

Express Terms Summary

Part 492 Climate Smart Community Projects

The Department of Environmental Conservation (Department) proposes to create a new 6 NYCRR Part 492, Climate Smart Community Projects, describing procedures for both "clean vehicle projects" and "climate adaptation and mitigation projects." These grant and rebate programs are authorized by ECL§ 54-1521 and ECL§ 54-1523, respectively. These regulations would describe the eligibility and procedures for each program and are specifically required by ECL § 54-1511(4) and ECL § 54-1521(4), respectively, and will provide municipalities with criteria governing the program, including eligible expenditures and procedures to govern the commitment and disbursement of the funds. The rulemaking creates separate sets of application procedures, review processes, and grant program approval guidelines and criteria, for each program.

Subpart 492-1 Definitions

This new subpart will consolidate and clarify applicable definitions. Common terms such as "department" are derived from standard Department definitions, and some terms, including "eligible vehicle," "eligible purchase," and "eligible infrastructure project," were previously defined by the authorizing legislation. Additional terms with specific definitions under this rulemaking, such as "climate mitigation easement," "cost," and "municipality" were developed after review of the authorizing legislation and discussion with appropriate staff and stakeholders.

Subpart 492-2 Clean Vehicle Projects

492-2.1 Applicability

This section describes the applicability of this Subpart to clean vehicle projects. In particular, this Subpart describes rebates available to municipalities in the clean vehicle projects category, including for purchase or lease of eligible clean vehicles (up to \$5,000 per vehicle and no less than \$750 per vehicle), and for costs to purchase and install electric vehicle charging or hydrogen fuel cell refueling infrastructure (up to \$250,000 per facility). These clean vehicle project categories and rebate limits were specifically laid out in ECL § 54-1521.

492-2.2 Application Procedures for State Rebates

This section describes the application procedures for State rebates for clean vehicle projects, including how applications will be requested and the types of information that will be necessary in order for a municipality to submit an application. This section also allows the Department to request any additional information it may require to evaluate the municipality's eligibility for State rebates.

492-2.3 State Requirements

This section describes requirements for State rebates for clean vehicle projects, including factors that will determine allowable rebate amounts, and other obligations of applicants for clean vehicle project rebate funds. Some of these obligations, such as the requirement for a climate change mitigation easement, are derived directly from the authorizing legislation, and some are standard contractual obligations of the State of New York. Others, including the requirement for

matching funds, required useful project life, and monitoring requirements, were developed after review of the authorizing legislation and discussion with appropriate staff and stakeholders.

492-2.4 Approval of Projects

This section describes the criteria and procedures for approval of clean vehicle projects.

Procedures for review and approval of clean vehicle projects were developed after review of the authorizing legislation and discussion with appropriate staff and stakeholders. These include criteria and procedures for determining basic eligibility and additional criteria and procedures for evaluating the context and technical soundness of the installation proposal.

492-2.5 Payments

This section describes the procedures for state payment to municipalities for clean vehicle project rebates. Procedures for reporting and payment reflect standard Department policies and conditions for state assistance contracts.

Subpart 492-3 Climate Change Adaptation and Mitigation Projects

492-3.1 Applicability

This section describes the applicability of this Subpart to climate adaptation and mitigation projects. In particular, this Subpart describes competitive state assistance payments available, for up to \$2,000,000, to municipalities for both planning and implementation projects to advance climate adaptation and mitigation in specified areas of emphasis.

492-3.2 Application Procedure for State Assistance

This section describes the application procedures for State assistance for climate change adaptation and mitigation projects (up to \$2,000,000 per project), including how applications will be requested and the types of information that will be necessary in order to submit an application.

492-3.3 State Requirements

This section describes requirements for climate change adaptation and mitigation projects, including factors that will determine allowable grant amounts, and other obligations of applicants for climate adaptation and mitigation project grant funds. Some of these obligations, such as the requirement for matching funds and for a climate change mitigation easement, are derived directly from the authorizing legislation, and some are standard contractual obligations of the State of New York. Others, including the required useful project life and monitoring requirements, were developed after review of the authorizing legislation and discussion with appropriate staff and stakeholders.

492-3.4 Approval of Projects

This section describes the criteria and procedures for approval of climate change adaptation and mitigation projects. First, the Department must determine that the municipality has considered future physical climate risk due to sea level rise, storm surges, or flooding. In addition, other procedures for review and approval of climate adaptation and mitigation projects were developed after review of the authorizing legislation and discussion with appropriate staff and stakeholders. Procedures for determining basic eligibility and evaluating projects are described in this section and will be described in a Request for Applications. Criteria that will be evaluated include

financial hardship, project readiness, project criticality, effectiveness of the proposal, planning context, quality of the application, and reasonableness of cost.

492-3.5 Payments

This section describes the procedures for state payment to municipalities for climate change adaptation and mitigation projects. Procedures for reporting and payment reflect standard Department policies and conditions for state assistance contracts.

Express Terms

Part 492 Climate Smart Community Projects

(Statutory Authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 54-1501, 54-1503, 54-1509, 54-1511, 54-1521)

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Subpart 492-1 Definitions

492-1.1 Definitions

(a) 'Clean vehicle projects'. Projects undertaking an eligible purchase or lease of an eligible vehicle, or installation of eligible infrastructure for public charging and/or fueling of eligible vehicles.

