) a tank system is known to be releasing petroleum, and (2) a UST system covered under section 613-2.1(a), 613-3.1(a)(2), or 613-3.1(a)(4) lacks infrastructure or equipment needed to meet secondary containment, spill and overflow prevention, corrosion protection, or leak detection requirements. The severity of the threat generally posed by Tier 1 conditions militates against the provision of any cure period that would allow the threat to continue.

The designation of a tank system that is releasing petroleum as a Tier 1 condition is supported by the existing prohibition on the operation of any leaking tank system. ECL section 17-1007(3) (enacted during 1983) provides that the operation of any leaking tank system and associated equipment is unlawful and the contents of any leaking tank system must be promptly removed. To allow for the continued operation of a tank system that is releasing petroleum during a cure period would be in direct contravention of ECL section 17-1007(3).

With respect to the other Tier 1 conditions involving equipment deficiencies at a UST system, the violations are generally of a kind that is not quickly ameliorated. The absence of required equipment, such as corrosion protection, usually requires substantial installation work that involves the excavation of soil around the UST system.

When the Department finds that a Tier 2 condition exists, imposition of a delivery prohibition would not occur until after a cure period occurs. The cure period that follows a Department finding of a Tier 2 condition would last either ten or 30 days depending on the circumstances. See section 613-5.1(b)(4).

There is some similarity between the circumstances described as a Tier 1 condition at section 613-5.1(a)(3)(ii) (regarding tank systems covered under sections 613-2.1(a), 613-3.1(a)(2), or 613-3.1(a)(4)) and the Tier 2 condition described at section 613-5.1(b)(4)(iii) (regarding tank systems covered under sections 613-3.1(a)(1) or 613-3.1(a)(3)). Both circumstances include the lack of essential infrastructure or equipment needed to meet secondary containment, spill and overflow prevention, corrosion protection, and leak detection requirements for UST systems. However, the Department determined that only the circumstances described at section 613-5.1(a)(3)(ii) warrant the allowance of a cure period before the delivery prohibition is imposed. The reason for the different treatment of USTs under these provisions is due to the different characteristics of the facilities being covered. The facilities subject to section 613-5.1(b)(4)(iii) are generally critical to public health and safety. These facilities include heating oil used for on-premises consumption (most often apartment buildings) and emergency generators at nuclear power plants. If these facilities were invariably ordered to cease operating while equipment is put in place, apartment dwellers may lose all heat during the winter or nuclear facilities could lose essential backup power capacity.

#### Rural Area Flexibility Analysis

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

For purposes of this Rural Area Flexibility Analysis, "rural area" means

those portions of the state so defined by Executive Law section 481(7). State Administrative Procedure Act section 102(10). Under Executive Law section 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, "rural areas" means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein." There are 44 counties in New York State (State) that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. The proposed rules would apply statewide so they would apply to all rural areas of the State.

#### 2. REPORTING, RECORDKEEPING, OTHER COMPLIANCE REQUIREMENTS, AND NEED FOR PROFESSIONAL SERVICES

The proposed rule contains no substantive changes to requirements that are imposed on subject facilities under existing statutory and regulatory authorities. The proposed rule would not impose requirements on facilities located in rural areas in a manner different from those imposed on facilities in non-rural areas. No different or additional professional services would likely be needed by facilities in rural areas by virtue of their rural location.

#### 3. COSTS

Under proposed Part 613, operators and tank system owners must designate operators for every underground storage tank (UST) system or group of UST systems that is subject to the requirements of Subpart 613-2. There would be three operator classes (A, B and C) to enable training to be focused on the particular level of knowledge required.

Consistent with federal requirements, there would be three key components of the operator training program: training, assessment of knowledge, and verification. Under proposed section 613-2.5, training could be accomplished by any method selected by the operator (self-study, online, or in-person classes). The New York State Department of Environmental Conservation (Department) will develop training materials and an examination to allow for operators to demonstrate their understanding of the equipment and practices necessary for the safe operation of UST systems. It is anticipated that the exam would primarily be administered online. The Department recognizes that online testing may not be a viable option for some operators and therefore proposes to provide in-person exam options.

There would be costs incurred by facilities subject to the operator training requirements of proposed section 613-2.5. Within 30 days of assuming his or her duties, every Class A and B operator must adequately perform on an assessment of knowledge of regulatory requirements applicable to the relevant operator class. Before assuming his or her duties, every Class C operator must be trained and tested by the Class A or B operator. Operators of heating oil tank systems (and other tank systems that are not regulated under 40 CFR Part 280) are exempt from this requirement. Self-study can be conducted at no cost and training courses are optional. The Department will develop tests for Class A and B operators. The Department will also develop training materials and make them publicly available. There will be no charge for the training materials or for an operator to take the test. Costs for Class A and B operators would be limited to costs associated with the time to prepare and take the test. Retesting or new operator designation would be required within 30 days of a Department determination that the relevant UST system is significantly out of compliance.

The proposed rule would eliminate or reduce costs that are incurred under the existing rules by certain facilities. These cost reductions are attributable to the following features of the proposed rule: (1) the elimination of the requirement to perform inventory monitoring for tank systems which store motor fuel or kerosene that will not be sold; (2) the introduction of a uniform records retention schedule with three time periods (three years, five years, or the life of the facility) depending upon the record type; and (3) the elimination of periodic tank testing for UST systems that were upgraded in accordance with 40 CFR Part 280.

The proposed rules would not impose costs on facilities in rural areas that are different or additional to those incurred by facilities in non-rural areas. There would be no likely variation in costs incurred by public and private entities in rural areas.

#### 4. MINIMIZING ADVERSE IMPACT

Since this rule making is a harmonization of existing State and federal requirements, the Department believes that the proposed rules would not cause an adverse impact on any rural area.

#### 5. RURAL AREA PARTICIPATION

The Department continues to provide statewide outreach to regulated communities and interested parties, including those in rural areas of the State. In 2011, 2012 and 2013, the Department made presentations to various petroleum associations (for example, Empire State Petroleum As-

sociation, New York State Conference of Mayors and Municipal Officials, and New York State Automobile Dealers Association) at conference venues. The Department also continues to post relevant information on its website to assist the owners and operators of subject facilities, including those located in rural areas, with understanding and implementing the requirements of the Petroleum Bulk Storage (PBS), hazardous waste and used oil management programs. And, the Department maintains listservs to which persons may subscribe so that they can receive information about new developments regarding the PBS, hazardous waste and used oil management programs.

#### Job Impact Statement

In accordance with Section 201-a(2)(a) of the State Administrative Procedure Act, a Job Impact Statement has not been prepared for this rule making as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State (State). This rule making repeals existing 6 NYCRR Parts 612 through 614 and replaces them with a new Part 613. This rule making is principally aimed at harmonizing the existing State requirements (currently found at 6 NYCRR Parts 612 through 614) with the federal requirements (found at 40 Code of Federal Regulations Part 280 and amendments to Subtitle I of the Resource Conservation and Recovery Act, 42 United States Code sections 6991 through 6991m). Many regulated entities with underground storage tank systems should find it easier and less expensive to comply with State regulatory requirements because they would be more consistent with federal regulatory requirements. The New York State Department of Environmental Conservation (Department) anticipates that this would result in increased compliance. Since this rule making is a harmonization of existing requirements and incorporation of existing statutory changes into regulation, there would be no change to existing job opportunities.

