

NEW YORK CODES, RULES AND REGULATIONS

TITLE 21. MISCELLANEOUS  
CHAPTER XI. NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

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Chapter XI Notes

Added Part 505 on 2/21/01; added Part 506 on 2/04/04.

PART 500. PROCEDURE

Part 500 Notes

Statutory authority: Public Authorities Law, § 1853(2)

Added Part 500 on 3/27/79.

§ 500.1 Certification and transmittal of minutes

Except as provided in section 500.2 of this Part, the secretary of the authority or, in the absence or disability of the secretary, the chairman of the authority, shall, as soon as practical after each meeting of the authority, certify a copy of the minutes of such meeting and transmit the same to the Governor of the State of New York at the Executive Chamber in Albany.

Statutory authority: Public Authorities Law, § 1853(2)

Added 500.1 on 3/27/79.

§ 500.2 When transmittal not required

If all action taken at any meeting of the authority relates solely to a particular matter or class of matters with respect to which the Governor of the State of New York has, by order filed with the authority, relieved the authority from the duty of procuring his approval in accordance with section 1853 of the Public Authorities Law, the minutes of such meeting need not be transmitted to the Governor in accordance with section 500.1 of this Part unless the authority shall otherwise direct.

Section statutory authority: Public Authorities, § 1853

Statutory authority: Public Authorities Law, § 1853(2)

Added 500.2 on 3/27/79.

§ 500.3 Approval of Governor required

Except to the extent the Governor of the State of New York has, by order filed with the authority, relieved the authority from the duty of procuring his approval of any action upon a particular matter or class of matters, no action taken at any meeting of the authority shall have force or effect until the Governor shall have had an opportunity to approve or veto the same in accordance with the provisions of section 1853 of the Public Authorities Law.

Section statutory authority: Public Authorities, § 1853

Statutory authority: Public Authorities Law, § 1853(2)

Added 500.3 on 3/27/79.

## PART 501. PUBLIC ACCESS TO RECORDS

Part 501 Notes

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added Part 501 on 3/27/79.

### § 501.1 Purpose and scope

(a) Public understanding of the process of government decisionmaking is essential to a free and democratic society. That understanding is enhanced by providing maximum public access to the documents and data upon which government policy is made. Accordingly, the authority's policy with respect to requests for its records is that disclosure is the rule and withholding is the exception. All records not exempt from disclosure will be made available. Moreover, records which may be exempt from disclosure will be made available as a matter of discretion when disclosure is not prohibited by law, or is not harmful to the public interest.

(b) This Part provides information concerning the procedures by which records may be requested, reviewed and obtained.

(c) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.1 on 3/27/79.

### § 501.2 Designation of records access officer

(a) The chairman of the authority is responsible for insuring compliance with the regulations herein, which apply to records maintained or submitted to the authority pursuant to its power and duties under its enabling act, and designates the following person as records access officer:

Records Access Officer

NYS Energy Research and Development Authority

17 Columbia Circle

Albany, NY 12203-6399

(b) The records access officer is responsible for insuring appropriate agency response to public requests for access to records. The designation of the records access officer shall not be construed to prohibit officials who have been authorized in the past to make records or information available to the public from continuing to do so. The records access officer shall insure that personnel:

- (1) maintain an up-to-date subject matter list;
- (2) assist the requester in identifying requested records, if necessary;
- (3) upon locating the records, take one of the following actions:

- (i) make records available for inspection; or
  - (ii) deny access to the records in whole or in part, and explain in writing the reasons therefor;
- (4) upon request for copies of records:

(i) make a copy available upon payment or offer to pay established fees, if any, in accordance with section 501.8 of this Part; or

- (ii) permit the requester to copy the records;
- (5) upon request, certify that a record is a true copy; and
- (6) upon failure to locate records, certify that after diligent search:
- (i) the records are not in the possession of the authority; or
  - (ii) the records of which the authority is a custodian cannot be found.

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.2 on 3/27/79; amended 501.2(a) on 2/21/01.

### § 501.3 Location

Records maintained at the Albany office shall be available for public inspection and copying at:

17 Columbia Circle

Albany, New York; and records maintained at the West Valley office shall be available for public inspection and copying at:

Western New York Nuclear Service Center

10282 Rock Springs Road

West Valley, New York

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.3 on 3/27/79; amended 501.3 on 2/21/01.

### § 501.4 Hours for public inspection

Requests for public access to records shall be accepted and records produced during all hours the authority is regularly open for business. These hours are: 8:30 a.m. - 5 p.m.

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.4 on 3/27/79.

### § 501.5 Requests for public access to records

(a) Any written request for records covered by this Part shall be deemed to be a request for records pursuant to the Freedom of Information Law, whether or not the Freedom of Information Law is mentioned in the request. An oral request for records will not be considered a request for records pursuant to the Freedom of Information Law. Responses to oral requests for records shall be made as promptly as resources and time restraints permit.

(b) The authority shall respond to a written request which reasonably describes the records sought within five business days of receipt of the request. If the authority fails so to do, the request may be construed as denied and may be appealed.

(c) The response set forth in subdivision (b) of this section shall offer or deny access, in whole or in part, to the records sought, or shall acknowledge receipt of the written request and set forth the approximate date upon which the request will be granted or denied. The response may set forth a request on the part of the authority to confer with the requester to review the request to determine which records will satisfy the objectives and needs of the requester; provided, however, that the failure on the part of the requester to confer with the authority or the failure of the authority to produce records described in the written request for records shall not preclude an appeal by the requester based upon a denial of access.

(d) If access to records is neither granted nor denied within 5 business days following the receipt of a request, the authority shall acknowledge the receipt of the request in writing and include a written statement of the approximate date when such request will be granted or denied, in which case, if access to records is neither granted or denied within 10 business days after the time set forth in such statement, the request may be considered as denied. The authority may extend the time for providing access to records beyond 5 business days of the receipt of a request when it is necessary to:

(1) search for and collect the requested records from facilities or other establishments that are separate from the authority;

(2) search for, collect and appropriately examine a voluminous amount of records which are demanded in a single request; or

(3) consult, which shall be conducted with all practicable speed, with another person having a substantial interest in the determination of the request, or among two or more components of the authority having substantial subject matter interest therein.

(e) The time limitations on response to requests for records shall begin to run as of the time a request for records is received by the records access officer and a date-stamp notation placed directly on the request.

