

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

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Agriculture and Markets publishes a new notice of proposed rule making in the *NYS Register*.

Incorporate by Reference in 1 NYCRR of the 2015 Edition of National Institute of Standards and Technology (“NIST”) Handbook 133

I.D. No.	Proposed	Expiration Date
AAM-28-15-00003-P	July 15, 2015	July 14, 2016

Board of Commissioner of Pilots

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supplementary Fees—Hudson River

I.D. No. COP-31-16-00005-P

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

Proposed Action: Amendment of section 55.2 of Title 21 NYCRR.

Statutory authority: Navigation Law, section 87

Subject: Supplementary fees—Hudson River.

Purpose: Assess supplementary fees for pilotage on the Hudson River.

Text of proposed rule: Section 55.2. Supplementary fees—Hudson River

(a) Additional fees for intermediate cargo stops, fueling stops, stops to take water. If a vessel [shall] makes a cargo stop, a fueling stop, or a stop to take water at any intermediate port or place on the Hudson River, the *Hudson River* [p]Pilot shall be entitled to [an additional fee of \$75 for a stop of six hours or less; \$150 for a stop of more than six hours but not more than 12 hours; \$200 for a stop of more than 12 hours but not more than 24 hours; and \$300 for a stop of 24 hours] *a fee of 5 percent per hour of the Zone 2 Base Rate, up to a maximum charge of 35%.*

(b) *Launch fees.*

(1) *Zone 1 - Lower River - Yonkers to Hyde Park: Yonkers to Hyde Park: Rate \$2.99 per Pilotage Unit for the Yonkers Pilot Station, \$1.495 per Pilotage Unit (computed as 50 percent of the per unit Zone 1 launch fee) for Pilot Transport Fee at Yonkers Anchorage.*

(2) *Zone 2 - Upper River - Hyde Park through Albany or Troy: Rate \$2.99 per Pilotage Unit for the Yonkers Pilot Station, \$2.63 per Pilotage Unit for the Norrie Point Pilot Station, \$1.315 per Pilotage Unit (computed as 50 percent of the per unit Zone 2 launch fee) for Pilot Transport Fee at Hyde Park Anchorage.*

(3) *A minimum of 100 Units, maximum of 500 Units applies for all launch fees.*

[(b)] (c) Additional fee for pilot detained on board vessels due to conditions. When a pilot is detained on board a vessel due to ice conditions, such pilot shall be entitled to a fee of [\$300 for each 24 hours, or part thereof, the pilot is detained] *35 percent of the Zone 2 Base Rate for each 24 hours or part thereof during which he shall be so detained.* [If] *In the event prevailing ice conditions require two pilots on board a vessel, the fee shall be the regular pilotage fee plus 50 percent of the regular pilotage fee for the second pilot. In addition, when the Norrie Point Station is closed and the pilot boards at Yonkers, a Pilot Transport Fee of \$1.315 (computed as 50 percent of the per unit Zone 2 launch fee) per pilotage unit will apply, with a minimum of 100 pilotage units and a maximum of 500 pilotage units. When the Yonkers Station is closed, a Pilot Transport Fee of \$1.495 (computed as 50 percent of the per unit Zone 1 launch fee) per pilotage unit will apply, with a minimum of 100 pilotage units and a maximum of 500 pilotage units.*

[(c)] (d) Additional fee for docking and undocking. For docking and undocking, the following schedule of fees, in addition to any fee otherwise established, shall apply:

(1) without assistance of tugs or bow thruster, 25 percent of the [statutory rate for registered vessels] *Zone 2 base rate;*

(2) without assistance of tugs but with assistance of bow thruster, 15 percent of the [statutory rate for registered vessels] *Zone 2 base rate;*

(3) with the assistance of tug or tugs, 10 percent of the [statutory rate for registered vessels] *Zone 2 base rate.* (See section 54.2 of this Title).

[(d)] (e) Fee for shifting at Hudson River ports. When a pilot is required to shift a vessel from one berth to another berth within the same port, the fee shall be 20 percent of the [statutory rate for registered vessels] *Zone 2 base rate.*

(f) *Fee for anchoring. A Hudson River Pilot who anchors a vessel shall be entitled to a fee of 5 percent of the Zone 2 Base Rate.*

[(e)] (g) Delay in rendering services, dismissed without rendering services, detained on board, quarantined, standing by.

(1) In any case where rendering services is delayed for the convenience of the vessel, the pilot shall be entitled to [\$50 for each hour or part thereof, however, if the pilot's services are used within one hour, no charge will be incurred] *5 percent per hour of the Zone 2 Base Rate, up to a maximum charge of 35 percent. However, if the pilot's services are used within one hour, no charge will be incurred.*

(2) In any case where a pilot reporting to a vessel is dismissed without rendering services, the fee shall be [\$150] *15 percent of the Zone 2 Base Rate.*

(3) In any case where a pilot is detained on board a vessel awaiting a favorable tide, a berth, or an anchorage, *or is quarantined*, the fee shall be [\$50 an hour] *5 percent per hour of the Zone 2 Base Rate, up to a maximum charge of 35 percent for each 24 hour period.*

[(4) A pilot detained on board a vessel on account of quarantinable disease shall be entitled to a fee of \$50 an hour.]

[(5)] (4) When a pilot, for the convenience of a vessel for any reason, is ordered to stand by, the *pilot shall be entitled to a fee [shall be \$50 an hour for the time on board but the minimum fee shall be \$150] of 5 percent per hour of the Zone 2 Base Rate, up to a maximum charge of 15%.*

(5) *If the departure of a vessel is delayed less than six hours before its scheduled departure time, there shall be a charge of 5 percent per hour of the Zone 2 Base Rate until the time the vessel sails, up to a maximum charge of 35 percent.*

[(f)] (h) Vessels arriving without prior notice, late cancellation of arrival, arriving late at pilot station, late ordering of pilot.

(1) Vessels which arrive at the pilot station without prior notice will be charged a fee [of \$250] *equal to 25 percent of the Zone 2 Base Rate.*

(2) If the arrival/*departure* of a vessel is cancelled less than six hours before its scheduled arrival/*departure* time, there shall be a charge of [\$150.] *15 percent of the Zone 2 Base Rate. If the arrival/*departure* of a vessel is cancelled less than two hours before its scheduled arrival/*departure* time, there shall be a charge of 35 percent of the Zone 2 Base Rate.*

(3) If a vessel arrives at the pilot station more than one hour later than its scheduled arrival time and the *pilot boat on station* or the pilot office has not been notified of the delayed arrival at least three hours before the scheduled arrival time, there shall be a charge of [\$50 for each hour or part thereof. The maximum charge shall be \$300] *5 percent per hour of the Zone 2 Base Rate, up to a maximum charge of 35%.*

(4) If an order to pilot a vessel outbound is received less than three hours prior to sailing time, *or an order to pilot a vessel inbound is received less than six hours prior to arrival time*, there shall be a charge of [\$100.] *10 percent of the Zone 2 Base Rate.*

All charges covered by this section shall be in addition to other fees presented by the Navigation Law and these regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Frank W. Keane, Board of Commissioner of Pilots of the State of New York, 17 Battery Place, Suite 1230, New York, N.Y. 10004, (212) 425-5027, email: FWKeane@bdcommpilotsny.org

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

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

Regulatory Impact Statement, 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.

Education Department

ERRATUM

A Notice of Emergency Adoption and Proposed Rule Making, I.D. No. EDU-27-16-00004-EP, published in the July 6, 2016 issue of the State Register contained an incorrect subject and purpose. The correct subject and purpose are as follows:

Subject: Social Studies examination requirements for a high school diploma.

Purpose: In effort to provide flexibility to districts during the transition period to the new Social Studies Regents examination, the proposed amendment shifts the requirement for students to take and pass the new Regents Examination in Global History and Geography II examination for graduation (instead of the prior Regents examination in global history and geography) for an additional year so that it applies to students first entering grade nine on or after September 2017; and provides districts with flexibility during the transition period to the new Social Studies Regents examination.

As a result of this publication error, the Education Department is extending the public comment period on this regulation until September 19, 2016.

Department of Environmental Conservation

NOTICE OF ADOPTION

Environmental Remediation - Brownfield Cleanup Program

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

Filing No. 696

Filing Date: 2016-07-13

Effective Date: 30 days after filing

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

Action taken: Amendment of Part 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 pertaining to the Brownfield Cleanup Program.

Text of final 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, which 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, which sets affordable units aside for home owners 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 on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and

(1) the proposed use is at least 75 percent for industrial uses; or

(2) at which:

(i) the proposed use is at least 75 percent for commercial or commercial and industrial uses;

(ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and

(iii) one or more of the following conditions exists, as certified by the applicant:

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

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

(c) there are no structures.

“Substantial government assistance” shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.

(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.)

Final rule as compared with last published rule: Nonsubstantive changes were made in section 375-3.2(l).

Revised rule making(s) were previously published in the State Register on March 9, 2016.

Text of 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

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

Revised 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. The BCP offers parties two separate categories of refundable tax credits for the cost of (1) site cleanup and (2) redevelopment, the latter described as tangible property tax credits (TPCs).

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 TPCs. These requirements provide that, in order to qualify for TPCs, New York City sites need to be in an environmental zone, “upside down,” “underutilized,” or 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 the New York State Department of Environmental Conservation (DEC) to define the terms “affordable housing project” and “underutilized” by regulation. DEC published proposed regulations regarding the “underutilized” and “affordable housing project” definitions in the State Register on June 10, 2015. Proposal of these regulations resulted in the amendments to the BCP law becoming effective on July 1, 2015. DEC also proposed to replace the prior regulatory definition of “brownfield site” to comport with the statutory definition found in ECL § 27-1405(2), as amended by Part BB of Chapter 56 of the Laws of 2015.