To conform to changes in proposed Part 613, corresponding changes to definitions and cross-references are being made to the Standards for the Management of Used Oil, established at 6 NYCRR Subpart 374-2. Changes to Subpart 374-2 include corrections, clarifications, and updates to add certain federal provisions. The revisions include federally driven corrections or clarifications, and updates to testing requirements to make it easier and more cost-effective for the regulated community to comply with certain sampling and analysis requirements. Changes are also being made to 6 NYCRR section 370.1(e)(2) to update references to federal regulations.

The Department concludes that these regulatory proposals for existing and new petroleum bulk storage facilities, and for used oil management, would not have a substantial adverse impact on jobs within the State.

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Chemical Bulk Storage

I.D. No. ENV-31-14-00007-P

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

**Proposed Action:** Repeal of Parts 595, 596, 597; addition of new Parts 596 and 597; and amendment of Parts 598 and 599 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 17-0301, 17-0303, 17-0501, 17-1743, 37-0101 through 37-0107, and 40-0101 through 40-0121

**Subject:** Chemical Bulk Storage.

**Purpose:** To amend existing CBS rule to be at least as stringent as EPA Federal rule (40 CFR 280) and include NYS 2008 statutory changes.

**Public hearing(s) will be held at:** 3:00 p.m. and 7:00 p.m., Oct. 14, 2014 at Empire State Plaza, Meeting Rm. 6, Albany, NY; 3:00 p.m. and 7:00 p.m., Oct. 16, 2014 at RIT Inn and Conference Center, 5257 W. Henrietta Rd., Henrietta, NY; and 3:00 p.m. and 7:00 p.m., Oct. 23, 2014 at St. Francis College, Founders Hall, 180 Remsen St., Brooklyn, 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.

**Substance of proposed rule (Full text is not posted on a State website):** The New York State Department of Environmental Conservation (Department) proposes to amend its existing rules that establish: methods and lists for identifying hazardous substances, requirements for reporting and remediation of releases of hazardous substances, requirements concerning

sales of hazardous substances, and requirements for the handling and storage of hazardous substances, commonly known as the chemical bulk storage (CBS) program. The existing rules are found at 6 NYCRR Parts 595 through 599.

Existing Part 595

Existing Part 595, Releases of Hazardous Substances, would be repealed.

Existing Part 596

Existing Part 596, Hazardous Substance Bulk Storage Regulations, would be repealed.

New Part 596

A new Part 596, Hazardous Substance Bulk Storage Facility Registration, has been proposed. The express terms for the proposed rule are summarized as follows:

Section 596.1: General

Section 596.1 contains provisions covering the purpose of the rule, applicability, definitions, severability, access to records and tank systems, confidentiality, and enforcement.

Section 596.2: Registration of Facilities

Section 596.2 contains provisions covering the registration process for tanks. It describes the requirements of the application forms. It describes the requirements for transfer of ownership. The following requirements are also described: registration of new facilities, change of substance stored, newly installed tanks, registration certificate, and identification numbers on tanks.

Section 596.3: Registration Fees for Facilities

Section 596.3 describes fees required for registration, re-registration or renewal. It states that no fee would be required for notifications of newly installed tanks.

Section 596.4: Sale of Hazardous Substances

Section 596.4 contains the requirements for the distribution of hazardous substances including the contents of technical guidance and recommended practices. It also requires the manufacturer or distributor to file an up-to-date copy of its technical guidance and recommended practices with the department. This part also prohibits the delivery to unregistered tanks.

Existing Part 597

Existing Part 597, List of Hazardous Substances, would be repealed.

New Part 597

A new Part 597, Hazardous Substances Identification, Release Prohibition, and Release Reporting, has been proposed. The express terms for the proposed rule may be summarized as follows:

Section 597.1: General

Section 597.1 contains a description of purpose of the rule, definitions, severability, and references. The purpose statement of Part 597 now explicitly includes the prohibition of releases, release reporting, and a requirement to remediate releases (provisions moved from existing Parts 595 and 596).

Section 597.2: Criteria for Identifying a Hazardous Substance or Acutely Hazardous Substance

Section 597.2 describes the six criteria for identifying a hazardous substance and four criteria for identifying an acutely hazardous substance.

Section 597.3: List of Hazardous Substances

In order to be consistent with changes to 40 Code of Federal Regulations Part 302 made since Part 597 was initially promulgated, 19 substances have been added (36 names added including synonyms) and four substances have been deleted (three names deleted) from the two tables listing hazardous substances in Part 597.

Section 597.4: Releases of Hazardous Substances

Section 597.4 includes a release reporting section that was largely drawn from the existing Part 595. New language was added that indicates a release would be reportable when a release of a reportable quantity occurs within any 24-hour period.

Revised Part 598

Part 598, Handling and Storage of Hazardous Substances, would be revised. The use of various terms, such as "tank" and "tank system" would be changed to conform with the definitions in the new Part 596. New sections addressing operator training and delivery prohibition would be added. The existing requirements concerning release reporting, spill response, investigation, and corrective action, found in existing Parts 595 and 596, would be moved to the proposed Part 598. Public participation provisions would be added to Part 598.

Revised Part 599

Part 599, currently titled Standards for New or Modified Hazardous Substance Storage Facilities, would be given the new title Standards for New Hazardous Substance Tank Systems. Minor changes are proposed for Part 599 that would allow the proposed rule to conform to the terminology used in the other proposed rules for the CBS program.

**Text of proposed rule and any required statements and analyses may be obtained from:** Russ Brauksieck, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@dec.ny.gov

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

**Public comment will be received until:** 60 days after publication of this notice.

**Additional matter required by statute:** Negative Declaration, Coastal Assessment Form, and Short Environmental Assessment Form have been completed for this proposed rule making.

### Summary of Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY

The State law authority that empowers the Department of Environmental Conservation (Department) to regulate the storage and handling of hazardous substances is found in Title 1 of Article 37 of the Environmental Conservation Law (ECL), sections 37-0101 through 37-0111, entitled "Substances Hazardous to the Environment" (Article 37), and ECL Article 40, sections 40-0101 through 40-0121, entitled "Hazardous Substances Bulk Storage Act" (Article 40). The Department is authorized to adopt regulations to implement the provisions of the ECL under ECL sections 3-0301(2)(a) and (m). ECL Articles 3 and 17 provide authority regarding access to facilities, premises, and records. The Department's existing rules with respect to chemical bulk storage (CBS) are found at 6 NYCRR Parts 595 through 599.

Under Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 USC sections 6991 through 6991m (Subtitle I), the U.S. Environmental Protection Agency (EPA) is authorized to regulate CBS underground storage tanks (USTs). The EPA implementing rule is found at 40 Code of Federal Regulations (CFR) Part 280.

