

# RULE MAKING ACTIVITIES

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

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

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

---

---

## Department of Agriculture and Markets

---

---

### REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

#### Importation of Poultry, That Have Not Been Determined to be Free of Avian Influenza, into the State

I.D. No. AAM-22-15-00004-EP

*This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement* pertain(s) to a notice of Emergency/Proposed rule making, I.D. No. AAM-22-15-00004-EP, printed in the *State Register* on June 3, 2015.

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Agriculture and Markets law sections 16 and 18 authorize the Commissioner of Agriculture and Markets (“Commissioner”) to promulgate rules necessary to carry out the powers and duties of the Department of Agriculture and Markets as set forth in the Agriculture and Markets Law. Agriculture and Markets Law section 72 authorizes the Commissioner to adopt rules designed to suppress and eradicate communicable diseases in domestic animals. Agriculture and Markets Law section 74 prohibits a person from importing a domestic animal into New York which has an infection or communicable disease.

##### 2. Legislative objectives:

The proposed rule promotes the public policy, as expressed in Agriculture and Markets Law sections 72 and 74, that the State’s animal industry, including its poultry industry, be protected from infectious diseases brought by animals imported into the State. The proposed rule advances such public policy by requiring that all birds imported into the State for all purposes other than immediate slaughter must be determined or certified to be free of avian influenza (a disease that could, if introduced into the State, devastate its poultry industry).

##### 3. Needs and benefits:

The proposed rule will amend sections 45.1 and 45.6 of 1 NYCRR. Section 45.1 will be amended by adding definitions for terms presently used in 1 NYCRR Part 45 as well as terms that will be used in the proposed amendments to section 45.6. Section 45.6 will be amended by adding a new subdivision (g) thereto; that new subdivision will require that all birds imported into the State for purposes other than immediate slaughter must have been tested and certified to be free of avian influenza or originate from a flock that has been certified or designated to be free of avian influenza. The proposed rule is necessary to protect New York’s poultry industry from avian influenza. Avian influenza is a respiratory disease of birds caused by Type A influenza virus. Avian influenza viruses are extremely contagious and are primarily spread through respiratory secretions and feces from infected birds. Transmission of the virus may occur through direct contact with infected birds or through an indirect route whereby the virus is carried on people’s clothing, shoes, and hands. Contaminated vehicles and poultry crates are another means for disease to spread from farm to farm. In certain conditions, the virus may survive for long periods in the environment.

An outbreak of avian influenza could cause major economic losses to the State’s poultry industry. A significant outbreak could result in the death or destruction of millions of birds. Furthermore, other states and foreign countries could embargo all poultry and poultry products from New York, causing economic losses to many of New York poultry producers that depend on international trade.

Avian influenza may also pose a threat to public health and safety. Highly pathogenic avian influenza viruses have been associated with occasional illness and death in humans in Asia, Africa, and Eastern Europe. Even though there does not appear to be any associated public health concerns with the strains of avian influenza currently circulating in the U.S., the avian influenza virus has the potential to mutate to a form that could have a negative impact upon human health.

The proposed rule will require that imported birds be tested for avian influenza within 10 days prior to entry into the State, or be from an avian influenza monitored source, or be from a flock certified by the National Poultry Improvement Plan (“NPIP”), which is a national collaboration of state and federal departments of agriculture and representatives of the poultry industry, as being an “Avian Influenza Clean” or an U.S. H5/H7 Avian Influenza Clean” flock (birds that are from an avian influenza monitored source, or from a flock certified by the NPIP, are tested in order to be so designated). The proposed rule, by requiring that the health status of birds prior to entry into the State be verified, will protect all of the sectors of the State’s poultry industry.

##### 4. Costs:

a) Costs to regulated parties for implementation of the proposed rule:

The proposed rule will require that all avian influenza testing done for purposes of importation be conducted using an official test at a USDA approved laboratory. The New York State Veterinary Diagnostic Laboratory at Cornell University (“NYSVDL”) is the only approved laboratory in the State to conduct such testing. If birds were to be imported into New York from a flock not certified by another state or by NPIP to be free of avian influenza, the proposed rule will require thirty birds from the relevant source flock of such birds to be tested; NVSL would charge \$127.50 to perform the appropriate blood or serum tests upon such birds (that is, 30 birds x \$4.25/test = \$127.50).

Notwithstanding the preceding, the blood or serum test is not a reliable

test for waterfowl; domestic ducks must be tested using the RRT-PCR (real-time reverse transcriptase polymerase chain reaction) test or virus isolation test, and other types of waterfowl such as geese and swans must be tested using the virus isolation test. Each RRT-PCR test at the NYSVDL costs \$36.75. Up to eleven animal specimens may be pooled into one sample if testing gallinaceous species (such as chicken, grouse, pheasants, or turkeys) and up to five specimens may be pooled if testing domestic ducks; as such, the total cost for testing a flock of chickens using the RRT-PCR test type is \$110.25 (3 samples [each consisting of 10 animal specimens] x \$36.75/test = \$110.25) and the total cost for testing a flock of domestic ducks using the RRT-PCR test is \$220.50 (6 samples [each consisting of 5 animal specimens] x \$36.75/test = \$220.50). The cost of the virus isolation test at the NYSVDL is \$60.00. For virus isolation, animal specimens may be pooled up to 5 per sample tube. The cost to import waterfowl (other than domestic ducks) would cost a total of \$360 (6 samples [each consisting of 5 animal specimens] x \$60 = \$360.)

Participants in the avian influenza monitored flock program would need to test 30 birds once per month. Flocks enrolled in NPIP's U.S. Avian Influenza Clean program or U.S. H5/H7 Avian Influenza program would need to test 30 birds every 90 days (egg type multiplier flocks, egg-type primary breeding, meat-type primary breeding and turkey breeding flocks); 15 birds every 90 days (meat-type multiplier flocks); and 30 birds every 180 days (hobbyist and exhibition waterfowl, exhibition poultry, game bird breeding flocks, and meat-type waterfowl breeding flocks.)

Producers would also need to acquire the services of an accredited veterinarian to obtain appropriate samples for testing. It is not anticipated that regulated parties will incur any additional costs for such sampling because all poultry located outside the State that is intended for importation into the State is already required to be officially tested for pullorum-typhoid pursuant to 1 NYCRR section 57.3(i). In addition, a person importing poultry into the State would need to obtain a Certificate of Veterinary Inspection. This cost varies by veterinarian services and location (average \$35-50/CVI.) However, importers who participate in the NPIP programs may complete a USDA VS Form 9-3 in lieu of a CVI. In most states, there is no charge for the USDA VS 9-3 forms.

The costs that will be imposed upon the poultry industry if the proposed rule were promulgated are minimal when considering the impact that HPAI would have on the poultry industry in New York. In addition, many out of state hatcheries and poultry supply flocks are already participating in the NPIP Avian Influenza Clean program or the or H5/H7 Avian Influenza Clean program and, therefore, no additional costs would be incurred for the facilities already enrolled.

5. Local government mandates:

None.

6. Paperwork:

The proposed rule requires a Certificate of Veterinary Inspection to be completed by an accredited veterinarian or a USDA VS Form 9-3 (for NPIP program participants) when importing poultry.

7. Duplication:

The proposed rule does not duplicate any existing federal, state, or local government regulation.

8. Alternatives:

Two alternatives to the proposed rule were considered but were rejected as insufficient to protect the health and safety of the New York poultry industry. The first alternative considered was maintaining the status quo, i.e. no requirement for avian influenza testing other than for birds that are supplied to live bird markets. With the introduction of HPAI into numerous states over the last several months, this alternative was rejected due to the fact that the New York poultry industry would not be adequately protected from the threat of disease.

Another alternative considered was to require testing from avian influenza-affected states only. Again, this alternative was rejected due to inadequate protection of the industry. HPAI continues to spread quickly and efficiently throughout the United States through point introductions rather than zonal spread. For this reason, avian influenza testing must be required for any poultry entering from all states and countries.

9. Federal standards:

The National Improvement Plan for Breeding and Commercial Poultry is set forth in Title 9 of the Code of Federal Regulations Parts 145, 146, and 147. The provisions of those Parts allow poultry producers and dealers to participate in the Plan upon a finding that their facilities, personnel, and practices meet the standards set forth in the relevant provisions of such Parts. A participant in such Plan who has failed to comply with applicable requirements, however, is "debarred" from participating and thereby loses the benefits associated with being a participant but is not subject to any other administrative action or penalty nor to any judicial action.

10. Compliance schedule:

Persons who import poultry into the State for any purpose other than immediate slaughter will be required to comply with the provisions of the proposed rule upon its adoption.

### Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rule will not regulate and has no effect upon local governments. The proposed rule will regulate poultry farmers and poultry dealers that import poultry and poultry products (poultry breeding stock and hatching eggs, baby poultry and started poultry) from other states. It is difficult to estimate the number of people who will be affected by the proposed rule since there are numerous backyard poultry owners throughout the State. The 2012 Census of Agriculture indicates that there are 6,175 poultry farms in the State, many of which import hatching eggs and day-old chicks from out-of-state-hatcheries. The majority of hatcheries in the U.S. are already participants in the "U.S. Avian Influenza Clean" or the "U.S. H5/H7 Avian Influenza Clean" programs of the National Poultry Improvement Plan ("NPIP") which is a national collaboration of State and federal departments of agriculture and representatives of the poultry industry.

Persons who participate in NPIP are presently required, when shipping poultry from one state to another, to complete a USDA VS Form 9-3, Report of Sales or Hatching Eggs, Chicks, and Poult.

An examination of the USDA VS 9-3 Forms that were received by the New York State Department of Agriculture and Markets as of April 28, 2015, for poultry and poultry products shipments during the months of March and April 2015 imported into New York State, revealed that 88% of the shipments (98 or 111 shipments) were from source flocks or hatcheries that were already participating in the U.S. Avian Influenza Clean component of the program. Many of the hatcheries and breeder flocks throughout the U.S. that ship interstate have achieved certification by NPIP to meet the requirements of other states receiving their poultry and products.

2. Compliance requirements:

The proposed rule will require persons who import or cause the importation of poultry into New York to obtain a Certificate of Veterinary Inspection for each shipment, if that person does not participate in the NPIP. A Certificate of Veterinary Inspection requires approval and countersignature of the Certificate by the State Animal Health Official indicating that the State Animal Health Official has verified that the requirements to qualify the poultry for import into the State have been met. The completion of a Certificate of Veterinary Inspection and official testing for avian influenza require the professional services of an accredited veterinarian.

A person who does participate in the NPIP will be required to obtain a USDA VS 9-3 Form.

3. Professional services:

A person who imports or causes the importation of poultry into New York will be required to hire a veterinarian to take the required samples for testing for avian influenza and, if necessary, to complete a Certificate of Veterinary Inspection for each shipment of poultry into the State. An importer will also be required to have samples tested only by an approved laboratory.

4. Compliance costs:

For importers who do not participate in NPIP, the cost incurred to comply will be due to 1) the professional services of an accredited veterinarian to complete the Certificate of Veterinary Inspection and collect and submit the samples for avian influenza testing; and 2) avian influenza testing at a USDA approved laboratory. Average cost for a CVI is \$35-\$50 per certificate. Under current New York regulation (1NYCRR 57), official testing of all poultry for pullorum-typhoid is required prior to importation into New York. Official pullorum-typhoid testing requires the services of an accredited veterinarian or a State Animal Health Official. Therefore, it is anticipated that an additional call charge will not be incurred.

For flocks that are NPIP certified as Avian Influenza clean, the only costs will be those associated with avian influenza testing at a USDA approved laboratory since a USDA VS 9-3 Form may be used in lieu of a CVI. In most cases, the USDA VS 9-3 Forms are provided by state departments of agriculture or official state agencies of the NPIP at no cost to the flock owners. The cost of avian influenza testing at a USDA approved laboratory varies by the laboratory and the type of test selected. For example, using the New York State Veterinary Diagnostic Laboratory fee schedule, the total cost to test 30 chickens when testing blood or serum samples is approximately \$127.50, and the cost of testing oropharyngeal swabs using the RRT-PCR test, is approximately, \$110.25. Domestic ducks must be tested using the RRT-PCR test on cloacal swabs and the total cost for testing a flock of domestic ducks will be approximately \$220.50. Waterfowl other than domestic ducks must be tested using the virus isolation test; the cost to qualify a flock of waterfowl to move into the State using the virus isolation test is approximately \$360.00.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the proposed rule has been assessed and compliance therewith is economically and technologically feasible. The Department of Agriculture and Markets ("Department") has determined that the majority of persons who

import or cause the importation of birds into the State already maintain flocks that are certified by the NPIP as U.S. Avian Influenza Clean or U.S. H5/H7 Avian Influenza Clean. Regarding producers who are not so certified, nothing would, actually or effectively, preclude them from becoming so or ensuring that the required tests are properly performed, and the required documentation properly completed, before importation.

6. Minimizing adverse impact:

The proposed amendments were drafted to minimize reporting and testing requirements for all regulated parties. The Certificate of Veterinary Inspection and avian influenza testing requirements are already in place for importing birds for slaughter at a live bird market. In addition, many persons who import or cause the importation of birds into New York maintain flocks that have already been certified by NPIP as U.S. Avian Influenza Clean or U.S. H5/H7 Avian Influenza Clean and, therefore, would fulfill the requirements for importation.

7. Small business and local government participation:

A conference call with approximately 20 producers of poultry, located in New York, was held on March 30, 2015 and again on May 15, 2015. During the calls, Department staff informed such producers, all of whom import poultry from other states, that the proposed rule was under consideration. None of the producers, upon being generally informed of the provisions of the proposed rule, conveyed any objections or suggestions for amendments thereto.

The Department also intends to publish the proposed rule in the Cornell Cooperative Extension Newsletter, a publication widely read by those in the poultry industry, no later than June 15th, 2015.

8. Rules that establish a violation:

A person who imports or causes the importation of poultry that has not been certified or determined to be free of avian influenza will be in violation of the proposed rule. The proposed rule does not include a cure period or an opportunity for ameliorative action; the Department cannot allow the importation of poultry, which may or may not be free of avian influenza, with the hope that the importer will, at some later point, be able to prove that such poultry is indeed free of avian influenza.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The proposed rule will regulate poultry farmers and poultry dealers that import poultry and poultry products from other states. With the exception of Albany, Bronx, Broome, Dutchess, Erie, Kings, Monroe, Nassau, New York, Niagara, Oneida, Onondaga, Orange, Queens, Richmond, Rockland, Saratoga, Suffolk and Westchester Counties, all of the counties in the State are "rural areas" and it is believed that there are poultry farmers and poultry dealers in each such rural counties. In the counties that are not rural, it is probable that there are poultry farmers and/or poultry dealers in rural townships in those counties to whom the proposed rule would apply.

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

The proposed rule will require persons located in rural areas who import or cause the importation of poultry into New York to obtain a Certificate of Veterinary Inspection for each shipment, if that person does not participate in the NPIP. A Certificate of Veterinary Inspection requires approval and countersignature of the Certificate by the State Animal Health Official indicating that the State Animal Health Official has verified that the requirements to qualify the poultry for import into the State have been met. The completion of a Certificate of Veterinary Inspection and official testing for avian influenza require the professional services of an accredited veterinarian.

A person located in a rural area who does participate in the NPIP will be required to obtain a USDA VS 9-3 Form.

A person located in a rural area who imports or causes the importation of poultry into New York will be required to hire a veterinarian to take the required samples for testing for avian influenza and, if necessary, to complete a Certificate of Veterinary Inspection for each shipment of poultry into the State. An importer will also be required to have samples tested only by an approved laboratory.

3. Costs:

For importers located in rural areas who do not participate in NPIP, the cost incurred to comply will be due to 1) the professional services of an accredited veterinarian to complete the Certificate of Veterinary Inspection and collect and submit the samples for avian influenza testing; and 2) avian influenza testing at a USDA approved laboratory. Average cost for a CVI is \$35-\$50 per certificate. Under current New York regulation (1NYCRR 57), official testing of all poultry for pullorum-typhoid is required prior to importation into New York. Official pullorum-typhoid testing requires the services of an accredited veterinarian or a State Animal Health Official. Therefore, it is anticipated that an additional call charge will not be incurred.

For flocks that are NPIP certified as Avian Influenza clean, the only costs that will be incurred by importers located in rural areas will be those associated with avian influenza testing at a USDA approved laboratory

since a USDA VS 9-3 Form may be used in lieu of a CVI. In most cases, the USDA VS 9-3 Forms are provided by state departments of agriculture or official state agencies of the NPIP at no cost to the flock owners. The cost of avian influenza testing at a USDA approved laboratory varies by the laboratory and the type of test selected. For example, using the New York State Veterinary Diagnostic Laboratory fee schedule, the total cost to test 30 chickens when testing blood or serum samples is approximately \$127.50, and the cost of testing oropharyngeal swabs using the RRT-PCR test, is approximately, \$110.25. Domestic ducks must be tested using the RRT-PCR test on cloacal swabs and the total cost for testing a flock of domestic ducks will be approximately \$220.50. Waterfowl other than domestic ducks must be tested using the virus isolation test; the cost to qualify a flock of waterfowl to move into the State using the virus isolation test is approximately \$360.00.

4. Minimizing adverse impact:

The proposed amendments were drafted to minimize reporting and testing requirements for all regulated parties including those located in rural areas. The Certificate of Veterinary Inspection and avian influenza testing requirements are already in place for importing birds for slaughter at a live bird market. In addition, many persons who import or cause the importation of birds into New York maintain flocks that have already been certified by NPIP as U.S. Avian Influenza Clean or U.S. H5/H7 Avian Influenza Clean and, therefore, would fulfill the requirements for importation.

5. Rural area participation:

A conference call with approximately 20 producers of poultry, located in New York, was held on March 30, 2015 and again on May 15, 2015. At least eight of those producers were from counties that are rural in nature, and at least two others reside in towns within non-rural counties that are, nevertheless, deemed rural areas. During the calls, Department staff informed such producers, all of whom import poultry from other states, that the proposed rule was under consideration. None of the producers, upon being generally informed of the provisions of the proposed rule, conveyed any objections or suggestions for amendments thereto.