(b) 'Climate adaptation and mitigation projects'. Projects funded pursuant to this title that shall include:

- (1) The construction of natural resiliency measures, conservation or restoration of riparian areas and tidal marsh migration areas;
- (2) Nature-based solutions to address physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable;
- (3) Relocation or retrofit of facilities to address physical climate risk due to sea level rise, and/or storm surges and/or flooding based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable;
- (4) Flood risk reduction;
- (5) Greenhouse gas emission reductions outside the power sector;
- (6) Enabling communities to become certified under the climate smart communities program, including by developing natural resources inventories, right sizing of municipal fleets and developing climate adaptation strategies; and
- (7) Climate change adaptation planning and supporting studies, including but not limited to vulnerability assessment and risk analysis of municipal drinking water, wastewater, and transportation infrastructure.

(c) 'Climate change mitigation easement'. An easement, to be enforced as a conservation easement, required by an applicant municipality that does not own the project site. The municipality must develop, execute, and file a climate change mitigation easement with the appropriate County clerk's office which ensures that:

(1) The property shall be accessible to the municipality for any necessary work to achieve the funded purpose throughout the anticipated life of the project;

(2) The property shall provide the identified public benefit throughout the anticipated life of the project;

(3) The property shall be used to achieve climate protection and mitigation goals pursuant to ECL Article 54 Title 15 "Climate Smart Community Projects" throughout the anticipated life of the project; and

(4) The property owner shall provide information and data to the municipality, or will provide access to the municipality for collection of data, as specified in the grant contract;

(d) 'Climate smart community projects'. Climate smart community projects are climate adaptation and mitigation projects and clean vehicle projects.

(e) 'Cost'. Cost shall mean eligible project costs as outlined in a Request for Applications, including the cost of all systems, facilities, machinery and equipment, engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incident to undertaking a climate smart community project.

(f) 'Department'. Department shall mean the Department of Environmental Conservation.

(g) 'Eligible vehicle'. A new motor vehicle that:

- (1) Has four wheels;
- (2) Was manufactured for use primarily on public street, roads and highways;
- (3) The powertrain of which has not been modified from the original manufacturer's specifications'
- (4) Is rated at not more than eight thousand five hundred pounds gross vehicle weight;
- (5) Has a maximum speed capability of at least fifty-five miles per hour; and
- (6) Is propelled at least in part by an electronic motor and associated power electronics which provide acceleration torque to the drive wheels sometime during normal vehicle operation, and that draws electricity from a hydrogen fuel cell or from a battery that:
 - (i) Has a capacity of not less than four kilowatt hours; and
 - (ii) Is capable of being recharged from an external source of electricity.

(h) 'Eligible purchase'. The purchase by a municipality to own or lease for a period of not less than thirty-six months of an eligible vehicle placed into service on or after April first, two thousand sixteen at a dealer located within New York.

(i) 'Eligible infrastructure project'. Any facility (not including a building and its structural components) that is used primarily for the public charging and/or fueling of vehicles which meet the eligible vehicle definition that has received required federal, state, and local permits and authorizations and complies with zoning.

(j) 'Municipality'. A county, city, town, village or borough (referring only to Manhattan, Bronx, Queens, Brooklyn, and Staten Island) residing within New York State. Municipality does not include local public authorities, public benefit corporations, Indian tribes or nations residing within New York State, or school or supervisory districts.

(k) 'Request for Applications'. A call for eligible applications issued by the Department laying out the specific process and requirements to apply for rebates and/or state assistance payments pursuant to this Title. The Request for Applications will be made available on the Department website and will be applicable until revised and replaced.

Subpart 492-2 Clean Vehicle Projects

492-2.1 Applicability.

This Subpart describes rebates available to municipalities for the purchase or lease of eligible vehicles (up to \$5,000 per vehicle and no less than \$750 per vehicle), and eligible infrastructure projects which support the public charging and/or fueling of eligible vehicles (up to \$250,000 per facility).

492-2.2 Application Procedure for State Rebates.

(a) A municipality shall make an application (in the manner described in the current Request for Applications issued by the Department) for a State rebate to be applied to the cost of a clean vehicle project. An application schedule, including a submission deadline, will be published at the time a Request for Applications is issued. The application shall identify an individual representative of the municipality who shall be authorized to sign said application as well as any contracts between the State and the municipality which may be required in order to qualify the municipality for a State rebate.

(b) At the request of the Department, the municipality shall provide any additional information, documents, or other material that the Department deems necessary to evaluate the municipality's eligibility for State rebates.

492-2.3 State Requirements.

- (a) Within the parameters provided for in the Request for Applications, individual rebate amounts will be determined annually based on factors including electric range of eligible vehicles (for vehicle purchase or lease projects) and cost effectiveness of the proposed infrastructure (for infrastructure installation projects).
- (b) Matching funds requirements, if applicable, shall be specified in the Request for Applications.
- (c) All contract documents prepared by the municipality for the construction of clean vehicle projects pursuant to this Part shall conform to all Federal, State and local laws, ordinances, rules and regulations.
- (d) The municipality shall provide the Department with monitoring information, or else allow the Department access to collect information, that documents or estimates the greenhouse gas reductions achieved as a result of the clean vehicle project.
- (e) The expected useful life of a vehicle purchase or lease project is a minimum of three years, and an infrastructure installation project is a minimum of ten years.
- (f) For all clean vehicle projects where an applicant municipality develops, improves, restores or rehabilitates real property that is not owned by the municipality, it shall obtain a climate change mitigation easement from the owner of the real property.

492-2.4 Approval of Projects.