#### 2. LEGISLATIVE OBJECTIVES

The legislative objectives inherent in the statutory authority are the safe storage and handling of hazardous substances to minimize the threats to public health and the environment that come from their release to the environment. The repeal and replacement of, or revisions to, the existing rules to be accomplished through the proposed rules would meet these legislative objectives and reflect the statutory changes that were made to Articles 37 and 40 in 2008 (see Ch. 334, L. 2008). Adoption of the proposed rules would ensure that the environmental and public health protections afforded by the existing Parts 595 through 599 and 40 CFR Part 280 are continued and enhanced. The 2008 statutory changes were made principally in order to allow State consistency with new federal requirements enacted as revisions to RCRA Subtitle I during 2005.

#### 3. NEEDS AND BENEFITS

The adoption of these proposed rules would ensure that the Department continues to receive grant funds which are vital to implementation and enforcement of the State's CBS program.

Many regulated entities with underground tank systems should find it easier and less expensive to comply with State regulatory requirements because they would be more consistent with federal regulatory requirements. The Department anticipates that this would result in increased compliance.

Some definitions are added or clarified in the proposed rule. The definition of "underground tank system" under the proposed rule would be essentially equivalent to the definition of "underground storage tank" that is found in 40 CFR Part 280. Different classes of operators are defined for the purposes of operator training. The definition of "tank system" is essentially substituted for the terms "tank" and "storage tank system." The definitions of "underground tank system" and "aboveground tank system" make usage of these terms consistent with the operation of 40 CFR Part 280. The definition of "tank system" includes exclusionary text that currently is found in the "applicability" section of existing Part 596 (section 596.1(b)(3)). The term "farm" would be added to clarify one of the exemptions and would be consistent with the same term in 6 NYCRR Part 613. The terms "stationary tank" and non-stationary tank" are replaced by the terms "tank system," "stationary device," and "container." In order to be consistent with 40 CFR Part 280 and ECL Articles 37 and 40, the definitions of "hazardous substance" found in the existing Parts 596 and 597 would be revised and clarified. The definition of "hazardous substance mixture" is added to address the issue of petroleum additives (that is, petroleum mixed with hazardous substances) and to clarify the threshold at which the proposed rules would not be applicable.

Pursuant to ECL section 37-0103(2)(c), the Department is required to update the Part 597 tables to include all substances defined as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC sections 9601 through 9675, as it may be amended from time to time. EPA maintains its CERCLA list of hazardous substances at 40 CFR Part 302. In order to be consistent with changes to 40 CFR Part 302 made since Part 597 was last promulgated, 19 substances would be added (36 names added including synonyms) and four substances would be deleted (three names deleted) from the two tables listing hazardous substances in Part 597.

Under the proposed Part 598, operators and tank system owners must designate operators for every underground tank system or group of

underground tank systems. There are three operator classes (A, B and C) to enable training to be focused on the particular level of knowledge required.

Consistent with federal requirements, there would be three key components to the operator training program: training, assessment of knowledge, and verification. Under proposed section 598.12, training could be accomplished by any method selected by the operator (self-study, online, or in-person classes). The Department will develop a test to allow for operators to demonstrate their understanding of the equipment and practices necessary for the safe operation of underground tank systems.

The new requirements of proposed section 598.13 would allow the Department to prohibit deliveries of hazardous substances to tank systems that are in significant non-compliance with the proposed rule.

The requirements concerning release reporting, and spill response, investigation, and corrective action, found in existing Parts 595 and 596, would be moved to proposed Part 598. Public participation provisions would be added to Part 598.

#### 4. COSTS

There would be costs incurred by facilities subject to the operator training requirements of proposed section 598.12. Within 30 days of assuming his or her duties, every Class A and B operator must adequately perform on an assessment of knowledge of regulatory requirements applicable to the relevant operator class. Before assuming his or her duties, every Class C operator must be trained and tested by the Class A or B operator. Operators of tank systems that are not regulated under 40 CFR Part 280 are exempt from this requirement. The Department will develop tests for Class A and B operators and training materials, for which there will be no charge. Costs for Class A and B operators would be limited to costs associated with the time to prepare and take the test. Retesting or new operator designation would be required within 30 days of a Department determination that the relevant underground tank system is significantly out of compliance.

The Department would incur costs to develop and administer the operator training and delivery prohibition requirements. Approximately \$5,000 will be needed to procure tags and associated materials to implement the delivery prohibition requirements. The amount of staff time needed to accomplish these tasks cannot be determined until the implementation details have been finalized. This will be accomplished while the rule making process is being completed. The Department would continue to partially cover its personal and non-personal service costs through registration application fees. The proposed rules would not impose any additional costs on state agencies or local governments that own or operate facilities.

#### 5. LOCAL GOVERNMENT MANDATES

No additional recordkeeping, reporting, or other requirements not already created by statute would be imposed on local governments.

#### 6. PAPERWORK

The proposed rule contains no substantive changes to existing reporting and record keeping requirements. Facilities would be required to retain records of operator training once the requirement for training goes into effect.

#### 7. DUPLICATION

One of the main goals of these proposed rules is to reduce duplication. The proposed rules represent a harmonization of existing State CBS and federal UST program requirements which use inconsistent terminology.

#### 8. ALTERNATIVES

The Department considered three alternatives when developing the proposed Parts 596-599: (1) no action, (2) a single-phase revision of all regulatory requirements that affect CBS including a new structure, and (3) a two-phase revision.

The Department declines to take no action for four interrelated reasons. First, the tables that list hazardous substances must be updated to reflect the changes to the listing of hazardous substances found in 40 CFR Part 302. Second, the existing rules do not adhere to the 2008 revisions to Article 40, including the implementation of the major changes to RCRA Subtitle I enacted during 2005. The major changes were the new requirements for operator training and the authority to prohibit the delivery of hazardous substances to facilities that are in significant non-compliance with the requirements of the CBS program. Third, compliance by facilities having underground tank systems should increase by taking the proposed action because the Department anticipates that these facilities would find it easier and less expensive if they have only one regulatory program to follow. Fourth, under the no-action alternative, the Department would lose crucial federal funding that supports implementation and enforcement of its CBS program.

The Department's second alternative was to propose a rule that would adopt the structure of 40 CFR Part 280 and include more stringent requirements, such as what EPA included in their proposed revision to 40 CFR Part 280. For two reasons, the Department declined to pursue the second alternative and instead chose to make changes to its CBS program through two separate rule makings, of which this rule making constitutes the first

phase. The reasons are: (1) the high likelihood that the Department will be obligated to undertake a second rule making to incorporate the presently uncertain revisions to the applicable federal requirements once the currently pending federal rule making is completed, and (2) the amount of time required for staff to modify the structure of the State regulations to mirror the structure of 40 CFR Part 280.

#### 9. FEDERAL STANDARDS

No federal standards will be exceeded by promulgating the proposed rules.

#### 10. COMPLIANCE SCHEDULE

Operators of underground tanks would need to complete operator training and testing requirements within one year of the effective date of the rule. With regard to all other requirements, the regulated community would be required to comply upon adoption of the proposed rules.

#### Regulatory Flexibility Analysis

##### 1. EFFECT OF RULE

The proposed rules would apply statewide in all 62 counties of New York State (State). The proposed rules represent a consolidation of existing State and federal requirements and therefore do not include any substantive changes to existing requirements concerning chemical bulk storage (CBS) or the identification of hazardous substances.