The Department also intends to publish the proposed rule in the Cornell Cooperative Extension Newsletter, a publication widely read by those in the poultry industry, no later than June 15th, 2015.

**Job Impact Statement**

The proposed rule amends sections 45.1 and 45.6 of Title One of the Official Compilation of Codes, Rules and Regulations of the State of New York to require poultry farmers and poultry dealers that import poultry from other states to locations other than live bird markets to have such poultry tested to determine whether they have avian influenza (currently, poultry imported from other states are required to be so tested if they are to be shipped to live bird markets located in New York).

The proposed rule is expected to have no impact, or perhaps a minimally positive impact, on jobs and employment opportunities. The cost to test poultry that is to be imported into the State to locations other than live bird markets is relatively minimal and many if not most of the poultry farmers and poultry dealers that export poultry from other states into New York already cause the poultry that they ship into New York to be tested. As such, the proposed rule, although it may cause the cost to import poultry to minimally increase, should not cause a negative impact upon jobs and employment opportunities. Indeed, because the proposed rule will minimize the possibility that avian influenza will infect poultry in New York and thereby potentially cause a significant negative impact upon the State's poultry industry, the proposed rule could encourage all participants in such industry (i.e., farmers, dealers, and live bird market operators) to invest in their business and/or expand their operations, thereby promoting jobs and employment opportunities.

## Department of Economic Development

### NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

#### Empire State Musical and Theatrical Production Tax Credit Program

**I.D. No.** EDV-46-14-00001-ERP

**Filing No.** 410

**Filing Date:** 2015-05-21

**Effective Date:** 2015-05-21

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

**Action Taken:** Addition of Part 240 to Title 5 NYCRR.

**Statutory authority:** L. 2014, ch. 59

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

**Specific reasons underlying the finding of necessity:** Chapter 59 of the Laws of 2014 created the Empire State Musical and Theatrical Production Tax Credit Program. The Program provides for the allocation of tax credits to qualified musical and theatrical production companies that complete qualifying touring productions. These benefits are designed to encourage musical and theatrical production companies preparing to undertake touring productions to make expenditures associated with producing these tours in Upstate New York theatrical facilities, and to secure the economic benefits associated with these production expenditures for Upstate New York communities.

Chapter 59 of the Laws of 2014 authorized the New York State Department of Economic Development to adopt regulations establishing procedures for the allocation of credits under the Program on an emergency basis. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from musical and theatrical production companies desiring to participate in the Program.

Adoption of this rule will allow the Department of Economic Development to begin accepting applications from musical and theatrical production companies, and will assist in stimulating spending on musical and theatrical productions in areas of the State that would otherwise not benefit from such expenditures.

**Subject:** Empire State Musical and Theatrical Production Tax Credit Program.

**Purpose:** Establish application procedures for the Empire State Musical and Theatrical Production Tax Credit Program.

**Substance of emergency/revised rule:** The Empire State Musical and Theatrical Production Tax Credit Program (the "Program") provides Empire State Musical and Theatrical Production Tax Credits ("Credits") to qualified musical and theatrical production companies that complete qualifying touring productions of eight or more shows in three or more localities.

1) The rule defines numerous important terms, including, but not limited to, "authorized applicant," "certificate of conditional eligibility," "qualified production expenditure," "qualified touring production," "show," and "technical period."

2) The rule indicates that only authorized applicants, qualified musical and theatrical production companies scheduled to begin production of qualified musical and theatrical productions after submitting an initial application to the New York State Department of Economic Development (the "Department"), may apply to participate in the Program.

3) The rule describes the application process for a musical and theatrical production company pursuing a Credit, including that an authorized applicant must submit an initial application prior to commencing the technical period for a qualified musical and theatrical production and submit a final application subsequent to completion of a qualified touring production.

4) The rule states that Credits shall be issued in the amount of twenty-five (25) percent and the sum of the qualified production expenditures and the transportation expenditures incurred by an applicant.

5) The rule provides that a final application shall not be approved un-

less the Department determines that the final application is complete, the applicant completed a qualified touring production, and the applicant did not knowingly submit false or misleading information to the Department.

6) The rule requires an applicant to retain records of any qualified musical and theatrical production costs used to calculate their potential or actual benefit(s) under the Program for a minimum of three years from the date the applicant claims a Credit.

7) The rule provides for an appeal process by which an applicant may appeal the disapproval of its final application by the Department, or the amount of a Credit granted by the Department, before an independent hearing officer.

8) The rule describes information sharing to take place between the Department and the New York State Department of Taxation and Finance relating to Credits applied for, allowed, or claimed under the Program, as well as information regarding taxpayers seeking Credits.

9) The rule describes the annual Program report to be submitted by the Department to the governor, the temporary president of the senate, and the speaker of the assembly. The annual report is to include information on the Credit-eligible man hours and total wages for such Credit-eligible man hours for each project, the identity of applicants for Credits, and the amount of each Credit allocated to each taxpayer.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on November 19, 2014, I.D. No. EDV-46-14-00001-EP. The emergency rule will expire August 18, 2015.

**Emergency rule compared with proposed rule:** Substantive revisions were made in section 240.2(m).

**Text of rule and any required statements and analyses may be obtained from:** Thomas Regan, New York State Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12207, (518) 292-5123, email: Thomas.Regan@esd.ny.gov

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

**Public comment will be received until:** 30 days after publication of this notice.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement. The changes made represent clarification of issues that do not impact the regulatory impact statement.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis. The changes made represent clarification of issues that do not impact the statement.

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

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis. The changes made represent clarification of issues that do not impact the statement.

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

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement. The changes made represent clarification of issues that do not impact the statement.

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

The New York State Department of Economic Development received two sets of comments on its draft music and theatrical tax credit regulations.

The following is a summary of the questions/comments made on these regulations and the Department's response. Where the regulations have been amended, the Department so indicates.

##### **Comments:**

1. Replace the term "show" with the term "performance" throughout the text.

The term "show" has been defined in the regulations to mean "a live performance of a dramatic musical or theatrical presentation."

2. Please clarify whether "completion of a qualified touring production" means completion of the entire tour or completion of eight shows in three localities? Please confirm that localities are any locality within North America.

The Department notes that completion of a qualified touring production means the completion of at least eight shows in three or more localities and that such localities do not necessarily have to be within New York State. Clarification to the regulation itself was not necessary.

3. Please clarify when discounting for unused assets is contemplated? Is this aimed at depreciation? Concern that a set may not be destroyed for a decade which should be considered when calculating an allowance expense for the purposes of the credit. Also, the regulations should contain a formula for standard depreciation in this section.

As indicated in the response, there could be assets that last long after a tour has been completed and others that have much shorter useful lives. The Department has no experience with "retained assets" in this industry and is not well positioned to establish a strict depreciation formula in regulations with such little information as a basis. With time and experience, a more formal depreciation schedule may evolve that makes sense to promulgate via regulations but not at this time.

An applicant will be asked to identify any such assets as part of the preliminary application and the conditional certificate of eligibility will reflect any decisions the Department makes about discounting such assets.

4. We understand that expenditures associated with a post-tech performance will be eligible for the credit if such performance takes place in a qualified production facility. Is that correct?

Yes.

5. Please expand upon the extent of the exclusions in the regulation, specifically the exclusions for "compensation for services performed at a location other than a qualified production facility" and "expenditures for the technical period of a musical and theatrical production incurred at a location other than a qualified production facility"? These exclusions can render the credit worthless because set building and rehearsals are typically done outside of a qualified production facility. Advertising, marketing and publicity expenses should be eligible for the credit as well.

The regulations have been modified, and any costs for services incurred that are directly and predominantly for the technical period, or the performance of a show in a qualified production facility, will be considered qualified production costs. Advertising, marketing and publicity expenses remain non-qualified expenses based upon the Department's determination that including such costs as qualified production costs would not further the purpose of the program to induce qualified production companies to incur production costs in New York regions outside of New York City.

6. Amend the definition of authorized applicant to state it is a music and theatrical production company scheduled to begin its technical rehearsal, not begin its production as a matter of clarification.

The regulations have been updated to reflect this suggested change.

7. Broaden the language of section 240.2(1)(ii) to include other compensation-based and related payments, including payroll taxes and workers compensation.

The regulations have been amended to include payroll taxes.

8. Clarify in section 240(m)(ii) what the phrase "for which receipts attributable to ticket sales constitute 75% or more of the gross receipts of the facility means. Commentator requests that any private fundraising or charitable contributions subsidizing these venues, as well as income derived from government grants, be excluded from amounts against which the 75% threshold is applied. Commentator also requests that the definition of facility be limited to the auditorium itself, as opposed to a larger facility of which the auditorium is a part thereof.

Changes have not been made to the regulation to reflect this comment because it is not consistent with the intent of the program.

9. Under section 240.2(p) "cast and crew" should be expanded to include members of the creative, production and administrative team, including but not limited to authors, music supervisors, technical directors and company managers.

Transportation costs will be covered for any cast and crew working at a qualified facility as part of the technical period.

10. Please clarify the timing of the final application process. Should a final application be filed after tech and after the first three venues of 8 performances each or at some other point?

The final application should be submitted upon completion of a qualified touring production.

11. Under the application process a pre-certification amount of the credit or an estimated credit based on the initial application should be provided the applicant (like in other tax credit programs).

The regulations have been amended to allow for a conditional certificate of eligibility.

## REVISED RULE MAKING NO HEARING(S) SCHEDULED

### Empire State Post Production Tax Credit Program

I.D. No. EDV-03-15-00001-RP

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

**Proposed Action:** Addition of Part 230 to Title 5 NYCRR.

**Statutory authority:** L. 2010, ch. 57, as amended by L. 2013, ch. 59

**Subject:** Empire State Post Production Tax Credit Program.

**Purpose:** Establish application procedure for the Empire State Post Production Tax Credit Program.

**Substance of revised rule:** The Empire State Post Production Tax Credit Program is a tax credit designed to attract film and television production companies to the State of New York so as to secure the associated economic and employment benefits for New Yorkers.

1) The regulation defines important terms, including, but not limited to "certificate of conditional eligibility," "completion of a qualified film," "post production costs," "qualified film production company," "qualified post production facility," and "third party inspection." Of particular note, the definition of "post production costs" includes post production costs for musical composition except for expenditures for the salaries of music composers.

2) The regulation indicates that only authorized applicants, qualifying film production companies scheduled to begin post production within one hundred eighty (180) days, may apply for program benefits.

3) The regulation delineates the application process for participation in the program. An authorized applicant is to submit an initial application prior to completion of principal photography. The New York State Department of Economic Development ("DED") may waive this requirement if the applicant can show exigent circumstances, and has not yet incurred qualified costs in New York. Applicants may be required to supplement their application with an interview with DED.

4) The regulation directs DED to assess initial applications to determine whether they are: (1) complete; (2) not premature [i.e., submitted no more than one hundred eighty (180) days prior to the commencement of post production]; (3) submitted prior to the end of principal photography; (4) submitted by a qualified production company; (5) in relation to a qualified film the applicant plans to complete; (6) projecting the applicant's qualified production costs at a qualified post production facility in the production of a qualified film to equal or exceed 75% of the projected total post production costs, or projecting the applicant's visual effects or animation at a qualified post production facility to meet or exceed \$3 million or 20% of the total post production costs for visual effects or animation paid or incurred in the post production of a qualified film at any post production facility, whichever is less; (7) supported by an attestation that the applicant did not submit false or misleading information to DED; (8) supported by certification that the applicant will purchase taxable tangible property and services, defined as qualified post production costs, only from companies registered to collect and remit New York state and local sales and use taxes; and (9) supported by a showing of the applicant's intent to comply with the end credit requirements by either including in the end credits of each qualified film the phrase "This Production Participated in the New York State Governor's Office for Motion Picture & Television Development's Post Production Credit Program" and a logo provided by the Governor's Office of Motion Picture and Television Development, or by including a New York promotional video approved by the Governor's Office of Motion Picture and Television Development in each film distributed on the secondary market.

5) The regulation provides that, after review of the applicant's application, DED shall advise the applicant as to whether the applicant's initial application meets the Program requirements. DED may issue a certificate of conditional eligibility to an applicant if that applicant's initial application meets the Program requirements.

6) DED evaluates final applications to determine whether: (1) the application is complete; (2) a qualified film was produced and completed; (3) the authorized applicant met the abovementioned requirements as to incurring qualified post production costs attributable to the use of tangible property or the performance of services at a qualified post production facility; (4) the authorized applicant did not knowingly submit false or misleading information; and (5) the applicant supplied documentation that the end credit requirements have been met. The Department may accept from an applicant a voluntary third party inspection, performed by a qualified certified public accountant, as part of an applicant's final application.

7) DED is to issue a certificate of tax credit to applicants whose final applications are approved, and a notice of disapproval stating the reason for the disapproval to any applicants whose final applications are not approved. Copies of certified tax credits are to be forwarded to the Department of Taxation and Finance.

8) The regulation provides that DED is to allocate tax credits each year in such a way as to give priority to applicants whose applications are approved at the earliest dates. In the event that an applicant's tax credit would exceed the maximum annual tax credit under the program, \$7 million in 2013 and 2014, and \$25 million in 2015-2019, that applicant is to be given priority for a tax credit in the immediate succeeding year.

9) Applicants are required to retain records of any qualified post production costs used to calculate their potential or actual benefit(s) under the program for a minimum of three (3) years from the date the applicant claims the tax credit. Applicants are to make records available to DED during normal business hours at an office of the applicant's within the State or, if no such office is available, at a mutually agreeable and reasonable venue within the State for the three year period.

10) An applicant may appeal a denial by DED of its final application, or a calculation by DED of a tax credit. Appeals of denials of applications must be sent to DED within thirty (30) days of the date of the denial letter, and appeals of tax credit determinations must be sent to DED within thirty (30) days of the issuance of the certificate of tax credit. Failure to appeal within the thirty (30) day period constitutes a waiver of an applicant's right to appeal.

11) The regulation describes the appeal process for appeals pursuant to timely appeal letters. The Commissioner of DED is to appoint an independent hearing officer to render a recommendation to the Commissioner. The Commissioner is to issue a final decision on the appeal within sixty (60) days of receiving the hearing officer's recommendation. A copy of the final decision must be delivered to the applicant within ten (10) days of the Commissioner's final order.

12) The regulation directs DED to file a quarterly report with the director of the Division of the Budget and the chairmen of the Assembly Ways and Means Committee and Senate Finance Committee within fifteen (15) days after the close of each calendar quarter. The report must indicate: (1) the total dollar amount of certificates of tax credits issued during each month of the calendar quarter, broken down by month; (2) the number of film projects which have been issued certificates of tax credits of less than \$1 million per project and the total dollar amount of credits issued to those projects; (3) the number of film projects which have been issued certificates of tax credits of \$1 million or more but less than \$5 million per project and the total dollar amount of credits issued to those projects; (4) the number of film projects which have been issued certificates of tax credits of \$5 million or more per project and the total dollar amount of credits issued to those projects; (5) for each film project which has been issued a certificate of tax credit, an itemization of labor information and expenditures; and (6) information on the identity, residency, and value of tax benefits received for each participant receiving tax credits under the program.

13) The regulation requires DED to file a report on a biennial basis with the director of the Division of the Budget and the chairs of the Assembly Ways and Means Committee and Senate Finance Committee within fifteen (15) days after the close of every other calendar year, with the coverage period for the first report spanning two (2) years beginning January 1, 2013. The report is to be prepared by a third-party auditor. This report must contain: (1) information as to the efficiency of program operations, reliability of financial reporting, compliance with laws and regulations, and distribution of assets and funds; (2) an economic impact study prepared by an independent third-party; and (3) any other information the Commissioner deems to be useful in analyzing the effects of the program.

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 230.2, 230.6 and 230.7.

**Text of revisions proposed rule and any required statements and analyses may be obtained from** Thomas Regan, New York State Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12207, (518) 292-5123, email: Thomas.Regan@esd.ny.gov

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

**Public comment will be received until:** 30 days after publication of this notice.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement. The changes made represent clarification of issues that do not impact the statements.

**Assessment of Public Comment**

The New York State Department of Economic Development (the "Department") received approximately 72 comments on the proposed regulation implementing the Empire State Post Production Tax Credit Program (the "Program"). The following is a summary of the comments and the Department's response to such comments. Note that where the Department is modifying its regulations as a result of a comment, it is so noted.

**Definitions**

**Comment:** The definition of "post production costs" should be expanded to include the costs associated with the production stage of animation.

**Answer:** The definition of "post production costs" has been expanded to include costs associated with the production of a fully animated film.

**Comment:** The definition of "post production costs" should be expanded to include costs for the salaries of music composers.

**Answer:** Expanding the definition of "post production costs" to encompass "above-the-line" costs, including costs for the salaries of music composers, would not comport with the Department's policy to focus incentives on "below-the-line" costs most likely to generate jobs for New Yorkers. Accordingly, this change has not been made.

**Comment:** The definition of "post production costs" should not exclude costs for licensing or rights associated with the production of a qualified film.

**Answer:** § 31(b)(2) of the Tax Law limits "post production costs" to activities associated with "traditional, emerging and new workflow techniques used in post-production." As licensing or otherwise procuring rights is not part of the workflow resulting in a finished film, such costs are not encompassed by the statutory definition of "post-production costs." Therefore, this change has not been made.

**Comment:** § 230.2(m) of the proposed regulations defines post production rather than post production costs. The words "the costs of" should be inserted to the first sentence so as to define post production costs.

**Answer:** The definition of "post production costs" has been changed accordingly.

**Comment:** The definition of "post production facility" should be clarified to describe the extent to which a facility must be used for post production in order to be a "post production facility."

**Answer:** There are no specific physical requirements inherent to post production facilities, and, in practice, post production facilities do not share uniform physical characteristics. Furthermore, post production service providers do not necessarily provide post production services exclusively. Therefore, limiting the range of facilities that may constitute a "post production facility" through a narrower definition thereof would undermine the goal of the Program to maximize post production activities in the State. The change proposed by the commenter has not been made.

**Comment:** The definition of "qualified film" should be omitted since it is the same definition that applies to the Empire State Film Production Tax Credit Program.