In the proposed rule making, DEC does not propose to revise the text of the “brownfield site” definition and only made one minor technical change to the “affordable housing project” definition as published in the State Register on June 10, 2015. No revisions were made to these definitions after the revised proposed rule making was published on March 9, 2016. The substantial revisions to the Express Terms made during the proposed rule making are found in the definition of “underutilized.” DEC proposed these revisions in response to comments received during the public comment period and the public hearing in 2015. After the revised proposed rule making, DEC made a minor clarification in the “underutilized” definition to the language pertaining to substantial government assistance which would allow for a combination of different types of assistance in order to meet the requirement for substantial government assistance. The

comments on the “underutilized” definition to a large extent urged DEC to expand the definition of underutilized properties that would qualify for the benefit of TPCs. The revisions to the definition consider the realities of redevelopment by allowing for mixed use development (up to 25 percent residential or restricted residential) while focusing on incentivizing redevelopment for industrial and commercial uses within New York City. The City of New York made clear that their primary focus was to promote the redevelopment of underutilized sites for industrial uses. The changes to the definition removed the requirement for substantial government assistance for development where the proposed use was going to be 75 percent or more for industrial uses. Additionally, DEC has lessened the time period from five to three years that a property has to be underutilized relative to applicable zoning, and DEC expanded the eligibility criteria for “underutilized” properties to include properties that are vacant with no structures on the site. All of these changes were made after consultation with the business community and the City of New York.

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 finalization of this rule making, 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 TPCs available to applicants in New York City 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 TPCs 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 TPCs 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 revised 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. On June 10, 2015, DEC published proposed regulations to define “affordable housing project,” and “underutilized,” as well as revise “brownfield site,” and the 2015 amendments to the BCP law became effective on July 1, 2015.

In part, the 2015 amendments to the BCP law address the large differences in the potential state tax liability between New York City BCP sites and those in the rest of the State. The primary driver for the regional imbalance within the BCP is attributed to high development costs for some downstate projects, which resulted in excessive TPCs. Limiting the eligibility of New York City sites for redevelopment credits to specific affordable housing projects and underutilized properties through criteria established by regulation, in addition to sites which are in an environmental zone or “upside down,” should help to target funds and projects in New York City areas with the most need. The substantial revisions to the proposed “underutilized” definition were made in response to comments and after consultation with New York City. Importantly, the revisions to the underutilized definition fulfills the City of New York’s stated goal to promote industrial redevelopment, while maintaining a fair and balanced approach to restrict the availability of TPCs to the sites with the most need. Finally, to ensure that TPCs 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 as was set forth in the revised statute.

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 TPCs, 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 TPCs, 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 revised proposed regulations. DEC costs for BCP application review are ongoing and any changes to DEC’s application review process due to revised 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. The revised proposed rulemaking also responded to a request by New York City to limit instances where it needed to certify to applications received for “underutilized” properties.

6. Paperwork

The 2015 amendments to the BCP 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 TPCs would need to also include documentation of the proposed eligibility criteria for such credits. The additional information has been added to the application form that is required for entry into the BCP.

7. Duplication

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

8. Alternatives

DEC was directed by the legislature to propose definitions for “affordable housing project” and “underutilized” in order for the amendments in Part BB of Chapter 56 of Laws of 2015 relative to the BCP to become effective. 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 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 revised proposed rule making.

9. Federal Standards

The revised proposed regulations would not exceed any minimum federal standards.

10. Compliance Schedule

As applicants have had a proposed definition for underutilized since June 2015, and DEC has revised the definition to make it less stringent (which included an additional 30 calendar day public comment period, March 10 - April 8, 2016), applicants to the BCP should be able to comply with the regulations upon adoption.

Revised Regulatory Flexibility Analysis

1. Effect of Rule

The revised 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 revised 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 revised 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 revised 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 revised 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 revised 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. 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 (TPCs) 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 TPCs, 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 revised 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 revised proposed 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, some of which may be small businesses or local governments, in understanding the requirements of the BCP. A public hearing on the proposed rule was held during the public comment period (June 10 – August 5, 2015) in New York City on July 29, 2015. Based on comments received, DEC made substantive revisions to the “underutilized” definition; one minor technical change to the “affordable housing project” definition; and no changes to the “brownfield site” definition. The revised proposed rule making (March 9 – April 8, 2016) also included a 30 calendar day public comment period, and the revised Express Terms and supporting rule making documents were 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.

Revised Rural Area Flexibility Analysis

Changes made to the Express Terms published with the Notice of Proposed Rule Making do not require revisions to the Rural Area Flexibility Analysis that was previously published in the June 10, 2015 issue of the State Register.

Revised Job Impact Statement

Changes made to the Express Terms published with the Notice of Proposed Rule Making do not require revisions to the Job Impact Exemption Statement that was previously published in the June 10, 2015 issue of the State Register.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

This assessment of public comment summarizes and responds to the comments received on the revised proposed regulations for the amendment of 6 NYCRR Subparts 375-1 and 375-3. On June 10, 2015, the New York State Department of Environmental Conservation (DEC) released

for public comment proposed regulations to define “affordable housing project,” “underutilized,” and “brownfield site,” under the Brownfield Cleanup Program (BCP). The statutory authority for such regulations is governed under Article 27, Title 14 of the Environmental Conservation Law. A public hearing was held on these definitions on July 29, 2015 and the comment period ended on August 5, 2015. Comments were received, both in writing and at the public hearing, from 11 separate entities. Subsequently, on March 9, 2016, DEC released for public comment revised proposed regulations which addressed comments received on the proposed regulations. No public hearing was required for the revised rule making. Written comments were received from eight separate entities.

DEC received comments from business organizations, the City of New York, the New York State private environmental bar association, the New York State Business Council, private environmental consultants, and individuals. During preparation of the revised rule making, DEC incorporated suggestions made by the public based on the comments received. Seven comments received pertained to additional concerns with the “underutilized” definition as proposed. One commenter provided comments related to eligibility requirements, which will be addressed in a future rule making, and were not relevant to the proposed rule making which is limited to the definition provisions.

Based on comments received on the “underutilized” definition, DEC made a minor clarification to the language pertaining to substantial government assistance which would allow for a combination of different types of assistance in order to meet the requirement for substantial government assistance. No changes were made to the “affordable housing project” or “brownfield site” definitions which remain as published for public comment in the State Register on March 9, 2016. The proposed Express Terms have also been posted on DEC’s web site.

All documents submitted to DEC are available to the public, subject to exceptions in the Freedom of Information Law.

The comments pertaining to the “underutilized” definition, while acknowledging improvement from the June 10, 2015 proposed version, indicated that the definition was still restrictive and relies too heavily on anticipated future uses of the property as commercial or industrial development. DEC points out that this revised definition of “underutilized” provides for mixed use development, with up to 25 percent restricted residential uses. Additionally, brownfields that are better suited for different types of development can still qualify for Tangible Property Tax Credits (TPCs) if they are located in an EnZone, are upside down, or provide affordable housing.

There was also the concern that few sites in New York City (NYC) would qualify as “underutilized” through the Tax-in-Arrears Test because of tax delinquency policies and procedures, and that few buildings would be deemed condemned or as having acute structural deficiencies because of building code violations. DEC believes that these criteria are valid indicators of underutilization and the regulations provide objective tests with clear parameters. DEC included these criteria to broaden the definition in response to comments received during the initial comment period.

Again, one commenter suggested using existing definitions of underutilized from outside New York or from various NYC laws or regulations in place of the DEC proposal. During the development of the statute, the Executive and Legislature evaluated the use of existing definitions of “underutilized” and did not come to the conclusion that any of those definitions were appropriate for eligibility for the TPCs associated with the BCP. DEC also reviewed other state and city laws, as well as other states’ definitions and determined that these definitions did not provide a workable definition in the context of the BCP. In many circumstances, the definitions in other laws are subjective and it is clear that in this area having the most objective criteria possible minimizes risk both for applicants and the State.

Another commenter indicated the need for substantial government assistance should be a factor for consideration, but not a requirement, and they also thought it was unclear which governmental entity would make this determination. The statute directs DEC to consider substantial government assistance in developing the regulatory definition of “underutilized.” Economic development agencies often assess projects to determine if state assistance is needed. DEC also consulted with NYC, who in many instances would certify that the proposed development requires substantial government assistance, and DEC would consider that certification in its determination on eligibility for TPCs for underutilized properties.

Two commenters suggested that the time limit for the Tax-in-Arrears test should be revised to either one or three years rather than be five years. DEC believes that the five year limit is appropriate to demonstrate underutilization. One year is too short of a timeframe to be a legitimate indicator of underutilization and it could have the perverse effect of encouraging entities to stop paying property tax specifically for the purpose of qualifying for TPCs.

DEC does not agree that the revised “underutilized” definition is unduly restrictive. Under the amendments to the BCP, it was clearly the intent of the Legislature to limit eligibility for TPCs in cities with a popula-

tion of a million or more, as evidenced by the statutory restrictions adopted. Nonetheless, in response to concerns raised by the definition proposed on June 10, 2015, DEC significantly broadened the definition and increased the number of sites eligible for TPCs by revising the definition to allow for commercial use in addition to industrial use, with up to 25 percent restricted residential uses for “underutilized” properties. Yet the revised definition responds to the Legislative mandate to limit the number of sites that are eligible for TPCs.

It should also be noted that any site meeting the definition of a “brownfield” remains eligible to participate in the site preparation tax credits and release of liability offered by the BCP, and, once additional regulations are adopted, the newly created BCP-EZ program. Only sites seeking the TPCs would be subject to the underutilized definition, if not otherwise eligible under one of the other gateways.

NOTICE OF ADOPTION

Deer and Bear Hunting

I.D. No. ENV-19-16-00001-A

Filing No. 705

Filing Date: 2016-07-18

Effective Date: 2016-08-03

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

Action taken: Amendment of sections 1.11, 1.18 and 1.31 of Title 6 NYCRR.

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

Subject: Deer and Bear Hunting.

Purpose: To revise regulations governing deer hunting seasons, issuance and use of deer hunting tags, and hunting black bear.