The New York State Department of Environmental Conservation (Department) does not collect data with respect to the number of the persons employed by the owner or operator of any subject facility or on the industrial classification of a registered facility. The Department does not have data on the corporate structures that may exist for a particular facility owner or operator which may have a bearing on determining how many persons are employed by the owner or operator. The Department only collects information regarding the name, address, and contact information for the owner and operator of each registered facility. Due to this lack of data, the Department is unable to make an estimate of how many small businesses comply with the existing CBS rules (6 NYCRR Parts 595 through 599) or would be required to comply with the proposed rules.

The most common types of subject facilities are municipal facilities, manufacturing facilities and utilities. There are over 1,400 registered facilities in the Department's CBS database. The Department believes that the great majority of the owners and operators of these facilities would likely be properly categorized as small businesses.

The Department does collect data on whether registered facilities are owned by local governments. Local governments have registered over 580 facilities. The Department believes that the types of facilities registered by local governments tend to be water and wastewater treatment facilities.

##### 2. COMPLIANCE REQUIREMENTS

The proposed rules contain no substantive changes to requirements that are imposed on subject facilities under existing statutory and regulatory authorities.

##### 3. PROFESSIONAL SERVICES

No new or additional professional services would likely be needed by facilities owned by small businesses or local governments to comply with the proposed rules.

##### 4. COMPLIANCE COSTS

Under proposed section 598.12, operators and tank system owners must designate operators for every underground tank system or group of underground tank systems. There would be three operator classes (A, B and C) to enable training to be focused on the particular level of knowledge required.

Consistent with federal requirements, there would be three key components to the operator training program: training, assessment of knowledge, and verification. Under proposed section 598.12, training could be accomplished by any method selected by the operator (self-study, online, or in-person classes). The Department will develop training materials and an examination to allow operators to demonstrate their understanding of the equipment and practices necessary for the safe operation of underground tank systems. It is anticipated that the exam would primarily be administered online. The Department recognizes that online testing may not be a viable option for some operators and therefore proposes to provide in-person exam options.

There would be costs incurred by facilities subject to the operator training requirements of proposed section 598.12. Within 30 days of assuming his or her duties, every Class A and B operator must adequately perform on an assessment of knowledge of regulatory requirements applicable to the relevant operator class. Before assuming his or her duties, every Class C operator must be trained and tested by the Class A or B operator. Operators of tank systems that are not regulated under 40 CFR Part 280 are exempt from this requirement. Self-study can be conducted at no cost and training courses are optional. The Department will develop tests for Class A and B operators. The Department will also develop training materials and make them publicly available. There will be no charge for the training materials or for an operator to take the test. Costs for Class A and B operators would be limited to costs associated with the time to prepare and take

the test. Retesting or new operator designation would be required within 30 days of a Department determination that the underground tank system is significantly out of compliance.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The proposed rules contain no substantive changes to requirements that are imposed on subject facilities under existing statutory and regulatory authorities. Implementation of the proposed rules would be economically and technologically feasible for small businesses and local governments.

#### 6. MINIMIZING ADVERSE IMPACT

Because the proposed rules represent a consolidation of existing State and federal requirements involving CBS and hazardous substance identification, the Department does not believe that the proposed rules would have an adverse economic impact on small businesses or local governments.

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

The Department provides statewide outreach to persons who will be subject to the proposed rules, including small businesses and local government, by posting relevant information on the Department's website. The website provides these persons with information regarding implementation of the existing rules for the CBS program, and provides copies of the proposed rules and explanatory material. The Department also maintains a listserv to which persons may subscribe so that they can receive information about new developments regarding the CBS program.

#### 8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

State Administrative Procedure Act (SAPA) section 202-b(1-a) provides as follows:

In developing a rule for which a regulatory flexibility analysis is required and which involves the establishment or modification of a violation or of penalties associated with a violation, the agency shall: (a) include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement; or (b) include in the regulatory flexibility analysis an explanation of why no such cure period was included in the rule.

Proposed section 598.13 would provide for the possible imposition of a delivery prohibition on any tank system for which the Department finds a Tier 1 or Tier 2 condition exists. The statutory basis for imposition of a delivery prohibition is found in Environmental Conservation Law (ECL) section 40-0111(2) as amended during 2008. The Department considers a delivery prohibition to be a penalty within the meaning of SAPA section 202-b(1-a).

The delivery prohibition would only be imposed without prior notice and opportunity for hearing when the Department finds that a Tier 1 condition exists with respect to a tank system. Tier 1 conditions would be regulatory violations that constitute imminent and serious threats to public health and the environment. Tier 1 conditions would include: (1) a tank system is known to be releasing a hazardous substance, and (2) an underground tank system lacks infrastructure or equipment needed to meet secondary containment, spill and overflow prevention, corrosion protection, or leak detection requirements. The severity of the threat generally posed by Tier 1 conditions militates against the provision of any cure period that would allow the threat to continue.

The designation of a tank system that is releasing hazardous substances as a Tier 1 condition is supported by the existing prohibition on the operation of any leaking tank system. ECL section 40-0111(2) (since it was originally enacted during 1986) provides that the operation of any leaking tank system and associated equipment is unlawful and the contents of any leaking tank system must be promptly removed. To allow for the continued operation of a tank system that is releasing hazardous substance during a cure period would be in direct contravention of ECL section 40-0111(2).

With respect to the other Tier 1 conditions involving equipment deficiencies at an underground system, the violations are generally of a kind that is not quickly ameliorated. The absence of required equipment, such as corrosion protection, usually requires substantial installation work that involves the excavation of soil around the underground tank system.

When the Department finds that a Tier 2 condition exists, imposition of a delivery prohibition would not occur until after a cure period occurs. The cure period that follows a Department finding of a Tier 2 condition would last either ten or 30 days depending on the circumstances. See proposed section 598.13(a)(2)(iv).

#### Rural Area Flexibility Analysis

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

For purposes of this Rural Area Flexibility Analysis, "rural area" means those portions of the state so defined by Executive Law section 481(7). State Administrative Procedure Act section 102(10). Under Executive Law section 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or

resources as are found therein. In counties of two hundred thousand or greater population, "rural areas" means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein." There are 44 counties in New York State (State) that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. The proposed rules would apply statewide so they would apply to all rural areas of the State.

##### 2. REPORTING, RECORDKEEPING, OTHER COMPLIANCE REQUIREMENTS, AND NEED FOR PROFESSIONAL SERVICES

The proposed rules contain no substantive changes to requirements that would be imposed on subject facilities under existing statutory and regulatory authorities. The proposed rules would not impose requirements on facilities located in rural areas in a manner different from those imposed on facilities in non-rural areas. No different or additional professional services would likely be needed by facilities in rural areas by virtue of their rural location.

##### 3. COSTS

Under proposed section 598.12, operators and tank system owners must designate operators for every underground tank system or group of underground tank systems. There would be three operator classes (A, B and C) to enable training to be focused on the particular level of knowledge required.

Consistent with federal requirements, there would be three key components to the operator training program: training, assessment of knowledge, and verification. Under proposed section 598.12, training could be accomplished by any method selected by the operator (self-study, online, or in-person classes). The New York State Department of Environmental Conservation (Department) will develop training materials and an examination to allow operators to demonstrate their understanding of the equipment and practices necessary for the safe operation of underground tank systems. It is anticipated that the exam would primarily be administered online. The Department recognizes that online testing may not be a viable option for some operators and therefore proposes to provide in-person exam options.