(a) Vehicle purchase or lease rebate applications will be screened for eligibility and, if eligible, shall be awarded in the order submitted based on earliest time of submission until funding is exhausted or until the deadline specified in the current Request for Applications, whichever is first.

(b) Infrastructure installation rebate applications will be evaluated through a two-step process. The first step will determine basic project eligibility and the second step will grade the application based on project-specific factors. Infrastructure projects that are eligible and meet a minimum threshold for project-specific factors will be awarded rebates in the order submitted based on earliest time of submission until funding is exhausted or until the deadline specified in the current Request for Applications, whichever is first. The Department shall determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year.

492-2.5 Payments

(a) Installment payments of the State grant will be made at the request of the municipality, and will be based on the cost of the work performed, materials and equipment supplied and incorporated in, and services rendered in connection with, an approved project.

(b) If the municipality fails to comply with any of the requirements of the Environmental Conservation Law or regulations of the Department applicable to the project, the Department may withhold all or part of further payments pending compliance.

(c) Upon notification from the municipality that the project is complete, the Department will determine if the project is operating in accordance with applicable laws and regulations. The cost of any work completed after the final determination, or after a date established by the Department at the final determination, will not be considered part of the project cost.

(d) A final payment, which brings the total of State grant payments to 100 percent of the State share of the project cost, will be released upon determination by the Department that the project is complete and is operating satisfactorily, and that all grant requirements have been met. If the project is complete but not operating satisfactorily, the Department may withhold from the final payment an amount sufficient, in the judgment of the Department, to ensure correction of deficiencies. The amount withheld will be released when deficiencies are corrected.

(e) Total grant payments may not exceed the State share of either the estimated reasonable cost or the actual project cost, whichever is lower after deducting any other State or Federal funds received or to be received for the project.

Subpart 492-3 Climate Change Adaptation and Mitigation Projects

492-3.1 Applicability

This Subpart describes competitive state assistance payments available to municipalities for climate adaptation and mitigation projects (up to \$2,000,000) including, but not limited to, natural resiliency measures, nature based mitigation projects, relocation or retrofit of existing facilities due to flooding or sea level rise, greenhouse gas emissions reduction outside the power sector, and climate change adaptation planning and supporting studies.

492-3.2 Application Procedure for State Assistance

(a) A municipality shall make an application (in the manner described in the current Request for Applications issued by the Department) for State assistance to be applied to the cost of a climate adaptation or mitigation project. An application schedule, including a submission deadline, will be published at the time a Request for Applications is issued. The application shall identify an individual representative of the municipality who shall be authorized to sign the application as well as any contracts between the State and the municipality which may be required in order to qualify the municipality for a State rebate.

(b) At the request of the Department, the municipality shall provide any additional information, documents, or other material that the Department deems necessary to evaluate the municipality's eligibility for State rebates.

492-3.3 State Requirements

(a) Within the parameters provided for in the Request for Applications, individual grant limits and eligible project types will be determined based on factors including State and department priorities, appropriations, and the availability of scientifically-supported climate projections and other climate change research.

(b) State assistance payments shall not exceed fifty percent of the project cost or two million dollars, whichever is less.

(c) All contract documents prepared by the municipality for the construction of climate adaptation and mitigation projects pursuant to this Part shall conform to all Federal, State and local laws, ordinances, rules and regulations.

(d) The municipality shall provide the Department with monitoring information as outlined in the current Request for Applications that documents or estimates the climate adaptation or mitigation benefits achieved as a result of the project.

(e) The expected useful life of a climate adaptation and mitigation project is a minimum of ten years.

(f) For all climate change adaptation and mitigation projects where an applicant municipality develops, improves, restores or rehabilitates real property that is not owned by the municipality, it shall obtain a climate change mitigation easement from the owner of the real property.

492-3.4 Approval of Projects

(a) The Department will issue, on a competitive basis, within amounts appropriated, state assistance payments towards the cost of eligible climate change mitigation or adaptation projects provided that the Department determines that the municipality has considered future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.

(b) The Department shall outline specific scoring criteria applicable to the eligible project types in a Request for Applications. These criteria shall include:

- (1) financial hardship;
- (2) project readiness;
- (3) project criticality;
- (4) effectiveness of the proposal;

- (5) planning context;
- (6) quality of the application; and
- (7) reasonableness of cost.

(c) Climate adaptation and mitigation projects will be screened for eligibility and, if eligible, scored based on the criteria described in the Request for Applications. Funding will be awarded according to project rank from highest to lowest until funding is exhausted.

492-3.5 Payments

(a) Installment payments of the State grant will be made at the request of the municipality, and will be based on the cost of the work performed, materials and equipment supplied and incorporated in, and services rendered in connection with, an approved project.

(b) The Department will retain five percent from each payment except the final payment.

(c) If the municipality fails to comply with any of the requirements of the Environmental Conservation Law or regulations of the Department applicable to the project, the Department may withhold all or part of further payments pending compliance.

(d) Upon notification from the municipality that the project is complete, the Department will determine if the project is operating in accordance with applicable laws and regulations. The cost of any work completed after the final determination, or after a date established by the Department at the final determination, will not be considered part of the project cost.

(e) A final payment, which brings the total of State grant payments to 100 percent of the State share of the project cost, will be released upon determination by the Department that the project is complete and is operating satisfactorily, and that all grant requirements have been met. If the

project is complete but not operating satisfactorily, the Department may withhold from the final payment an amount sufficient, in the judgment of the Department, to ensure correction of deficiencies. The amount withheld will be released when deficiencies are corrected.