Text or summary was published in: the May 11, 2016 issue of the Register, I.D. No. ENV-19-16-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Jeremy Hurst, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8867, email: jeremy.hurst@dec.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department received approximately 20 comments relevant to the proposed changes. The discussion below is organized according to the topic of the proposed change.

1. Adding bear to the youth hunt.

Comment: Several commenters expressed support for this change.

Response: The Department appreciates the recognition of the benefits to be gained by this change.

Comment: One person objected to this change based on an objection to all special hunting opportunities for youth, expressing the opinion that they create an entitlement attitude and an expectation of getting something for nothing.

Response: The Department and most hunting groups believe that youth hunting programs increase interest in hunting and help build the next generation of hunters.

2. Rescinding 2015 antlerless-only regulation.

Comment: Several commenters expressed support for this change, although one of them noted that it might have been preferable to allow a 2-year trial period for the 2015 regulation. A couple of writers noted that some hunters may have refrained from hunting during the antlerless-only period because of the restriction. One person suggested immediately implementing a new antlerless-only muzzleloader season as Phase 3, rather than waiting until next year, due to the severe overpopulation of deer in the affected Wildlife Management Units (WMUs). Another suggested reducing the number of buck tags distributed.

Response: The Department believes that little would be gained by leaving the Phase 2 restrictions in place for another year. We plan to discuss several possible regulatory approaches with hunters this year in an effort to identify a strategy for 2017 that will increase antlerless harvest as needed.

Comment: One commenter opposed the change, stating that Phase 2 should remain in place until Phase 3 is ready.

Response: The Department believes that little would be gained by leaving the Phase 2 restrictions in place for another year. We hope that rescinding them will help stimulate productive conversations with hunters to identify a more effective strategy.

3. Reducing doe harvest in 6F and 6J.

Comment: Several commenters expressed support for this change. A couple of them suggested that the antlered-only restriction should apply to bowhunters as well as muzzleloader hunters.

Response: The bowhunting harvest is a small percentage of the total harvest of does in these units, so limiting it would not have much of an impact on population objectives. The current change matches the restrictions that are in place in neighboring WMUs 6A and 6N.

Comment: One person objected to this change, stating that deer are plentiful in that area.

Response: Harvest numbers indicate that populations have been declining for several years in these WMUs.

4. Clarification of special season tag use.

Comment: Several commenters expressed support for this change.

Response: The Department appreciates the support.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Waste Fuels

I.D. No. ENV-31-16-00003-P

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

Proposed Action: Amendment of Part 200; repeal of Subpart 225-2; and addition of new Subpart 225-2 to Title 6 NYCRR.

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

Subject: Waste Fuels.

Purpose: Update permit references, rule citations, monitoring, recordkeeping, reporting requirements, and incorporate Federal standards.

Public hearing(s) will be held at: 1:00 p.m., Sept. 30, 2016 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY.

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

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

Text of proposed rule: (Existing subdivisions 200.1(a) through (cu) remain unchanged.)

Existing subdivision (cw) is amended as follows:

(cw) Waste Oil. Any [Used]used and/or reprocessed[engine lubricating] oil [and/or any other used oil, including but not limited to, fuel oil, engine oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil,]which has not[subsequently] been re-refined, and which does not contain chemical waste. This includes but is not limited to, engine oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil.

A new subdivision (cx) is added as follows:

(cx) Residual oil. A fuel oil which meets the latest American Society for Testing and Materials (ASTM) specification number D396 for residual fuel oils (#4, #5, or #6).

(Existing sections 200.2 through 200.8 remain unchanged.)

Existing section 200.9, Table 1 is amended as follows:

Regulation	Referenced Material	Availability
[225-2.4(a)(3)]	[40 CFR Part 761 (July 1989) pages 213-267]	[*]

(Existing section 200.10 through section 200.16 remains unchanged.)

Existing 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Fuels is repealed. A new Subpart 225-2, Fuel Composition and Use - Waste Oil as a Fuel is added as follows:

6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oil as a Fuel

Section 225-2.1 Applicability.

This Subpart applies to the use of waste oil to be burned as a fuel.

Section 225-2.2 Definitions.

(a) To the extent that they are not inconsistent with the specific definitions in Subdivision (b) of this Section, the general definitions of Part 200 and Part 201 of this Title apply.

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

(1) 'Automotive maintenance/service facility'. Any facility that performs automotive fluid changes, collects automotive fluids, or drains automotive fluids.

(2) 'Chemical waste'. Waste including but not limited to spent solvents, tars, paints, resins and wastes, and sludges from any process.

(3) 'Reprocessed oil'. Any oil from which physical and/or chemical contaminants have been removed such that the oil is suitable for productive use (including but not limited to reuse as a lubricant, or burned as a fuel).

(4) 'Re-refined oil'. Any oil from which physical and/or chemical contaminants have been removed such that the oil is substantially equivalent to virgin distillate or residual oil.

(5) 'Total halogens'. The total organic and inorganic halides (fluorine, F; chlorine, Cl; bromine, Br; iodine, I), expressed as chloride present in a fuel oil or waste fuel, in parts per million by weight (water free basis).

Section 225-2.3 Prohibitions. No owner or operator of a facility may burn waste oil without a department issued permit or registration, pursuant to Part 201 of this Title, except as stated in subdivision 225-2.4(d) of this subpart. To be permitted to burn a waste oil, an owner or operator of a facility must meet the requirements of this Subpart.

Section 225-2.4 'Requirements for owners or operators of facilities proposing to burn waste oil'. As part of an application for a permit or registration to burn waste oil, owners or operators of facilities must meet the following criteria.

(a) Submit an analysis of the waste oil proposed to be burned to the department, pursuant to Section 225-2.6 of this Subpart.

(b) A stationary combustion installation or process source that proposes to burn waste oil must have a minimum operating heat input of 10 million Btus per hour or greater.

(c) An incinerator that proposes to burn waste oil must have a minimum charging capacity that equals or exceeds 2,000 pounds per hour of refuse.

(d) An owner or operator of space heaters located in automotive maintenance/service facilities may burn waste oil and be excepted from the requirements of this section, where the following conditions are met:

(1) the maximum operating heat input is less than one million Btu per hour;

(2) the waste oil is generated on site (this includes waste oils generated by do-it-yourself customers that the facility is required to accept) or at another facility owned and/or operated by the same person or group; and

(3) the waste oil meets the criteria in Section 225-2.5 Table 1 of this Subpart, except that lead may not exceed 25 parts per million (ppm) by weight (water free basis) of fuel.

Section 225-2.5 General waste oil limits. Any waste oil that is proposed to be burned must meet the minimum limitations in Table 1 below:

Constituent/Property	Limit
Polychlorinated Biphenyls (PCB)	< 2 ppm (1)
Total Halogens	<= 1,000 ppm (1)
Sulfur	0.75% by weight (2)
Gross Heat Content	>= 125,000 (Btu/gal)
Lead	< 100 ppm (1)
(1) ppm by weight (water free basis) of fuel.	
(2) As per the requirements of subdivision 6 NYCRR 225-1.2(i) of this Title.	

Section 225-2.6 Reports, sampling, and analysis of waste oil.

(a) The owner or operator of a facility permitted to burn waste oil shall: (1) sample, analyze, and measure each load of waste oil received, or maintain copies of supplier provided analyses of each load of waste oil received; and

(2) maintain, for a minimum of five years, records of the total quantity of waste oil received and the names, addresses, and waste oil analysis from each waste oil supplier.

(b) Owners or operators required to maintain and retain records pursuant to this section must make such records available for inspection by the department during normal business hours. These records must be submitted upon request to the department.

(c) Sampling and analysis of waste oil samples must be carried out in accordance with methods acceptable to the department.

Section 225-2.7 Severability.

Each provision of this Subpart shall be deemed severable, and, in the event that any provision of this Subpart is held to be invalid, the remainder of this Subpart shall continue in full force and effect.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Jennings, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403

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

Public comment will be received until: October 5, 2016.

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

Summary of Regulatory Impact Statement

INTRODUCTION

Proposed 6 NYCRR Subpart Part 225-2 (Proposed Subpart 225-2) regulates the use of waste oil to be burned for heat and/or energy recovery at non-exempt, stationary sources. The Department is proposing to repeal Existing 6 NYCRR Part 225-2 Fuel Composition and Use – Waste Fuel (Existing Subpart 225-2) and replace it with Proposed 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oils (Proposed Subpart 225-2). Proposed Subpart 225-2 regulates the burning of waste oils in combustion, incineration, and process sources throughout New York State. Proposed Subpart 225-2 establishes applicability criteria, composition limits, and permitting requirements for waste oils; establishes monitoring, record-keeping, and reporting requirements for facilities that are determined eligible to burn waste oil; and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. Also, as part of this rulemaking, the Department is adding the definition for “residual oil” to 6 NYCRR Part 200 (Part 200). If finalized, Proposed Subpart 225-2 will be included as a component of the State Implementation Plan (SIP) for New York State (NYS), as required by the Clean Air Act. This is not a mandate on local governments. It applies to any entity that owns or operates a subject stationary source. In addition, Part 200, which contains definitions related to air regulations, will also be updated.

STATUTORY AUTHORITY

The statutory authority for promulgation of Proposed 6 NYCRR Subpart 225-2 is found in the following Sections of the Environmental Conservation Law (ECL): Section 1-0101, Section 3-0301, Section 19-0103, Section 19-0105, Section 19-0301, Section 19-0303, Section 19-0305, Section 71-2103, and Section 71-2105.

Based on the above-referenced sections the Commissioner has sufficient authority to regulate air pollution from emission sources, including the promulgation of Proposed 6 NYCRR Subpart 225-2 “Fuel Composition and Use - Waste Oils”.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was adopted to safeguard the air resources of New York from pollution. To facilitate this purpose, the Legislature granted specific powers and duties to the Department, including the power to formulate, adopt, promulgate, amend, and repeal regulations that prevent, control, or prohibit air pollution. This authority specifically extends these powers over areas of the State that are or may be affected by air pollution and allows the Department to prescribe for such areas (1) the degree of air pollution or air contamination that may be permitted therein, and (2) the extent to which air contaminants may be emitted to the air by any air contamination source. In addition, this authority includes the preparation of a general, comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the State. The legislative objectives underlying the above statutes are directed toward protection of the environment and public health.