There would be costs incurred by facilities subject to the operator training requirements of proposed section 598.12. Within 30 days of assuming his or her duties, every Class A and B operator must adequately perform on an assessment of knowledge of regulatory requirements applicable to the relevant operator class. Before assuming his or her duties, every Class C operator must be trained and tested by the Class A or B operator. Operators of tank systems that are not regulated under 40 CFR Part 280 are exempt from this requirement. Self-study can be conducted at no cost and training courses are optional. The Department will develop tests for Class A and B operators. The Department will also develop training materials and make them publicly available. There would be no charge for the training materials or for an operator to take the test. Costs for Class A and B operators would be limited to costs associated with the time to prepare and take the test. Retesting or new operator designation would be required within 30 days of a Department determination that the underground tank system is significantly out of compliance.

The proposed rules would not impose costs on facilities in rural areas that are different or additional to those incurred by facilities in non-rural areas. There would be no likely variation in costs incurred by public and private entities in rural areas.

##### 4. MINIMIZING ADVERSE IMPACT

Since this rule making is a consolidation of existing requirements, the Department believes that the proposed rules would not cause an adverse impact on any rural area.

##### 5. RURAL AREA PARTICIPATION

The Department provides statewide outreach to persons who will be subject to the proposed rules, including persons residing or working in rural areas of the State, by posting relevant information on the Department's website. The website provides these persons with information regarding implementation of the existing rules for the Chemical Bulk Storage (CBS) program and copies of the proposed rules and explanatory material. The Department also maintains a listserv to which persons may subscribe so that they can receive information about new developments regarding the CBS program.

#### Job Impact Statement

In accordance with Section 201-a(2)(a) of the State Administrative Procedure Act, a Job Impact Statement has not been prepared for this rule making as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State (State). This rule making is principally aimed at harmonizing the existing State requirements (currently established at 6 NYCRR Parts 595 through 599) with the federal requirements (found at 40 Code of Federal Regulations Parts 280 and 302, and amendments to Subtitle I of the Resource Conservation and Recovery Act, 42 United States Code sections 6991 through 6991m). Many

regulated entities with underground tank systems should find it easier and less expensive to comply with State regulatory requirements because they would be more consistent with federal regulatory requirements. The New York State Department of Environmental Conservation (Department) anticipates that this would result in increased compliance. The Department is also updating the list of hazardous substances subject to regulation consistent with the mandate of Environmental Conservation Law section 37-0103(2)(c). Since this rule making consists of a harmonization of existing requirements and the incorporation of existing statutory changes into regulation, there would be no change to existing job opportunities.

The Department concludes that this regulatory proposal would not have a substantial adverse impact on jobs within the State.

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## Department of Financial Services

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### ERRATUM

A Notice of Proposed Rule Making, I.D. No. DFS-29-14-00014-P, pertaining to Title Insurance Agents, Affiliated Relationships, and Title Insurance Business, published in the July 23, 2014 issue of the *State Register* failed to include the following proposed text of proposed new Part 35 (Regulation 206) to Title 11 NYCRR:

Text of New 11 NYCRR 35 (Insurance Regulation 206).

#### Section 35.1 Definitions.

For purposes of this Part:

(a) *Affiliated person* means a person who acts as an agent, representative, attorney, or employee of the owner, lessee, or mortgagee, or of the prospective owner, lessee, or mortgagee of real property or any interest therein, or such person's spouse, when the person or spouse directly or indirectly:

(1) is a member, employee, or director of a title insurance agent or title insurance corporation;

(2) owns any interest in a title insurance agent;

(3) owns at least five percent of a title insurance corporation's securities or controls the title insurance corporation; or

(4) is a subsidiary or affiliate of a title insurance agent or title insurance corporation.

(b) *Applicant or applicant for insurance* means the person for whom the purchase of the property that is the subject of the title insurance policy is financed, to whom a mortgage loan is made, or who owns or is purchasing the property or any interest therein, or a person who is an attorney-in-fact for such person.

(c) *Person* shall have the meaning set forth in Insurance Law section 2101(q).

(d) *Real estate settlement service* means any service that is provided in connection with a real estate transaction, including a title search, title examination, provision of title insurance commitments or certificates of title, title insurance, preparation of documents, services rendered by an attorney or a real estate agent or broker, origination of a mortgage loan (including the taking of a loan application or loan processing), and closing, or settlement.

(e) *RESPA* means the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. section 2601 et seq., as amended, and Regulation X, 12 C.F.R. Part 1024 et seq., as amended.

(f) *Significant and multiple sources of business* means title insurance business that a title insurance agent or title insurance corporation generates from non-affiliate, non-controlled or non-owner business sources that constitute a significant amount of the title insurance business transacted by the title insurance agent or title insurance corporation.

#### Section 35.2 Applications.

The forms of applications for licenses to act as a title insurance agent pursuant to Insurance Law section 2139 are prescribed as follows: individual and business entity.

#### Section 35.3 Change of contact information.

Every licensee shall notify the department of any change of business or residence address, telephone number, fax number, or email address within 30 days of the change.

#### Section 35.4 Affiliated business relationships.

(a) A title insurance corporation shall not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance corporation has significant and multiple sources of business. A title insurance agent shall not accept title insurance business referred directly or indirectly from an affiliated person unless the title insurance agent has significant and multiple sources of business.

(b) A title insurance agent or title insurance corporation shall not require an affiliated person to refer a specified amount of title insurance to the title insurance corporation or title insurance agent.

(c) No title insurance agent or title insurance corporation shall directly or indirectly provide compensation to an affiliated person that refers title insurance business to the title insurance agent or title insurance corporation except that:

(1) a title insurance agent or title insurance corporation may pay an affiliated person the fair market value for actual bona fide services rendered to the title insurance agent or title insurance corporation; and

(2) the affiliated person may receive a return on investment in the title insurance agent or title insurance corporation that is commensurate with that person's ownership interest in the title insurance agent or title insurance corporation.

(d) A title insurance agent or title insurance corporation shall not require an applicant for insurance to purchase any other good or service from such title insurance agent, title insurance corporation or an affiliate person as a condition to such applicant purchasing title insurance from such title insurance agent or title insurance corporation, and neither shall a title insurance agent or title insurance corporation require an applicant for insurance to obtain title insurance from such agent or corporation as a condition to purchasing any other goods or services from the title insurance agent, title insurance corporation or any affiliated person.