(f) A request for access to records must reasonably describe the records requested. Where possible, specific information regarding dates, title, file designations, and other information which may help identify the records, should be supplied by the requester. Where the information supplied by the requester is not sufficient to permit identification and location of the records by authority personnel without an unreasonable amount of effort, the requester will be contacted and asked to supply the necessary information. Every reasonable effort shall be made by authority personnel to assist in the identification and location of requested records.

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.5 on 3/27/79; amended 501.5 on 2/29/80; amended 501.5(d) on 2/21/01.

#### § 501.6 Trade secret designation

(a) For purposes of this Part, trade secret means any record including, but not limited to: any proprietary data concerning past, present or planned future energy distribution, sales volumes, costs, or prices; customer or client lists; devices; processes or plans; formulas; patterns; processes; procedures; studies, analyses, plans, and surveys; compounds; cost records; compilations of information; and other confidential or proprietary information which is not published or divulged, disclosure of which would cause substantial injury to the competitive position of the commercial enterprise. Trade secret shall also include information derived from information from a commercial enterprise which if disclosed would cause substantial injury to the competitive position of the commercial enterprise.

(b) The authority may deny access to a trade secret. A record containing a trade secret shall be labeled using such words as "trade secret", "confidential", "proprietary information", or words of similar import.

(c) A person may, at the time of submission of a record, request that the authority designate all or a portion of such record as a trade secret, and except such record from disclosure under paragraph (d) of subdivision two of section 87 of the Public Officers Law. Such request shall identify the record constituting a trade secret and the reasons why disclosure of such record would cause substantial injury. The request shall indicate, if appropriate:

(1) the specific record requested to be considered a trade secret, including, where applicable, page, form, line, chart, or table designation;

(2) the confidential nature of the record, including a description of the nature and extent of the injury to the person's competitive position such as unfair economic or competitive damage which would be incurred were the record to be disclosed;

(3) whether the record is treated as confidential by the submitter, including whether it has been made available to others;

(4) whether any patent, copyright, or similar legal protection exists for the record;

(5) whether the public disclosure of such record is otherwise restricted by law, and the specific source and contents of such restrictions;

(6) the date upon which such record will no longer need to be kept confidential, if applicable;

(7) whether the request itself constitutes a record which, if disclosed, would defeat the purpose for which trade secret status is sought;

(8) whether the record is known outside of the business of the submitter;

(9) the extent to which the record is known by the employees and others involved in the business of the submitter;

(10) the value of the record to the submitter and to its competitors;

(11) the amount of effort or money expended by the submitter in developing the record;

(12) the ease or difficulty with which the record could be properly acquired or duplicated by others; and

(13) any other factors considered relevant.

(d) When a record deemed a trade secret has been submitted to the authority, and such record is not being reviewed, analyzed, or used by a person to whom such record was intended for use, custody of such record shall be the responsibility of the Director of Contract Management for records maintained at the Albany office and the Program Director of West Valley Site Management for records maintained at the West Valley office. Such record shall be excepted from disclosure and be maintained apart by the authority from all other records in secure file facilities until 15 days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction. A record granted trade secret status or which is being reviewed to determine if it constitutes a trade secret, whether in written or electronic form, or obtained through electronic transfer and stored in written form, on computer disks, or in other media, shall be placed in envelopes with flaps, enclosed in containers, or secured in another manner which will effectively maintain the integrity of the trade secret and which can be marked to clearly limit access to the contents. The container will indicate a trade secret control number and identify the source or owner of the record and the authority employee who received the record. Access and use of the record shall be limited to persons performing administrative or evaluative responsibilities. If a determination is made that the record does not constitute a trade secret, it will be removed from the secured location and made available to the person requesting access to such record.

(e) On the initiative of the authority at any time, or upon the written request of any person for access to a record to which trade secret status pursuant to subdivision (c) of this section has been granted or is pending, the authority shall:

(1) inform the person who submitted the request for exception of the authority's intention to determine whether such status should be granted or continued;

(2) permit the person who requested the exception, within 10 business days of receipt of notification from the authority, to submit a written statement of the necessity for the granting or continuation of such exception; and

(3) within seven business days of receipt of such written statement, or within seven business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing, or terminating such status and stating the reasons therefor; copies of such determination shall be served upon the person who requested the exception, the person requesting a copy of the record, and the Committee on Open Government.

(f) A denial of an exception from disclosure under subdivision (e) of this section and a denial of access to a record may be appealed by the person submitting the information or requesting the record within seven business days of receipt of the written notice denying the request by filing a written appeal from the determination with the chairman of the authority. The appeal shall be determined within 10 business days of the receipt of the appeal. Written notice of the determination shall be served upon the person requesting the record, the person who requested the exception, and the Committee on Open Government. The notice shall contain a statement of the reasons for the determination.

(g) A proceeding to review an adverse determination pursuant to subdivision (f) of this section may be commenced pursuant to Article 78 of the Civil Practice Law and Rules. Such proceeding must be commenced within 15 days of the service of the written notice containing the adverse determination provided for in paragraph (f)(2) of this section.

(h) The person requesting an exception from disclosure pursuant to this section shall in all proceedings have the burden of proving entitlement to the exception.

(i) When the authority denies access to a record pursuant to Public Officers Law section 87(2)(d), the authority shall have the burden of proving that the record falls within the provisions of such exception.

(j) Nothing in this section shall be construed to deny any person access, pursuant to the Public Officers Law and any other section of this Part, to any record or part excepted from disclosure upon the express written consent of the person who requested or received the exception.

(k) Nothing in this section shall be construed to limit or abridge any otherwise available right of access at law or equity of any party to records.

Section statutory authority: Public Officers Law, § 87; Civil Practice Law & Rules, § A78

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.6 on 2/21/01.

#### § 501.7 Subject matter list

(a) The records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in the possession of the authority, whether or not such records are available pursuant to subdivision 2 of section 87 of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

Section statutory authority: Public Officers Law, § 87

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.6 on 3/27/79; renumbered 501.6 to be 501.7 on 2/21/01.

#### § 501.8 Denial of access to records

(a) Denial of access to records shall be in writing, stating the reason therefor, advising the requester of the right to appeal to the individual designated to hear appeals, and stating that an appeal must be taken within 30 days of receipt of the denial.

(b) If requested records are not provided within the time required in section 501.5 of this Part, such failure shall also be deemed a denial of access.