Proposed 6 NYCRR Subpart 225-2 addresses the burning of waste oils and subsequent emissions from burning waste oils throughout New York State. The regulation defines waste oil and establishes clear limits on its constituents. Finally, the regulation incorporates monitoring, recordkeeping, and reporting requirements for the purpose of compliance with the regulation.

NEEDS AND BENEFITS

The Department is proposing this repeal and replacement of Existing Subpart 225-2 in order to best protect and preserve the state’s air resources. The Department proposes to achieve this end by imposing composition limits on waste oil in order to minimize emissions and clarify the types of emission sources eligible to burn waste oil. The Department is proposing to repeal Existing Subpart 225-2 and replace it with Proposed Subpart 225-2, Fuel Composition and Use – Waste Fuel. Existing Subpart 225-2 has not been updated since its promulgation in 1983. As a result, many of its provisions are outdated and contain obsolete references and standards.

Rule Streamlining and Simplification

The permitting process contained in Existing Subpart 225-2 has become

outdated. Proposed Subpart 225-2 will simplify and streamline implementation of the regulation by eliminating obsolete regulatory references; correcting typographical errors; updating the regulation’s waste oil constituent limits; removing outdated work practices; expanding the number of facilities eligible to burn waste oil; updating the permitting process to include monitoring, recordkeeping, and reporting requirements, thus aligning it with Part 201 and Title V criteria found in the Clean Air Act; and moving the definition of “residual oil” from Existing Subpart 225-2 to 6 NYCRR Part 200 (Part 200). Existing Subpart 225-2 also contains references to liquid waste transportation regulations that, over the past thirty years, have changed and need to be removed from this regulation. The Department is removing the ninety-nine (99) percent combustion efficiency requirement. The Proposed Subpart 225-2 will no longer address the burning of chemical waste and “off-spec” waste oils (i.e. Waste fuel B) that do not meet the limitations specified in Table 1 of Existing Subpart 225-2. Instead, burning chemical waste and off-spec waste oils will be regulated under 6 NYCRR Part 212 (Process Operations) or 6 NYCRR Parts 370-376 as appropriate. Proposed Subpart 225-2 will expand the number of emission sources eligible to burn waste oils by lowering the minimum permissible heat input requirement of 20 million British thermal units per hour (mmBtu/hr) to 10 mmBtu/hr. Proposed Subpart 225-2 clarifies the regulation’s process for the burning of waste oil while removing the term waste fuel.

Finally, the Department is extending the permitting exemption for facilities generating their own waste oils to fire waste oil in space heaters of less than one mmBtu/hr heat input. Existing Subpart 225-2 provides this permitting exemption exclusively to automotive service facilities. Proposed Subpart 225-2 allows additional types of facilities to burn waste oil in space heaters. Automotive maintenance/service facilities are now defined as “any facility that performs automotive fluid changes, collects automotive fluids, or drains automotive fluids”. Eligible facilities now include, but are not limited to, fleet maintenance facilities like municipal garages, rental car maintenance facilities, auto crushing facilities, and junkyards.

Stakeholder Meetings

While drafting Proposed Subpart 225-2, the Department held a stakeholder conference call with staff from the New York City Department of Environmental Protection on February 14, 2014 and a stakeholder meeting with an attendee from the New York Association of Service Stations and Repair Shops on February 18, 2014. The Department solicited comments on Proposed Subpart 225-2 from the stakeholders. While the stakeholders asked questions, which the Department answered, they provided no specific comments.

On March 4, 2016 the Department sent a mass e-mail to the environmental justice contact list (8000 to 10,000 contacts), which contained a fact sheet on the proposed changes to Subpart 225-2. The fact sheet contained information regarding the proposed rule changes and included frequently asked questions. The contacts were given until March 25, 2016 to review and provide comments to the Department. No Comments were received. Utilizing the same contact list the Department sent a mass e-mail to schedule a webinar. The Webinar was held on May 24, 2016 at 12:30 PM. The webinar had 15 attendees. The attendees asked several questions regarding the time frame for notice and applicability of the proposed rule, which Department staff answered.

COSTS

Costs to Regulated Parties and Consumers:

There will be no additional costs associated with the Proposed Subpart 225-2.

In addition, the removal of the 99 percent combustion efficiency limit will save regulated facilities money by eliminating the requirement to periodically test combustion efficiency. Depending on equipment size and configuration, these tests can cost a subject facility between \$1,000.00 and \$5,000.00 per test.

Costs to State and Local Governments:

Based on the Department’s permitting data, there currently are no State and local government facilities that have a Title V permit, state facility permit, or registration subject to this regulation. Therefore, no additional costs will be incurred by State and local government facilities based on this regulatory update.

Costs to the Regulating Agency:

No additional monitoring, recordkeeping, or reporting requirements are being proposed under this rule-making. The only costs to the Regulating Agency are those routine costs associated with the rulemaking. These costs are regularly-incurred, operating costs.

LOCAL GOVERNMENT MANDATES

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other subject entities. No additional monitoring, recordkeeping, reporting, or other requirements will be imposed on local governments under this rulemaking. Finally, as stated above in the Cost section of this Regulatory Impact Statement, there are currently no local government facilities subject to this regulation.

PAPERWORK

Proposed Subpart 225-2 will create no additional paperwork for the facilities subject to the requirements of this rule.

DUPLICATION

Proposed Subpart 225-2 does not duplicate, overlap, or conflict with any other State or federal Air requirements.

ALTERNATIVES

The Department evaluated the following alternatives:

1) No action - do not change the current version of the regulation. This option will not address the issue of consistency with Title V monitoring, recordkeeping, or reporting requirements. It will also not correct inconsistencies with other State and federal regulations.

2) Title V Update only - update the rule to match the current Title V permitting requirements. This regulation has not been updated since its promulgation in 1983. The regulation does not conform to the requirements of the Title V program (Subpart 201-6). Updating the monitoring, recordkeeping, and reporting requirements of this rule to match those of Title V is long overdue. However, this option by itself would not address inconsistencies with other State and Federal liquid waste transportation requirements, nor would it simplify and/or streamline the regulation.

FEDERAL STANDARDS

Proposed Subpart 225-2 does not exceed any minimum federal standards. The proposed reduction of the lead standard will make the Proposed 225-2 lead limit equivalent to the lead standards regulated under the federal regulations for liquid waste transporters.

COMPLIANCE SCHEDULE

The Department proposes to promulgate the Proposed Subpart 225-2 by the summer of 2016. The provisions of this rule will take effect upon promulgation of the rule.

Regulatory Flexibility Analysis**EFFECT OF RULE ON SMALL BUSINESSES AND LOCAL GOVERNMENTS**

The Department is proposing to repeal Existing 6 NYCRR Part 225-2 Fuel Composition and Use – Waste Fuel (Existing Subpart 225-2) and replace it with Proposed 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oils (Proposed Subpart 225-2). Proposed Subpart 225-2 regulates the burning of waste oils in combustion, incineration, and process sources throughout New York State. Small businesses are those that are independently owned, located within New York State, and that employ 100 or fewer persons. Proposed Subpart 225-2 requirements apply equally to every stationary source that fires oil in New York State. Proposed Subpart 225-2 will not affect small businesses or local governments differently from any other source subject to this rule and may help certain small businesses.

COMPLIANCE REQUIREMENTS

Proposed Subpart 225-2 establishes applicability criteria, composition limits, and permitting requirements for waste oils; establishes monitoring, recordkeeping, and reporting requirements for facilities that are determined eligible to burn waste oil; and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. If finalized, Proposed Subpart 225-2 will be included as a component of the State Implementation Plan (SIP) for New York State (NYS), as required by the Clean Air Act. Also, as part of this rulemaking, the Department is adding the definition for "residual oil" to 6 NYCRR Part 200 (Part 200). No new compliance requirements will be incurred by stationary sources subject to the provisions of the proposed rule.

PROFESSIONAL SERVICES

As stated above, this revision will place no new compliance obligation on subject stationary sources. Therefore, the Department does not expect small businesses or local governments will need to hire additional professional services to comply with the provisions of the proposed rule.

COMPLIANCE COSTS

Based on the Department's permitting data, there currently are no local government facilities that have a Title V permit, state facility permit, or registration subject to this regulation. Therefore, no additional costs will be incurred by local government facilities based on this regulatory update. In addition, because there will be no additional compliance requirements placed on subject facilities, the Department does not anticipate any new costs to small businesses.

MINIMIZING ADVERSE IMPACTS

The Department does not expect any particular adverse impacts on small businesses and local governments throughout New York State. Proposed Subpart 225-2 is a statewide regulation. Its requirements are the same for all facilities. The Department does not anticipate small businesses or local governments to be impacted differently than other sources subject to Proposed Subpart 225-2.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

During the drafting of Proposed Subpart 225-2, the Department held both a stakeholder conference call with staff from the New York City

Department of Environmental Protection on February 14, 2014 and a stakeholder meeting with an attendee from the New York Association of Service Stations and Repair Shops on February 18, 2014. The Department solicited comments on the proposed rule from the stakeholders. The stakeholders asked questions but provided no specific comments. In addition, the Department will hold public hearings on Proposed Subpart 225-2 at various locations in New York State which will be open to small business and local government representatives.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The Department does not expect any particular adverse economic or technological feasibility impacts on small businesses and local governments throughout New York State. Proposed Subpart 225-2 is a statewide regulation. Its requirements are the same for all facilities. The Department does not anticipate small businesses or local governments to be impacted economically or technologically differently than other sources subject to Proposed Subpart 225-2.