**Answer:** The Department provided the definition in full, rather than referring to the definition codified in § 24 of the Tax Law, in order to promote clarity and ease of use. Accordingly, the proposed change will not be made.

**Comment:** The definition of "qualified film production company" should be revised to provide that a "qualified film production company" for the purposes of the Program need only control the production for the period to which the credit applies.

**Answer:** Pursuant to § 31(b)(1) of the Tax Law, the definition of "qualified film production company" for the purposes of the Program shall be the same as that used in § 24 of the Tax Law. § 24(b)(6) of the Tax Law defines "qualified film production company" as an entity that "controls the qualified film during production." Therefore, the Department lacks the statutory authority to make the requested change.

**Comment:** The definition of "qualified post production costs" should not limit such costs to those for tangible products or the performance of services within New York State.

**Answer:** As described above, the statutory definition of "post production costs" of § 31(b)(2) of the Tax Law limits "post production costs" to those associated with "workflow techniques used in post-production." To the extent that costs incurred in connection with the post-production of a film are not associated with the workflow resulting in the finished film, such costs are not "post production costs" for the purposes of the Program, and accordingly cannot be "qualified post production costs." The Department has thus interpreted § 31(b)(2) of the Tax Law to exclude any costs connected with the post production of a film which are not products or services associated with the post production of a film. Furthermore, § 31(a)(2) of the Tax Law provides that the amount of a credit to be issued to a participant in the Program is to be limited to those "qualified post production costs" incurred in New York State at a qualified production facility. Accordingly, the Department may properly limit "qualified post production costs" to those incurred in New York State. Therefore, the changes proposed by the commenter have not been made.

**Comment:** The use of the word "review" in the definition of "third party verification" inaccurately describes the services to be provided by certified public accountants as part of third party verifications and should be removed from the definition.

**Answer:** The term "third party verification" has been changed to "third party inspection," and the word "review" has been replaced with the word "inspection" in the definition.

**Criteria for Evaluation of Applications**

**Comment:** The Department does not have the statutory authority to require authorized applicants to certify that they will purchase taxable tangible property and services only from companies registered to collect and remit New York State and local sales and use taxes.

**Answer:** Determining the contents of applications for Program benefits is delegated to the Department. The Department considers this provision to be within its authority to establish an application for program benefits.

**Comment:** The regulation currently provides that final applications must show that qualified post production costs incurred at qualified post production facilities equaled or exceeded seventy-five (75) percent of the projected post production costs for the project. The Department should not

evaluate applications based upon projected post production costs after a project is completed and actual post production costs are available. Accordingly, the word “projected” in § 230.6(b)(3) of the proposed rule should be changed to “actual”.

Answer: The word “projected” has been removed from § 230.6(b)(3).

## Department of Environmental Conservation

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Environmental Remediation - Brownfield Cleanup Program

I.D. No. ENV-23-15-00008-P

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

**Proposed Action:** Amendment of Part 375 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, art. 27, title 14; section 3-0301(2)(a) and (m)

**Subject:** Environmental Remediation - Brownfield Cleanup Program.

**Purpose:** To amend the Environmental Remediation Program regulations that pertain to the Brownfield Cleanup Program.

**Public hearing(s) will be held at:** 1:00 p.m., July 29, 2015 at 1235 Worth St., New York, NY.

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

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

**Text of proposed rule:** 6 NYCRR PART 375 is amended to read as follows:

(Existing Table of Contents remains unchanged.)

Subpart 375-1 General Remedial Program Requirements

(Existing section 375-1.1 through subdivision 375-1.2(a) remain unchanged.)

Existing subdivision 375-1.2(b) is amended to read as follows:

(b) “Brownfield site” means any real property[, the redevelopment or reuse of which may be complicated by the presence or potential presence of] *where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the Department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations.* Such term shall not include real property identified in subdivision 375-3.3(b).

(Existing subdivision 375-1.2(c) through section 375-1.12 remain unchanged.)

(Existing Subpart 375-2 remains unchanged.)

Subpart 375-3 Brownfield Cleanup Program

(Existing section 375-3.1 remains unchanged.)

Existing subdivisions 375-3.2(a) through 375-3.2(j) are renumbered 375-3.2(b) through (k).

A new subdivision 375-3.2(a) is adopted to read as follows:

(a) “Affordable housing project” means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.

(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, that defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants’ households annual gross income.

(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency’s affordable housing program, or a local government’s regulatory agreement or legally binding restriction, that sets affordable units aside for tenants at a defined maximum percentage of the area median income.

(3) “Area median income” means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.

A new subdivision 375-3.2(l) is adopted to read as follows:

(l) “Underutilized” means, as of the date of application, real property:

(1) on which a building or buildings, can be certified by the municipality in which the site is located, to have for at least five years used no more than fifty percent of the permissible floor area under the applicable base zoning immediately prior to the application which has been in effect for at least five years;

(2) at which the proposed development is solely for a use other than residential or restricted residential;

(3) which could not be developed without substantial government assistance, as certified by the municipality in which the site is located; and

(4) which is subject to one or more of the following conditions, as certified by the municipal department responsible for such determinations of the municipality in which the site is located:

(i) property tax payments have been in arrears for at least five years immediately prior to the application;

(ii) contains a building that is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or

(iii) the proposed use is in whole or in substantial part for industrial uses.

“Substantial government assistance” shall mean a substantial loan, grant, land purchase subsidy, or land purchase cost exemption or waiver, from a governmental entity; or for properties to be developed in whole or in part for industrial uses, a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or a tax credit, from a governmental entity, or a low-cost loan from an industrial fund managed by the municipality and partner financial institutions.

(Existing subdivision 375-3.3(a) remains unchanged.)

Existing paragraph 375-3.3(a)(1) is repealed.

[(1) A brownfield site has two elements:

(i) there must be confirmed contamination on the property or a reasonable basis to believe that contamination is likely to be present on the property; and

(ii) there must be a reasonable basis to believe that the contamination or potential presence of contamination may be complicating the development, use or re-use of the property.]

Existing paragraphs 375-3.3(a)(2) through 375-3.3(a)(4) are renumbered 375-3.3(a)(1) through 375-3.3(a)(3).

(Existing subdivision 375-3.3(b) through section 375-3.11 remain unchanged.)

(Existing Subparts 375-4 through 375-6 remain unchanged.)

**Text of proposed rule and any required statements and analyses may be obtained from:** Michael Ryan, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7011, (518) 402-9706, email: derweb@dec.ny.gov

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

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

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

#### Regulatory Impact Statement

##### 1. Statutory Authority

In 2003, the New York State (State) Legislature created the Brownfield Cleanup Program (BCP) to promote environmental and public health as well as the economic vitality of the State through the cleanup and redevelopment of brownfields. Brownfields were defined by statute as “real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of contamination.” The BCP offers parties two separate categories of refundable tax credits for the cost of (1) site cleanup and (2) redevelopment, the latter of which are described as tangible property tax credits.

The Legislature amended the BCP law in April 2015. Part BB of Chapter 56 of the Laws of 2015 amended and added new language to Environmental Conservation Law (ECL) Article 27, Title 14 (BCP) and Section 21 of the Tax Law. Some of these amendments provided new requirements for sites in New York City to qualify for tangible property tax credits. These requirements provide that, in order to qualify for tangible property tax credits, New York City sites need to be in an environmental zone, need to be “upside down,” need to be “underutilized,” or must constitute an “affordable housing project.”

While the Legislature defined the environmental zone and “upside down” requirements, ECL § 27-1405(29) and (30) of the BCP law directs

New York State Department of Environmental Conservation (DEC) to define the terms “affordable housing project” and “underutilized” by regulation. DEC needs to publish proposed regulations regarding the “underutilized” definition in the State Register in order for the changes to the BCP to become effective by the later of the publication date of the proposal or July 1, 2015. DEC then must adopt a final regulation containing the “underutilized” definition by October 1, 2015. In addition, section 45(f) of the law calls for DEC to publish the “affordable housing project” definition in the State Register on or before June 8, 2015.

The 2015 amendments also redefined “brownfield site,” which is a term originally defined in regulation per the 2003 statute. Thus, as part of this rule making, DEC is replacing the current regulatory definition of “brownfield site” with the statutory definition found in ECL § 27-1405(2), as amended by Part BB of Chapter 56 of the Laws of 2015.

Finally, DEC recognizes that many of the 2015 amendments to the BCP law require the agency to propose additional regulatory changes which will apply state-wide. Following the publication of this rule making, which will trigger the 2015 amendments becoming effective, DEC will undertake another rule making in order to make the required additional changes to the regulations.

## 2. Legislative Objectives

ECL § 27-1403 states the objectives of the BCP, including the advancement of “the policy of the state of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being,” finding that, “it is appropriate to adopt this act to encourage persons to voluntarily remediate brownfield sites for reuse and redevelopment.”

The 2015 amendments to the BCP reflect an intent to reduce the amount of tangible property tax credits available to applicants for brownfield sites in high-value real estate markets while further incentivizing development on brownfields where certain project criteria are met. These amendments also clarify the definition of “brownfield site” such that DEC-identified standards may be used to determine program eligibility for sites. The amendments restricting the availability of BCP tangible property tax credits apply only to sites in New York City and preclude credits unless the sites are determined to be “upside down,” in an environmental zone, “underutilized,” or used for an “affordable housing project.” For sites that are eligible for tangible property tax credits anywhere in the State, these credits may be increased for projects “in an environmental zone,” “within a designated brownfield opportunity area,” “developed as affordable housing,” “used primarily for manufacturing activities,” or “remediated to Track 1.”

## 3. Needs and Benefits

The proposed rule making is mandatory and required by statute.

This rule making would amend Part 375 to add to new definitions to 375-3.2, “affordable housing project” and “underutilized,” and revise the existing definition of “brownfield site” as specified in statute. Part BB of Chapter 56 of the Laws of 2015 amended and added new language to Environmental Conservation Law (ECL) Article 27, Title 14 (Brownfield Cleanup Program, BCP) and certain other laws. As required by ECL § 27-1405(29) and (30), DEC must define the terms “affordable housing project” and “underutilized” by regulation. The new BCP law directs DEC to publish the “affordable housing project” definition in the State Register on or before June 8, 2015 and to publish proposed regulations regarding the “underutilized” definition in the State Register in order for the changes to the BCP to become effective by the later of the published date or July 1, 2015. DEC will also amend the ‘brownfield site’ definition at 6 NYCRR 375-1.2(b) and delete 6 NYCRR 375-3.3(a)(1) to conform to such definition in the new BCP law.

The 2015 amendments to the BCP law address the large differences in the potential state tax liability between Upstate and Downstate BCP sites. The primary driver for the regional imbalance within the BCP is attributed to high development costs for some Downstate projects, which were reflected in excessive tangible property tax credits. Limiting the eligibility of New York City sites to specific affordable housing projects and underutilized properties through criteria established by regulation should help to target projects in New York City areas with the most need. Finally, to ensure that tangible property tax credits are only afforded to sites with actual contamination rather than potential contamination, the amended definition of “brownfield site” clarifies DEC’s use of an environmental standards-based approach to site eligibility determinations.

## 4. Costs

### a. Costs to Regulated Parties

Since all costs incurred at a site prior to its acceptance to the BCP are ineligible for tax credits, applicants would incur credit-ineligible costs for performing site investigation work prior to the acceptance of a site in order to meet the amended definition of “brownfield site.” Nearly all applicants currently conduct this work, or are required to do so by DEC in the context of the review of their application as set forth at 6 NYCRR 375-

3.3(a)(4)(ii), under the original definition. However, following the implementation of the amended statute, every applicant would be required to provide investigatory information sufficient to satisfy DEC’s environmental quality standards prior to acceptance into the BCP.

New York City applicants may incur costs to establish the required criteria for tangible property tax credits, including costs involved with obtaining a certification that a site would not be developed without substantial government assistance as described in the definition of “underutilized.” Should New York City applicants meet the required criteria for tangible property tax credits, the costs that are incurred in the application process would be fully or partially offset through tax credits. There may be similar costs to applicants across the rest of the State attempting to increase tax credits through a certification of an affordable housing project.

### b. Costs to DEC, State and Local Governments

DEC, State and local governments would not incur additional costs due to the issuance of the proposed regulations. However, under the statutory amendments DEC will not receive payment of oversight costs from BCP volunteers. DEC costs for BCP application review are ongoing and any changes to DEC’s application review process due to proposed regulations are expected to be de minimis.

## 5. Local Government Mandates

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other subject entities. Also, no additional monitoring, recordkeeping, reporting, or other requirements would be imposed on local governments under this rule making. To the extent that New York City certifications are required for projects to meet the definitions of underutilized or affordable housing, these certification programs are in place or are developed and implemented at the discretion of the local government.

## 6. Paperwork

The proposed rule making would require environmental investigation data to be submitted with BCP application materials in order to prove status as a “brownfield site.” Applications for New York City sites seeking tangible property tax credits would need to also include documentation of the proposed eligibility criteria for such credits. This information would be added to the current application form that is required for entry into the BCP.

## 7. Duplication

The proposed rule making does not duplicate, overlap, or conflict with any other State or federal requirements.

## 8. Alternatives

DEC is directed by the legislature to propose definitions for “affordable housing project” and “underutilized.” A deadline of June 8, 2015 was provided for the former to be published in the State Register for public comment. In addition, if the “underutilized” definition is not published by July 1, 2015, the effective date of the amendments in Part BB of Chapter 56 of Laws of 2015 relative to the BCP would be the date when “underutilized” is published in the State Register with the proposed regulations. Failure to comply with these provisions may result in legal action. While conforming the definition of “brownfield site” in the regulations to the law is not statutorily dictated, failure to do so would result in confusion between the statute and existing DEC BCP regulations with potential legal action.

Because of the statutory mandate to define “affordable housing project” and “underutilized” and the need to conform the statutory definition of “brownfield site” to the regulatory definition, there are no other alternatives for this proposed rule making.

## 9. Federal Standards

The proposed regulations would not exceed any minimum federal standards.

## 10. Compliance Schedule

To reflect requirements in statute, the rule must be promulgated by October 1, 2015. Applicants to the BCP should be able to comply with the regulations upon issuance.

## Regulatory Flexibility Analysis

### 1. Effect of Rule

The proposed rule would add or update definitions of the following terms: “brownfield site,” “underutilized,” and “affordable housing project.” These definitions would only affect eligible parties that voluntarily elect to participate in the Brownfield Cleanup Program (BCP). The rule does not impose any mandate to participate. It is unknown how many small businesses or local governments would want to participate in the BCP and thus be affected by the rule.

### 2. Compliance Requirements

Since the BCP is a voluntary program and the proposed rule would only be adding or amending definitions, it would not impose any additional compliance requirements. Thus, no small business or local government would be required to undertake reporting, recordkeeping, or other affirmative acts in order to comply with the proposed rule. New York City has

volunteered to issue certifications that a property requires “substantial government assistance” described in the definition of “underutilized.” Additionally, New York City already enters into regulatory agreements with developers of affordable housing projects.

### 3. Professional Services

Since the BCP is a voluntary program and the proposed rule would only add or amend definitions, it would not impose any requirements for professional services. Thus, no small business or local government would require professional services in order to comply with the proposed rule. The New York State Department of Environmental Conservation (DEC) will continue to post information on its website to explain recent changes in the law and to provide information about the proposed rule.

### 4. Compliance Costs

Since all costs incurred at a site prior to its acceptance to the BCP are ineligible for tax credits, applicants would incur credit-ineligible costs for performing site investigation work prior to the acceptance of a site in order to meet the amended definition of “brownfield site.” Nearly all applicants currently conduct this work, or are required to do so by DEC in the context of the review of their application as set forth at 6 NYCRR 375-3.3(a)(4)(ii), under the original definition. However, following the implementation of the amended statute, every applicant would be required to provide investigatory information sufficient to satisfy DEC’s environmental quality standards prior to acceptance into the BCP.

New York City applicants may incur costs to establish the required criteria for tangible property tax credits or costs involved with obtaining a certification that a site would not be developed without substantial government assistance as described in the definition of “underutilized.” Should New York City applicants meet the required criteria for tangible property tax credits, the costs that are incurred in the application process would be fully or partially offset through tax credits. There may be similar costs to applicants across the rest of the State attempting to increase tax credits through a certification of an affordable housing project.

### 5. Economic and Technological Feasibility

It is economically and technologically feasible for a small business or local government to comply with the proposed rule. There are financial incentives and liability protections for applicants, including small businesses and local governments, to participate in the BCP.

### 6. Minimizing Adverse Impact

The rule would have no adverse economic impact on small businesses and local governments.

### 7. Small Business and Local Government Participation

DEC continues to post relevant information on its website to assist applicants in understanding the requirements of the BCP, some of which may be small businesses or local governments. A public hearing on the proposed rule will be held during the public comment period in New York City. Details about the public hearing and how to submit comments on the proposed rule will be posted on DEC’s website. DEC also maintains a listserv to which persons/entities, including small businesses and local governments, may subscribe so that they can receive information about new developments regarding the BCP.

### 8. Cure period or Other Opportunity for Ameliorative Action

The rule would only add two new definitions and revise an existing definition to the BCP. Thus, no cure period is needed.

### Rural Area Flexibility Analysis

For purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means those portions of the state so defined by Executive Law section 481(7). SAPA 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 amendments to the rule would include the addition of definitions for ‘affordable housing project’ and ‘underutilized.’ The definition of ‘affordable housing project’ would apply to projects across the State that are eligible for tax credits. It is anticipated to be utilized in urban areas of the State where affordable housing projects are currently constructed, and thus would not impose any impact on rural areas in the State. The definition of ‘underutilized’ would only apply to prospective projects in New York City and thus would not impose any impact on rural areas in the State. Therefore, a RAFA is not required for this rule making.

### Job Impact Statement

In accordance with Section 201-a(2)(a) of the State Administrative Procedures Act (SAPA), a Job Impact Statement has not been prepared for

this proposed rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State (State). The amendments to the rule would include the addition of definitions for ‘affordable housing project’ and ‘underutilized’ and revisions to existing ‘brownfield site’ definition, which do not adversely impact jobs and employment opportunities in the State.