#### Section 35.5 Referrals by affiliated persons and required disclosures.

(a) Except as provided in subdivision (c) of this section, an affiliated person that directly or indirectly refers an applicant for title insurance to a title insurance agent or title insurance corporation shall, at the time of making the referral, provide the following disclosures pursuant to Insurance Law section 2113(d) in a separate writing to the applicant and obtain written acknowledgement of receipt from the applicant:

(1) that the affiliated person has a financial or other beneficial interest in the title insurance agent or title insurance corporation and is likely to receive a financial or other benefit as a result of this referral;

(2) that the applicant is not required to use the services of the title insurance agent or title insurance corporation to which the applicant is being referred, and that the applicant may shop around to determine whether the applicant is receiving the best services and the best rate for the title services;

(3) unless the affiliated person is licensed as a title insurance agent, that any money or other thing of value paid by the title insurance agent or title insurance corporation to the affiliated person is based on that person's financial or other beneficial interest in the title insurance agent or title insurance corporation and is not related to the amount of title insurance business that person refers to the title insurance agent or title insurance corporation; and that the payment of such money or other thing of value does not violate Insurance Law sections 2324 or 6409 or RESPA;

(4) that the affiliated person is not required to refer a specified amount of title insurance business;

(5) the amount or value of any compensation or other things of value that the affiliated person expects to receive in connection with the services to be provided by the title insurance agent or the title insurance corporation to which the applicant is being referred;

(6) an estimate of the cost or range of charges for the services of the title insurance agent or title insurance corporation, including, the title insurance premiums, fees and other charges; and

(7) that the affiliated person is not the sole source of business for the title insurance agent or title insurance corporation, and that the title insurance agent or title insurance corporation has significant and multiple sources of business.

(b) Except as provided in subdivision (c) of this section, the title insurance agent or title insurance corporation to which a referral is made shall be responsible for ensuring that the applicant for insurance received all disclosures that are required hereunder.

(c) A title insurance agent that represents an applicant in another capacity, including as an attorney, shall not be subject to the disclosure requirements set forth in subdivision (a) of this section, but shall advise the applicant that the applicant is not required to use the person as a title insurance agent.

#### Section 35.6 Disclosure of fees and other charges.

(a) At the time of closing, a title insurance agent shall provide to the applicant, or the applicant's representative, a list of its title insurance fees, including discretionary or ancillary fees, along with any other separately identifiable service charge, in accordance with the title

insurance agent's or title insurance corporation's fee schedule. All fees charged by the title insurance agent shall be in accordance with Insurance Law section 2119. The title insurance agent also shall disclose to the applicant, or the applicant's representative, the premium for the title insurance policy at the time of closing. If no title insurance agent is used, then the title insurance corporation shall provide the notices.

(b) Every title insurance agent and title insurance corporation shall, on its website, make its range of charges for title services publicly available and accessible in a manner that permits a policyholder or potential applicant to independently determine the applicable charges. If a title insurance agent does not have a website, then the title insurance agent shall post its range of charges for title services in its place of business and provide the range of charges to policyholders or potential applicants in a written document.

Section 35.7 Other disclosures to applicants.

(a)(1) A title insurance agent shall furnish a title insurance report to the applicant and the applicant's representative at least three days prior to the scheduled date of closing, provided, however, that if an applicant is represented by an attorney, then a title insurance agent shall furnish a title insurance report to the applicant's attorney unless the applicant also requests the title insurance report, in which case the title insurance agent shall furnish the report to both the applicant and the applicant's attorney.

(2) If a title insurance agent is unable to deliver a title insurance report at least three days prior to closing, then the title insurance agent shall document or require documentation of the reasons for the delay.

(3) The report shall display conspicuously the following statement, or a statement containing substantially similar language, on the first page in bold type:

**THIS REPORT IS NOT A TITLE INSURANCE POLICY! PLEASE READ IT CAREFULLY.**

**THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE PROPERTY.**

**YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.**

(b) Where an applicant is only seeking a lender's title insurance policy, a title insurance agent shall provide to the applicant a separate written notice, which shall be signed by the applicant, at the time the title commitment or title report is prepared, and which shall explain:

(1) that a lender's title insurance policy protects the mortgage lender, and does not provide title insurance protection to the applicant as owner of the property being purchased;

(2) what a lender's title insurance policy insures against and what an owner's title insurance policy insures against; and

(3) that the applicant may obtain an owner's title insurance policy to protect the applicant's interest as an owner, and provide the website address for the insurance corporation's rate calculator or a toll-free telephone number the applicant or the applicant's attorney may call for a premium quote.

(c) If no title insurance agent is used, then the title insurance corporation shall provide the notices and obtain the applicant's signature.

Section 35.8 Use of title closer by title insurance agent and title insurance corporation.

(a) When a title insurance corporation engages or uses a title insurance closer at a closing, the title insurance corporation shall exercise due diligence to ensure that the title closer is competent and trustworthy; provided that if the title insurance agent engages the title insurance closer, the title insurance agent shall exercise such due diligence.

(b) Any acts relating to the issuance of a title policy that are performed by a title closer while the closer is acting for or on behalf of the title insurance agent or title insurance corporation are the responsibility of the title insurance agent or the title insurance corporation that engaged such title closer.

Section 35.9 Statistical data call.

Every title insurance agent shall timely comply with and respond to a rate service organization's annual statistical data call.

Section 35.10 Record retention.

Every title insurance agent shall retain any notice or disclosure that is provided pursuant to this Part in accordance with the requirements in Part 20.4 of this Title (Insurance Regulation 29-A) and this Part.

The Department of State apologizes for any confusion this may have caused.

## New York State Gaming Commission

### NOTICE OF ADOPTION

#### Prohibited Substances and Out of Competition Drug Testing for Harness Racing

**I.D. No.** SGC-15-14-00005-A

**Filing No.** 658

**Filing Date:** 2014-07-22

**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of section 4120.17 of Title 9 NYCRR.

**Statutory authority:** Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 122 and 902(1)

**Subject:** Prohibited substances and out of competition drug testing for harness racing.

**Purpose:** To enhance the integrity and safety of standardbred horse racing.

**Text or summary was published** in the April 16, 2014 issue of the Register, I.D. No. SGC-15-14-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

One public comment was received in response to the publication of the proposed rule-making in the April 16, 2014 State Register. The comment came from an organization representing six of the harness horseperson's groups in New York; they wrote in opposition to the proposed amendments. The comment argued, first, that the Commission has no authority to collect samples from racehorses while the rule's prohibited doping agents that are known to profoundly undermine the integrity of racing can still be detected, unless the racehorses are at the racetrack and/or entered to race. In litigation, the Appellate Division has rejected this legal argument, as well as others in the comment. *Matter of Ford v. N.Y.S. Racing and Wagering Bd.*, 107 A.D.3d 1071 (3rd Dep't 2013). The comment says that the Commission should not have a conflict among its rules by prohibiting all protein-based substances while allowing, for example, antitoxins. Such prohibition is limited in paragraph (c)(1)(iii), as amended, to only those substances that produce analgesia or enhance a horse's performance beyond its natural abilities. The comment asserts that the samples have to be tested by the regulated parties in addition to testing that is done by the Commission, but provides no rationale for duplicative testing. The regulated parties are free to collect their own samples, in any event; and no law enforcement program in the State, including prosecutions for driving while intoxicated, requires collection of samples for the defense. Finally, the comment makes several vague and conclusory assertions that some of the proposed amendments do not improve the original rule, but the Commission disagrees.

## Department of Health

### NOTICE OF ADOPTION

#### Disclosure of Confidential Cancer Information

**I.D. No.** HLT-08-14-00002-A

**Filing No.** 661

**Filing Date:** 2014-07-22

**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of section 1.31 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 225(4) and 2402

**Subject:** Disclosure of Confidential Cancer Information.

**Purpose:** To allow more types of relevant research access to the Registry, expand use of confidential data to surveillance and evaluation.