CURE PERIOD

The Department is not including a cure period in this rulemaking. The purpose of this rulemaking is to update, clarify, and simplify the regulation. Delaying the promulgation of the regulation will adversely affect the facilities that are subject to this regulation in that they will not receive the benefits of the streamlining and updating in a timely fashion.

Rural Area Flexibility Analysis**TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED**

Proposed 6 NYCRR Subpart 225-2 (Proposed Subpart 225-2) is not expected to have a substantial adverse impact on rural areas in New York State. The proposed rulemaking will apply statewide and thus all stationary sources that fire waste fuels in New York State will be equally affected.

Rural areas are defined as rural counties in New York State that have populations of less than 200,000 people, towns in non-rural counties where the population densities are less than 150 people per square mile, and villages within those towns.

COMPLIANCE REQUIREMENTS

The Department is proposing to repeal Existing 6 NYCRR Part 225-2 Fuel Composition and Use – Waste Fuel (Existing Subpart 225-2) and replace it with Proposed 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oils (Proposed Subpart 225-2). Proposed Subpart 225-2 regulates the burning of waste oils in combustion, incineration, and process sources throughout New York State. Proposed Subpart 225-2 establishes applicability criteria, composition limits, and permitting requirements for waste oils; establishes monitoring, recordkeeping, and reporting requirements for facilities that are determined eligible to burn waste oil; and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. If finalized, Proposed Subpart 225-2 will be included as a component of the State Implementation Plan (SIP) for New York State (NYS), as required by the Clean Air Act. Also, as part of this rulemaking, the Department is adding the definition for "residual oil" to 6 NYCRR Part 200 (Part 200). No new compliance requirements will be incurred by stationary sources subject to the provisions of the proposed rule.

COSTS

There will be no additional costs associated with Proposed Subpart 225-2.

The removal of the 99 percent combustion efficiency limit will save regulated facilities money (\$1,000.00 to \$5,000.00 per test) by eliminating the requirement to periodically test combustion efficiency.

MINIMIZING ADVERSE IMPACT

The Department does not expect any adverse impacts on rural areas. Proposed Subpart 225-2 is a statewide regulation. Its requirements are the same for all facilities, and rural areas are impacted no differently than other areas in the state.

RURAL AREA PARTICIPATION

During the drafting of Proposed Subpart 225-2, the Department held both a stakeholder conference call with staff from the New York City Department of Environmental Protection on February 14, 2014 and a stakeholder meeting with an attendee from the New York Association of Service Stations and Repair Shops on February 18, 2014. The Department solicited comments on the proposed rule from the stakeholders. The stakeholders asked questions but provided no specific comments. In addition, the Department will hold public hearings on Proposed Subpart 225-2 at various locations in New York State which will be open to representatives from rural areas.

Job Impact Statement**NATURE OF IMPACT**

The Department is proposing to repeal Existing 6 NYCRR Part 225-2 Fuel Composition and Use – Waste Fuel (Existing Subpart 225-2) and replace it with Proposed 6 NYCRR Subpart 225-2, Fuel Composition and Use - Waste Oils (Proposed Subpart 225-2). Proposed Subpart 225-2

regulates the burning of waste oils in combustion, incineration, and process sources throughout New York State. Proposed Subpart 225-2 establishes applicability criteria, composition limits, and permitting requirements for waste oils; establishes monitoring, recordkeeping, and reporting requirements for facilities that are determined eligible to burn waste oil; and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. Also, as part of this rulemaking, the Department is adding the definition for "residual oil" to 6 NYCRR Part 200 (Part 200). If finalized, Proposed Subpart 225-2 will be included as a component of the State Implementation Plan (SIP) for New York State (NYS), as required by the Clean Air Act. These proposed changes to Subpart 225-2 are not anticipated to have an adverse impact on employment opportunities in the State.

CATEGORIES AND NUMBERS AFFECTED

Proposed Subpart 225-2 is meant to streamline regulations and is not placing any new substantive requirements on subject stationary sources. Therefore, Proposed Subpart 225-2 is not anticipated to have any short-term or long-term effects on the number of current jobs or future employment opportunities throughout New York State.

REGIONS OF ADVERSE IMPACT

Proposed Subpart 225-2 is a statewide regulation. This regulation is not expected to have an adverse impact on jobs or employment opportunities in New York State. It does not impact any region or area of the state disproportionately in terms of jobs or employment opportunities.

MINIMIZING ADVERSE IMPACT

The Department does not expect any adverse impacts on jobs in New York State based on Proposed Subpart 225-2. Proposed Subpart 225-2 is a statewide regulation. Its requirements are the same for all facilities, and will not impact job opportunities in the State.

SELF-EMPLOYMENT OPPORTUNITIES

There are no anticipated effects on self-employment opportunities associated with Proposed Subpart 225-2.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Achievement and Investment in Merit Scholarship (NY-AIMS)

I.D. No. ESC-31-16-00001-E

Filing No. 701

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: Addition of section 2201.16 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-g

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2015 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of \$500 each, will be granted annually in 2015-16 and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with sec-

tion 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Purpose: To implement The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Text of emergency rule: New section 2201.16 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.16 The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

(a) *Definitions. As used in section 669-g of the Education Law and this section, the following terms shall have the following meanings:*

(1) *"Good academic standing" shall have the same meaning as set forth in section 665(6) of the education law.*

(2) *"Grade point average" shall mean the student's numeric grade calculated on the standard 4.0 scale.*

(3) *"Program" shall mean The New York State Achievement and Investment in Merit Scholarship codified in section 669-g of the education law.*

(4) *"Unmet need" for the purpose of determining priority shall mean the cost of attendance, as determined for federal Title IV student financial aid purposes, less all federal, State, and institutional higher education aid and the expected family contribution based on the federal formula.*

(b) *Eligibility. An applicant must:*

(1) *have graduated from a New York State high school in the 2014-15 academic year or thereafter; and*

(2) *enroll in an approved undergraduate program of study in a public or private not-for-profit degree granting post-secondary institution located in New York State beginning in the two thousand fifteen-sixteen academic year or thereafter; and*

(3) *have achieved at least two of the following during high school:*

(i) *Graduated with a grade point average of 3.3 or above;*

(ii) *Graduated with a "with honors" distinction on a New York State regents diploma or receive a score of 3 or higher on two or more advanced placement examinations; or*

(iii) *Graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration; and*

(4) *satisfy all other requirements pursuant to section 669-g of the education law; and*

(5) *satisfy all general eligibility requirements provided in section 661 of the education law including, but not limited to, full-time attendance, good academic standing, residency and citizenship.*

(c) *Distribution and priorities. In each year, new awards made shall be proportionate to the total new applications received from eligible students enrolled in undergraduate study at public and private not-for-profit degree granting institutions. Distribution of awards shall be made in accordance with the provisions contained in section 669-g(3)(a) of the education law within each sector. In the event that there are more applicants who have the same priority than there are remaining scholarships or available funding, awards shall be made in descending order based on unmet need established at the time of application. In the event of a tie, distribution shall be made by means of a lottery or other form of random selection.*

(d) *Administration.*

(1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *Recipients of an award shall:*

(i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *receive such awards for not more than four academic years of undergraduate study, or five academic years if the program of study normally requires five years as defined by the commissioner pursuant to Article 13 of the education law; and*

(iii) *provide any information necessary for the corporation to determine compliance with the program's requirements.*

(e) *Awards.*

(1) *The amount of the award shall be determined in accordance with section 669-g of the education law.*

(2) *Disbursements shall be made annually to institutions on behalf of recipients.*

(3) *Awards may be used to offset the recipient's total cost of attendance determined for federal Title IV student financial aid purposes or may be used in addition to such cost of attendance.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 12, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer The New York State Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging \$29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

This Program cushions the disparate growth in the cost of a postsecondary education by providing New York State high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in the State for up to four years of undergraduate study (or five years if enrolled in a five-year program). Five thousand awards, of \$500 each, will be granted annually in 2015-16 and 2016-17.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$2.5 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 669-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

**EMERGENCY
RULE MAKING**

New York State Get on Your Feet Loan Forgiveness Program

I.D. No. ESC-31-16-00002-E

Filing No. 702

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: Addition of section 2201.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-g

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than \$50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Get on Your Feet Loan Forgiveness Program.

Purpose: To implement the New York State Get on Your Feet Loan Forgiveness Program.

Text of emergency rule: New section 2201.15 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.15 *New York State Get on Your Feet Loan Forgiveness Program.*

(a) *Definitions. As used in section 679-g of the education law and this section, the following terms shall have the following meanings:*

(1) *"Adjusted gross income" shall mean the income used by the U.S. Department of Education to qualify the applicant for the federal income-driven repayment plan.*

(2) *"Award" shall mean a New York State Get on Your Feet Loan Forgiveness Program award pursuant to section 679-g of the education law.*

(3) *"Deferment" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.*

(4) *"Delinquent" shall mean the failure to pay a required scheduled payment on a federal student loan within thirty days of such payment's due date.*

(5) *"Forbearance" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.*

(6) *"Income" shall mean the total adjusted gross income of the applicant and the applicant's spouse, if applicable.*

(7) *"Program" shall mean the New York State Get on Your Feet Loan Forgiveness Program.*

(8) *"Undergraduate degree" shall mean an associate or baccalaureate degree.*

(b) *Eligibility. An applicant must satisfy the following requirements:*

(1) *have graduated from a high school located in the State or attended an approved State program for a State high school equivalency di-*

ploma and received such diploma. An applicant who received a high school diploma, or its equivalent, from another state is ineligible for a Program award;

(2) *have graduated and obtained an undergraduate degree from a college or university located in the State in or after the two thousand fourteen-fifteen academic year;*

(3) *apply for this program within two years of obtaining such undergraduate degree;*

(4) *not have earned a degree higher than an undergraduate degree at the time of application;*

(5) *be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income;*

(6) *have income of less than fifty thousand dollars;*

(7) *comply with subdivisions three and five of section 661 of the education law;*