(c) The following person shall hear appeals from denial of access to records under the Freedom of Information Law:

Chairman  
New York State Energy Research and Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399  
(518) 862-1090.

(d) The time for deciding an appeal by the individual designated to hear appeals shall commence upon his receipt of a written appeal which sets forth:

- (1) the date of the appeal;
- (2) the date and location of the request for records;
- (3) the records to which the requester was denied access;
- (4) whether the denial of access was in writing or due to failure to provide records as required by section 501.5 of this Part; and
- (5) the name and return address of the requester.

(e) The individual designated to hear appeals shall inform the requester of his decision, in writing, within seven business days of his receipt of an appeal. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation, consistent with the purpose of the exemption, of how the exemption applies to the records withheld, and the reasons for asserting it. A denial in whole or in part shall also inform the requester of his right to seek judicial review of the authority's final determination. The chairman may ask the requester for an extension of time to render the final determination. The chairman shall inform the requester of the reason for the request for the extension and of the date upon which the final determination may be expected.

(f) The person designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of the appeal. Such copies shall be addressed to:

Committee on Open Government  
Department of State  
41 State Street  
Albany, NY 12231

(g) The person designated to hear appeals shall inform the requester and the Committee on Public Access to Records of his determination, in writing, within seven business days of his receipt of an appeal, unless the requester shall have agreed to an extension of time for the determination of the appeal. Any request by the authority to the requester for additional time in which to issue its determination on appeal shall also be transmitted promptly to the Committee on Public Access to Records. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (f) of this section.

(h) A final determination denying access to a requested record shall be subject to judicial review pursuant to article 78 of the Civil Practice Law and Rules.

Section statutory authority: Civil Practice Law & Rules, § A78

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.7 on 3/27/79; amended 501.7(d) on 2/29/80; amended 501.7(e) on 2/29/80; renumbered 501.7 to be 501.8 on 2/21/01; amended 501.8(c) on 2/21/01; amended 501.8(f) on 2/21/01.

#### § 501.9 Fees

- (a) There shall be no fee charged for:

- (1) inspection of records;
- (2) search for records; or
- (3) any certification pursuant to this Part.

(b) Copies of records shall be provided upon the payment of or offer to pay a fee of 25 cents a page for copies not exceeding 9 by 14 inches, or the actual cost of reproducing such records if larger copies are required. If records are copied electronically to computer disk or to other media, copies will be provided upon the payment of or the offer to pay the cost of the computer disk or other such media, and any other actual costs incurred by the authority. If it is not practical for the authority to photocopy or electronically copy any such record, it will be copied commercially if the person requesting the copy pays or offers to pay the fee equal to the cost of such commercial reproduction.

Statutory authority: Public Officers Law, § 87(1); Public Authorities Law, 1855(4)

Added 501.8 on 3/27/79; renumbered 501.8 to be 501.9 on 2/21/01; amended 501.9 (b) on 2/21/01.

#### § 501.10 Public notice

A notice containing the title, business address and business telephone number of the records access officer and appeals person, and the location where records can be seen or copied, shall be posted in a conspicuous location wherever records are kept.

Added 501.10 on 3/27/79; renumbered 501.9 to be 501.10 on 2/21/01.

### PART 502. REPORTS BY GENERATORS OF LOW-LEVEL RADIOACTIVE WASTE

#### Part 502 Notes

Statutory authority: Public Authorities Law, § § 1854-d(1), 1855(4); Public Officers Law, § 87(4)(a)

Added Part 502 on 3/02/87.

#### § 502.1 Purpose

Chapter 673 of the Laws of 1986, the Low-Level Radioactive Waste Management Act, provides that the New York State Energy Research and Development Authority has responsibility for the construction and operation by 1993 of facilities in New York for permanent disposal of lowlevel radioactive waste generated within New York. The act establishes the Commission for Siting Low-Level Radioactive Waste Disposal Facilities and empowers the commission to make site and disposal method selections, sufficient to accommodate low-level radioactive waste generated in New York over at least 30 years. The act also provides related responsibilities for the New York State Department of Environmental Conservation (DEC) and New York State Department of Health (DOH). The act provides that the authority shall establish by regulation and collect rates, charges, and other fees upon the disposal of low-level radioactive waste sufficient to recover from generators costs of the State associated with low-level radioactive waste management facilities, and authorizes the authority to establish terms and conditions for receipt, acceptance, and disposal of low-level radioactive waste at the permanent disposal facilities. The act requires the authority to submit annually to the Governor and the Legislature a report summarizing lowlevel radioactive waste generated within New York during the previous calendar year. In addition, the act requires each generator of low-level radioactive waste within New York to submit to the authority no less frequently than annually a report detailing low-level radioactive waste generated, stored for decay or later transfer, or transferred by the generator. The purpose of these rules is to set forth the requirements for reports to be submitted by generators to the authority. The purpose of the reporting requirements is to assist the authority in constructing low-level radioactive waste management facilities, establishing

rates, charges, and other fees for disposal of low-level radioactive waste, and terms and conditions for its receipt, acceptance, and disposal at permanent disposal facilities, and preparing the reports to be submitted annually by the authority to the Governor and the Legislature. In addition, the reports are intended to provide information useful to the DEC, the Commission for Siting Low-Level Radioactive Waste Disposal Facilities, and the Advisory Committee on Permanent Disposal Facilities Siting and Disposal Method Selection in meeting their responsibilities under the act.

Statutory authority: Public Authorities Law, § § 1854-d(1), 1855(4); Public Officers Law, § 87(4)(a)

Added 502.1 on 3/02/87.