**Text or summary was published in** the February 26, 2014 issue of the Register, I.D. No. HLT-08-14-00002-P.

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

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

#### Assessment of Public Comment

The Department received one public comment from New York City Department of Health and Mental Hygiene. The NYC Department of Health and Mental Hygiene was not opposed to the change but requested that the release of identifiable cancer data for surveillance or evaluation be further broadened to include government at the local level. The proposed regulation greatly expands access to identifiable data and the Department is not prepared to go beyond the scope of the proposed change at this time.

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

#### Outpatient Services Licensed Under the Mental Hygiene Law

**I.D. No.** HLT-31-14-00002-P

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

**Proposed Action:** Addition of Subpart 86-12 to Title 10 NYCRR.

**Statutory authority:** L. 2011, ch. 59, part H, sections 26 and 111(a)

**Subject:** Outpatient Services Licensed Under the Mental Hygiene Law.

**Purpose:** Creates methodology for adjusting provider reimbursement in OPWDD, OHM & OASAS certified clinics based on annual patient visits.

**Text of proposed rule:** Pursuant to the authority vested in the Commissioner of Health by sections 26 and 111(a) of part H of chapter 59 of the laws of 2011, Part 86 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by adding a new Subpart 86-12, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

*Subpart 86-12 – Outpatient Services Licensed Under the Mental Hygiene Law*

##### 86-12.1 Utilization limits on OPWDD licensed clinics

For periods on and after April 1, 2011 Medicaid reimbursement rates for clinics licensed by the Office for People With Developmental Disabilities (“OPWDD”) shall be subject to the following:

(a) Definitions: As used in this section:

(i) “Clinic” shall mean a clinic treatment facility licensed by OPWDD pursuant to 14 NYCRR Part 679.

(ii) “Clinic visit”. For services provided by a clinic for the period on and after April 1, 2011 through June 30, 2011, “clinic visit” shall have the same meaning such term has in 14 NYCRR Part 679 as in effect for such period, and for services provided by a clinic for the period on and after July 1, 2011, “clinic visit” shall have the same meaning such term has in 14 NYCRR Part 679 as in effect for such period.

(iii) “Monthly utilization threshold” shall be a monthly utilization standard defined in terms of an average monthly visit per patient served, as established by OPWDD based on peer norms.

(iv) “Reimbursement rate”. For the period from April 1, 2011 through June 30, 2011, “reimbursement rate” shall mean the applicable fee as set forth in 14 NYCRR Part 679 as in effect for such period, and for any period on and after July 1, 2011, “reimbursement rate” shall mean the rate established in accordance with 14 NYCRR Part 679 for such period or periods.

(v) “Utilization review period” shall mean the 2009 calendar year.

(b) Service categories and corresponding monthly utilization thresholds are:

(i) Nutrition/dietetics: 2.08

(ii) Speech language pathology: 4.33

(iii) Occupational therapy: 4.08

(iv) Physical therapy: 5.25

(v) Rehabilitation counseling: 3.25

(vi) Individual psychotherapy: 3.08

(vii) Group psychotherapy: 3.17

(c) For each service category identified in subdivision (b) of this section, OPWDD will annually calculate a monthly utilization rate for each clinic based on paid Medicaid claims for services rendered during the utilization review period. Service categories shall be identified by the procedure codes and clinician identifiers submitted on paid Medicaid claims. Visits associated with patients who received fewer than four visits within a service category shall be excluded from monthly utilization rate calculations. For utilization review periods beginning prior to July 1, 2011, OPWDD will use only the initial procedure code reported on the claim to calculate monthly utilization rates.

(d) When a clinic’s calculated monthly utilization rate exceeds the monthly utilization threshold, OPWDD will calculate “excess visits” based on the following formula:

$$\text{Excess Visits} = (\text{Clinic monthly utilization rate} - \text{Threshold Value}) * \text{Recipient Months}$$

(e) OPWDD will sum a clinic’s excess visits across all service categories. OPWDD will calculate excess visits as a percentage of total paid visits during the utilization review period. The reimbursement rates of clinics with excess visits shall be reduced by a uniform percentage in accordance with the following:

Excess Visits as a percentage of Total Paid Visits	Reduction
15.1% or more	5.00%
Between 10.1% and 15%	4.25%
Between 5.1% and 10%	3.50%
Between 1% and 5%	2.75%
Less than 1%	0.00%

(f) For the period April 1, 2011 through March 31, 2012, OPWDD may waive the reimbursement rate reductions in this section in accordance with the provisions of section 26 of part H of chapter 59 of the laws of 2011, provided, however, that the waiver shall be subject to retroactive revocation upon a determination by OPWDD, in consultation with the Department, that the clinic has not complied with the terms of such waiver.

(g) The issuance of waivers as described in subdivision (f) of this section shall be subject to the following:

(i) In order to receive a waiver a clinic must submit to OPWDD a request for a waiver and a utilization reduction plan. OPWDD’s decision on the waiver shall be based on whether the clinic’s utilization reduction plan shows a reduction in the clinic’s planned state fiscal year 2011-2012 Medicaid visits by an amount equal to the paid visits in excess of the utilization thresholds and whether the clinic is operating in conformance with all applicable statutes, rules and regulations. For purposes of this section, a clinic’s planned state fiscal year 2011-2012 visits cannot exceed its paid Medicaid visits in calendar year 2010.

(ii) OPWDD will compare the actual paid and planned state fiscal year 2011-2012 visits for each clinic granted a waiver. If a clinic fails to achieve the reduction in utilization in accordance with its utilization reduction plan, OPWDD will revoke the waiver and reduce the clinic’s reimbursement rates for state fiscal year 2011-12 as computed in accordance with the provisions of subdivisions (a) through (e) of this section, provided, however, that such reduction computation shall incorporate and reflect any utilization reduction that the clinic did achieve while operating under the waiver.

86-12.2 Utilization limits on OMH licensed clinics. (a) Effective for services provided on and after April 1, 2011 Medicaid payments for outpatient mental health services provided in outpatient facilities licensed by the Office of Mental Health (“OMH”) pursuant to article 31 of the Mental Hygiene Law shall reflect applicable provisions of regulations promulgated by OHM and shall be adjusted relative to 2009 service utilization and payment levels in accordance with the following:

(1) For persons 21 years of age or older, the thirty-first through fiftieth visit in a state fiscal year shall be subject to a 25% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 31 of the Mental Hygiene Law or regulations promulgated thereunder.

(2) For persons 21 years of age or older, visits in excess of fifty visits in a state fiscal year shall be subject to a 50% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 31 of the Mental Hygiene Law or regulations promulgated thereunder.

(3) For persons less than 21 years of age at the start of the state fiscal year, visits in excess of fifty visits in that state fiscal year shall be subject to a 50% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 31 of the Mental Hygiene Law or regulations promulgated thereunder.

(4) Off-site visits, medical visits and crises visits, when billed under their applicable rate codes, shall be disregarded in computing the number of visits pursuant to paragraphs (1), (2) and (3) of this subdivision.