(f) Total grant payments may not exceed the State share of either the estimated reasonable cost or the actual project cost, whichever is lower after deducting any other State or Federal funds received or to be received for the project.

Regulatory Impact Statement Summary

6 NYCRR Part 492, Climate Smart Community Projects

The New York State Department of Environmental Conservation (Department) proposes to create a new 6 NYCRR Part 492 describing the procedures applicable to "clean vehicle projects" and "climate adaptation and mitigation projects," authorized by Environmental Conservation Law (ECL) §§ 54-1511, 54-1521, and 54-1523. "Clean vehicle projects" include rebates available to municipalities for the purchase or lease of eligible vehicles (up to \$5,000 per vehicle), and eligible infrastructure projects which support the public charging and/or fueling of eligible vehicles (up to \$250,000 per facility). "Climate adaptation and mitigation projects" include competitive state assistance payments available to municipalities for climate adaptation and mitigation projects (up to \$2,000,000) including, but not limited to, natural resiliency measures, nature based mitigation projects, relocation or retrofit of existing facilities due to flooding or sea level rise, greenhouse gas emissions reduction outside the power sector, and climate change adaptation planning and supporting studies.

1. Statutory Authority

The statutory authority to promulgate Part 492 is found in ECL §§ 54-1501, 54-1503, and 54-1521. ECL § 54-1501 defines Climate Smart Community (CSC) projects as, "adaptation and mitigation projects, including flood mitigation and coastal and riparian resiliency, greenhouse gas reductions outside the power sector and climate change adaptation planning, and clean vehicle projects."

ECL§ 54-1503 authorizes the Commissioner to undertake Climate Smart Community (CSC) Projects and ECL § 54-1521 requires the Department, in consultation with NYSERDA, to promulgate rules to implement this title.

2. Legislative Objectives

ECL § 54-1503 authorizes the Commissioner to undertake CSC Projects and ECL § 54-1521(4) requires the Department, in consultation with NYSERDA, to promulgate rules to implement this title, including regarding the procedures and guidelines for claiming rebates for clean vehicle projects. According to the 2016 Regular Session Law Chapter 58, Part U, §8, the Commissioner is authorized to issue rebates through a request for proposal, "until January 1, 2018 or such time as regulations are adopted pursuant to section 54-1521 of the environmental conservation law, whichever is sooner." Similarly, ECL § 54-1511(4) specifically requires the Department to promulgate rules regarding climate adaptation and mitigation projects. Pursuant to the 2016 Regular Session Law Chapter 58, Part U, § 8, the Department is authorized to provide state assistance to municipalities for climate adaptation and mitigation projects through requests for proposals, "until January 1, 2018 or such time as regulations are adopted pursuant to section 54-1511 of the environmental conservation law, whichever is sooner." Therefore, consistent with the directives set forth in the legislation, the Department is seeking to promulgate rules and regulations to govern municipal eligibility, application review, and technical criteria for both types of CSC projects by January 1, 2018.

The Department proposes to create a new 6 NYCRR Part 492 covering both "clean vehicle projects" and "climate adaptation and mitigation projects," authorized by ECL § 54-1521 and

ECL § 54-1523, respectively. These regulations will provide municipalities with criteria governing the program as described in ECL § 54-1511. For FY 2016/17, the Department implemented CSC projects through the Grants Gateway and NYS Consolidated Funding Application pursuant to ECL, 2016 Sess. Laws of N.Y., Chapter 58, Part U, §8. The Department has evaluated the results of the initial round to inform the development of these proposed regulations.

3. Needs and Benefits

In 2015, the Governor signed the Under 2 MOU (Memorandum of Understanding), an agreement among states, provinces and cities worldwide affirming their collective commitment to reduce greenhouse gas (GHG) emissions 80 percent by 2050. To help achieve this goal, New York set an aggressive target to reduce emissions 40 percent below 1990 levels by 2030 and 80 percent by 2050. These targets were confirmed by Executive Order 166 on June 1, 2017, which stated, "[i]t is the policy of the State of New York to reduce GHG emissions by forty percent by 2030, and eighty percent by 2050 from 1990 levels, across all emitting activities of the economy."

The programs covered under this regulation provide funding for municipalities to support actions that provide public benefits related to environmental quality, emergency preparedness, economic health, and social resilience. These regulations are required by statute, and the programs covered help advance progress towards the greenhouse gas reduction targets and climate resiliency goals identified by the Governor. These regulations are intended to provide clarity and certainty, and to encourage the application for and issuance of CSC grants.

Clean Vehicle Projects

The transportation sector is the largest contributor of greenhouse gas emissions in the state, currently accounting for 34% of the state's total GHG emissions. The clean vehicle rebate program covered by Part 492 provides funding to increase both the number of clean vehicles in municipal fleets (up to \$5,000 per vehicle based on the electric range of the vehicle), as well as publicly accessible clean vehicle charging and refueling infrastructure (up to \$250,000 per facility), vital to meeting New York's GHG emission reduction goals in the transportation sector.

Climate Adaptation and Mitigation Projects

NYSERDA's ClimAID assessment (2011, 2014) projects a wide range of impacts local governments in New York State will face as the climate changes. Average temperatures are projected to increase 4 - 10°F by 2100. Precipitation is also projected to increase, occur with greater variability year-to-year, and occur more frequently in the form of downpours. These climatic changes will bring greater risks as a result of flooding, extreme heat, exacerbation of respiratory conditions, and the introduction of new disease vectors and pests, among other hazards. Sea level is also projected to rise across New York's coastal area by up to 6 feet by 2100, increasing risks from flooding and storm surge.