## § 502.2 Definitions

For purposes of this Part:

- (a) Act means the Low-Level Radioactive Waste Management Act (ch. 673, L. 1986).
- (b) Authority means the New York State Energy Research and Development Authority, and any successor thereto.
- (c) Class means the classes of low-level radioactive waste, Class A, Class B, and Class C, as described in sections 61.55 and 61.56 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.
- (d) Director means the Program Director, Radioactive Waste Management Program, or his designee, New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399.
- (e) Generate means to produce or cause the production of, or to engage in an activity which otherwise results in the creation or increase in the volume, of low-level radioactive waste.
- (f) Generator means a person who by his actions within New York, or through the actions within New York of any agent, employee, or independent contractor, generates low-level radioactive waste. For purposes of this Part, a person who only provides a service by arranging for the collection, transportation, treatment, storage, or disposal of low-level radioactive waste generated by others within or outside of New York is a generator only if and to the extent that such person himself generates low-level radioactive waste as a result of such activities. In such event, such person shall submit a report, pursuant to section 502.3 of this Part, only for the low-level radioactive waste such person himself generates.
- (g) Licensed LLRW disposal facility means any of the three disposal facilities existing upon the effective date of these regulations (March 2, 1987) at Barnwell, South Carolina, Richland, State of Washington, and Beatty, Nevada.
- (h) Low-level radioactive waste and LLRW mean radioactive waste:
  - (1) (i) that is not high-level radioactive waste, transuranic waste, spent nuclear fuel, or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and
  - (ii) which consists of or contains Class A, B, or C radioactive waste as described in sections 61.55 and 61.56 of title 10, Code of Federal Regulations, as in effect on January 26, 1983;
- (2) provided that, for purposes of this Part, low-level radioactive waste does not include radioactive waste:
  - (i) owned or generated by the United States Department of Energy;
  - (ii) owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy; or
  - (iii) owned or generated by the Federal Government as a result of any research, development, testing, or production of any atomic weapons.
- (i) Person means an individual, partnership, corporation, or other legal entity, including any State, interstate, Federal, or municipal governmental entity.
- (j) Waste means material which is not in use and is no longer useful.

Added 502.2 on 3/02/87.

### § 502.3 Reports

(a) No later than April 27, 1987, and no later than March 1st of each year thereafter, each generator shall submit to the director a report (one copy), containing the information set forth in subdivision (c) of this section, for the preceding calendar year, provided that if a generator generated low-level radioactive waste at facilities located more than 25 miles apart, or at facilities located 25 miles or less apart for which separate authorizations are held, issued by the operator of a licensed LLRW disposal facility (e.g., site use permit) or the host state in which a licensed LLRW disposal facility is located, which authorize transfer of LLRW to a licensed LLRW disposal facility, the generator shall submit a separate report (one copy) for each such facility.

(b) In the event two or more persons are generators with respect to the same low-level radioactive waste (for instance, because of their relationship as employer and employee or principal and agent), those persons shall designate between or among themselves one person who shall submit the report required by this section. The designee shall indicate on the report required by this section the identities of each of the other generators who are not submitting the report, and the nature of the relationships between or among the designee and such other generators. Notwithstanding the foregoing provisions of this subdivision, an employer may submit the report on behalf of its employees, and a medical institution or university may submit the report on behalf of its physicians, interns, staff, or students who generate LLRW as independent contractors to such medical institution or university, without identifying the employees, physicians, interns, staff, or students on behalf of whom the report is submitted.

(c) Each report shall contain the following information:

(1) calendar year reporting period;

(2) name, principal office address (and, if different, address of the facility at which LLRW was generated), and telephone number of the generator;

(3) type of generator (e.g., medical, university, industrial, electric utility, or governmental) and a description of the activity, process, or use of radioactive material which results in the generation of LLRW;

(4) the information with respect to other generators, if applicable, described in subdivision (b) of this section;

(5) name, title, and telephone number of the individual who prepared the report;

(6) identification of any and all radioactive material and nuclear facility licenses issued by the United States Nuclear Regulatory Commission, the New York State Department of Health, the New York State Department of Labor, or the New York City Department of Health under which LLRW is generated, including identification of the respective licensing agency;

(7) identification of any and all authorizations held by the generator, issued by the operator of a licensed LLRW disposal facility (e.g., site use permit) or the host state in which a licensed LLRW disposal facility is located, which authorize transfer of LLRW to a licensed LLRW disposal facility;

(8) details regarding LLRW transferred, either directly or through a broker or agent, for disposal at a licensed LLRW disposal facility during the reporting period, including:

(i) the total volume, volume by class, and activity by radionuclide and class;

(ii) the types and specifications of individual containers used and the number of each type transferred for disposal;

(iii) the maximum surface radiation exposure level on any single container of LLRW transferred, the number of disposal containers with surface radiation exposure levels that exceed 200 mR/hour, and the identification of the contents of each such container by volume, class, and activity by radionuclide;

(iv) the volume of Class A LLRW that meets the United States Nuclear Regulatory Commission stability requirements, as set forth in section 61.56(b) of title 10, Code of Federal Regulations;

(v) the identification of each licensed LLRW disposal facility to which LLRW was transferred, either directly or through a broker or agent, and the volume and activity by class of LLRW transferred to each licensed LLRW disposal facility;

(vi) the identification of all brokers or agents to which LLRW was transferred, the volume and activity by class of LLRW transferred to each, and the volume and activity by class of the generator's LLRW transferred by each such broker or agent to each licensed LLRW disposal facility;

(vii) the weight of source material by type (e.g., natural uranium, depleted uranium, or thorium);

(viii) the total number of grams of special nuclear material by radionuclide, and the maximum number of grams of special nuclear material in any single shipment by radionuclide;

(ix) as complete a description as practicable of the principal chemical and physical form of the LLRW by volume and radionuclide, including the identification of any known hazardous properties, other than its radioactive property;

(x) for solidified or sorbed liquids, the nature of the liquid, the solidifying or sorbing agent used, and the final volume;

(xi) for LLRW containing more than 0.1 percent by weight chelating agents, the identification of the chelating agent, the volume and weight of the LLRW and the weight percentage of chelating agent; and

(xii) where LLRW identified in this paragraph was treated, either by the generator or its agent or independent contractor, in preparation for transfer to a licensed LLRW disposal facility, to reduce its volume or activity (including reduction by storage for decay) or to change its physical or chemical characteristics (other than by solidification or sorption of liquids as addressed in subparagraph (x) of this paragraph, a description of the treatment process and the generator's best estimate of the effectiveness in terms of the quantitative volume or activity reduction, or in quantitative or other relevant terms for changes in physical or chemical characteristics, as applicable;

(9) the radionuclides originally contained in any LLRW generated during the reporting period which was held for decay and disposed of as nonradioactive waste;

(10) a description, including the capacity in terms of volume of LLRW, of any facilities or parts thereof which the generator has dedicated to the storage of LLRW for periods in excess of 90 days prior to transfer, either directly or through a broker or agent, to a licensed LLRW disposal facility, and the volume of LLRW stored by the generator in such facilities at the end of the reporting period;

(11) the volume, volume by class, and activity by radionuclide and class of that LLRW, if any, which the generator is holding at the end of the reporting period because the generator knows or has reason to believe that LLRW will not be accepted for disposal at any of the licensed LLRW disposal facilities, and a description of the LLRW and the reason it is known or believed to be unacceptable for disposal at any of the licensed LLRW disposal facilities; and

(12) an estimate of the period of time the generator could store its LLRW at its facilities without disruption of its LLRW generating activities, should the generator be unable to transfer LLRW, either directly or through a broker or agent, to a licensed LLRW disposal facility.