(8) *work in the State, if employed. A member of the military who is on active duty and for whom New York is his or her legal state of residence shall be deemed to be employed in NYS;*

(9) *not be delinquent on a federal student loan or in default on a student loan made under any statutory New York State or federal education loan program or repayment of any New York State award; and*

(10) *be in compliance with the terms of any service condition imposed by a New York State award.*

(c) *Administration.*

(1) *An applicant for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *A recipient of an award shall:*

(i) *request payment at such times, on such forms and in a manner as prescribed by the corporation;*

(ii) *confirm he or she has adjusted gross income of less than fifty thousand dollars, is a resident of New York State, is working in New York State, if employed, and any other information necessary for the corporation to determine eligibility at such times prescribed by the corporation. Said submissions shall be on forms or in a manner prescribed by the corporation;*

(iii) *notify the corporation of any change in his or her eligibility status including, but not limited to, a change in address, employment, or income, and provide the corporation with current information;*

(iv) *not receive more than twenty four payments under this program; and*

(v) *provide any other information or documentation necessary for the corporation to determine compliance with the program's requirements.*

(d) *Amounts and duration.*

(1) *The amount of the award shall be equal to one hundred percent of the recipient's established monthly federal income-driven repayment plan payment whose payment amount is generally ten percent of discretionary income and whose payment is based on income rather than loan debt.*

(2) *In the event the established monthly federal income-driven repayment plan payment is zero or the applicant is otherwise not obligated to make a payment, the applicant shall not qualify for a Program award.*

(3) *Disbursements shall be made to the entity that collects payments on the federal student loan or loans on behalf of the recipient on a monthly basis.*

(4) *A maximum of twenty-four payments may be awarded, provided the recipient continues to satisfy the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.*

(e) *Disqualification. A recipient shall be disqualified from receiving further award payments under this program if he or she fails to satisfy any of the eligibility requirements, no longer qualifies for an award, or fails to respond to any request for information by the corporation.*

(f) *Renewed eligibility. A recipient who has been disqualified pursuant to subdivision (e) may reapply for this program and receive an award if he or she satisfies all of the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.*

(g) *Repayment. A recipient who is not a resident of New York State at the time a payment is made under this program shall be required to repay such payment or payments to the corporation. In addition, at the corporation's discretion, a recipient may be required to repay to the corporation any payment made under this program that, at the time payment was made, should have been disqualified pursuant to subdivision (e). If a recipient is required to repay any payment or payments to the corporation, the following provisions shall apply:*

(1) *Interest shall begin to accrue on the day such payment was made on behalf of the recipient. In the event the recipient notifies the corporation of a change in residence within 30 days of such change, interest shall begin to accrue on the day such recipient was no longer a New York State resident.*

(2) *The interest rate shall be fixed and equal to the rate established in section 18 of the New York State Finance Law.*

(3) *Repayment must be made within five years.*

(4) *Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, waive or defer payment, extend the repayment period, or take such other appropriate action.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 12, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

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

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

Legislative objectives:

The Education Law was amended to add a new section 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages \$29,400. Many of these students feel burdened by debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

Although New York's public colleges and universities offer among the lowest tuition in the nation, currently the average New York student graduates from college with a four-year degree saddled with more than \$25,000 in student loans. Mounting student debt makes it difficult for recent graduates to deal with everyday costs of living, which often increases the amount of credit card and other debt they must take on in order to survive. To help mitigate the disparate growth in the cost of financing a postsecondary education, this Program offers financial aid relief to recent college graduates by providing up to twenty-four payments towards an eligible applicant's federal income-based student loan repayment plan commitment. Students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter, who continue to live in New York State upon graduation, earn less than

\$50,000 per year, participate in either the federal Pay as You Earn (PAYE) or applicable federal Income Based Repayment (IBR) program, and apply for this Program within two years after graduating from college are eligible for this Program.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$5.2 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the U.S. Department of Education with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the

New York State Higher Education Services Corporation’s Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

Justice Center for the Protection of People with Special Needs

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Justice Center for the Protection of People With Special Needs publishes a new notice of proposed rule making in the NYS Register.

Protocols for Interviewing Service Recipients During Investigation of Abuse or Neglect

I.D. No.	Proposed	Expiration Date
JCP-28-15-00008-EP	July 15, 2015	July 14, 2016

Department of Motor Vehicles

NOTICE OF ADOPTION

Wyoming County Motor Vehicle Use Tax

I.D. No. MTV-22-16-00003-A

Filing No. 706

Filing Date: 2016-07-19

Effective Date: 2016-08-03

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

Action taken: Amendment of section 29.12(q) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); Tax Law, sections 1201(e), 1202(a) and (c)

Subject: Wyoming County motor vehicle use tax.

Purpose: Raises the amount of the Wyoming County motor vehicle use tax.

Text or summary was published in the June 1, 2016 issue of the Register, I.D. No. MTV-22-16-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Recovery of Expenses

I.D. No. PSC-14-13-00005-A

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted the terms of a joint proposal that incorporates the resolution of St. Lawrence Gas Company, Inc.’s (St. Lawrence) petition to recover expenses related to In-Line Inspection.

Statutory authority: Public Service Law, sections 5, 65(1) and 66(12)

Subject: Recovery of expenses.

Purpose: To adopt a joint proposal providing for recovery of expenses related to In-Line Inspection.

Substance of final rule: The Commission, on July 14, 2016, adopted the terms of a joint proposal executed by St. Lawrence Gas Company, Inc. (St. Lawrence), Department of Public Service Trial Staff, and Multiple Intervenors, with a minor modification, resolving St. Lawrence’s petition to recover expenses related to In-Line Inspection, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(13-G-0076SA2)

NOTICE OF ADOPTION

Cost Recovery and Incentive Mechanism for the NWA Project

I.D. No. PSC-32-15-00007-A

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted an order approving, with modification, Central Hudson Gas and Electric Corporation’s (Central Hudson) proposal for cost recovery and incentive mechanism for the Non-Wire Alternative (NWA) Project.

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

Subject: Cost recovery and incentive mechanism for the NWA Project.

Purpose: To approve Central Hudson’s proposal for cost recovery and incentive mechanism for the NWA Project.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving, with modification, Central Hudson Gas and Electric Corporation’s proposal for cost recovery and incentive mechanism for the Non-Wire Alternative Project, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0318SA3)

NOTICE OF ADOPTION

Revenue Increase

I.D. No. PSC-39-15-00010-A

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted the terms of a joint proposal that establishes a multi-year rate plan for St. Lawrence Gas Company, Inc.’s (St. Lawrence).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Revenue increase.

Purpose: To adopt a joint proposal for St. Lawrence to establish a multi-year rate plan.

Substance of final rule: The Commission, on July 14, 2016, adopted the terms of a joint proposal executed by St. Lawrence Gas Company, Inc. (St. Lawrence), Department of Public Service Trial Staff, and Multiple Intervenor, with a minor modification, establishing a multi-year rate plan for St. Lawrence, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-G-0382SA1)

NOTICE OF ADOPTION

Moratorium on ESCO Enrollments of New Low-Income Assistance Program Customers

I.D. No. PSC-50-15-00007-A

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted an order directing a moratorium on energy service company (ESCO) enrollments of new low-income assistance program customers and on renewals of existing customers.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5) and (8)

Subject: Moratorium on ESCO Enrollments of new low-income assistance program customers.

Purpose: To direct a moratorium on ESCO Enrollments.

Substance of final rule: The Commission, on July 14, 2016, adopted an order directing a moratorium on energy service company enrollments of new low-income assistance program customers and on renewals of existing customers, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(12-M-0476SA13)

NOTICE OF ADOPTION

Application of the ESM to a Partial Year Period

I.D. No. PSC-02-16-00007-A

Filing Date: 2016-07-18

Effective Date: 2016-07-18

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

Action taken: On 7/14/16, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) petition for the application of the Earnings Sharing Mechanism (ESM) to a partial year period, with modifications.

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Application of the ESM to a partial year period.

Purpose: To approve O&R's petition for the application of the ESM to a partial year period, with modifications.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Orange and Rockland Utilities, Inc.'s petition for the application of the Earnings Sharing Mechanism to a partial year period, with modifications, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(11-E-0408SA5)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-07-16-00019-A

Filing Date: 2016-07-18

Effective Date: 2016-07-18

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

Action taken: On 7/14/16, the PSC adopted an order approving Heritage Springs Water Works, Inc.'s (Heritage Springs) tariff amendments converting P.S.C. No. 1—Water to an electronic format, P.S.C. No. 2—Water, and adding provisions to Service Classification No. 1.

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

Subject: Tariff amendments.

Purpose: To approve Heritage Springs' tariff amendments.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Heritage Springs Water Works, Inc.'s tariff amendments converting P.S.C. No. 1 – Water to an electronic format, P.S.C. No. 2 – Water, and adding provisions to Service Classification No. 1, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-W-0022SA1)

NOTICE OF ADOPTION

Petition to Receive Full Electric Service

I.D. No. PSC-08-16-00006-A

Filing Date: 2016-07-14

Effective Date: 2016-07-14

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

Action taken: On 7/14/16, the PSC adopted an order denying Fastrac Markets, LLC's (Fastrac) petition to receive full electric service from Rochester Gas and Electric Corporation (RG&E).

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 65, 66 and 68(1)

Subject: Petition to receive full electric service.

Purpose: To deny Fastrac's petition to receive full electric service from RG&E.

Substance of final rule: The Commission, on July 14, 2016, adopted an order denying Fastrac Markets, LLC's petition to receive full electric service from Rochester Gas and Electric Corporation, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.
(16-E-0057SA1)

NOTICE OF ADOPTION

Transfer of Stock

I.D. No. PSC-09-16-00004-A

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted an order approving Bristol Water-Works Corporation (Bristol Water) and Bristol Harbour Resort Management LLC's (BHRM) petition to transfer 100 percent of Bristol Water's stock to BHRM.

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

Subject: Transfer of stock.