## Department of Financial Services

### EMERGENCY RULE MAKING

#### Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

**I.D. No.** DFS-23-15-00001-E

**Filing No.** 409

**Filing Date:** 2015-05-20

**Effective Date:** 2015-05-21

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

**Action taken:** Addition of Part 418, MB 109 and MB 110 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-D

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

**Specific reasons underlying the finding of necessity:** Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

**Subject:** Registration and Financial Responsibility Requirements for Mortgage Loan Servicers.

**Purpose:** To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services.

**Substance of emergency rule:** Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers (“servicers”) be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including “Mortgage Loan”, “Mortgage Loan Servicer”, “Third Party Servicer” and “Exempted Person”.

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a “change of control” of a servicer, sets forth the requirements for prior approval of a change of

control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies). The financial responsibility requirements include a required net worth (as defined in the section) of at least \$250,000 plus 1/4 % of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least \$250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding \$4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Services (formerly the Superintendent of Banks) must approve or disapprove

an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 17, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Hadas A. Jacobi, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

#### **Regulatory Impact Statement**

##### 1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. (Note that under Section 89 of Part A of Chapter 62 of the Laws of 2011, the functions and powers of the banking board have been transferred to the Superintendent.)

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear

and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

### 2. Legislative Objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute – the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

### 3. Needs and Benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loan servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include:

pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance.

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. ( 3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419)

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

### 4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is \$3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

### 5. Local Government Mandates.

None.

### 6. Paperwork.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

### 7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations.

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

### 8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary

burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

#### 9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer – collecting consumers' money and acting as agents for mortgagees in foreclosure transactions – the Department believes that it is imperative that servicers be required to meet this heightened standard.

#### 10. Compliance Schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

### **Regulatory Flexibility Analysis**

#### 1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law"). Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

#### 2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

#### 3. Professional Services:

None.

#### 4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administra-

tive costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

#### 5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

#### 6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

#### 7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

### **Rural Area Flexibility Analysis**

Types and Estimated Numbers of Rural Areas: Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimis business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services: Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than \$4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs: The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impact: The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-

line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations.

Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation: Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

**Job Impact Statement**

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

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

**Debt Collection**

**I.D. No.** DFS-23-15-00002-P

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

**Proposed Action:** This is a consensus rule making to amend Part 1 of Title 23 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302

**Subject:** Debt Collection.

**Purpose:** Fixes errors in debt collection rules.

**Text of proposed rule:** Section 1.2(a)(2) is amended to read as follows:

(2) the following [written] notice:

“If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers’ compensation benefits;
8. Public or private pensions;
9. Veterans’ benefits;

10. Federal student loans, federal student grants, and federal work study funds; and

11. Ninety percent of your wages or salary earned in the last sixty days.”

Section 1.4(c) is amended to read as follows:

(c) Substantiation of a charged-off debt shall include [a copy of a judgment against the consumer or]:

(1) the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, payment or balance transfer shall be deemed sufficient to satisfy this requirement;

(2) the charge-off account statement, or equivalent document, issued by the original creditor to the consumer;

(3) a statement describing the complete chain of title from the original creditor to the present creditor, including the date of each assignment, sale, and transfer; and

(4) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt pursuant to section 1.5 of this Part.

Section 1.5(a)(2) is amended to read as follows:

(2) the following notice:

“If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers’ compensation benefits;
8. Public or private pensions;
9. Veterans’ benefits;

10. Federal student loans, federal student grants, and federal work study funds; and

11. Ninety percent of your wages or salary earned in the last sixty days.”

**Text of proposed rule and any required statements and analyses may be obtained from:** Max Dubin, Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 480-7232, email: fslreg@dfs.ny.gov

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

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

**Consensus Rule Making Determination**

This rulemaking amends the Department of Financial Service’s regulations of debt collection in New York by making minor clarifications to the rules. These changes address confusion expressed by some debt collectors. The first change eliminates the word “written” since such direction was already included in the rule and was repetitive and unnecessary. The second change eliminates the option that a debt collector may provide a copy of a judgment against the consumer in order to substantiate a debt. The final rule does not regulate collections of a money judgment, therefore the option to provide a judgment as substantiation of a debt is irrelevant and confusing to some debt collectors. Finally, a required disclosure of consumers’ rights under the Exempt Income Protection Act is amended for clarity and consistency with the rest of the regulation.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act (“SAPA”) § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

**Job Impact Statement**

This rulemaking makes minor edits to the Department of Financial Service’s regulations of debt collection in New York to address some confusion created by the rules. The amendments do not create any new obligations for debt collectors and should not have any negative impact on businesses or on jobs in New York.

---



---

## Office of Mental Health

---



---

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

#### Personalized Recovery Oriented Services (PROS)

I.D. No. OMH-23-15-00003-P

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

**Proposed Action:** This is a consensus rule making to amend Part 512 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09(b), 31.04(b) and 43.02(b); Social Services Law, sections 364(3) and 364-a(1)

**Subject:** Personalized Recovery Oriented Services (PROS).

**Purpose:** Add language back into regulation that had been erroneously eliminated in a previous rulemaking.

**Text of proposed rule:** A new paragraph (10) is added to subdivision (e) of section 512.7 of Title 14 NYCRR to read as follows:

*(10) If a PROS participant receives solely ORS services from a comprehensive PROS, the provider shall be responsible only for completing a psychiatric rehabilitation assessment with an employment focus and for developing an IRP that is reflective of an employment support goal. The provider is not required to complete a relapse prevention plan with the individual, but may do so. All other documentation requirements still pertain.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

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

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

#### Consensus Rule Making Determination

This proposal is being filed as a Consensus rule on the grounds that it is non-controversial and makes a minor technical correction.

14 NYCRR Part 512 establishes the standards for Personalized Recovery Oriented Services (PROS) Programs that are certified by the Office of Mental Health (Office). The purpose of PROS programs is to assist individuals in recovering from the disabling effects of mental illness. The PROS regulations have been amended several times since they were originally promulgated in 2005. When they were amended in 2012, a paragraph pertaining to program operations was inadvertently eliminated. The language that had been erroneously removed had clarified the responsibilities of PROS providers in situations where a PROS participant is receiving solely Ongoing Rehabilitation and Support services from a comprehensive PROS program. Specifically, in those circumstances, the provider is responsible only for completing a psychiatric rehabilitation assessment with an employment focus, and for developing an individualized recovery plan that is reflective of an employment support goal. The provider is not required to complete a relapse prevention plan with the individual, but may do so. All other documentation requirements still pertain as specified in the regulations. No new provisions are being added as a result of this rule making. The language that is being added to the regulation as a result of this rule making is identical to the language that had been inadvertently eliminated. As PROS providers need to be aware of their responsibilities in the situation described above, and the absence of these provisions has been a source of confusion to PROS providers, the Office is adding the language back into the regulation. For all the reasons listed above, this non-controversial amendment is appropriately filed as a consensus rule.

**Statutory Authority:** Sections 7.09(b) and 31.04(a) of the Mental Hygiene Law grant the Commissioner of Mental Health the power and responsibility to plan, establish and evaluate programs and services for the benefit of individuals with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner the authority to request from operators of facilities certified by the Office of Mental Health such financial, statistical and program information as the Commissioner may determine to be necessary. Sections 364(3) and 364-a(1) of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

#### Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of the amendment is to make a technical change to the Office's regulations regarding Personalized Recovery Oriented Services (PROS). The change adds language back into the regulation that had been erroneously eliminated in a previous rule making. It is evident from the rulemaking that there will be no adverse impact on jobs and employment opportunities.

---



---

## Public Service Commission

---



---

### NOTICE OF ADOPTION

#### Approving the Use of the Leviton Series 8000 Electric Submeter

I.D. No. PSC-14-14-00016-A

**Filing Date:** 2015-05-20

**Effective Date:** 2015-05-20

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

**Action taken:** On 5/14/15, the PSC adopted an order approving the petition by Leviton Manufacturing Co., Inc. for the use of the Leviton Series 8000 electric submeter.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approving the use of the Leviton Series 8000 electric submeter.

**Purpose:** To approve the use of the Leviton Series 8000 electric submeter.

**Substance of final rule:** The Commission, on May 14, 2015, adopted an order approving the petition by Leviton Manufacturing Co., Inc. for the use of the Leviton Series 8000 residential electric meter for submetering applications in New York State, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

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

(14-E-0081SA1)

### NOTICE OF ADOPTION

#### Denying a Petition for Supplemental Benefits to the Renewable Portfolio Standard Program

I.D. No. PSC-20-14-00011-A

**Filing Date:** 2015-05-20

**Effective Date:** 2015-05-20

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

**Action taken:** On 5/14/15, the PSC adopted an order denying a petition by Sterling Energy Group, Inc. and Niagara Generation, LLC, for supplemental benefits to the April 17, 2007 Renewable Portfolio Standard Program.

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

**Subject:** Denying a petition for supplemental benefits to the Renewable Portfolio Standard Program.

**Purpose:** To deny a petition for supplemental benefits to the Renewable Portfolio Standard Program.

**Substance of final rule:** The Commission, on May 14, 2015, adopted an order denying a petition by Sterling Energy Group, Inc. and Niagara Generation, LLC, for supplemental benefits to the April 17, 2007 Renewable Portfolio Standard Program, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Com-

mission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(03-E-0188SA48)

**NOTICE OF ADOPTION**

**Approving the Tariff Filing by Con Ed to Make Amendments to P.S.C. No. 4 — Steam**

**I.D. No.** PSC-38-14-00020-A

**Filing Date:** 2015-05-20

**Effective Date:** 2015-05-20

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

**Action taken:** On 5/14/15, the PSC adopted an order approving the tariff filing by Consolidated Edison Company of New York, Inc. (Con Ed) to make amendments to the rates, charges, rules and regulations contained in its Schedule for P.S.C. No. 4 — Steam.

**Statutory authority:** Public Service Law, section 80(1), (10)(a) and (b)

**Subject:** Approving the tariff filing by Con Ed to make amendments to P.S.C. No. 4 — Steam.

**Purpose:** To approve the tariff filing by Con Ed to make amendments to P.S.C. No. 4 — Steam.

**Substance of final rule:** The Commission, on May 14, 2015, adopted an order approving the tariff filing by Consolidated Edison Company of New York, Inc. (Con Ed) to make amendments to its Schedule for P.S.C. No. 4 — Steam that creates a new charge for investigating a broken company valve seal, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(14-S-0382SA1)

**NOTICE OF ADOPTION**

**Authorizing the Petition by Madison to Submeter Electricity**

**I.D. No.** PSC-11-15-00022-A

**Filing Date:** 2015-05-20

**Effective Date:** 2015-05-20

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

**Action taken:** On 5/14/15, the PSC adopted an order authorizing the petition by 160 Madison Avenue LLC (Madison) to submeter electricity at 160 Madison Avenue, New York, New York.

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

**Subject:** Authorizing the petition by Madison to submeter electricity.

**Purpose:** To authorize the petition by Madison to submeter electricity.

**Substance of final rule:** The Commission, on May 14, 2015, adopted an order authorizing the petition by 160 Madison Avenue LLC to submeter electricity at 160 Madison Avenue, New York, New York, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(15-E-0078SA1)

**NOTICE OF ADOPTION**

**Allowing Adams CATV, Inc. to Purchase 100% of the Stock of Oquaga Lake Cable System**

**I.D. No.** PSC-12-15-00006-A

**Filing Date:** 2015-05-21

**Effective Date:** 2015-05-21

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

**Action taken:** On 5/14/15, the PSC adopted an order allowing the joint petition of Adams CATV, Inc. and Oquaga Lake Cable, Inc. to transfer control of cable television system franchise, certificates and facilities in Broome County to Adams CATV, Inc.

**Statutory authority:** Public Service Law, section 222

**Subject:** Allowing Adams CATV, Inc. to purchase 100% of the stock of Oquaga Lake Cable System.

**Purpose:** To allow Adams CATV, Inc. to purchase 100% of the stock of Oquaga Lake Cable System.

**Substance of final rule:** The Commission, on May 14, 2015, adopted an order approving the joint petition filed by Adams CATV, Inc. and Oquaga Lake Cable, Inc. transferring the control of the cable television system and related assets, including the franchise certificate of confirmation and facilities in the Town of Sanford, Broome County, to Adams CATV, Inc., subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(15-V-0090SA1)

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

**Modification of New York American Water's Current Rate Plan**

**I.D. No.** PSC-23-15-00005-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 whether to adopt, reject or modify the terms of a joint proposal from New York American Water and DPS Staff that would extend the company's system improvement charge mechanism and freeze rates for two years.

**Statutory authority:** Public Service Law, sections 89-b and 89-c

**Subject:** The modification of New York American Water's current rate plan.

**Purpose:** Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff.

**Substance of proposed rule:** In Case 11-W-0200, in 2012, the Commission established New York American Water Company, Inc.'s (NYAW) (f/k/a Long Island Water Corporation) current rate plan. That plan includes a System Improvement Charge (SIC) mechanism for NYAW's Lynbrook District, which allows NYAW to recover carry charges for specific completed infrastructure projects until the Company's next rate case. In an October 27, 2014 Petition, NYAW states that the SIC projects identified in the current rate plan are either completed or near completion and proposes that the SIC mechanism be updated to include new infrastructure projects identified in the petition. The petition states that updating the SIC mechanism as proposed will allow the Company to continue to construct necessary capital improvements that benefit ratepayers, while providing

NYAW with an opportunity to earn its authorized rate of return under the current rate plan. NYAW and Department of Public Service Staff (Staff), filed a notice of pending negotiations on March 16, 2015. These negotiations lead to the Joint Proposal (JP) the Commission is now considering. Under the terms of the JP, six new capital projects would be added to the SIC mechanism, with a 2.5% cap on the increase to the SIC surcharge. In addition, NYAW would be allowed to defer abnormally high increases in property taxes (greater than 8%) in the Lynbrook District, the Company's pre-tax rate of return will be reduced from 10.14% to 9.57%, the allowed return on equity will be reduced from 9.65% to 9.0%, and the Company's equity ratio will be set at 47%. In addition, earning sharing mechanisms will be instituted for the Company's Lynbrook, Merrick and Sea Cliff Districts, and base rates will be frozen for the term of the agreement. The Commission is considering whether to adopt, reject or modify the terms of the JP and may consider related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(11-W-0200SP2)

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

**Modification of New York American Water's Current Rate Plan**

**I.D. No.** PSC-23-15-00006-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 adopt, reject or modify the terms of a joint proposal from New York American Water and DPS Staff that would extend the company's system improvement charge mechanism and freeze rates for two years.

**Statutory authority:** Public Service Law, sections 89-b and 89-c

**Subject:** The modification of New York American Water's current rate plan.

**Purpose:** Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff.

**Substance of proposed rule:** In 2012, the Commission established New York American Water Company, Inc.'s (NYAW) (f/k/a Long Island Water Corporation) current rate plan. That plan includes a System Improvement Charge (SIC) mechanism for NYAW's Lynbrook District, which allows NYAW to recover carry charges for specific completed infrastructure projects until the Company's next rate case. As part of NYAW's acquisition of Aqua America, Inc.'s New York assets, in Case 11-W-0472, the rates of the former Aqua companies were frozen for the duration of the NYAW rate plan. In an October 27, 2014 Petition, NYAW states that the SIC projects identified in the current rate plan are either completed or near completion and proposes that the SIC mechanism be updated to include new infrastructure projects identified in the petition. The petition states that updating the SIC mechanism as proposed will allow the Company to continue to construct necessary capital improvements that benefit ratepayers, while providing NYAW with an opportunity to earn its authorized rate of return under the current rate plan. NYAW and Department of Public Service Staff (Staff), filed a notice of pending negotiations on March 16, 2015. These negotiations lead to the Joint Proposal (JP) the Commission is now considering. Under the terms of the JP, six new capital projects would be added to the SIC mechanism, with a 2.5% cap on the increase to the SIC surcharge. In addition, NYAW would be allowed to defer abnormally high increases in property taxes (greater than 8%) in the Lynbrook District, the Company's pre-tax rate of return will be reduced from 10.14% to 9.57%, the allowed return on equity will be reduced from 9.65% to 9.0%, and the Company's equity ratio will be set at 47%. In addition, earning sharing mechanisms will be instituted for the Company's Lynbrook, Merrick and Sea Cliff Districts, and base rates will be frozen

for the term of the agreement. The Commission is considering whether to adopt, reject or modify the terms of the JP and may consider related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(11-W-0472SP2)

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

**Notice of Intent to Submeter Electricity**

**I.D. No.** PSC-23-15-00007-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to submeter electricity filed by 200 W. 54 Corp., for the premises located at 200 West 54th Street, New York, New York.

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

**Subject:** Notice of Intent to Submeter electricity.

**Purpose:** To consider the request of 200 W. 54 Corp. to submeter electricity at 200 West 54th Street, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent filed by 200 W. 54 Corp., to submeter electricity at 200 West 54th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Notice.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0214SP1)

## Department of State

### EMERGENCY RULE MAKING

#### Use of Truss Type Construction, Pre-Engineered Wood Construction or Timber Construction in Residential Structures

**I.D. No.** DOS-02-15-00004-E

**Filing No.** 411

**Filing Date:** 2015-05-22

**Effective Date:** 2015-05-22

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

**Action taken:** Addition of Part 1265 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 382-b

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

**Specific reasons underlying the finding of necessity:** This rule is adopted as an emergency measure to preserve public safety and general welfare and because time is of the essence.

This rule implements Executive Law § 382-b, as added by Chapter 353 of the Laws of 2014.

Executive Law § 382-b provides that when truss type, pre-engineered wood or timber construction is used in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure, the owner must notify the code enforcement official of that fact and must place an approved sign or symbol on the exterior of the structure to warn firefighters and other first responders of that fact. As stated in the Memorandum in Support of the bill enacting Executive Law § 382-b, “(w)hile truss construction is very durable, when weakened by a fire, major components of a truss foundation can collapse suddenly without warning. When responding to a fire emergency, firefighters are unable to differentiate between a building constructed of truss foundation or another type of construction. As a result, in recent years truss constructions have been the cause of many preventable deaths of fire-fighters. It is imperative that firefighters are notified of the use of truss type construction so they can take appropriate measures that will protect the lives of residents and ensure their own safety. With the enactment of this bill, emergency responders will be able to take proper precautions in responding to a fire in a residential structure where truss type construction was utilized.”