(d) In addition to the information required by subdivision (c) of this section, each report shall contain the generator's best estimate in terms of total volume, and volume and activity by class and radionuclide, of LLRW that the generator expects to transfer to licensed LLRW disposal facilities in each of the next five calendar years.

Statutory authority: Public Authorities Law, § § 1854-d(1), 1855(4); Public Officers Law, § 87(4)(a)

Added 502.3 on 3/02/87.

#### § 502.4 Registry and forms

Commencing September 1, 1987, the director shall maintain and update annually a registry of generators which have submitted reports for the preceding calendar year. Commencing November 1, 1987 and by November 1st of each year thereafter, the director shall forward a blank reporting form to each generator listed on the most recent registry, at the

address indicated on the registry. The foregoing notwithstanding, each generator, including new generators, shall be responsible for obtaining blank reporting forms from the director.

Statutory authority: Public Authorities Law, § § 1854-d(1), 1855(4); Public Officers Law, § 87(4)(a)

Added 502.4 on 3/02/87.

#### § 502.5 Trade secrets

In the event a generator submitting a report required by section 502.3 of this Part makes a request pursuant to section 89(5) of the Public Officers Law that information in the report be excepted from disclosure, the generator shall clearly identify that specific information in the report for which the request is made by labeling that specific information as "trade secret" or "proprietary data." Pending a final determination of the request pursuant to section 89(5) of the Public Officers Law, the director shall maintain the report or relevant portion thereof in a separate and secure file, and shall deny access to the report or relevant portion thereof to all persons other than employees of the authority who require access in order to use the report or relevant portion thereof to carry out responsibilities under the act. Nothing contained in this section shall prohibit the authority from using or disclosing information which is the subject of the request, without detail which identifies the generator, for the purpose of carrying out its responsibilities under the act or enabling other State governmental entities to carry out their responsibilities under the act.

Statutory authority: Public Authorities Law, § § 1854-d(1), 1855(4); Public Officers Law, § 87(4)(a)

Added 502.5 on 3/02/87.

#### § 502.6 Materials incorporated by reference

(a) The term low-level radioactive waste is defined in section 502.2 of this Part, in part, by Federal descriptions of Class A, B, or C radioactive waste as set forth in sections 61.55 and 61.56 of title 10, Code of Federal Regulations, as in effect on January 26, 1983 ("Federal provisions"). In summary, the Federal provisions are as follows. Of the three classes, Class A is the least and Class C the greatest potential hazard to the public and the environment. Classification is determined by concentration of long- and short-lived radionuclides. All three classes must meet minimum waste form and packaging characteristics to facilitate handling and worker protection. Class B and C radioactive wastes must also meet stability requirements intended to minimize water infiltration and leachability of radionuclides from the waste. Disposal of Class C radioactive waste requires measures to protect against inadvertent intrusion.

(b) The Federal provisions are set forth in subpart D, entitled "Technical Requirements for Land Disposal Facilities," of Part 61, entitled "Licensing Requirements for Land Disposal of Radioactive Waste," of the rules of the United States Nuclear Regulatory Commission, published in the first volume of title 10, entitled "Energy," of the Code of Federal Regulations, containing parts 0 to 199, revised as of January 1, 1986, on pages 645-647 of such volume. The publisher of the volume is the Office of the Federal Register, National Archives and Records Administration. A copy of the volume may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. A copy of the volume is available for public inspection and copying at the offices of the authority, located at 17 Columbia Circle, Albany, NY 12203-6399.

Statutory authority: Public Authorities Law, § § 1854-d(1), 1855(4); Public Officers Law, § 87(4)(a)

Added 502.6 on 3/02/87.

## PART 503. IMPLEMENTATION OF STATE ENVIRONMENTAL QUALITY REVIEW ACT

### Part 503 Notes

Statutory authority: Environmental Conservation Law, § 8-0113(3); Public Authorities Law, § § 1852(3), 1855(4)

Added Part 503 on 2/27/87.

#### § 503.1 Purpose and application

(a) The purpose of this Part is to supplement the provisions of the State Environmental Quality Review Act and the rules and regulations of the Department of Environmental Conservation promulgated thereunder, by providing a supplemental list of Type II actions specifically related to the particular activities of the New York State Energy Research and Development Authority.

(b) This Part shall apply to any action that the New York State Energy Research and Development Authority intends to carry out, fund, or approve.

Statutory authority: Environmental Conservation Law, § 8-0113(3); Public Authorities Law, § § 1852(3), 1855(4)

Added 503.1 on 2/27/87.

#### § 503.2 Definitions

Definitions. In addition to the definitions contained in section 8-0105 of the State Environmental Quality Review Act and 6 NYCRR 617.2, the following definitions shall apply to this Part:

(a) Authority means the New York State Energy Research and Development Authority.

(b) NYCRR means the Official Compilation of the Codes, Rules and Regulations of the State of New York.

Section statutory authority: Environmental Conservation Law, § 8-0105

Statutory authority: Environmental Conservation Law, § 8-0113(3); Public Authorities Law, § § 1852(3), 1855(4)

Added 503.2 on 2/27/87.