86-12.3 Utilization limits on OASAS licensed clinics. (a) Effective for services provided on and after April 1, 2011 Medicaid payments for outpatient alcoholism and substance abuse services provided in outpatient clinic facilities licensed by the Office of Alcoholism and Substance Abuse Services ("OASAS") pursuant to article 32 of the Mental Hygiene Law shall reflect applicable provisions of regulations promulgated by OASAS and shall be adjusted relative to 2009 service utilization and payment levels in accordance with the following:

(1) The seventy-sixth through ninety-fifth visits in a state fiscal year shall be subject to a 25% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 32 of the Mental Hygiene Law or regulations promulgated thereunder.

(2) Visits in excess of the ninety-five visits in a state fiscal year shall be subject to a 50% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 32 of the Mental Hygiene Law or regulations promulgated thereunder.

**Text of proposed 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

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

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

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

**Regulatory Impact Statement**

**Statutory Authority:**

Section 26 of Part H of Chapter 59 of the Laws of 2011 authorizes the Commissioner of Health, in consultation with the Commissioners of OPWDD, OMH and OASAS, to promulgate regulations to establish methodologies to implement targeted Medicaid reimbursement rate reductions based on utilization thresholds. Section 111(a) of Part H of Chapter 59 of the Laws of 2011 provides that such regulations may be made effective retroactive to April 1, 2011.

**Legislative Objective:**

Section 26 of Part H of Chapter 59 of the Laws of 2011 authorize revisions to Medicaid rates in a manner designed to reduce provider reimbursement for excessive or inappropriate utilization of certain services based on annual patient use in accordance with the Medicaid Redesign Team Proposal #26.

**Needs and Benefits:**

Historically, over use and inappropriate use of these services has caused waste to the Medicaid system. These amendments are designed to discourage excessive and inappropriate utilization of services by establishing reimbursement methodologies for adjusting provider reimbursement in OPWDD, OMH, and OASAS certified clinics to reflect limitations based on annual patient visits. The benefits of these revised methodologies are to discourage overuse, reduce wasteful Medicaid cost, and increasing the effectiveness of the program by allocating money to needed services.

**COSTS:**

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

Implementation of and compliance with these regulations will impose no additional administrative costs on providers.

**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. The gross Medicaid savings will be \$27M (OASAS: \$13M, OMH: \$12M, and OPWDD: \$2M).

**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 existing state or federal regulations.

**Alternatives:**

These regulations are in conformance with the statutory mandates set forth in Section 26 of Part H of Chapter 59 of the Laws of 2011. Implementation of this statute requires the promulgation of these regulations.

**Federal Standards:**

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

**Compliance Schedule:**

The proposed amendment will become effective retroactive to April 1, 2011.

**Regulatory Flexibility Analysis**

**Effect on Small Business and Local Governments:**

For the purpose of this regulatory flexibility analysis, small businesses were considered to be clinics certified under the Mental Hygiene Law by OPWDD, OMH and OASAS.

**Compliance Requirements:**

No new reporting, record keeping 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.

**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 with regard to clinics certified under the Mental Hygiene Law, including those with fewer than 100 employees.

**Compliance Costs:**

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

**Minimizing Adverse Impact:**

The proposed amendments apply to Medicaid reimbursement rates for clinics certified under the Mental Hygiene Law. These regulations and the Medicaid reimbursement rate revisions they implement are specifically mandated by sections 26 and 111(a) of part H of chapter 59 of the laws of 2011. 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 these reimbursement rate revisions are mandated in statute.

**Small Business and Local Government Participation:**

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2011-12 enacted budget and the Department's issuance in the State Register of federal public notices concerning such proposals.

**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, record keeping, or other compliance requirements are being imposed as a result of this proposal.

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

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

**Minimizing Adverse Impact:**  
The proposed amendments apply to Medicaid reimbursement for certain services of clinics certified under the Mental Hygiene Law. 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 rate revisions in question are mandated in statute.

**Opportunity for Rural Area Participation:**  
Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2011-12 enacted budget and the Department's issuance in the State Register of federal public notices concerning such proposals.

**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.

## Office for People with Developmental Disabilities

### NOTICE OF ADOPTION

#### Update Increase Percentage for Leases

**I.D. No.** PDD-21-14-00004-A  
**Filing No.** 659  
**Filing Date:** 2014-07-22  
**Effective Date:** 2014-08-06

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

**Action taken:** Amendment of section 635-6.3 of Title 14 NYCRR.

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

**Subject:** Update Increase Percentage for Leases.

**Purpose:** To adjust reimbursement to affected providers for lease costs.  
**Text or summary was published** in the May 28, 2014 issue of the Register, I.D. No. PDD-21-14-00004-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Karisa Capone, Regulatory Affairs Unit, OPWDD, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.ny.gov

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

**Assessment of Public Comment**

The agency received no public comment.

## Public Service Commission

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

#### Notification Concerning Tax Refunds

**I.D. No.** PSC-31-14-00003-P

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

**Proposed Action:** The PSC is considering Verizon New York Inc.'s petition seeking retention of a portion of a property tax refund related to its regulated, intrastate New York operations.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** Notification concerning tax refunds.

**Purpose:** To consider Verizon New York Inc.'s request to retain a portion of a property tax refund.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, Verizon New York Inc.'s (Verizon) request to retain the portion of a property tax refund received that is allocable to Verizon's regulated, intrastate New York operations and any other related actions. Verizon proposes to retain such tax refund in accordance with earlier Commission Orders involving previous Verizon tax refunds.

**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.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, 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. (14-C-0248SP1)

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

#### To Transfer 100% of the Issued and Outstanding Stock from Vincent Cross to Bonnie and Michael Cross

**I.D. No.** PSC-31-14-00004-P

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

**Proposed Action:** The Commission is considering whether to grant, deny or modify, in whole or in part, a petition by N.E.A. Cross of NY Inc. requesting authority pursuant to Public Service Law section 70 to transfer 100% of the Issued and Outstanding Stock.

**Statutory authority:** Public Service Law, sections 2(3), (4), (11) and 70(4)

**Subject:** To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross.

**Purpose:** To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross.

**Substance of proposed rule:** The Public Service Commission is considering the petition by N.E.A. Cross of NY Inc. (N.E.A. Cross) to transfer 100% of the issued and outstanding capital stock of N.E.A. Cross by Vincent Cross to Bonnie Cross and Michael Cross, each of whom would receive 50% of the outstanding shares. The Commission may approve, reject or modify, in whole or in part, the relief requested by N.E.A. Cross and may consider any related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza,

Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, 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.

(14-G-0221SA1)

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

#### **Issuance of Promissory Notes**

**I.D. No.** PSC-31-14-00005-P

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

**Proposed Action:** The Commission is considering the petition of National Fuel Gas Distribution Corp. to issue promissory notes up to \$100 million for construction programs and for general corporate purposes and to enter into derivative instruments through December 31, 2017.

**Statutory authority:** Public Service Law, section 69

**Subject:** Issuance of promissory notes.

**Purpose:** To approve the petition of National Fuel Gas Distribution Corp. to issue up to \$100 million in promissory notes.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by National Fuel Gas Distribution Corporation to issue promissory notes in an amount not to exceed \$100 million and to enter into derivative instruments through December 31, 2017.

The proposed action would allow National Fuel Gas Distribution Corporation funding for construction programs, repay existing debt and for general corporate purposes.

**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.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, 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.

(14-G-0228SP1)