Executive Law § 382-b further provides that the form to be used to notify code enforcement officials of the use of truss type, pre-engineered wood or timber construction in residential structures and the sign or symbol to be affixed to a residential structure using truss type, pre-engineered wood or timber construction must be prescribed by the Code Council. Executive Law § 382-b further provides that “as a condition of the final receipt of a certificate of occupancy or certificate of completion, a sign or symbol designed and approved by the [Code Council] shall be affixed to any electric box attached to the exterior of the structure, if one exists.”

Therefore, as of January 1, 2015, the effective date of Executive Law § 382-b, local code officials are not permitted to issue certificates of occupancy for residential structures using truss type, pre-engineered wood or timber construction unless the required sign or symbol has been affixed to the structure. Executive Law § 382-b provides that the form to be used to notify code enforcement officials of the use of truss type, pre-engineered wood or timber construction in residential structures must be prescribed by the Code Council and the sign or symbol to be affixed to a residential structure using truss type, pre-engineered wood or timber construction must be designed and approved by the Code Council.

The Code Council previously adopted an emergency rule (the Initial Rule) that prescribed the notification form contemplated by Executive Law § 382-b and designed and approved the sign or symbol contemplated by Executive Law § 382-b. The Notice of Emergency Adoption and Proposed Rule Making for that Initial Rule was filed on December 30, 2014 and that Initial Rule became effective, as an emergency rule, on December 31, 2014.

The Initial Rule would have expired on March 29, 2015; however, the Initial Rule was re-adopted by Notice of Emergency Adoption filed on March 26, 2015. The re-adoption of the Initial Rule will expire on May 24, 2015.

The public comment period for the proposed adoption of the Initial

Rule on a permanent basis has expired. The Department of State has reviewed the comments received and has prepared an assessment of those comments. Based on the comments, the Department of State and the Code Council have determined that several non-substantial changes to the Initial Rule should be made.

At the meeting of the Code Council held on May 15, 2015, the Code Council voted to adopt the Initial Rule, with the non-substantial changes referred to above, as a permanent measure. The permanent adoption of the Initial Rule, with those non-substantial changes, will not take effect until the Notice of Adoption is published in the State Register. The Department of State intends to file such Notice of Adoption in the near future. However, such Notice of Adoption will not appear in the State Register before May 24, 2015, the date on which the currently effective emergency rule will expire.

At its May 15, 2015 meeting, the Code Council also vote to adopt the Initial Rule, with the non-substantial changes referred to above, as an emergency measure. At its May 15, 2015 meeting, the Code Council found and determined that adopting the Initial Rule, with the non-substantial changes, on an emergency basis, as authorized by section 202 of the State Administrative Procedure Act, was required to preserve public safety and general welfare because:

(1) Executive Law § 382-b provides that when truss type, pre-engineered wood or timber construction is used in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure, the owner must notify the code enforcement official of that fact and must place an approved sign or symbol on the exterior of the structure to warn firefighters and other first responders of that fact;

(2) Executive Law § 382-b provides that the form to be used to notify code enforcement officials of the use of truss type, pre-engineered wood or timber construction in residential structures and the sign or symbol to be affixed to a residential structure using truss type, pre-engineered wood or timber construction must be prescribed by the Code Council;

(3) on and after January 1, 2015, the effective date of Executive Law § 382-b, local code officials are not permitted to issue certificates of occupancy for residential structures using truss type, pre-engineered wood or timber construction unless the required sign or symbol has been affixed to the structure;

(4) an emergency rule implementing Executive Law § 382-b has been filed and is now in effect;

(5) the emergency rule now in effect will expire on May 24, 2015;

(6) the adoption of the Initial Rule, with the non-substantial changes referred to above, as a permanent rule will not be effective until the Notice of Adoption of such permanent rule is published in the State Register;

(7) the Notice of Adoption of the Initial Rule, with the non-substantial changes referred to above, as a permanent rule would not appear in the State Register until after the May 24, 2015 expiration of the currently effective emergency rule; and

(8) adopting the Initial Rule, with the non-substantial changes referred to above, on an emergency basis, to be effective on May 25, 2015, is necessary to assure that the required sign or symbol can be placed on structures during the period between the expiration date of the currently effective emergency rule (May 24, 2015) and the date on which the Notice of Adoption of the permanent rule is published in the State Register.

**Subject:** Use of truss type construction, pre-engineered wood construction or timber construction in residential structures.

**Purpose:** To implement the provisions of new section 382-b of the Executive Law, as added by chapter 353 of the Laws of 2014.

**Substance of emergency rule:** This rule adds a new Part 1265 (entitled “Residential Structures with Truss Type Construction, Pre-Engineered Wood Construction and/or Timber Construction”) to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1265.1 (Introduction) states that Section 382-b of the Executive Law provides that any person utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure, shall, upon application for a building permit with the local government having jurisdiction, include on the permit application that truss type, pre-engineered wood or timber construction is being utilized, and that the property owner or the property owner’s representative shall complete a form prescribed by the State Fire Prevention and Building Code Council (hereinafter referred to as the Code Council) designating the structure as truss type, pre-engineered wood or timber construction and file such form with the application for a building permit. Section 1265.1 also states that Section 382-b of the Executive Law further provides that as a condition of the final receipt of a certificate of occupancy or certificate of completion, a sign or symbol designed and approved by the Code Council shall be affixed to any electric box attached to the exterior of the structure, if such an electric box exists, and that Part 1265

prescribes (1) the form to be used by the property owner or property owner's representative to designate a residential structure as truss type, pre-engineered wood or timber construction and (2) the sign or symbol to be affixed to the exterior electric box, if any, of a residential building that utilizes truss type, pre-engineered wood and/or timber construction.

Section 1265.2 (Applicability) provides that Part 1265 applies to the construction of each new residential structure and to each addition to or rehabilitation of an existing residential structure, when:

(1) truss type construction, pre-engineered wood construction, and/or timber construction is utilized in such construction, addition or rehabilitation; and

(2) such construction, addition or rehabilitation (i) was commenced on or after January 1, 2015 or (ii) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

Section 1265.2 also provides that Part 1265 does not apply in any city having a population in excess of one million persons.

Section 1265.3 (Definitions) defines certain terms used in Part 1265, including pre-engineered wood construction, timber construction, and truss type construction, which are defined in Section 1265.3 as follows:

The term "pre-engineered wood construction" shall mean construction that uses, for any load-supporting purpose(s), girders, beams, or joists made using wood components (or wood-based components) that are bonded together with adhesives (including, but not limited to, prefabricated wood I-joists, structural glued laminated timbers, structural log members, structural composite lumber, and cross-laminated timber).

The term "timber construction" shall mean construction that uses, for any load-supporting purpose(s), solid or laminated wood having the minimum dimensions required for structures built using type IV construction (HT) in accordance section 602.4 of the BCNYS.

The term "truss type construction" shall mean construction that uses, for any load-supporting purpose(s), a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own. Truss type construction shall not include (1) individual wind or seismic bracing components which form triangles when diagonally connected to the main structural system or (2) structural components that utilize solid plate web members.

Section 1265.3 also defines the terms addition, authority having jurisdiction, BCNYS, electric box, existing residential structure, new residential structure, RCNYS, rehabilitation, and residential structure.

Section 1265.4 (Notice to be given to authority having jurisdiction) provides that when truss type construction, pre-engineered wood construction, and/or timber construction is to be utilized in the construction of a new residential structure or in an addition to or rehabilitation of an existing residential structure, the owner of such structure, or the owner's duly authorized representative, shall notify the authority having jurisdiction of that fact. Such notice shall be in writing and shall be provided to the authority having jurisdiction with the application for a building permit. In the case of a construction, addition or rehabilitation project commenced prior to January 1, 2015 and not completed prior to January 1, 2015, such notice shall be given as soon as practicable after January 1, 2015 and in any event prior to the issuance of the certificate of occupancy or certificate of compliance for such project.

Section 1265.4 also prescribes the form to be used to give the required notice. Section 1265.4 authorizes the authority having jurisdiction to prescribe its own form to be used to give the notice, provided that such form requests at least same information as the form prescribed in Section 1265.4.

Section 1265.5 (Sign or symbol) provides that when truss type construction, pre-engineered wood construction, and/or timber construction is utilized in the construction of a new residential structure or in an addition to or rehabilitation of an existing residential structure, such residential structure shall be identified by a sign or symbol in accordance with the provisions of Part 1265.

Section 1265.5 also provides that the sign or symbol shall be affixed to the electric box attached to the exterior of the residential structure; provided, however, that (1) if affixing the sign or symbol to the electric box would obscure any meter on the electric box, or if the utility providing electric service to the residential structure does not allow the sign or symbol to be affixed to the electric box, the sign or symbol shall be affixed to the exterior wall of the residential structure at a point immediately adjacent to the electric box; and (2) if no electric box is attached to the exterior of the residential structure or if, in the opinion of the authority having jurisdiction, the electric box attached to the exterior of the building is not located in a place likely to be seen by firefighters or other first responders responding to a fire or other emergency at the residential structure, the sign or symbol shall be affixed to the exterior of the residential structure in a location approved by the authority having jurisdiction as a location likely to be seen by firefighters or other first responders responding to a fire or other emergency at the residential structure.

Section 1265.5 also provides that the sign or symbol shall be affixed prior to the issuance of a certificate of occupancy or a certificate of compliance, and that the authority having jurisdiction shall not issue a certificate of occupancy or certificate of compliance until the sign or symbol shall have been affixed.

Section 1265.5 also provides that the property owner shall be responsible for maintaining the sign or symbol and shall promptly replace any such sign or symbol that is affixed to an electric box when any change or modification is made to such electric box.

Section 1265.5 also provides that the property owner shall promptly replace the sign or symbol if such sign or symbol is removed or becomes damaged, faded, worn or otherwise less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure.

Section 1265.5 also provides that the property owner shall keep the area in the vicinity of the sign or symbol clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol to be less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure.

Section 1265.5 also provides that the sign or symbol indicating the utilization of truss type construction, pre-engineered wood construction and/or timber construction:

(1) shall consist of a circle six inches (152.4 mm) in diameter, with a stroke width of 1/2 inch (12.7 mm). The background of the sign or symbol shall be reflective white in color, and the circle and contents shall be reflective red in color, conforming to Pantone matching system (PMS) #187;

(2) shall be of sturdy, non-fading, weather-resistant material; provided, however, that a sign or symbol applied directly to a door or sidelight may be a permanent non-fading sticker or decal;

(3) shall contain an alphabetic construction type designation to indicate the construction type of the residential structure, as follows:

(i) if the residential structure is subject to the provisions of the RCNYS, the construction type designation shall be "V" and

(ii) if the residential structure is subject to the provisions of the BCNYS, the construction type designation shall be "I", "II", "III", "IV" or "V" to indicate the construction classification of the structure under section 602 of the BCNYS; and

(4) shall contain an alphabetic location designation to indicate the location(s) containing truss type construction, pre-engineered wood construction and/or timber construction structural components, as follows:

(i) "F" shall mean floor framing, including girders and beams;

(ii) "R" shall mean roof framing; and

(iii) "FR" shall mean floor framing and roof framing.

The construction type designation shall be placed at the 12 o'clock position of the sign or symbol, over the location designation, which shall be placed at the six o'clock position of the sign or symbol.

Section 1265.6 (Notification, consultation, and warning) provides that upon receipt of a form indicating that truss type, pre-engineered wood or timber construction is to be used in a residential structure, the authority having jurisdiction shall notify the chief of the fire district, fire department or fire company having jurisdiction over the structure of that fact.

Section 1265.6 also provides that the chief of the fire district, fire department, or fire company having jurisdiction over the residential structure to be erected, added to, or modified, or his or her designee shall use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

Section 1265.6 also provides that the local building department or local code enforcement official for the authority having jurisdiction shall consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

Section 1265.7 (Enforcement) provides that subdivision 4 of section 382-b of the Executive Law directs local governments to provide for enforcement of section 382-b of the Executive Law, and that enforcement of section 382-b of the Executive Law shall include, but shall not be limited to, enforcement of the provisions of this Part.

Section 1265.8 (General Municipal Law section 205-b) provides that nothing contained in Part 1265 shall in any way affect or diminish section 205-b of the General Municipal Law.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DOS-02-15-00004-EP, Issue of January 14, 2015. The emergency rule will expire June 10, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Mark Blanke, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

**Additional matter required by statute:** An Assessment of Public Comment is attached as part of item 18 below. The Introductory Statement in the attached Assessment of Public Comment states why that Assessment is attached to this Notice of Emergency Adoption.

#### **Regulatory Impact Statement**

**1. STATUTORY AUTHORITY AND LEGISLATIVE OBJECTIVES**  
Executive Law § 382-b authorizes the State Fire Prevention and Building Code Council (the Code Council) to promulgate rules and regulations it deems necessary to carry into effect the provisions that section. This rule implements the provisions of Executive Law § 382-b.

The Legislative objectives of Executive Law § 382-b include (1) providing a means of notifying a local code enforcement official when truss type, pre-engineered wood or timber construction is to be utilized in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure; (2) providing for the placement and maintenance of a sign or symbol on the exterior of such residential structures to provide notice to firefighters and other first responders that one or more of those construction types have been used; and (3) providing for communication and coordination between and among code enforcement officials, fire departments, and emergency dispatch personnel for the purpose of providing warning to firefighters and other first responders that one or more of those construction types have been used.

#### **2. NEEDS AND BENEFITS**

The Memorandum in Support of the bill enacting Executive Law § 382-b states that "(w)hile truss construction is very durable, when weakened by a fire, major components of a truss foundation can collapse suddenly without warning. When responding to a fire emergency, firefighters are unable to differentiate between a building constructed of truss foundation or another type of construction. As a result, in recent years truss constructions have been the cause of many preventable deaths of fire-fighters. It is imperative that firefighters are notified of the use of truss type construction so they can take appropriate measures that will protect the lives of residents and ensure their own safety. With the enactment of this bill, emergency responders will be able to take proper precautions in responding to a fire in a residential structure where truss type construction was utilized."

Executive Law § 382-b provides that any person utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure must (1) notify the local government that will issue the building permit for the that truss type, pre-engineered wood or timber construction is being utilized and (2) affix a sign or symbol to the electric box, if any, on the exterior of the structure indicating that truss type, pre-engineered wood or timber construction has been used. Executive Law § 382-b provides that the form to be used to notify the local code official that truss type, pre-engineered wood or timber construction is to be used shall be prescribed by the Code Council and that the sign or symbol to be fixed to the electric box shall be as approved by the Code Council.

Executive Law § 382-b also provides that (1) upon receipt of a form indicating that truss type, pre-engineered wood or timber construction is to be used in a residential structure, the code enforcement official must notify the chief of the fire district, fire department or fire company having jurisdiction over the structure of that fact; (2) the chief of the fire district, fire department, or fire company having jurisdiction over the residential structure to be erected, added to, or modified, or his or her designee shall use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure; (3) the local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure; (4) local governments shall provide by local law or resolution for the enforcement of the provisions of Executive Law § 382-b, if necessary; and (5) the Code Council shall promulgate rules and regulations it deems necessary to carry into effect the provisions of Executive Law § 382-b including, but not limited to, the dimensions and color of the required sign or symbol.

This rule prescribes the notification form contemplated by Executive Law § 382-b, designs and approves the sign or symbol contemplated by Executive Law § 382-b, and otherwise implements the provisions of Executive Law § 382-b.

#### **3. COSTS**

##### **A. Regulated Parties**

For a regulated party who chooses to use truss type, pre-engineered wood or timber construction in the construction of a new residential structure or the addition to or rehabilitation of an existing residential structure, the initial costs of complying with this rule will include (1) any

increase in the fees currently charged by the local code enforcement officials to cover the additional costs associated with processing the form notifying the official that truss-type, pre-engineered wood or timber construction is to be used and/or for inspecting the structure to confirm that the required sign or symbol has been affixed to the exterior of the structure and (2) the cost of obtaining any affixing the required sign or symbol. Fees charged by local code enforcement officials are fixed by local governments, and not by this rule; the Department of State (DOS) anticipates that for the most part, any fee increase imposed by local governments by reason of this rule will be modest. DOS estimates that the cost of purchasing and affixing the sign or symbol required by this rule will be \$20 to \$30.

For regulated parties who own residential structures covered by this rule, the annual or ongoing costs for continuing compliance with this rule will include the cost of replacing the sign or symbol required by this rule when the electric box to which the sign or symbol is affixed is changed or modified or when the sign or symbol becomes worn, faded, or otherwise less conspicuous. DOS estimates that the cost of purchasing and affixing a replacement sign or symbol required will be \$20 to \$30. For regulated parties who own residential structures covered by this rule will also be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure. DOS anticipates that this requirement will not significantly increase the cost of normal property maintenance.

The estimated cost of obtaining and affixing the required sign or symbol was determined by prices for signs currently posted on the website of a manufacturer of the signs now required under Part 1264 (ranging from \$12.45 to \$21.45 for a single sign to as low as \$8.95 per sign when purchased in quantity: <http://www.safetysign.com/products/p5973/ny-type-v-floor-truss-sign> [accessed 3/20/2015]); the cost of affixing the sign to the structure is assumed to be nominal.

B. Department of State, the State, and Local Governments

DOS does not anticipate that DOS or the State of New York will incur any significant costs for the implementation of, and continued administration of, this rule.

For local governments, the initial costs for implementation of this rule will include the cost of training their code enforcement personnel on the requirements of this rule. However, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and DOS anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

For local governments, the on-going costs for the continued compliance with and administration of this rule will include the costs associated with the inspecting residential structures to confirm that the required sign or symbol has been affixed; notifying the fire department when truss type, pre-engineered wood or timber construction is to be used in the construction of a new residential structure; consulting with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure; and warning persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure. However, DOS anticipates that a local government will be able to fulfill these obligations using its existing code enforcement, fire department, and emergency dispatch personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

Any local government or state agency that chooses to construct, add to, rehabilitate or won a residential structure will subject to this rule, and will be subject to the same costs of initial compliance and on-going compliance as any other regulated party.