The climate adaptation and mitigation projects covered by Part 492 are defined at ECL § 54-1523(1)(a)-(g), and cover a wide range of municipal activities including natural resiliency measures and conservation or restoration of riparian and tidal marsh migration areas; relocation or retrofit of facilities to address sea-level rise, storm surge, and flooding; flood risk reduction; greenhouse gas emission reductions outside the power sector; and certification under the Climate

Smart Communities program. The new Title 15 EPF program targets both climate adaptation and mitigation (greenhouse gas reduction) activities, and provides the Department with the ability to make awards based solely on climate benefit.

4. Costs

Part 492 will not impose any costs on any entity because the regulation is a voluntary funding program and does not impose any standards or compliance obligations. Therefore, there are no costs associated with Part 492. Likewise, the regulation will not impose any additional costs on the Department or local government entities.

5. Paperwork

The proposed rule is not expected to create any significant increase in the amount of required paperwork necessary to apply for state assistance through Title 15 of the Environmental Protection Fund.

6. Local Government Mandates

The proposed rule does not create any local government mandates. The programs are voluntary grant programs.

7. Duplication

This proposal is not intended to duplicate any state or federal regulations or statutes. The final rule will conform to the requirements of the ECL.

8. Alternatives

There is no legal alternative to this rulemaking because it is required by legislation. Therefore, there is no "no action" alternative available to the Department. The department will, however, continually evaluate the success of the program and may change future Request for Applications to reflect shifts in available funding, State priorities, available technologies and best practices, and climate conditions.

9. Federal Standards

There are currently no federal standards that apply to Title 15 of the Environmental Protection Fund.

10. Compliance Schedule

Due to legislative mandate, Part 492 should be promulgated by January 1, 2018. Applicants will be required to comply with the effective date of the rule.

Regulatory Impact Statement

6 NYCRR Part 492, Climate Smart Community Projects

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vehicle), and eligible infrastructure projects which support the public charging and/or fueling of eligible vehicles (up to \$250,000 per facility). "Climate adaptation and mitigation projects" include competitive state assistance payments available to municipalities for climate adaptation and mitigation projects (up to \$2,000,000) including, but not limited to, natural resiliency measures, nature based mitigation projects, relocation or retrofit of existing facilities due to flooding or sea level rise, greenhouse gas (GHG) emissions reduction outside the power sector, and climate change adaptation planning and supporting studies.

1. Statutory Authority

Environmental Conservation Law, §§ 1-0101, 3-0301, 54-1501, 54-1503, 54-1511, 54-1521, 54-1523

ECL § 1-0101 sets forth the policy of the Department to conserve, improve, and protect New York State's environment and natural resources, including the control of "air pollution, in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being." ECL § 1-0101 further states that it is the policy of the State to coordinate its environmental plans, functions, powers, and programs with those of the federal government and other regions to manage air resources such that the State may fulfill its responsibility as trustee of the environment for present and future generations. This section also provides that it is the policy of the State to foster, promote, create, and maintain an environment where man and nature thrive in harmony by providing that care is taken with air resources shared between states.

ECL § 3-0301 provides that it is the responsibility of the Department to carry out the environmental policy of the State. In order to carry out that mandate, ECL § 3-0301(1)(a) gives

the Commissioner the authority to "[c]oordinate and develop policies, planning and programs related to the environment of the State and regions thereof..." ECL § 3-0301(1)(b) instructs the Commissioner to promote and coordinate management of, among other things, air resources "to assure their protection, enhancement, provision, allocation and balanced utilization consistent with the environmental policy of the State and take into account the cumulative impact upon all such resources in making any determination in connection with any license, order, permit, certification or other similar action or promulgating any rule or regulation, standard or criterion." ECL § 3-0301(1)(i) charges the Commissioner with promoting and protecting the air resources of New York State, including providing for the prevention and abatement of air pollution. Section 3-0301(2)(a) gives the Commissioner the authority to adopt rules and regulations in order to implement the provisions of the ECL. ECL § 3-0301(2)(m) grants the Commissioner the authority to "adopt such rules, regulations, and procedures as may be necessary, convenient, or desirable to effectuate the purposes of this chapter."

ECL § 54-1501 defines Climate Smart Community (CSC) projects as, "adaptation and mitigation projects, including flood mitigation and coastal and riparian resiliency, GHG reductions outside the power sector and climate change adaptation planning, and clean vehicle projects."

ECL § 54-1503 specifically authorizes the Commissioner of the Department to undertake CSC projects and ECL § 54-1511 authorizes the Commissioner to provide, on a competitive basis, state assistance payments towards the cost of approved CSC projects provided that the Commissioner, "determines that future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme

weather events, including hazard risk analysis data if applicable, has been considered." This section also authorizes the Commissioner to enter into contracts with municipalities, and requires the Commissioner to promulgate rules and regulations governing eligibility, application and review procedures, and dispersal of state assistance payments. Pursuant to this section, state assistance payments may not exceed 50% of the total project cost or \$2,000,000, whichever is less.