Purpose: To approve Bristol Water and BHRM's petition to transfer 100 percent of Bristol Water's stock to BHRM.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Bristol Water-Works Corporation (Bristol Water) and Bristol Harbour Resort Management LLC's (BHRM) petition to transfer 100 percent of Bristol Water's stock to BHRM, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-W-0074SA1)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Section 602.10(b)

I.D. No. PSC-15-16-00013-A

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted an order approving Verizon New York Inc.'s (Verizon) petition for a waiver of 16 NYCRR Section 602.10(b) of the requirements relating to the distribution of telephone directories.

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

Subject: Waiver of 16 NYCRR Section 602.10(b).

Purpose: To approve Verizon's petition for a waiver of 16 NYCRR Section 602.10(b).

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Verizon New York Inc.'s petition for a waiver of 16 NYCRR Section 602.10(b) of the requirements relating to the distribution of telephone directories, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-C-0186SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-15-16-00014-A

Filing Date: 2016-07-14

Effective Date: 2016-07-14

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

Action taken: On 7/14/16, the PSC adopted an order approving Village of Westfield's (Westfield) tariff amendments to establish Service Classification (SC) No. 7 — Purchase of Renewable Energy from New Distributed Generators, contained in P.S.C. No. 1 — Electricity.

Statutory authority: Public Service Law, sections 5(b), 65 and 66

Subject: Tariff amendments.

Purpose: To approve Westfield's tariff amendments to establish SC No. 7, contained in P.S.C. No. 1 — Electricity.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Village of Westfield's tariff amendments, with modifications, to establish Service Classification No. 7 — Purchase of Renewable Energy from New Distributed Generators, contained in P.S.C. No. 1 — Electricity, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-E-0178SA1)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Section 602.10(b)

I.D. No. PSC-16-16-00003-A

Filing Date: 2016-07-15

Effective Date: 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted an order approving Dex Media, Inc.'s (Dex) petition for a waiver of 16 NYCRR Section 602.10(b) of the requirements relating to the distribution of telephone directories.

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

Subject: Waiver of 16 NYCRR Section 602.10(b).

Purpose: To approve Dex's petition for a waiver of 16 NYCRR Section 602.10(b).

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Dex Media, Inc.'s petition for a waiver of 16 NYCRR Section 602.10(b) of the requirements relating to the distribution of telephone directories, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-C-0190SA1)

NOTICE OF ADOPTION

Transfer of Streetlights

I.D. No. PSC-18-16-00011-A**Filing Date:** 2016-07-15**Effective Date:** 2016-07-15

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

Action taken: On 7/14/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) petition to transfer certain streetlights to the City of Beacon.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of streetlights.

Purpose: To approve Central Hudson's petition to transfer certain streetlights to the City of Beacon.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Central Hudson Gas and Electric Corporation's petition to transfer certain streetlights to the City of Beacon, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-E-0173SA1)

NOTICE OF ADOPTION

Transfer of Streetlights

I.D. No. PSC-18-16-00017-A**Filing Date:** 2016-07-14**Effective Date:** 2016-07-14

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

Action taken: On 7/14/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) petition to transfer certain streetlights to the City of Poughkeepsie.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of streetlights.

Purpose: To approve Central Hudson's petition to transfer certain streetlights to the City of Poughkeepsie.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Central Hudson Gas and Electric Corporation's petition to transfer certain streetlights to the City of Poughkeepsie, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-E-0174SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-19-16-00009-A**Filing Date:** 2016-07-14**Effective Date:** 2016-07-14

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

Action taken: On 7/14/16, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) tariff amendments to Rider T - Commercial Demand Response Programs, contained in P.S.C. No. 10 — Electricity.

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

Subject: Tariff amendments.

Purpose: To approve Con Ed's tariff amendments to Rider T, contained in P.S.C. No. 10 - Electricity.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff amendments to Rider T - Commercial Demand Response Programs, contained in P.S.C. No. 10 - Electricity, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-E-0236SA1)

NOTICE OF ADOPTION

Transfer of Ownership Interests and Lightened Regulation

I.D. No. PSC-20-16-00014-A**Filing Date:** 2016-07-14**Effective Date:** 2016-07-14

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

Action taken: On 7/14/16, the PSC adopted an order approving Castleton Energy Center, LLC, et. al.'s (CEC) petition for a transfer of ownership interests and continuation of lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 5(1) and 70

Subject: Transfer of ownership interests and lightened regulation.

Purpose: To approve CEC et. al.'s petition for a transfer of ownership interests and continuation of lightened regulation.

Substance of final rule: The Commission, on July 14, 2016, adopted an order approving Castleton Energy Center, LLC (CEC), Castleton Power, LLC (Castleton Power) and Fortistar Castleton LLC's (Fortistar Castleton) petition for the transfer of ownership interests from Castleton Power and CEC to Fortistar Castleton and the continuation of lightened regulation, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(16-E-0244SA1)

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

Proposed Acquisition of 100% of the Assets of WBA by NYAW and to Address Other Matters Related to the Acquisition

I.D. No. PSC-31-16-00004-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 a joint petition by New York American Water Company Inc. (NYAW) and West Branch Acres Inc. (WBA) for the acquisition of all of WBA's assets by NYAW and to address other matters related to the acquisition.

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

Subject: Proposed acquisition of 100% of the assets of WBA by NYAW and to address other matters related to the acquisition.

Purpose: To consider the proposed acquisition of all assets of WBA by NYAW and other matters related to the acquisition.

Substance of proposed rule: The Public Service Commission is considering a joint petition filed on July 6, 2016 by West Branch Acres Inc. (WBA) and New York American Water Company Inc. (NYAW) for approval of an Agreement of Sale under which WBA will sell and NYAW will purchase 100 percent of the water supply assets of WBA. West Branch Acres provides metered water service to approximately 74 residential customers located within the Town of Carmel in Putnam County, New York. NYAW proposes, upon close of the transaction, the installation of Commission approved meters, implementation of a Supervisory Control and Data Acquisition (SCADA) system, an emergency back-up generator, and upgrades to the electrical and control systems on the company wells and chemical feed systems. These projects would be funded by the capital budget of NYAW. NYAW proposes that the current customers of WBA would eventually be transitioned to the Lynbrook District Tariff. In addition, NYAW requests authority to maintain the books and records of WBA outside the state, seeks recovery of certain environmental expenses related to the proposed acquisition, and requests waiver of certain requirements of 16 NYCRR § 31.1 related to information to be provided in the petition. The Commission may adopt, reject, or modify, in whole or in part, the joint petition and may resolve 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-W-0394SP1)

Department of Transportation

NOTICE OF ADOPTION

Updates to Various Household Goods Provisions in Title 17 NYCRR

I.D. No. TRN-48-15-00005-A

Filing No. 707

Filing Date: 2016-07-19

Effective Date: 2016-08-03

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

Action taken: Repeal of Part 814; and addition of new Part 814 to Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(18), 191 and 196

Subject: Updates to various household goods provisions in Title 17 NYCRR.

Purpose: Update various household goods provisions in Title 17 NYCRR.

Substance of final rule: The proposed rule amendments provide for the following changes. Part 814.0 is amended to contain a definition of household goods; currently, there is no definition of the term. Subdivision 814.1(a) contains an outdated reference to the Public Service Commission, which was removed. Subdivision 814.1(e) allows for the provision of the Summary of Information booklet to shippers electronically. Subdivisions 814.2(a) and (c) now reference Transportation Law section 196 rather than section 172, reflecting statutory changes. A new Part 814.3 is added to allow for combination of a Non-Binding Estimate and Order for Service into one document, with the ability for electronic communication added. Part 814.4 is repealed. Part 814.5 is renumbered as 814.4, with the addition of e-mail addresses as a point of contact. Part 814.6 is renumbered as 814.5, with the removal of a requirement of the licensee to inform the Department in cases of reasonable dispatch, as defined. Part 814.7 is renumbered as 814.6, with the addition of all items of life sustenance to be delivered by licensee in instances of disputes as to charges. Part 814.8 is renumbered as 814.7. Part 814.9 is renumbered as 814.8, with the addition of electronic means of communication. The 120 day requirement for disposition of claims is reduced to 90 days. The 60 day requirement to satisfy a judgment is reduced to 30 days to harmonize with Civil Court requirements.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 814.3(b), (c), 814.4 and 814.8(b).

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, 50 Wolf Road, 6th Floor, Albany, NY 12232, (518) 457-2411, email: david.winans@dot.ny.gov

Revised Job Impact Statement

1. Nature of impact: The proposed rule changes are being advanced for the purpose of adding a definition of the term 'household goods', specifying the information that must be provided to shippers via order for service documents, updating the related statutory authority, allowing for electronic communications, and to correct addresses which have changed. The rule changes are not expected to have any impact on jobs, because the associated New York State Department of Transportation (NYSDOT) enforcement activity will be consistent with past practice.

2. Categories and numbers affected: NYSDOT participates in motor carrier enforcement with police agencies, and on its own initiative, performs inspections of vehicles and drivers and motor carrier compliance reviews. These reviews and inspections are performed using the standards that are found in the CFR regulations historically incorporated by reference in 17 NYCRR. Neither the frequency of inspections nor the basis for NYSDOT enforcement action is expected to change in a way that could affect employment.

3. Regions of adverse impact: Inspections and reviews are conducted pursuant to Department policy and there is no variance in the methodology across regions. No adverse impact on jobs in any region or regions is anticipated.

4. Minimizing adverse impact: The purpose of performing motor carrier enforcement activities is the advancement of public safety through verification of compliance with state and federal law and regulation pertaining to motor carrier safety; consequently, there are no adverse impacts.