#### § 503.3 List of Type II actions

In addition to the list of actions contained in 6 NYCRR 617.13, the following actions or classes of actions do not have a significant effect on the environment and do not require environmental impact statements or any other determination or procedure under the State Environmental Quality Review Act or Part 617 of Title 6 NYCRR:

(a) design, laboratory testing, construction, installation, or demonstration of:

(1) lighting and daylighting systems which include such components as ballasts, controls, automatic dimmers, reostats, luminaires, lamps, reflectors, or louvers;

(2) more energy-efficient, or minor modifications to, heating or air conditioning equipment or systems using less than five million Btu's per hour;

(3) more energy-efficient, or minor modifications to, conventional refrigeration equipment, motors, compressors, pumps, or fans;

(4) more energy-efficient, or minor modifications to, heat exchangers, recuperators, heat pipes, heat wheels, or mechanical heat pumps of less than 10 million Btu's per hour heat recovery;

(5) minor new devices, instrumentation, or equipment for measuring or monitoring air or water quality at existing facilities;

(6) blowers, pumps, fans, air diffusers, dewatering apparatus, heat pumps, or other comparable energy-saving equipment for water or sewage treatment works, or the minor alteration of the related existing structures, buildings, or facilities involving no expansion of use beyond that previously existing;

(7) safety or health protective devices for use during construction of, or in conjunction with, structures, facilities, or mechanical equipment;

(8) insulation, weatherstripping, storm windows, submeters, load management systems, or similar energy conservation measures;

(9) computer programs;

(10) minor equipment additions for separating components, or mechanically changing the shape or form, of nonhazardous solid waste at existing resource recovery facilities, provided that any installation and demonstration is limited to minor equipment modifications of an existing system for source separation or mechanical change of shape or form;

(11) passive solar and solar-electric techniques in existing buildings, but not including additions to the building or solar-electric installations of more than 4,000 square feet;

(12) local traffic control systems;

(13) closed-cycle earth heat exchange systems producing less than one million Btu's per hour;

(14) minor new devices for electrical interconnection of existing wind turbines, cogeneration equipment, electric vehicle charging, or photovoltaic energy systems, having an installed generating capacity of five megawatts or less, with existing transmission or distribution facilities;

(15) process controls or control systems that do not result in increased emissions or production of wastes, such as computer hardware or software, programmable controllers, robots, or related automation equipment;

(16) mechanical technologies, such as filters or membranes, for separating liquids or gases for purposes of recovering or recycling components, energy, or water in connection with existing facilities;

(17) fully or semi-automated laser, other electrically powered, lighting, hot-air, infrared, or lamination technologies for materials cutting, spot heating, or treating in manufacturing operations;

(18) minor new devices, instrumentation, or equipment, but not including the construction of towers, for measuring or monitoring the performance of an operation, process, or system or to support remote or wireless communications;

(19) engines or fuel cells producing no more than 200 kilowatts that either use existing fuel supplies or involve new fuel storage supplies of not more than 500 liters;

(b) sampling and analytically evaluating nonradioactive or nonhazardous solids, liquids, or gases such as biogas, coal wastes, ash, sewage sludge, wood, or other biomass materials, when no more than 100 grams or one liter of material is required per analysis;

(c) operating a sewage or industrial waste treatment plant to test chemical, physical, or biological concepts for the treatment of such wastes when no more than 20 percent of full scale system flow is being treated or controlled and the effluent from the test equipment is returned to the full scale treatment or control system for further treatment or control;

(d) laboratory testing of chemical, physical, and biological concepts for the treatment or control of nonhazardous municipal, utility, business, or industrial wastes, or other nonhazardous materials when a reactor volume of no more than 100 liters is used;

(e) administering or managing routine or continuing agency activities, including but not limited to the execution of personal service or consulting contracts, which do not include new programs or the major reordering of priorities;

- (f) performing administrative support or consulting service functions consisting of:
  - (1) providing technical assistance or advice to other government agencies or the private sector;
  - (2) commenting on legislation or regulations proposed by government agencies;
  - (3) executing routine contracts for printing, equipment maintenance, or office supplies, or purchase contracts for minor new equipment;
  - (4) establishing rates, charges, or fees for services, facilities, or products of the authority other than rates, charges, or fees for disposal of low-level radioactive waste;
  - (5) establishing reporting requirements;
  - (6) providing training, seminars, or other informational or educational services; or
  - (7) performing other comparable administrative or consulting service activities;
- (g) preparing and executing leases in which the authority is either the lessee or lessor, which involve the lease of less than 100 contiguous acres of land and only structures (if any) existing at the time of the lease, when there is to be no material change in use;
- (h) approving an inducement resolution or other similar official action for purposes of the Federal Internal Revenue Code (not including any authorizing resolution) for potential financing for sewage facilities, solid waste disposal facilities, facilities for the local furnishing of electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, or special energy projects;
- (i) approving an authorizing resolution providing for the issuance by the authority of its bonds, notes, commercial paper, or other obligations (bonds) to refund obligations previously issued by the authority;
- (j) performing minor interior or exterior alterations of existing structures, buildings, or facilities, such as warehouses, garages, service buildings, residences, roads, or parking lots, or mechanical, electrical, or plumbing equipment contained therein, involving negligible or no expansion of use beyond that previously existing;
- (k) conducting landscaping, groundskeeping, or similar activities that may alter or temporarily disturb the surface of land, but which will have negligible or no permanent adverse effect, such as minor soil grading, seeding, planting, or paving;
- (l) conducting energy audits;
- (m) sponsoring energy fairs, passive solar design competitions, or other similar activities;
- (n) collecting, organizing, and analyzing information, including basic data collection and research, masterplan study components, water quality or pollution studies, traffic counts, engineering studies, boring studies, surveys, or soils studies that do not commit the authority to undertake, fund, or approve any Type I or unlisted action;
- (o) preparing and disseminating pamphlets, brochures, reports, or other informational materials;
- (p) conducting pilot- or bench-scale laboratory research and analyses in which all products and byproducts can be adequately disposed of through the existing laboratory's solid waste disposal, ventilation, and sewage treatment systems;
- (q) operating test engines or no more than 50 motor vehicles on an alternate fuel when emissions from the alternate fuel are below those of conventional fuels in every regulated category; and
- (r) combusting no more than five million Btu's per hour (steam equivalent) of wood at existing facilities.

Statutory authority: Environmental Conservation Law, § 8-0113(3); Public Authorities Law, § § 1852(3), 1855(4)

Added 503.3 on 2/27/87; amended 503.3(a) on 7/07/99; amended 503.3(p) on 7/07/99.

## PART 504. PROMPT PAYMENT POLICY STATEMENT

### Part 504 Notes

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added Part 504 on 11/30/88.

#### § 504.1 Purpose and applicability

(a) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.

(b) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:

(1) under the Eminent Domain Procedure Law;

(2) as interest allowed on judgments rendered by a court pursuant to any provision of law except section 2880 of the Public Authorities Law;

(3) to the Federal government; to any State agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(4) if the authority is exercising a legally authorized setoff against all or part of the payment; or

(5) if other State or Federal law or rule or regulation specifically requires otherwise.