ECL § 54-1521 requires the Department, in consultation with NYSERDA, to promulgate rules and regulations to implement this title. ECL § 54-1521 also describes clean vehicle projects and defines the terms "eligible infrastructure project," "eligible purchase," and "eligible vehicle." ECL § 54-1521(2) permits the Commissioner, in consultation with the New York State Energy Research Development Authority (NYSERDA), to issue rebates for eligible infrastructure projects that support the development of clean vehicles, provided that the municipality may receive a maximum rebate of \$250,000. ECL § 54-1521(3) authorizes the Commissioner, in consultation with NYSERDA, to issue rebates for the eligible purchases of clean vehicles, taking into account the electric range of the vehicles, and provided the rebate amount is not less than \$750 and not more than \$5,000 per vehicle.

ECL § 54-1523 describes climate adaptation and mitigation projects and authorizes the Commissioner to provide state assistance payment to municipalities on a competitive basis. This section also encourages the equitable regional distribution of state assistance payments, and forbids the expenditure of state funds for land acquisition.

2. Legislative Objectives

ECL § 54-1503 authorizes the Commissioner to undertake CSC Projects and ECL § 54-1521(4) requires the Department, in consultation with NYSERDA, to promulgate rules to implement this title, including procedures and guidelines for claiming rebates for clean vehicle projects.

According to the 2016 Regular Session Law Chapter 58, Part U, §8, the Commissioner is authorized to issue rebates through a request for proposal, "until January 1, 2018 or such time as regulations are adopted pursuant to section 54-1521 of the environmental conservation law, whichever is sooner." Similarly, ECL § 54-1511(4) specifically requires the Department to promulgate rules regarding climate adaptation and mitigation projects. Pursuant to the 2016 Regular Session Law Chapter 58, Part U, § 8, the Department is authorized to provide state assistance to municipalities for climate adaptation and mitigation projects through requests for proposals, "until January 1, 2018 or such time as regulations are adopted pursuant to section 54-1511 of the environmental conservation law, whichever is sooner." Therefore, consistent with the directives set forth in the legislation, the Department is seeking to promulgate rules and regulations to govern municipal eligibility, application review, and technical criteria for both types of CSC projects by January 1, 2018.

The Department proposes to create a new 6 NYCRR Part 492 covering both "clean vehicle projects" and "climate adaptation and mitigation projects," authorized by ECL § 54-1521 and ECL § 54-1523, respectively. These regulations will provide municipalities with criteria governing the program as described in ECL § 54-1511. For FY 2016/17, the Department implemented CSC projects through the Grants Gateway and NYS Consolidated Funding Application pursuant to 2016 Sess. Laws of N.Y., Chapter 58, Part U, §8. The Department has

evaluated the results of the initial round to inform the development of these proposed regulations.

3. Needs and Benefits

In 2015, the Governor signed the Under 2 MOU (Memorandum of Understanding), an agreement among states, provinces and cities worldwide affirming their collective commitment to reduce (GHG) emissions 80 percent by 2050. To help achieve this goal, New York set an aggressive target to reduce emissions 40 percent below 1990 levels by 2030 and 80 percent by 2050. These targets were confirmed by Executive Order 166 on June 1, 2017, which stated, "[i]t is the policy of the State of New York to reduce GHG emissions by forty percent by 2030, and eighty percent by 2050 from 1990 levels, across all emitting activities of the economy."

The programs covered under the proposed regulation provide funding for municipalities to support actions that provide public benefits related to environmental quality, emergency preparedness, economic health, and social resilience. These regulations are required by statute, and the programs covered help advance progress towards the GHG reduction targets and climate resiliency goals identified by the Governor. The proposed regulation is intended to provide clarity and certainty, and to encourage the application for and issuance of CSC grants.

Clean Vehicle Projects

The transportation sector is the largest contributor of GHG emissions in the state, currently accounting for 34% of the state's total GHG emissions. Compared to gasoline-powered cars, electric cars are more energy efficient and cost about 50 to 70 percent less to operate per mile.

New York's Governor signed the Zero Emission Vehicle (ZEV) MOU and the International ZEV Alliance to move the state forward on reducing emissions from automobiles. New York is also part of the twelve-state Transportation and Climate Initiative (TCI) coalition that is developing a potential market based approach to reducing emissions from the transportation sector.

The clean vehicle rebate program covered by Part 492 proposes funding to increase both the number of clean vehicles in municipal fleets (up to \$5,000 per vehicle based on the electric range of the vehicle), as well as publicly accessible clean vehicle charging and refueling infrastructure (up to \$250,000 per facility), vital to meeting New York's GHG emission reduction goals in the transportation sector.

Although subject to change, the Round One Request for Applications implemented factors to ensure the fairness, local commitment, and cost-effectiveness of the program. Rebates were awarded on a first-come, first-serve basis for eligible projects including purchase or lease of clean vehicles or installation of electric vehicle supply equipment (EVSE) or hydrogen fuel cell refueling infrastructure. Infrastructure projects were also required to meet a minimum score for technical criteria, to ensure they were feasible and appropriate for local conditions. Recipients of rebates for infrastructure projects were required to provide a 20% match for awarded funds to demonstrate local commitment. Cost-effectiveness of the proposed infrastructure was ensured for EVSE projects by capping rebate awards at \$8000 per port (or \$32,000 per pedestal for DC Fast-Charge infrastructure), amounts developed in consultation with NYSERDA that represent a reasonable cost for infrastructure.

The Department will evaluate each round of the clean vehicle program and make changes, if necessary, in future Requests for Applications. The Department may make changes to improve program delivery and reflect shifts in available funding, market value of equipment and other costs, electric range of available vehicles, technological improvements, and state or regional emissions reduction priorities.