#### **4. PAPERWORK**

A property owner utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure will be required to notify the local code enforcement official of that fact. That notice must be given using the form prescribed in this rule or using a substantially similar form prescribed by the local code enforcement office.

#### **5. LOCAL GOVERNMENT MANDATES**

Upon receipt of notification that a residential structure will use truss type, pre-engineered wood or timber construction, the local code enforcement official will be required to notify the chief of the fire district, fire department or fire company having jurisdiction over the structure of that fact. The chief of the fire district, fire department, or fire company must

use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

Before issuing a certificate of occupancy, the local code enforcement official will be required to determine that the required sign has been affixed to the structure.

Local governments will be required to enforce Executive Law § 382-b and this new rule. Local governments, fire departments, and emergency dispatch personnel will be required to see that their personnel receive training on these new requirements.

DOS anticipates that local governments will be able to enforce the new requirements added by Executive Law § 382-b and implemented by this rule with their current code enforcement personnel, and will not require any additional professional services.

#### 6. DUPLICATION

This rule does not duplicate any rule or other legal requirement of the State or Federal government known to DOS.

#### 7. ALTERNATIVES

No significant alternatives to this rule were considered by DOS. DOS believes that the provisions of this rule are necessary to implement Executive Law § 382-b.

#### 8. FEDERAL STANDARDS

This rule does not exceed any minimum standards of the Federal government for the same or similar subject areas known to DOS.

#### 9. COMPLIANCE SCHEDULE

DOS anticipates that regulated parties will be able to comply with this rule immediately.

### *Regulatory Flexibility Analysis*

#### 1. EFFECT OF RULE:

This rule implements Executive Law § 382-b, which relates to the use of truss-type, pre-engineered wood and timber construction in the construction of new residential structures and the addition to or rehabilitation of existing residential structures. Executive Law § 382-b, and this rule, apply in all parts of the State except New York City. Therefore, this rule will apply to all small businesses and all local governments that construct new residential buildings or add to or rehabilitate existing residential structures in any part of the State except New York City.

In addition, Executive Law § 382-b requires local governments to enforce section 382-b, and to communicate and coordinate with fire departments and emergency dispatch personnel in warning firefighters and other first responders when responding to a fire in a residential structure that utilizes truss-type, pre-engineered wood and timber construction in the construction. This rule implements those requirements. Therefore, this rule will apply to all or most of the local governments in the State other than New York City.

#### 2. COMPLIANCE REQUIREMENTS:

A small business or local government that chooses to utilize truss type, pre-engineered wood or timber construction in the construction of any new residential structure or in any addition to or rehabilitation of an existing residential structure to include with the building permit application a notification advising the local code enforcement official that truss type, pre-engineered wood or timber construction is being utilized.

Upon receipt of such notification, the local code enforcement official will be required to notify the chief of the fire district, fire department or fire company having jurisdiction over the structure that truss type, pre-engineered wood or timber construction is being utilized is being used. The chief of the fire district, fire department, or fire company must use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

A small business or local government that uses truss type, pre-engineered wood or timber construction in the construction of a residential structure or an addition to or rehabilitation of an existing residential structure will be required to place a sign or symbol of the type described in this rule on the exterior wall of the structure.

Before issuing a certificate of occupancy, the local code enforcement official will be required to determine that the required sign has been affixed to the structure.

A small business or local government that owns a residential structure that is subject to this rule will be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure. A small business or local government that owns such a residential structure will be required to replace the sign or symbol if the electric box to which the sign or symbol is affixed is changed or modified or if the sign or symbol becomes worn, faded, or otherwise less conspicuous.

Local governments will be required to enforce Executive Law § 382-b and this rule. Local governments, fire departments, and emergency dispatch personnel will be required to see that their personnel receive training on these new requirements.

DOS anticipates that local governments will be able to enforce the requirements added by Executive Law § 382-b, and implemented by this rule, with their current code enforcement personnel, and will not require any additional professional services.

#### 3. PROFESSIONAL SERVICES:

A small business or local government that constructs a new residential structure or adds to or rehabilitates an existing residential structure will typically find it to be necessary or desirable to use the services of a design professional to design a new residential building or an addition to or rehabilitation of an existing residential structure. The new requirements added by Executive Law § 382-b, and implemented by this rule, should not increase the level of professional services required.

#### 4. COMPLIANCE COSTS:

The initial costs of complying with this rule for small business or local government that uses truss type, pre-engineered wood or timber construction in the construction of a residential structure or an addition to or rehabilitation of an existing residential structure will include (1) any increase in the fees currently charged by the local code enforcement officials for processing permit applications, issuing permits, conducting inspections, and issuing permits to cover the additional costs associated with processing the form notifying the official that truss-type, pre-engineered wood or timber construction is to be used and/or for inspecting the structure to confirm that the required sign or symbol has been affixed to the exterior of the structure and (2) the cost of obtaining any affixing the required sign or symbol. Fees charged by local code enforcement officials are fixed by local governments, and not by this rule; the Department of State anticipates that for the most part, any fee increase imposed by local governments by reason of new section 382-b (and this rule) will be modest. The Department of State estimates that the cost of purchasing and affixing the sign or symbol required by this rule will be \$20 to \$30.

The initial costs of compliance described in the preceding paragraph are not likely to vary for small businesses or local governments of different types and of differing sizes.

The annual or ongoing costs to building owners for continuing compliance with this rule for a small business or local government that used truss type, pre-engineered wood or timber construction in the construction of a new residential structure or the addition to or rehabilitation of an existing residential structure will include the cost of replacing the sign or symbol required by this rule when the electric box to which the sign or symbol is affixed is changed or modified or when the sign or symbol becomes worn, faded, or otherwise less conspicuous. The Department of State estimates that the cost of purchasing and affixing a replacement sign or symbol required will be \$20 to \$30. A small business or local government that owns such a residential structure will also be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to fire fighters or other first responders responding to a fire or other emergency at the residential structure. The Department of State anticipates that this requirement will not significantly increase the cost of normal property maintenance.

The annual/ongoing costs described in the preceding paragraph are not likely to for small businesses or local governments of different types and of differing sizes.

The initial costs to be incurred by local governments will include the cost of training their code enforcement personnel on the requirements of this rule. However, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for a local government will include the costs associated with fulfilling the notification, warning, and consultation obligations established by Executive Law § 382-b. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement, fire depart-

ment, and emergency dispatch personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

Any variation in local governments' costs of complying with this rule is likely to be attributable to the number of residential structures within the local government that utilize truss type, pre-engineered wood or timber construction and not to the type and/or size of the local government.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

The Department of State anticipates that local governments will be able to provide training to their code enforcement personnel through the already required annual in-service training; that local governments will be able to this rule with their existing code enforcement personnel; and that local governments will be able to recoup any additional code enforcement expenses through fees they are authorized to impose by existing law.

#### 6. MINIMIZING ADVERSE IMPACT:

This rule was designed to minimize any adverse impact on small businesses and local governments by (1) implementing only those requirements that are specified in the underlying statute (Executive Law § 382-b) and (2) prescribing a simple notification form and permitting local governments to prescribe their own notification forms if they wish to do so.

Approaches such as establishing differing compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments and/or providing exemptions from coverage by the rule, or by any part thereof, for small businesses and local governments were not considered because doing so (1) is not authorized by Executive Law § 382-b and (2) would endanger the public safety and general welfare.

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

The Department of State gave small business and local governments an opportunity to participate in this rule making by posting a notice regarding this rule on the Department of State's website and by publishing a notice regarding this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

#### 8. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES:

This rule will neither establish or modify a violation nor establish or modify penalties associated with a violation. Therefore, for the purposes of Chapter 524 of the Laws of 2011 and subdivision 1-a of section 202-b of the State Administrative Procedure Act, this rule is not required to 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.

#### *Rural Area Flexibility Analysis*

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

This rule implements new Executive Law § 382-b, as added by Chapter 353 of the Laws of 2014, relating to the use of truss-type, pre-engineered wood and timber construction in the construction of new residential structures and in the addition to or rehabilitation of existing residential structures. Executive Law § 382-b and this rule apply in all parts of the State except cities having a population greater than 1,000,000 persons. Therefore, this rule will apply in all rural areas of the State.

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

This rule will require residential property owners wishing to utilize truss type, pre-engineered wood or timber construction in the construction of any new residential structure or in any addition to or rehabilitation of an existing residential structure to include with the building permit application a notification advising the local code enforcement official that truss type, pre-engineered wood or timber construction is being utilized.

Upon receipt of such notification, the local code enforcement official will be required to notify the chief of the fire district, fire department or fire company having jurisdiction over the structure that truss type, pre-engineered wood or timber construction is being utilized is being used. The chief of the fire district, fire department, or fire company must use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting

fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The owner of the structure will be required to place a sign or symbol of the type described in this rule on the exterior wall of the structure. Property owners will be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to fire fighters or other first responders responding to a fire or other emergency at the residential structure. Property owners will be required to replace the sign or symbol if the electric box to which the sign or symbol is affixed is changed or modified or if the sign or symbol becomes worn, faded, or otherwise less conspicuous.

Local governments will be required to enforce Executive Law § 382-b and this rule. Local governments, fire departments, and emergency dispatch personnel will be required to see that their personnel receive training on these new requirements.

The Department of State anticipates that local governments will be able to enforce the requirements added by Executive Law § 382-b, and implemented by this rule, with their current code enforcement personnel, and will not require any additional professional services.

Building owners will typically find it to be necessary or desirable to use the services of a design professional to design a new residential building or an addition to or rehabilitation of an existing residential structure. The requirements added by Executive Law § 382-b, and implemented by this rule, should not increase the level of professional services required.

#### 3. COSTS.

The initial costs of complying with this rule for the owner of a residential structure utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure will include (1) any increase in the fees currently charged by the local code enforcement officials for processing permit applications, issuing permits, conducting inspections, and issuing permits to cover the additional costs associated with processing the form notifying the official that truss-type, pre-engineered wood or timber construction is to be used and/or for inspecting the structure to confirm that the required sign or symbol has been affixed to the exterior of the structure and (2) the cost of obtaining any affixing the required sign or symbol. Fees charged by local code enforcement officials are fixed by local governments, and not by this rule; the Department of State anticipates that for the most part, any fee increase imposed by local governments by reason of Executive Law § 382-b (and this rule) will be modest. The Department of State estimates that the cost of purchasing and affixing the sign or symbol required by this rule will be \$20 to \$30. Such costs are not likely to vary for different types of public and private entities in rural areas.

The annual or ongoing costs to building owners for continuing compliance with this rule will include the cost of replacing the sign or symbol required by this rule when the electric box to which the sign or symbol is affixed is changed or modified or when the sign or symbol becomes worn, faded, or otherwise less conspicuous. The Department of State estimates that the cost of purchasing and affixing a replacement sign or symbol required will be \$20 to \$30. Property owners will also be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to fire fighters or other first responders responding to a fire or other emergency at the residential structure. The Department of State anticipates that this requirement will not significantly increase the cost of normal property maintenance. The annual / ongoing costs described in this paragraph are not likely to for different types of public and private entities in rural areas.

The initial costs to be incurred by local governments will include the cost of training their code enforcement personnel on the requirements of this rule. However, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for a local government will include the costs associated with fulfilling the notification, warning, and consultation obligations established by Executive Law § 382-b. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement, fire department, and emergency dispatch personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

#### 4. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all areas of the State, including rural areas, by (1) implementing only those requirements that are specified in the underlying statute (Executive Law § 382-b)

and (2) prescribing a simple notification form and permitting local governments to prescribe their own notification forms if they wish to do so.

Establishing different compliance requirements for public and private sector interests in rural areas and/or providing exemptions from coverage by the rule for public and private sector interests in rural areas was not considered because doing so (1) is not authorized by the statute and (2) would endanger the public safety and general welfare.

#### 5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of this rule by means of notices posted on the Department's website and published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

#### **Job Impact Statement**

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends adds a new Part 1265 (entitled "Residential Structures with Truss Type Construction, Pre-Engineered Wood Construction or Timber Construction") to Title 19 of the NYCRR. Part 1265 implements new section 382-b of the Executive Law, as added by Chapter 353 of the Laws of 2014. Under section 382-b, and this rule, any person who uses truss-type, pre-engineered wood or timber construction in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure will be required to notify the local code enforcement official of that fact and to place a sign or symbol on the exterior wall of the structure intended to notify firefighters and other first responders that truss-type, pre-engineered wood or timber construction has been used in the structure. This rule prescribes (1) the form to be used by the property owner or property owner's representative to designate a residential structure as truss type, pre-engineered wood or timber construction and (2) the sign or symbol to be affixed to the exterior of a residential building that utilizes truss type, pre-engineered wood and/or timber construction.

The Department of State has concluded that although provisions of this rule will impose certain new obligations on regulated parties, the cost of complying with these new obligations will be minimal. For example, Part 1265 requires that each new residential structure and each addition to or rehabilitation of an existing residential structure that utilizes truss type construction, pre-engineered wood construction and/or timber construction be identified by signs or symbols in accordance with the provisions of this Part before receiving a certificate of occupancy or a certificate of compliance. The Department of State estimates that the cost of obtaining and posting a sign or symbol required by this rule will be \$20 to \$30. Therefore, the Department of State anticipates that the impact of this rule on the cost of any new construction, addition or rehabilitation project will be negligible.

New section 382-b of the Executive Law also requires, and this rule also provides, that local governments must enforce these new requirements, and that local governments, fire departments, and emergency dispatch personnel must consult with each other in developing means to warn firefighters and other first responders responding to a fire in a residential structure that truss-type construction, pre-engineered wood construction and/or timber construction has been utilized in the structure. The Department of State anticipates that, for the most part, these tasks can be accomplished by existing personnel, at little or no additional cost to local governments, fire departments or emergency dispatchers. Therefore, the Department of State anticipates that the impact of this rule on the costs of obtaining building permits, conducting construction inspections, issuing certificates of occupancy, and performing other code enforcement activities will be negligible.

Therefore, this rule should have no substantial adverse impact on the cost of obtaining a building permit, constructing a new residential structure, adding to or rehabilitating an existing residential structure, or obtaining a certificate of occupancy or a certificate of compliance and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to constructing a new residential structure or adding to or rehabilitating an existing residential structure utilizing truss type construction, pre-engineered wood construction and/or timber construction.

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

This rule implements Executive Law § 382-b. A rule implementing Executive Law § 382-b was previously adopted as an emergency rule by Notice of Emergency Adoption and Proposed Rule Making filed on December

31, 2014. That rule (the "Initial Rule") became effective on December 31, 2014.

The Initial Rule was re-adopted, without change, as an emergency measure by Notice of Emergency Adoption filed on March 26, 2015. The emergency re-adoption of the Initial Rule will expire on May 24, 2015.

The public comment period for the proposal to adopt the Initial Rule as a permanent measure has expired. The Department of State and the State Fire Prevention and Building Code Council (Code Council) have determined that several non-substantial changes should be made to the Initial Rule. The Code Council voted to adopt the Initial Rule, with those non-substantial changes, as a permanent measure. A Notice of Adoption for that permanent rule has been, or soon will be, filed. However, that Notice of Adoption will not be published in the State Register until June 10, 2015, which is after the expiration of the currently effective emergency re-adoption of the Initial Rule.

This Notice of Emergency Adoption adopts, as an emergency measure, the Initial Rule with the non-substantial changes referred to above. This emergency adoption is necessary to assure that a rule implementing Executive Law § 382-b remains in effect from May 25, 2015 through and including June 9, 2015.

It appears that this is not a re-adoption of the Initial Rule because the rule adopted by this Notice of Emergency Adoption is the Initial Rule with the non-substantial changes referred to above. If this had been a re-adoption of the Initial Rule, without change, an Assessment of Public Comment would have been required. To satisfy the spirit of that requirement, the Assessment of Public Comment form the Notice of Adoption of this rule as a permanent rule is set forth below:

#### Assessment

The Notice of Emergency Adoption and Proposed Rule Making was published in the January 14, 2015 State Register. A public hearing was held on March 2, 2015. The Department of State (DOS) received the comments described below.

Summary and Analysis of Issues Raised and Significant Alternatives Suggested by Comments, and Reasons why any Significant Alternatives were not incorporated into the Rule

COMMENT 1: One commenter quoted the following passage from the Senate Sponsor's revised Memorandum in Support of the Senate version of the bill:

"The phrase 'truss type, pre-engineered wood or timber construction' means either conventional wood trusses built up from solid sawn material, usually 2X pieces, or heavy timber trusses (e.g. bowstring truss) built up from large-section pieces meeting the dimensional requirements of heavy timber as defined by the New York State Fire Prevention and Building Code."

The commenter stated that the Senate Sponsor's revised Memorandum in Support "clearly indicates that the language of the bill was intended to apply to pre-engineered wood trusses, whether constructed from lumber or timber" and that "(t)he interpretation reflected in the proposed rule is technically flawed by its application to far more pre-engineered wood products than prescribed by the legislation." The commenter also stated that "(m)ore importantly, the sweeping application of the interpretation represents a significant and unnecessary cost to citizens of New York. Nearly every residential structure in New York is constructed of wood products including a likely combination of lumber, pre-engineered trusses, I-joists and wood structural panels. The expression 'truss type, pre-engineered wood or timber construction' taken in the context of the rule, would include all of those residential structures. Using the most recent available data from the U.S. Census Bureau, this would cost the citizens of New York slightly more than 1.6 million dollars (citation omitted)." The commenter also stated that "(t)he law is clearly intended to apply to pre-engineered trusses that have chord and/or web members comprised of lumber or timber"; that "the term 'truss' as used in law pertains to pre-engineered structural components that derive bending strength through the triangular orientation and connection of web and chord members. The structural mechanics associated with a truss are significantly different from those inherent to lumber joists/rafters and I-joists"; and that "'timber' is undefined in the building code. The current code has references to 'heavy timber' and such is defined by minimum sizes. The proposed rule also refers to 'timber.' In that no definition of timber exists in the State's current code, policymakers must rely on the clarification set forth in the revised sponsor's memo which is specific as to what is to be regarded as 'timber' for purposes of this new law." The commenter requested an amendment to the proposed rule "to set forth a definition of 'truss type, pre-engineered wood or timber construction' that comports with the sponsor's intent, as set forth in the revised Introducer's Memorandum in Support."