Section statutory authority: Public Authorities, § 2880

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.1 on 11/30/88.

#### § 504.2 Definitions

As used in this Part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) Authority means the New York State Energy Research and Development Authority.

(b) Contract means an enforceable agreement entered into between the authority and a contractor.

(c) Contractor means any person, partnership, private corporation or association:

(1) selling materials, equipment or supplies or leasing property or equipment to the authority pursuant to a contract;

(2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the authority pursuant to a contract; or

(3) rendering or providing services to the authority pursuant to a contract.

(d) Date of payment means the date on which the authority requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a payment.

(e) Designated payment office means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203-6399.

(f) Payment means provision by the authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions which may limit the authority's power to pay, such as claims, liens, attachments or judgments against the contractor which have not been properly discharged, waived or released.

(g) Prompt payment means a payment within the time periods applicable pursuant to sections 504.3 through 504.5 of this Part in order for the authority not to be liable for interest pursuant to section 504.6 of this Part.

(h) Payment due date means the date by which the date of payment must occur, in accordance with the provisions of sections 504.3 through 504.5 of this Part, in order for the authority not to be liable for interest pursuant to section 504.6 of this Part.

(i) Proper invoice means a written request for a contract payment that is submitted by a contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as the authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the authority's Controller, marked "Attention: Accounts Payable," at the designated payment office.

(j) (1) Receipt of an invoice means:

(i) if the payment is one for which an invoice is required, the later of:

(a) the date on which a proper invoice is actually received in the designated payment office during normal business hours; or

(b) the date by which, during normal business hours, the authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.

(ii) if a contract provides that a payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the contract requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the contractor has invoiced the authority for the portion working, completed or delivered, the authority will not be in receipt of an invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(k) Setoff means the reduction by the authority of a payment due a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the authority.

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.2 on 11/14/88; amended 504.2 (j) on 12/15/93; amended 504.2 (e) on 7/07/99.

### § 504.3 Prompt payment schedule

Except as otherwise provided by law or regulation or in sections 504.4 and 504.5 of this Part, the date of payment by the authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.3 on 11/14/88; amended 504.3 on 12/15/93.

#### § 504.4 Payment procedures

(a) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the authority.

(b) The authority shall notify the contractor within 15 calendar days after receipt of an invoice of:

- (1) any defects in the delivered goods, property or services;
- (2) any defects in the invoice; and
- (3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in section 504.3 of this Part until any such defects or improprieties are corrected or otherwise resolved.

(d) If the authority fails to notify a contractor of a defect or impropriety within the 15-calendar-day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the contractor. If the authority fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, the authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

Statutory authority: Public Authorities Law, §§ 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.4 on 11/30/88.

#### § 504.5 Exceptions and extension of payment due date

The authority has determined that, notwithstanding the provisions of sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date.

(a) If the case of a payment which a contract provides will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by the contract or other State or Federal mandate has not been submitted to the authority on a timely basis, then the payment due date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to the authority and the date when the authority has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the contractor is specifically required by the contract or by other State or Federal mandate, whether to be performed by or on behalf of the authority or another entity, or is specifically permitted by the contract or by other State or Federal provision and the authority or other entity with the right to do so elects to have such activity or documentation undertaken, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when any such activity or documentation has been completed, the authority has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the contract, prior to payment, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when the State or Federal agency, or other contributing party to the contract, has completed the inspection, advised the authority of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the authority.

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.5 on 11/30/88.

#### § 504.6 Interest eligibility and computation

If the authority fails to make prompt payment, the authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than \$ 10. Interest shall be computed at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to section 1096 (e) (1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

Section statutory authority: Tax Law, § 1096

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.6 on 11/14/88; amended 504.6 on 12/15/93.

#### § 504.7 Sources of funds to pay interest

Any interest payable by the authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.7 on 11/30/88.

#### § 504.8 Incorporation of prompt payment policy statement into contracts

The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the authority may subsequently amend this Part by further rule making.

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.8 on 11/30/88.

#### § 504.9 Notice of objection

Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the authority pursuant to this Part which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority at the address set forth in section 504.2(e). The Vice President of the authority, or his or her designee, shall review the objection for purposes of affirming or modifying the authority's action. Within 15 working

days of the receipt of the objection, the vice president, or his or her designee, shall notify the contractor either that the authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.9 on 11/14/88; amended 504.9 on 12/15/93.

#### § 504.10 Judicial review

Any determination made by the authority pursuant to this Part which prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in section 504.9 of this Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

Section statutory authority: Civil Practice Law & Rules, § A78

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.10 on 11/30/88.

#### § 504.11 Court action or other legal processes

(a) Notwithstanding any other law to the contrary, the liability of the authority to make an interest payment to a contractor pursuant to this Part shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by the authority after the date specified therein pursuant to any provision of law other than Public Authorities Law, section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

Section statutory authority: Public Authorities, § 2880

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.11 on 11/30/88.

#### § 504.12 Amendments

This Part may be amended by resolution of the authority, provided that the chair, upon written notice to the other members of the authority, may from time to time promulgate nonmaterial amendments of this Part.

Statutory authority: Public Authorities Law, § § 1852(3), 1855(4), 2880; Executive Law, § 102 (1)

Added 504.12 on 11/14/88; amended 504.12 on 12/15/93.

## PART 505. PERSONAL PRIVACY PROTECTION

### Part 505 Notes

Statutory authority: Public Authorities Law § 1855 (4); Public Officers Law, art. 6-A, § 94(2)

Added Part 505 on 2/21/01.

#### § 505.1 Purpose and intent

(a) The purpose of these regulations is to implement procedures relating to requests for records or personal information by a data subject pursuant to the Personal Privacy Protection Law, in accordance with the provisions of Article 6-A of the Public Officers Law. These procedures shall apply to records or personal information directly maintained by the authority and maintained under any contract it executes for the operation of a system of records, or for research, evaluation, or reporting by the authority or on its behalf.

(b) It is the intent of the authority to maintain in its records, except when a data subject has submitted unsolicited personal information, only such personal information that is relevant and necessary to accomplish a purpose of the authority that is required to be accomplished by statute or executive order or to implement a program specifically authorized by law. It is the intent of the authority to collect personal information directly from the data subject whenever practicable and to seek to ensure that all records used by the authority to make a determination about a data subject are accurate, relevant, timely, and complete.

Section statutory authority: Public Officers Law, § A6-A

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.1 on 2/21/01.