Climate Adaptation and Mitigation Projects

NYSERDA's ClimAID assessment (2011, 2014) projects a wide range of impacts local governments in New York State will face as the climate changes. Average temperatures are projected to increase 4 - 10°F by 2100. Precipitation is also projected to increase, occur with greater variability year-to-year, and occur more frequently in the form of downpours. These climatic changes will bring greater risks as a result of flooding, extreme heat, exacerbation of respiratory conditions, and the introduction of new disease vectors and pests, among other hazards.

Sea level is also projected to rise across New York's coastal area by up to 6 feet by 2100, increasing risks from flooding and storm surge. The Governor signed the Community Risk and Resiliency Act (CRRRA) in 2014 to address these risks. CRRRA requires that applicants to certain State programs demonstrate that they have considered future physical climate risks from storm surges, and sea-level rise or flooding. CRRRA also requires the Department to establish official State sea-level rise projections to provide the basis for adaptation decisions and other decision making.

The climate adaptation and mitigation projects covered by the proposed Part 492 are defined at ECL § 54-1523(1)(a)-(g), and cover a wide range of municipal activities including natural resiliency measures and conservation or restoration of riparian and tidal marsh migration areas; relocation or retrofit of facilities to address sea-level rise, storm surge, and flooding; flood risk reduction; GHG emission reductions outside the power sector; and certification under the Climate Smart Communities program. The new Title 15 EPF program targets both climate adaptation and mitigation (GHG reduction) activities, and provides the Department with the ability to make awards based solely on climate benefit.

The new proposed Part 492 would add a funding component to the existing CSC Program. The CSC Program encourages local governments to reduce GHG emissions and increase local resilience to a changing climate through adoption of a municipal resolution "pledging" to initiate and advance efforts that benefit the climate.

Although subject to change, the Round One Request for Applications implemented factors to ensure fairness, maximize the effectiveness of funding, address financial hardship, promote local climate action, and advance State priorities. Eligible project types and costs were developed in order to address the CRRRA adaptation priorities and emissions reduction in the state's largest non-power sector sources (transportation and landfill methane). In the scoring criteria, additional points were awarded to financial hardship communities, and to communities that previously demonstrated commitment to local climate action through the Climate Smart Communities program.

The Department will evaluate each round of the climate adaptation and mitigation funding program and make changes, if necessary, in future Requests for Applications. Such changes would reflect shifts in, among other factors, available funding, State priorities, available technologies and best practices, and climate conditions.

4. Costs

As proposed, Part 492 will not impose any costs on any entity because the regulation is a voluntary funding program and does not impose any standards or compliance obligations. Therefore, there are no costs associated with the proposed Part 492. Likewise, the proposed regulation will not impose any additional costs on the Department or local government entities.

5. Paperwork

The proposed rule is not expected to create any significant increase in the amount of required paperwork necessary to apply for state assistance through Title 15 of the Environmental Protection Fund.

6. Local Government Mandates

The proposed rule does not create any local government mandates. The programs are voluntary grant programs.

7. Duplication

This proposal is not intended to duplicate any state or federal regulations or statutes. The final rule will conform to the requirements of the ECL.

8. Alternatives

There is no legal alternative to this rulemaking because it is required by legislation. Therefore, there is no "no action" alternative available to the Department.

The department will, however, continually evaluate the success of the program and may change future Request for Applications to reflect shifts in available funding, State priorities, available technologies and best practices, and climate conditions.

9. Federal Standards

There are currently no federal standards that apply to Title 15 of the Environmental Protection Fund.

10. Compliance Schedule

Due to legislative mandate, Part 492 should be promulgated by January 1, 2018. Applicants will be required to comply with the effective date of the rule.

Assessment of Public Comments

6 NYCRR Part 492, Climate Smart Communities Projects

Comments Received from December 6, 2017 through February 5, 2018

Comment 1:

Part 492, Climate Smart Communities Projects could be strengthened by revising the definition of “climate adaptation and mitigation projects” under 492-1.1 to explicitly include extreme heat mitigation.

Response to Comment 1:

The definitions under 492-1.1 are worded to match those of the governing statute ECL 54-1523. However, it is the determination of the Department of Environmental Conservation that the list of projects is only illustrative, not exhaustive of adaptation and mitigation projects. Indeed, as described in the 2017 NYS Regional Economic Development Council Consolidated Funding Application and other documents distributed by the Department, projects to address future extreme-heat conditions and to improve emergency preparedness and response systems for future extreme-climate conditions are eligible for funding.

Supporting Documents

6 NYCRR Part 492, Climate Smart Community Projects

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Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to create a new 6 NYCRR Part 492 describing "clean vehicle projects" and "climate adaptation and mitigation projects," authorized by Environmental Conservation Law §§ 54-1521 and 54-1523. "Clean vehicle projects" include rebates available to municipalities for the purchase or lease of eligible vehicles (up to \$5,000 per vehicle), and eligible infrastructure projects which support the public charging and/or fueling of eligible vehicles (up to \$250,000 per facility). "Climate adaptation and mitigation projects" include competitive state assistance payments available to municipalities for climate adaptation and mitigation projects (up to \$2,000,000) including, but not limited to, natural resiliency measures, nature based mitigation projects, relocation or retrofit of existing facilities due to flooding or sea level rise, greenhouse gas emissions reduction outside the power sector, and climate change adaptation planning and supporting studies. Application for funding under Part 492 is voluntary. There are no requirements in the proposed regulation which apply only to rural areas. The beneficial emission reductions resulting from mitigation projects funded under Part 492 will accrue to all areas of the state.