DOS RESPONSE TO COMMENT 1: DOS is bound by the language of

the new statute as adopted. The new statute (Executive Law § 382-b) expressly applies where “truss type, pre-engineered wood or timber construction” is used for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure.

Section 382-b is part of Article 18 of the Executive Law. Article 18 already includes a definition of the term “truss type construction.” See Executive Law § 372(19), which defines the term “truss type construction” as “a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own.”

DOS must presume that the Legislature intended the phrase “truss type” construction in new Section 382-b to have the meaning already ascribed to that phrase in Article 18. DOS must presume that the Legislature intended the references in Section 382-b to “pre-engineered wood” construction and “timber” construction would have meaning and would be given effect. Based on the language of Section 382-b, DOS must presume that the Legislature intended the statute, and the rule implementing the statute, to apply to a residential structure using any of the three types of construction mentioned in the statute: (1) truss-type construction, (2) pre-engineered wood construction, or (3) timber construction.<sup>1</sup>

DOS has determined that the rule should not be revised as suggested by Comment 1.

COMMENT 2: A commenter stated that in residential construction, many of the typical electric meters may not have a large enough area for a 6 inch diameter sticker, and that a typical meter box would accommodate a 3 inch sticker on the side and 4 inch sticker at one or more of the “corners” on the face. The commenter stated that regulated parties would be unable to comply with this rule, as written, without obstructing the electric meter. The commenter suggests that the rule be revised (1) to allow the use of a 3 inch reflective and red on black sticker on residential buildings, and (2) to prohibit the use of “combination” stickers and to require the use a separate sticker for each place (roof or floor) where one of the covered construction types is used (for example, require a building with truss-type roof construction and pre-engineered wood floor construction to have both a “VR” sticker and a “VF” sticker).

DOS RESPONSE TO COMMENT 2: The proposed rule already provides for placement of the required sticker in a location other than the electric box if placing the sticker on the box would obscure the meter.

DOS believes that permitting the use of smaller stickers (3 inch rather than 6 inch) may make the stickers less conspicuous to first responders, defeating a major purpose of new Section 382-b.

The use of a “combination” sticker to indicate that one of the construction methods has been used in both the floor and the roof has been permitted in commercial buildings since 2005 (see 19 NYCRR Part 1264, implementing Executive Law § 382-a, effective 12/29/2004) and has caused no issues known to DOS.

In addition, this rule requires the use of stickers of the same size and design required by Part 1264, assuring that the required stickers are already commercially available.

DOS has determined that the rule should not be revised as suggested by Comment 2.

COMMENT 3: A commenter expressed the concern that because most residential siding has a 4 inch reveal, there will not be a smooth area large enough to place a 6 inch sticker, making the 6 inch sticker more susceptible to damage and/or removal.

DOS RESPONSE TO COMMENT 3: As stated in the DOS response to Comment 2, smaller stickers will be less conspicuous to first responders, and permitting the use of small stickers will defeat a major purpose of new Section 382-b.

In addition, the rule as written provides flexibility regarding the placement of the sticker. DOS anticipates that local code enforcement officials will be able find an appropriate location for the required sticker.

DOS has determined that the rule should not be revised as suggested by Comment 3.

COMMENT 4: A commenter noted that the portion of the rule requiring that the local code enforcement official be given notice of the use of truss-type, pre-engineered wood or timber construction expressly applies in the case of a construction, addition or rehabilitation project that was commenced prior to January 1, 2015 but not completed prior to January 1, 2015, while the portion of the rule requiring the placement of the sticker on the building does not expressly mention projects that were commenced prior to January 1, 2015 but not completed prior to January 1, 2015. The commenter stated that it was the commenter’s opinion that the portion of the rule requiring the placement of the sticker should apply in the case of

projects that were commenced prior to January 1, 2015 but not completed prior to January 1, 2015, and the commenter suggested that the rule should be amended to make this intent more clear.

DOS RESPONSE TO COMMENT 4: DOS agrees with this comment. The intent of this rule was and is to have all provisions of the rule apply to all construction, addition or rehabilitation projects which utilize truss-type, pre-engineered wood or timber construction and which were commenced prior to January 1, 2015 but not completed prior to January 1, 2015.<sup>2</sup> DOS also agrees that this intent can be clarified by making revisions to the rule similar to those proposed by this commenter.

DOS has determined that the rule should be revised in response to Comment 4 by adding provisions to clarify the intent that all provisions of this rule apply in the case of a construction, addition or rehabilitation projects which utilizes truss-type, pre-engineered wood or timber construction and which was commenced prior to January 1, 2015 but not completed prior to January 1, 2015.

#### Description of Changes made in the Rule as a result of Comments

Section 1265.2 (Applicability) has been revised to clarify the intent that all requirements of Part 1265 shall apply to each construction, alteration or rehabilitation project utilizing truss type construction, pre-engineered wood construction or timber construction, provided that the project (1) was commenced on or after January 1, 2015 or (2) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

Section 1265.3 (Definitions) has been revised to designate each definition of a word or phrase as a separate subdivision. The definition of “new residential structure” (now designated as subdivision “(f)” in Section 1265.3) has been revised by adding a new sentence to clarify the intent that a residential structure shall be deemed to be a “new residential structure” if the original construction of such residential structure (1) was commenced on or after January 1, 2015 or (2) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

The originally proposed version of this rule included two sections numbered 1265.3. The second former Section 1265.3 (Notice to be given to authority having jurisdiction), former Section 1265.4 (Sign or symbol), former Section 1265.5 (Notification, consultation, and warning), former Section 1265.7 (Enforcement), and former Section 1265.7 (General Municipal Law section 205-b) have been re-numbered as Sections 1265.4, 1265.5, 1265.6, 1265.7, and 1265.8, respectively, to correct this error.

Subdivision (a) of former Section 1265.4 (re-numbered as Section 1265.5) has been revised to make its format more consistent with the format of subdivision (a) of former Section 1265.3 (re-numbered as Section 1265.4).

<sup>1</sup> DOS also notes that it was the Assembly version of the bill, and not the Senate version of the bill, that was passed by the Legislature and signed by the Governor. The Assembly Sponsor’s Memorandum in Support contains no provision addressing the meaning of the phrase “truss type, pre-engineered wood or timber construction.” In addition, the revised version of the Sponsor’s Memorandum in Support that contains the language quoted by the commenter was issued on June 16, 2014, the same day on which the Assembly passed the Assembly bill that ultimately became law. Therefore, the Senate Sponsor’s revised Memorandum in Support was not available for consideration by the Assembly. Most importantly, the provision in the Senate Sponsor’s revised Memorandum in Support was not incorporated into the bill that was passed by the Legislature and signed by the Governor.

<sup>2</sup> It is also intended that all provisions of this rule shall apply to all construction, addition or rehabilitation projects which utilize truss-type, pre-engineered wood or timber construction and which are commenced on or after January 1, 2015.

### NOTICE OF ADOPTION

#### Use of Truss Type Construction, Pre-Engineered Wood Construction or Timber Construction in Residential Structures

I.D. No. DOS-02-15-00004-A

Filing No. 412

Filing Date: 2015-05-22

Effective Date: 2015-06-10

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

**Action taken:** Addition of Part 1265 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 382-b

**Subject:** Use of truss type construction, pre-engineered wood construction or timber construction in residential structures.

**Purpose:** To implement the provisions of new section 382-b of the Executive Law, as added by chapter 353 of the Laws of 2014.

**Substance of final rule:** This rule adds a new Part 1265 (entitled "Residential Structures with Truss Type Construction, Pre-Engineered Wood Construction and/or Timber Construction") to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1265.1 (Introduction) states that Section 382-b of the Executive Law provides that any person utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure, shall, upon application for a building permit with the local government having jurisdiction, include on the permit application that truss type, pre-engineered wood or timber construction is being utilized, and that the property owner or the property owner's representative shall complete a form prescribed by the State Fire Prevention and Building Code Council (hereinafter referred to as the Code Council) designating the structure as truss type, pre-engineered wood or timber construction and file such form with the application for a building permit. Section 1265.1 also states that Section 382-b of the Executive Law further provides that as a condition of the final receipt of a certificate of occupancy or certificate of completion, a sign or symbol designed and approved by the Code Council shall be affixed to any electric box attached to the exterior of the structure, if such an electric box exists, and that Part 1265 prescribes (1) the form to be used by the property owner or property owner's representative to designate a residential structure as truss type, pre-engineered wood or timber construction and (2) the sign or symbol to be affixed to the exterior electric box, if any, of a residential building that utilizes truss type, pre-engineered wood and/or timber construction.

Section 1265.2 (Applicability) provides that Part 1265 applies to the construction of each new residential structure and to each addition to or rehabilitation of an existing residential structure, when:

(1) truss type construction, pre-engineered wood construction, and/or timber construction is utilized in such construction, addition or rehabilitation; and

(2) such construction, addition or rehabilitation (i) was commenced on or after January 1, 2015 or (ii) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

Section 1265.2 also provides that Part 1265 does not apply in any city having a population in excess of one million persons.

Section 1265.3 (Definitions) defines certain terms used in Part 1265, including pre-engineered wood construction, timber construction, and truss type construction, which are defined in Section 1265.3 as follows:

The term "pre-engineered wood construction" shall mean construction that uses, for any load-supporting purpose(s), girders, beams, or joists made using wood components (or wood-based components) that are bonded together with adhesives (including, but not limited to, prefabricated wood I-joists, structural glued laminated timbers, structural log members, structural composite lumber, and cross-laminated timber).

The term "timber construction" shall mean construction that uses, for any load-supporting purpose(s), solid or laminated wood having the minimum dimensions required for structures built using type IV construction (HT) in accordance section 602.4 of the BCNYS.

The term "truss type construction" shall mean construction that uses, for any load-supporting purpose(s), a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own. Truss type construction shall not include (1) individual wind or seismic bracing components which form triangles when diagonally connected to the main structural system or (2) structural components that utilize solid plate web members.

Section 1265.3 also defines the terms addition, authority having jurisdiction, BCNYS, electric box, existing residential structure, new residential structure, RCNYS, rehabilitation, and residential structure.

Section 1265.4 (Notice to be given to authority having jurisdiction) provides that when truss type construction, pre-engineered wood construction, and/or timber construction is to be utilized in the construction of a new residential structure or in an addition to or rehabilitation of an existing residential structure, the owner of such structure, or the owner's duly authorized representative, shall notify the authority having jurisdiction of that fact. Such notice shall be in writing and shall be provided to the authority having jurisdiction with the application for a building permit. In the case of a construction, addition or rehabilitation project commenced prior to January 1, 2015 and not completed prior to January 1, 2015, such notice shall be given as soon as practicable after January 1, 2015 and in any event prior to the issuance of the certificate of occupancy or certificate of compliance for such project.

Section 1265.4 also prescribes the form to be used to give the required notice. Section 1265.4 authorizes the authority having jurisdiction to prescribe its own form to be used to give the notice, provided that such form requests at least same information as the form prescribed in Section 1265.4.

Section 1265.5 (Sign or symbol) provides that when truss type construction, pre-engineered wood construction, and/or timber construction is utilized in the construction of a new residential structure or in an addition to or rehabilitation of an existing residential structure, such residential structure shall be identified by a sign or symbol in accordance with the provisions of Part 1265.

Section 1265.5 also provides that the sign or symbol shall be affixed to the electric box attached to the exterior of the residential structure; provided, however, that (1) if affixing the sign or symbol to the electric box would obscure any meter on the electric box, or if the utility providing electric service to the residential structure does not allow the sign or symbol to be affixed to the electric box, the sign or symbol shall be affixed to the exterior wall of the residential structure at a point immediately adjacent to the electric box; and (2) if no electric box is attached to the exterior of the residential structure or if, in the opinion of the authority having jurisdiction, the electric box attached to the exterior of the building is not located in a place likely to be seen by firefighters or other first responders responding to a fire or other emergency at the residential structure, the sign or symbol shall be affixed to the exterior of the residential structure in a location approved by the authority having jurisdiction as a location likely to be seen by firefighters or other first responders responding to a fire or other emergency at the residential structure.

Section 1265.5 also provides that the sign or symbol shall be affixed prior to the issuance of a certificate of occupancy or a certificate of compliance, and that the authority having jurisdiction shall not issue a certificate of occupancy or certificate of compliance until the sign or symbol shall have been affixed.

Section 1265.5 also provides that the property owner shall be responsible for maintaining the sign or symbol and shall promptly replace any such sign or symbol that is affixed to an electric box when any change or modification is made to such electric box.

Section 1265.5 also provides that the property owner shall promptly replace the sign or symbol if such sign or symbol is removed or becomes damaged, faded, worn or otherwise less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure.

Section 1265.5 also provides that the property owner shall keep the area in the vicinity of the sign or symbol clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol to be less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure.

Section 1265.5 also provides that the sign or symbol indicating the utilization of truss type construction, pre-engineered wood construction and/or timber construction:

(1) shall consist of a circle six inches (152.4 mm) in diameter, with a stroke width of 1/2 inch (12.7 mm). The background of the sign or symbol shall be reflective white in color, and the circle and contents shall be reflective red in color, conforming to Pantone matching system (PMS) #187;

(2) shall be of sturdy, non-fading, weather-resistant material; provided, however, that a sign or symbol applied directly to a door or sidelight may be a permanent non-fading sticker or decal;

(3) shall contain an alphabetic construction type designation to indicate the construction type of the residential structure, as follows:

(i) if the residential structure is subject to the provisions of the RCNYS, the construction type designation shall be "V";

(ii) if the residential structure is subject to the provisions of the BCNYS, the construction type designation shall be "I", "II", "III", "IV" or "V" to indicate the construction classification of the structure under section 602 of the BCNYS;

(4) shall contain an alphabetic location designation to indicate the location(s) containing truss type construction, pre-engineered wood construction and/or timber construction structural components, as follows:

(i) "F" shall mean floor framing, including girders and beams;

(ii) "R" shall mean roof framing; and

(iii) "FR" shall mean floor framing and roof framing.

The construction type designation shall be placed at the 12 o'clock position of the sign or symbol, over the location designation, which shall be placed at the six o'clock position of the sign or symbol.

Section 1265.6 (Notification, consultation, and warning) provides that upon receipt of a form indicating that truss type, pre-engineered wood or timber construction is to be used in a residential structure, the authority having jurisdiction shall notify the chief of the fire district, fire department or fire company having jurisdiction over the structure of that fact.

Section 1265.6 also provides that the chief of the fire district, fire

department, or fire company having jurisdiction over the residential structure to be erected, added to, or modified, or his or her designee shall use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

Section 1265.6 also provides that the local building department or local code enforcement official for the authority having jurisdiction shall consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

Section 1265.7 (Enforcement) provides that subdivision 4 of section 382-b of the Executive Law directs local governments to provide for enforcement of section 382-b of the Executive Law, and that enforcement of section 382-b of the Executive Law shall include, but shall not be limited to, enforcement of the provisions of this Part.

Section 1265.8 (General Municipal Law section 205-b) provides that nothing contained in Part 1265 shall in any way affect or diminish section 205-b of the General Municipal Law.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 1265.2, 1265.3, 1265.3(f), 1265.4, 1265.5, 1265.6, 1265.7 and 1265.8.

**Text of rule and any required statements and analyses may be obtained from:** Mark Blanke, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

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

Changes made to the rule text since the publication of the Notice of Emergency Adoption and Proposed Rule Making are described below. None of the changes affects the issues addressed in the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement and, therefore, a Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required.

Section 1265.2 (Applicability) has been revised to clarify the intent that all requirements of Part 1265 shall apply to each construction, alteration or rehabilitation project utilizing truss type construction, pre-engineered wood construction or timber construction, provided that the project (1) was commenced on or after January 1, 2015 or (2) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

Section 1265.3 (Definitions) has been revised to designate each definition of a word or phrase as a separate subdivision. The definition of "new residential structure" (now designated as subdivision "(f)" in Section 1265.3) has been revised by adding a new sentence to clarify the intent that a residential structure shall be deemed to be a "new residential structure" if the original construction of such residential structure (1) was commenced on or after January 1, 2015 or (2) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

The originally proposed version of this rule included two sections numbered 1265.3. The second former Section 1265.3 (Notice to be given to authority having jurisdiction), former Section 1265.4 (Sign or symbol), former Section 1265.5 (Notification, consultation, and warning), former Section 1265.7 (Enforcement), and former Section 1265.7 (General Municipal Law section 205-b) have been re-numbered as Sections 1265.4, 1265.5, 1265.6, 1265.7, and 1265.8, respectively, to correct this error.

Subdivision (a) of former Section 1265.4 (re-numbered as Section 1265.5) has been revised to make its format more consistent with the format of subdivision (a) of former Section 1265.3 (re-numbered as Section 1265.4).

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

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

The Notice of Emergency Adoption and Proposed Rule Making was published in the January 14, 2015 State Register. A public hearing was held on March 2, 2015. The Department of State (DOS) received the comments described below.

Summary and Analysis of Issues Raised and Significant Alternatives Suggested by Comments, and Reasons why any Significant Alternatives were not incorporated into the Rule

COMMENT 1: One commenter quoted the following passage from the Senate Sponsor's revised Memorandum in Support of the Senate version of the bill:

"The phrase 'truss type, pre-engineered wood or timber construction' means either conventional wood trusses built up from solid sawn material, usually 2X pieces, or heavy timber trusses (e.g. bowstring truss) built up

from large-section pieces meeting the dimensional requirements of heavy timber as defined by the New York State Fire Prevention and Building Code."