Assessment of Public Comment

A comment was received on the proposal to repeal Part 814 as adopted in 1974 and adopt a new Part 814. The comment was submitted by Bill Whalen, Executive Director of the NYS Movers and Warehousemen's Association through their counsel, Amy Kellogg of Harter Secrest & Emory LLP. Mr. Whalen's comment was supportive of the Department's initiative updating Part 814, and assisted by identifying a few typographical and editorial errors that were present in text posted on the Department's public webpage. The errors required a few non-substantive changes to the text, and the corrected text file was sent to Mr. Whalen through his counsel for confirmation as corrected, the text was consistent with our mutual expectations of the finished product. He did so confirm and reiterated his full support of the adoption of the new Part 814.

Workers' Compensation Board

NOTICE OF ADOPTION

Administrative Appeals

I.D. No. WCB-45-15-00020-A

Filing No. 700

Filing Date: 2016-07-15

Effective Date: 2016-10-03

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

Action taken: Repeal of sections 300.13, 300.15 and 300.16; addition of new section 300.13 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 23, 117 and 141

Subject: Administrative Appeals.

Purpose: Update the process for requesting administrative review of decisions by a law judge.

Text of final rule: Sections 300.13, 300.15 and 300.16 of Title 12 of NYCRR are repealed and a 300.13 is added:

300.13 *Administrative Review, Full Board Review, and Applications for Board Reconsideration*

a. Definitions

(1) "Administrative Review" means an administrative appeal from a decision of a Compensation Claims Referee, under section twenty-three of the workers' compensation law, or an administrative appeal of a finalized administrative determination as set forth in part three-hundred twelve of this chapter.

(2) "Full Board Review" means an administrative appeal from a decision of the Board pursuant to section twenty three of the workers' compensation law. Such review is discretionary unless a board member dissents from the ruling regarding a finding other than the issue of whether to appoint an impartial medical specialist. Upon notice to the claimant, his or her legal representative, if any, the employer or carrier or Special Fund, the full board may review any case on its own motion.

(3) "Filing" means an application has been received by the Board at the designated point of receipt. Upon posting on the Board's website, the Chair may prescribe the format and method for filing and service including, among other methods, electronic, mail or fax service.

(4) "Necessary Parties of Interest" means, for the purposes of this section, claimants, self-insured employers, private insurance carriers, the state insurance fund, special funds, no-fault carriers per section one hundred forty-two of the workers' compensation law, or any surety, including but not limited to the uninsured employer's fund, and the liquidation bureau. Treating Medical Providers and Independent Medical Examiners are not parties of interest and may not make filings, oral arguments, or otherwise participate in the administrative review process. Attorneys and licensed hearing representatives are not necessary parties of interest under this rule, except that an attorney or representative is a necessary party in an appeal that concerns the amount of a fee payable to an attorney or representative or a penalty imposed against an attorney or licensed hearing representative. A claimant's attorney or licensed hearing representative, properly designated by the claimant as his or her representative, shall receive a copy of any applications or rebuttals filed under this section.

b. Requests for Administrative Review and Requests for Full Board Review filed pursuant to Workers' Compensation Law Section 23, and Requests for Reconsideration of a Board Panel decision pursuant to Section 300.14 of this Part.

(1) Application format. Unless submitted by an unrepresented claimant, an application to the Board for administrative review of a decision by a Workers' Compensation Law Judge shall be in the format as prescribed by the Chair. The application in the format prescribed by the Chair must be filled out completely by the appellant, except that the requirement to utilize the application format shall not be imposed upon a claimant who is unrepresented.

(i) Unless otherwise specified by the Chair, the appellant may attach a legal brief of up to eight pages in length, in 12-point font, with one inch margins, on 8.5 inch by 11 paper. A brief longer than eight pages will not be considered, unless the appellant specifies, in writing, why the legal argument could not have been made within eight pages. In no event shall a brief longer than fifteen pages be considered.

(ii) Documents that are present in the Board's electronic case folder at the time the administrative review is submitted shall not be, included with or attached to the application. The Board may reject applications for review by an appellant, or an attorney or licensed representative of the appellant, who attaches documents that are already in the case folder at the time of the application.

(iii) If the appellant seeks to introduce additional documentary evidence in the administrative appeal that was not presented before the Workers' Compensation Law Judge, the appellant must submit a sworn affidavit, setting forth the evidence, and explaining why it could not have been presented before the Workers' Compensation Law Judge. The Board has discretion to accept or deny such newly filed evidence. Newly filed evidence submitted without the affidavit will not be considered by the Board panel.

(2) The application for administrative review:

(i) shall specify the issues and grounds for the appeal;

(ii) shall specify the objection or exception that was interposed to the ruling, and when the objection or exception was interposed;

(iii) shall, when filed by an employer or carrier, specify which payments are continuing pending resolution of the administrative appeal, and which payments are stayed pursuant to section twenty-three of the Workers' Compensation Law;

(iv) shall include proof of service upon all necessary parties of interest, in the format prescribed by the Chair. Service upon a party who is not adverse to the interest of the appellant may not render the appeal defective as such party is not a necessary party of interest. Failure to properly serve a necessary party shall be deemed defective service and the application may be rejected by the Board.

(A) Proof of service in the format prescribed by the Chair shall specify the papers served, the person who was served, the date, and method of service including the actual address, email address or fax number where service was transmitted. An affidavit, affirmation, or other satisfactory proof of service as prescribed by the Chair, shall be submitted with the Application for Administrative Review to the Board. The affidavit, affirmation, or other proof of service must certify that all service was completed within thirty days from the filing of the decision that is the subject of the Application for Administrative Review.

(B) There is no requirement that each party be served in the same manner. Service is deemed timely if completed by the party of interest within thirty days of the filing of the decision by the Board.

(C) Unless the Chair directs service by electronic means, the appellant must certify in the affidavit or affirmation of service, that the party served provided explicit permission to receive service by fax, email, or other electronic means.

(D) When the administrative appeal is filed by the carrier, self-insured employer, or other payor or potential payor, service shall be upon the claimant, and claimant's attorney or representative, and other necessary parties in interest.

(E) Service upon a party who is not adverse to the interest of the appellant is optional, and failure to properly serve an optional party shall not be deemed to render the appeal defective.

(v) Shall include any additional fee request in the format prescribed by the Chair for fee requests. Failure to request an additional fee in the prescribed format shall result in waiver of such fee.

(3) Filing with the Board.

(i) The application shall be filed with the board within thirty days after the notice of the filing of the decision. All filings must be made using methods designated, permitted, and prescribed by the Chair. If more than one filing option is permitted by the Chair, the appellant shall choose one method for filing. Any duplicate filings may be deemed to be raising or continuing an issue without reasonable grounds, and may subject the appellant to assessments under 114-a(3) of the Workers' Compensation Law.

(ii) Method of filing the application

(A) By mail shall be sent to the Board's designated Centralized Mailing Address;

(B) By fax shall be sent to the Board's designated Centralized Fax Number;

(C) By email shall be sent to the Board's designated email address for claims documents;

(D) By electronic means shall be filed in the method and manner prescribed by the Chair. An application that is submitted by electronic means in accordance with this subparagraphs shall not be deemed filed with the Board until such submission is received and acknowledged by the Board.

(iii) The Chair may prescribe and require the format and the methods of filing of administrative appeals, including by electronic means, and may set the requirements to include various data fields, except that claimants who are unrepresented are exempt from the requirement to file electronically.

(4) Denial of review. The application for review may be denied under the following circumstances:

(i) By letter issued by the Chair or the Chair's designee when the appellant, other than a claimant who is not represented, does not comply with prescribed formatting, completion and service submission requirements;

(ii) By decision of the Board panel, when the appellant does not file the application within thirty days;

(iii) By decision of the Board panel, when the appellant does not properly file the application with the Board;

(iv) By decision of the Board panel, when the appellant does not provide proper proof of timely service upon a necessary party in interest other than a party who is not adverse to the appellant. When the appellant fails to supply proper proof of timely service upon a necessary party,

(A) When a rebuttal is submitted, the necessary party shall raise the issue of defective service in its rebuttal. Failure to raise the issue of defective service in the rebuttal shall constitute a waiver of the issue.

(B) When no rebuttal is filed, the Board may consider whether the application was defectively served, and if so, the Board may deny review without decision.

(v) By decision of the Board Panel, where the appellant did not interpose a specific objection or exception to a ruling or award by a workers' compensation law judge.

(A) Where a decision is made at a hearing, the appellant did not preserve a specific objection to the ruling or award at the hearing on the record.

(B) Where proceedings occur off-calendar, such as at a deposition, the appellant did not preserve objections on the record at the start of or conclusion of the proceeding as to qualifications of the deponent, or admissibility of any medical report or report of independent medical examination.

(C) No objection to findings made by reserved decision that have not been previously made at a hearing, need be interposed prior to filing of an application for review.

c. *Rebuttal.* A party adverse to the application for administrative review may file a rebuttal to such application for review. The rebuttal shall be in writing and, for parties other than an unrepresented claimant, shall be accompanied by a cover sheet in the format prescribed by the Chair. The rebuttal shall conform to the requirements for requests for administrative review set forth in subdivision (b) herein. Such rebuttal shall be served on the Board and all necessary parties within thirty days after service of the application for review together with proof of service upon all necessary parties in the form and format prescribed by the Chair.

d. The Board shall have the verbatim records of all hearings and proceedings placed in the case file it maintains in a readable, viewable or audible format where the issue or issues raised in the application for review were covered, and the case file shall only be considered by a Board Panel after the verbatim records covering the disputed issues are inserted in the case file.

e. *Stay of Payments.* There is no stay of any payment due to the claimant or the Board upon a filing of an application for full Board review.

f. When a claimant is not represented, the Board shall have discretion to waive the requirements contained in this section. An unrepresented claimant, who subsequently retains counsel, may have the procedural requirements of this section waived for the time when he or she was unrepresented.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 300.13(b)(4).

Revised rule making(s) were previously published in the State Register on June 8, 2016.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required because the changes made to the last published rule does not necessitate revisions to the previously published documents. The change to the rule clarifies that a decision of the Board Panel will be issued when review is denied due to a party's failure to raise an exception on the record.

Assessment of Public Comment

The agency received no public comment.