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

Part 492 will require municipalities, in certain circumstances, to provide monitoring information, or access to monitoring information, that documents greenhouse gas or climate change mitigation benefits. However, there are no requirements in the proposed regulation that apply exclusively to rural areas and participation in the program is voluntary. Municipalities may engage professional consulting and construction services to carry out projects funded pursuant to this title.

3. Costs:

Part 492 will not impose any costs on any entity because the regulation is a voluntary funding program and does not impose any standards or compliance obligations. Therefore, there are no costs associated with Part 492. Likewise, the regulation will not impose any additional costs on the Department or local government entities. Certain projects funded under Part 492 will require matching funds from the municipality. However, as participation in this program is voluntary any matching costs incurred by the municipality will be elective.

4. Minimizing adverse impact:

The proposed changes will not adversely impact rural areas. Application for funding under Part 492 is voluntary and there are no requirements in the proposed regulation which apply only to rural areas. The beneficial emission reductions resulting from mitigation projects funded under Part 492 will accrue to all areas of the state.

5. Rural area participation:

The Department plans on holding a public hearing and webinar that will be available to participants throughout New York State once the regulation is proposed. The hearing will be available for persons from all areas, including rural areas, to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

Job Impact Statement

1. Nature of Impact:

The New York State Department of Environmental Conservation (Department) proposes to create a new 6 NYCRR Part 492 describing "clean vehicle projects" and "climate adaptation and mitigation projects," authorized by Environmental Conservation Law §§ 54-1521 and 54-1523. "Clean vehicle projects" include rebates available to municipalities for the purchase or lease of eligible vehicles (up to \$5,000 per vehicle), and eligible infrastructure projects which support the public charging and/or fueling of eligible vehicles (up to \$250,000 per facility). "Climate adaptation and mitigation projects" include competitive state assistance payments available to municipalities for climate adaptation and mitigation projects (up to \$2,000,000) including, but not limited to, natural resiliency measures, nature based mitigation projects, relocation or retrofit of existing facilities due to flooding or sea level rise, greenhouse gas emissions reduction outside the power sector, and climate change adaptation planning and supporting studies. The proposed regulations are not expected to adversely impact jobs and employment opportunities in New York State. Application for funding under Part 492 is voluntary. Funding is available for a variety of eligible actions and depending on the specific actions proposed by an applicant, employment opportunities may be created as a result of project implementation. New York State has offered several rounds of state assistance through the Environmental Protection Fund in the

past, and the Department is unaware of any significant adverse impact to jobs and employment opportunities as a result of these previous programs.

2. Categories and numbers affected:

This funding program is available to all municipalities in New York State, including counties, cities, towns, villages, and boroughs. The Department does not anticipate any of these areas suffering any adverse employment or economic impact from this regulation.

3. Regions of adverse impact:

This funding program is available to every municipality throughout New York State.

Accordingly, there are no regions of the state that would have a disproportionate adverse impact on jobs or employment opportunities as a result of this rulemaking.

4. Minimizing adverse impact:

The proposed regulations are not expected to have adverse impacts on jobs and employment opportunities. Application to these programs is voluntary. Funding is available for a variety of eligible actions and depending on the specific actions proposed by an applicant, employment opportunities may be created as a result of project implementation.

Regulatory Flexibility Analysis for Small Businesses and Local Governments

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) proposes to create a new 6 NYCRR Part 492 describing "clean vehicle projects" and "climate adaptation and

mitigation projects," authorized by Environmental Conservation Law §§ 54-1521 and 54-1523. "Clean vehicle projects" include rebates available to municipalities for the purchase or lease of eligible vehicles (up to \$5,000 per vehicle), and eligible infrastructure projects which support the public charging and/or fueling of eligible vehicles (up to \$250,000 per facility). "Climate adaptation and mitigation projects" include competitive state assistance payments available to municipalities for climate adaptation and mitigation projects (up to \$2,000,000) including, but not limited to, natural resiliency measures, nature based mitigation projects, relocation or retrofit of existing facilities due to flooding or sea level rise, greenhouse gas emissions reduction outside the power sector, and climate change adaptation planning and supporting studies. The proposed regulations are not expected to adversely impact small businesses and local governments in New York State. Application for funding under Part 492 is voluntary.

2. Compliance requirements:

Local governments are eligible to apply for funding under Part 492, and will be required to adhere to its requirements in order to receive state assistance payments. Application for funding under Part 492 is voluntary.

3. Professional services:

Municipalities may employ local professional services to carry out projects funded pursuant to this title. No additional costs will accrue to small businesses or local governments as participation in this program is voluntary.

4. Compliance costs:

Local governments are eligible to apply for funding under Part 492, and will be required to adhere to its requirements in order to receive state assistance payments. Local governments may incur costs associated with preparing applications, carrying out projects, and local match requirements pursuant to this title. However, application for funding under Part 492 is voluntary.

5. Minimizing adverse impact:

Since application for funding under Part 492 is voluntary, and these programs provide state assistance payment for projects undertaken by local governments in their localities for the benefit of the public, the Department does not anticipated any adverse impact on local governments as a result of these regulations.

6. Small business and local government participation:

The Department plans on holding a public hearing and webinar that will be available to participants throughout New York State once the regulation is proposed. The hearing will be available for persons from all areas of the state to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

7. Economic and technological feasibility:

Application for funding under Part 492 is voluntary. New York State has offered many rounds of state assistance through the Environmental Protection Fund in the past, and local governments have been able to adhere to program requirements using available technology and resources, without any significant adverse economic impacts.