The commenter stated that the Senate Sponsor's revised Memorandum in Support "clearly indicates that the language of the bill was intended to apply to pre-engineered wood trusses, whether constructed from lumber or timber" and that "(t)he interpretation reflected in the proposed rule is technically flawed by its application to far more pre-engineered wood products than prescribed by the legislation." The commenter also stated that "(m)ore importantly, the sweeping application of the interpretation represents a significant and unnecessary cost to citizens of New York. Nearly every residential structure in New York is constructed of wood products including a likely combination of lumber, pre-engineered trusses, I-joists and wood structural panels. The expression 'truss type, pre-engineered wood or timber construction' taken in the context of the rule, would include all of those residential structures. Using the most recent available data from the U.S. Census Bureau, this would cost the citizens of New York slightly more than 1.6 million dollars (citation omitted)." The commenter also stated that "(t)he law is clearly intended to apply to pre-engineered trusses that have chord and/or web members comprised of lumber or timber"; that "the term 'truss' as used in law pertains to pre-engineered structural components that derive bending strength through the triangular orientation and connection of web and chord members. The structural mechanics associated with a truss are significantly different from those inherent to lumber joists/rafters and I-joists"; and that "'timber' is undefined in the building code. The current code has references to 'heavy timber' and such is defined by minimum sizes. The proposed rule also refers to 'timber.' In that no definition of timber exists in the State's current code, policymakers must rely on the clarification set forth in the revised sponsor's memo which is specific as to what is to be regarded as 'timber' for purposes of this new law." The commenter requested an amendment to the proposed rule "to set forth a definition of 'truss type, pre-engineered wood or timber construction' that comports with the sponsor's intent, as set forth in the revised Introducer's Memorandum in Support."

DOS RESPONSE TO COMMENT 1: DOS is bound by the language of the new statute as adopted. The new statute (Executive Law § 382-b) expressly applies where "truss type, pre-engineered wood or timber construction" is used for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure.

Section 382-b is part of Article 18 of the Executive Law. Article 18 already includes a definition of the term "truss type construction." See Executive Law § 372(19), which defines the term "truss type construction" as "a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own."

DOS must presume that the Legislature intended the phrase "truss type" construction in new Section 382-b to have the meaning already ascribed to that phrase in Article 18. DOS must presume that the Legislature intended the references in Section 382-b to "pre-engineered wood" construction and "timber" construction would have meaning and would be given effect. Based on the language of Section 382-b, DOS must presume that the Legislature intended the statute, and the rule implementing the statute, to apply to a residential structure using any of the three types of construction mentioned in the statute: (1) truss-type construction, (2) pre-engineered wood construction, or (3) timber construction.<sup>1</sup>

DOS has determined that the rule should not be revised as suggested by Comment 1.

COMMENT 2: A commenter stated that in residential construction, many of the typical electric meters may not have a large enough area for a 6 inch diameter sticker, and that a typical meter box would accommodate a 3 inch sticker on the side and 4 inch sticker at one or more of the "corners" on the face. The commenter stated that regulated parties would be unable to comply with this rule, as written, without obstructing the electric meter. The commenter suggests that the rule be revised (1) to allow the use of a 3 inch reflective and red on black sticker on residential buildings, and (2) to prohibit the use of "combination" stickers and to require the use a separate sticker for each place (roof or floor) where one of the covered construction types is used (for example, require a building with truss-type roof construction and pre-engineered wood floor construction to have both a "VR" sticker and a "VF" sticker).

DOS RESPONSE TO COMMENT 2: The proposed rule already provides for placement of the required sticker in a location other than the electric box if placing the sticker on the box would obscure the meter.

DOS believes that permitting the use of smaller stickers (3 inch rather than 6 inch) may make the stickers less conspicuous to first responders, defeating a major purpose of new Section 382-b.

The use of a "combination" sticker to indicate that one of the construc-

tion methods has been used in both the floor and the roof has been permitted in commercial buildings since 2005 (see 19 NYCRR Part 1264, implementing Executive Law § 382-a, effective 12/29/2004) and has caused no issues known to DOS.

In addition, this rule requires the use of stickers of the same size and design required by Part 1264, assuring that the required stickers are already commercially available.

DOS has determined that the rule should not be revised as suggested by Comment 2.

COMMENT 3: A commenter expressed the concern that because most residential siding has a 4 inch reveal, there will not be a smooth area large enough to place a 6 inch sticker, making the 6 inch sticker more susceptible to damage and/or removal.

DOS RESPONSE TO COMMENT 3: As stated in the DOS response to Comment 2, smaller stickers will be less conspicuous to first responders, and permitting the use of small stickers will defeat a major purpose of new Section 382-b.

In addition, the rule as written provides flexibility regarding the placement of the sticker. DOS anticipates that local code enforcement officials will be able find an appropriate location for the required sticker.

DOS has determined that the rule should not be revised as suggested by Comment 3.

COMMENT 4: A commenter noted that the portion of the rule requiring that the local code enforcement official be given notice of the use of truss-type, pre-engineered wood or timber construction expressly applies in the case of a construction, addition or rehabilitation project that was commenced prior to January 1, 2015 but not completed prior to January 1, 2015, while the portion of the rule requiring the placement of the sticker on the building does not expressly mention projects that were commenced prior to January 1, 2015 but not completed prior to January 1, 2015. The commenter stated that it was the commenter's opinion that the portion of the rule requiring the placement of the sticker should apply in the case of projects that were commenced prior to January 1, 2015 but not completed prior to January 1, 2015, and the commenter suggested that the rule should be amended to make this intent more clear.

DOS RESPONSE TO COMMENT 4: DOS agrees with this comment. The intent of this rule was and is to have all provisions of the rule apply to all construction, addition or rehabilitation projects which utilize truss-type, pre-engineered wood or timber construction and which were commenced prior to January 1, 2015 but not completed prior to January 1, 2015.<sup>2</sup> DOS also agrees that this intent can be clarified by making revisions to the rule similar to those proposed by this commenter.

DOS has determined that the rule should be revised in response to Comment 4 by adding provisions to clarify the intent that all provisions of this rule apply in the case of a construction, addition or rehabilitation projects which utilizes truss-type, pre-engineered wood or timber construction and which was commenced prior to January 1, 2015 but not completed prior to January 1, 2015.

Description of Changes made in the Rule as a result of Comments

Section 1265.2 (Applicability) has been revised to clarify the intent that all requirements of Part 1265 shall apply to each construction, alteration or rehabilitation project utilizing truss type construction, pre-engineered wood construction or timber construction, provided that the project (1) was commenced on or after January 1, 2015 or (2) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

Section 1265.3 (Definitions) has been revised to designate each definition of a word or phrase as a separate subdivision. The definition of "new residential structure" (now designated as subdivision "(f)" in Section 1265.3) has been revised by adding a new sentence to clarify the intent that a residential structure shall be deemed to be a "new residential structure" if the original construction of such residential structure (1) was commenced on or after January 1, 2015 or (2) was commenced prior to January 1, 2015 and was not completed prior to January 1, 2015.

The originally proposed version of this rule included two sections numbered 1265.3. The second former Section 1265.3 (Notice to be given to authority having jurisdiction), former Section 1265.4 (Sign or symbol), former Section 1265.5 (Notification, consultation, and warning), former Section 1265.7 (Enforcement), and former Section 1265.7 (General Municipal Law section 205-b) have been re-numbered as Sections 1265.4, 1265.5, 1265.6, 1265.7, and 1265.8, respectively, to correct this error.

Subdivision (a) of former Section 1265.4 (re-numbered as Section 1265.5) has been revised to make its format more consistent with the format of subdivision (a) of former Section 1265.3 (re-numbered as Section 1265.4).

<sup>1</sup> DOS also notes that it was the Assembly version of the bill, and not the Senate version of the bill, that was passed by the Legislature and signed by the Governor. The Assembly Sponsor's Memorandum in Support contains no provision addressing the meaning of the phrase "truss type,

pre-engineered wood or timber construction." In addition, the revised version of the Sponsor's Memorandum in Support that contains the language quoted by the commenter was issued on June 16, 2014, the same day on which the Assembly passed the Assembly bill that ultimately became law. Therefore, the Senate Sponsor's revised Memorandum in Support was not available for consideration by the Assembly. Most importantly, the provision in the Senate Sponsor's revised Memorandum in Support was not incorporated into the bill that was passed by the Legislature and signed by the Governor.

<sup>2</sup> It is also intended that all provisions of this rule shall apply to all construction, addition or rehabilitation projects which utilize truss-type, pre-engineered wood or timber construction and which are commenced on or after January 1, 2015.

---



---

## Office of Temporary and Disability Assistance

---



---

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

#### Emergency Shelter Allowances

**I.D. No.** TDA-23-15-00004-P

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

**Proposed Action:** Amendment of section 352.3(k) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 131(1); L. 2008 and 2009, ch. 53; L. 2010, chs. 58 and 110; L. 2011, 2012, 2013, 2014 and 2015, ch. 53

**Subject:** Emergency Shelter Allowances.

**Purpose:** Update provisions for Emergency Shelter Allowances for persons with AIDS or HIV-related illness to reflect statutory authority.

**Text of proposed rule:** Paragraph (1) of subdivision (k) of § 352.3 is amended to read as follows:

(1) An emergency shelter allowance must be provided, upon request, to an eligible household composed of an applicant for or recipient of public assistance, who has been medically diagnosed as having AIDS or HIV-related illness as defined from time-to-time by the AIDS Institute of the State Department of Health, and any household members residing with such person. Such household must be homeless or faced with homelessness and have no viable and less costly alternative housing available. The social and medical needs of the household members must be considered in making a determination concerning availability of alternative housing.

(a) *An applicant for or recipient of public assistance medically diagnosed as having AIDS or HIV-related illness is considered to be the "first person" in the household, and qualifies the household for an emergency shelter allowance. The first person may or may not be in receipt of Supplemental Security Income (SSI).*

(b) *The income and needs of the first person medically diagnosed as having AIDS or HIV-related illness and any additional household member that is not in receipt of SSI are used in calculating an emergency shelter allowance, as described in paragraph (3) of this subdivision.*

(c) *The SSI income and needs of any household member not considered the first person medically diagnosed as having AIDS or HIV-related illness are not used in calculating an emergency shelter allowance.*

Paragraph (2) of subdivision (k) of § 352.3 is amended to read as follows:

(2) An emergency shelter allowance must not exceed \$480 for the first person in the household and \$330 for each additional household member, and in no event be greater than the household's actual monthly rent due. [A person with AIDS or HIV-related illness is considered to be the first person in the household.] Except for cases specified in paragraph (3) of this subdivision, the emergency shelter allowance is considered to be the household's public assistance shelter allowance for public assistance budgeting purposes.

Subparagraph (iv) of paragraph (3) of subdivision (k) of § 352.3 is amended to read as follows:

(iv) subtract the SSI [benefits] and other income of the SSI eligible [persons] person only when such person is included as the first person in the household, from the sum of the amount calculated in accordance with the provisions of subparagraph (ii) or (iii) of this paragraph, whichever is less, and the incremental nonshelter public assistance standard of need of

the SSI eligible persons. The resulting amount, if greater than zero, is the household's emergency shelter allowance. This allowance is added to the public assistance grant determined in accordance with subparagraph (i) of this paragraph.

**Text of proposed rule and any required statements and analyses may be obtained from:** Richard P. Rhodes, Jr., Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, NY 12243, (518) 486-7503, email: Richard.rhodesjr@otda.ny.gov

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

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

#### **Regulatory Impact Statement**

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

§ 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

§ 34(3)(f) of the SSL requires the Commissioner of OTDA to establish regulations for the administration of public assistance and care within the State.

§ 131(1) of the SSL requires social services districts (SSDs), insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Chapter 53 of the Laws of 1988 implemented the original budget appropriation for an emergency shelter allowance (ESA) for those individuals who have been medically diagnosed as having acquired immune deficiency syndrome (AIDS) or a human immunodeficiency virus (HIV)-related illness. This law required that calculation of the ESA budget and resulting benefit include all of an individual's and family member's Supplemental Security Income (SSI) income.

Beginning with Chapter 53 of the Laws of 2008 and continuing with Chapter 53 of the Laws of 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015, the enacted appropriation language excluded any specific reference to the inclusion of SSI income in the budget methodology for the calculation of the ESA for individuals medically diagnosed with AIDS or HIV-related illness.

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

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations, and policies to adequately provide for those persons unable to provide for themselves so that, whenever possible, such persons could be restored to conditions of self-support and self-care. The current ESA for individuals with medically diagnosed AIDS or HIV-related illness is provided to prevent those households that have no viable option or less costly alternative housing available from becoming, or remaining, homeless.

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

The proposed regulatory amendments to 18 NYCRR § 352.3(k) are necessary due to the enactment of Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015. Prior to this change, language contained in enacted OTDA budgets required SSDs to consider the needs and income of all household members, including those receiving SSI income, when determining the household's eligibility for an ESA. Under current law, SSDs must disregard the SSI income and needs of any household member who is not the sole household member medically diagnosed with AIDS or HIV-related illness. The current law prevents SSI income from negatively impacting the household budget of an individual medically diagnosed with AIDS or HIV-related illness. In addition to aligning the State regulations with current State law, the proposed regulatory amendments would help ensure that SSDs, including New York City, are able to continue to provide the same level of housing for these individuals in need as they have in the past.

##### **4. Costs:**

The proposed regulatory amendments would have no fiscal impact. The proposed regulatory amendments are necessary to bring the State regulations into compliance with State appropriations language contained in Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015 and with policies and practices consistent with current State law.

##### **5. Local government mandates:**

The proposed regulatory amendments would not impose any additional programs, services, duties or responsibilities upon the SSDs. SSDs are already required to provide an ESA upon request to eligible households pursuant to Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015. OTDA updated the Welfare Management System so that the budgeting methodology is applied when updated budgets are generated. On February 4, 2009, OTDA issued Administrative Directive 09-ADM-03 (09-ADM-03) to the SSDs explaining the statutory changes and providing contact information in the event SSDs had any questions.

##### **6. Paperwork:**

There would be no additional forms required to support the proposed regulatory amendments.

##### **7. Duplication:**

The proposed regulatory amendments would not duplicate, overlap, or conflict with any existing State or federal laws. The proposed regulatory amendments are necessary in order to render the State regulations consistent with current State law.

##### **8. Alternatives:**

An alternative to the proposed regulatory amendments is to leave 18 NYCRR § 352.3(k) intact. However, this alternative is not a viable option because the proposed regulatory amendments are necessary in order to render the State regulations consistent with current State law.

##### **9. Federal standards:**

The proposed regulatory amendments would not conflict with federal standards for public assistance.

##### **10. Compliance schedule:**

Chapter 53 of the Laws of 2008 became effective April 1, 2008, and SSDs have been directed to provide retroactive benefits and eligibility determinations retroactive to that date pursuant to 09-ADM-03. Thus the SSDs are already in compliance with the provisions contained in the proposed regulatory amendments.

#### **Regulatory Flexibility Analysis**

##### **1. Effect of rule:**

The proposed regulatory amendments would minimally impact local governments, but not small businesses.

##### **2. Compliance requirements:**

The proposed regulatory amendments to 18 NYCRR § 352.3(k) are necessary due to the enactment of Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015. Prior to this change, language contained in enacted Office of Temporary and Disability Assistance (OTDA) budgets required social services districts (SSDs) to consider the needs and income of all household members, including those receiving Supplemental Security Income (SSI), when determining the household's eligibility for an emergency shelter allowance (ESA). Under current law, SSDs must disregard the SSI income and needs of any household member who is not the sole household member medically diagnosed with AIDS or HIV-related illness. The current law prevents SSI income from negatively impacting the household budget of an individual medically diagnosed with AIDS or HIV-related illness.

##### **3. Professional services:**

The proposed regulatory amendments would not require small businesses or local governments to hire additional professional services.

##### **4. Compliance costs:**

The proposed regulatory amendments would have no fiscal impact. The proposed regulatory amendments are necessary to bring the State regulations into compliance with State appropriations language contained in Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015 and with policies and practices consistent with current State law.

##### **5. Economic and technological feasibility:**

Small businesses and local governments in the State have the economic and technological abilities to comply with the proposed regulatory amendments.

##### **6. Minimizing adverse impact:**

The proposed regulatory amendments would not impose any additional programs, services, duties, or responsibilities upon the SSDs. SSDs are already required to provide an ESA upon request to eligible households pursuant to Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015. OTDA updated the Welfare Management System so that the budgeting methodology is applied when updated budgets are generated. On February 4, 2009, OTDA issued Administrative Directive 09-ADM-03 (09-ADM-03) to the SSDs explaining the statutory changes and providing contact information in the event SSDs had any questions.

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

When the draft of 09-ADM-03 was distributed to all SSDs explaining the changes enacted by Chapter 53 of the Laws of 2008, OTDA did not receive any objections from the SSDs. 09-ADM-03 was officially released on February 4, 2009.

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

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

The proposed regulatory amendments would minimally impact the 44 rural social services districts (SSDs) in the State because the proposed regulatory amendments reflect current budgeting practices. The use of emergency shelter allowances (ESAs) is currently a limited practice outside of New York City because rural SSDs utilize other funds to provide housing for persons medically diagnosed with acquired immune

deficiency syndrome (AIDS) or a human immunodeficiency virus (HIV)-related illness.

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

No additional recordkeeping would be required to support the proposed regulatory amendments.

3. Costs:

The proposed regulatory amendments would have no fiscal impact upon the rural SSDs. The proposed regulatory amendments are needed to bring the State regulations into compliance with State appropriation language contained in Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015 and with policies and practices consistent with current State law.

4. Minimizing adverse impact:

The proposed regulatory amendments would not impose any additional programs, services, duties, or responsibilities upon the rural SSDs. SSDs are already required to comply with the State appropriations language set forth in Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015. Furthermore, as noted above, the use of the ESA is currently a limited practice outside of New York City because rural SSDs utilize other funds to provide housing for persons medically diagnosed with AIDS or HIV-related illness.

5. Rural area participation:

When the draft of Administrative Directive 09-ADM-03 (09-ADM-03) was distributed to the 44 rural SSDs explaining the changes enacted by Chapter 53 of the Laws of 2008, the Office of Temporary and Disability Assistance did not receive any objections from the rural SSDs. 09-ADM-03 was officially released on February 4, 2009.

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

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in either the public or private sectors. The proposed regulatory amendments reflect the enactment of Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapters 53 of the Laws of 2011, 2012, 2013, 2014, and 2015, which impact the budgeting methodology used to determine eligibility for the emergency shelter allowance for persons medically diagnosed with acquired immune deficiency syndrome or a human immunodeficiency virus-related illness who are homeless or faced with homelessness.