#### § 505.2 Definitions

(a) Authority means the New York State Energy Research and Development Authority.

(b) Committee means the Committee on Open Government as constituted pursuant to subdivision 1 of section 89 of the Public Officers Law.

(c) Data subject means any natural person about whom personal information has been collected by the authority.

(d) Disclose means to reveal, release, transfer, disseminate, or otherwise communicate personal information or records orally, in writing, or by electronic or any other means other than to the data subject.

(e) Governmental unit means any governmental entity performing a governmental or proprietary function for the Federal government or for any state or any municipality thereof.

(f) Law means State statute, Federal statute, rule, or regulation.

(g) Personal information means any information concerning a data subject which, because of name, number, symbol, mark, or other identifier, can be used to identify that data subject.

(h) Record means any item, collection, or grouping of personal information about a data subject which is maintained and is retrievable by use of the name or other identifier of the data subject irrespective of the physical form or technology used to maintain such personal information. The term record shall not include personal information which is not used to make any determination about the data subject if it is:

(1) a telephone book or directory which is used exclusively for telephone and directory information;

- (2) any card catalog, book, or other resource material in any library;
  - (3) any compilation of information containing names and addresses only which is used exclusively for the purpose of mailing authority information;
  - (4) personal information required by law to be maintained, and required by law to be used, only for statistical research or reporting purposes;
  - (5) information requested by the authority which is necessary for the authority to answer unsolicited requests by the data subject for information; or
  - (6) correspondence files.
- (i) System of records means any group of records under the actual or constructive control of the authority pertaining to one or more data subjects from which personal information is retrievable by use of the name or other identifier of a data subject.

Section statutory authority: Public Officers Law, § 89

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.2 on 2/21/01.

### § 505.3 Assignment of responsibilities

(a) The Privacy Compliance Officer is designated the officer responsible for ensuring that the authority complies with the provisions of the Personal Privacy Protection Law and the regulations in this Part.

(b) The address of the Privacy Compliance Officer is New York State Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203-6399.

(c) The Privacy Compliance Officer is responsible for:

- (1) assisting a data subject in identifying and requesting a record or personal information, if necessary;
- (2) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;
- (3) taking one of the following actions:
  - (i) making the record or personal information available to the data subject for inspection in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;
  - (ii) providing the data subject with a copy of the record or personal information upon payment of or offer to pay the fee set forth in section 505.10 of this Part;
  - (iii) denying access to the record or personal information in whole or in part and explaining in writing the reasons therefor;
  - (iv) providing notification that the authority does not have possession of the record or personal information sought;
  - (v) providing notification that the authority cannot locate the record or personal information sought after having made a diligent search; or
  - (vi) providing notification that the record or personal information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the authority; and
- (4) keeping an accurate accounting of the date, nature, and purpose of each disclosure of a record or personal information when required by section 94 of the Public Officers Law, and the name and address of the person or

governmental unit to whom the disclosure is made and retaining such accounting for at least five years after the disclosure for which the accounting is made or for the life of the record disclosed, whichever is longer; and

(5) upon request, certifying that a copy of a record or personal information is a true copy or that it does not have possession of a record or such record cannot be found after diligent search.

(d) No record or personal information shall be destroyed to avoid the provisions of this Part. All records or personal information shall be maintained until destroyed in accordance with the authority's records and retention policy and procedure.

Section statutory authority: Public Officers Law, § 94

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.3 on 2/21/01.

#### § 505.4 Proof of identity

(a) When records or personal information are made available in person following a written request from a data subject, the authority may require appropriate identification, such as a driver's license, an identifier assigned to the data subject by the authority, a photograph or similar information that confirms that the record or personal information sought pertains to the data subject. When a request is made by mail, the authority may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification that confirms that the record or personal information sought pertains to the data subject.

(b) Proof of identity shall not be required regarding a request for a record or personal information accessible to the public pursuant to article 6 of the Public Officers Law.

Section statutory authority: Public Officers Law, § A6

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.4 on 2/21/01.

#### § 505.5 Location

Records containing personal information shall be made available for public inspection and copying at: 17 Columbia Circle, Albany, NY 12203-6399.

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.5 on 2/21/01.

#### § 505.6 Hours for public inspection and copying

Requests for public access to records of personal information shall be accepted and records produced during all hours the authority is regularly open for business. These hours are 8:30 a.m. - 5 p.m.

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.6 on 2/21/01.

§ 505.7 Requests for records and personal information

(a) All requests for personal information shall be made in writing.

(b) A request shall reasonably describe the records and personal information sought. Whenever possible the data subject should supply identifying information that assists the authority in locating the records or personal information sought.

(c) Within 5 business days of the receipt of a request, the authority shall provide access to the record or personal information, deny access in writing explaining the reasons therefor or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied.

(d) Upon a data subject's voluntary request the authority shall permit a person of the data subject's choosing to accompany the data subject when reviewing and obtaining a copy of a record or personal information, provided that the authority may require the data subject to furnish a written statement authorizing discussion of the record or personal information in the accompanying person's presence.

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.7 on 2/21/01.

§ 505.8 Amendment of records and personal information

(a) Within 30 business days of a request from the data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the authority shall:

(1) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed; or

(2)(i) inform the data subject in writing of the denial of the request to correct or amend the record or personal information, including the reasons therefor; and

(ii) notify the data subject that an appeal of the decision may be made to the chairman of the authority at the address set forth in section 505.3(b) of this Part.

(b) A failure to grant or deny access to records or personal information within 5 business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of a request, or a failure to respond to a request for amendment or correction of a record or personal information within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.8 on 2/21/01.

§ 505.9 Appeal of a denial of a request for access to a record or a denial of a request for correction of a record

(a) Any data subject denied access to a record or personal information or denied a request to amend or correct a record or personal information may, within 30 days of such denial, appeal in writing to the chairman of the authority.

(b) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the date the request for a record or personal information or amendment or correction of a record or personal information was denied and a copy of the denial;

(2) the record or personal information that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within 7 business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the chairman shall:

(1) provide access to or correct or amend the record or personal information; or

(2) (i) fully explain in writing the reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules;

(ii) inform the data subject of the right to file with the authority a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination; and

(iii) inform the data subject of the right to request that such a statement of disagreement be provided to any person or governmental unit to which the record or personal information has been or is disclosed.

(d) With respect to any personal information about which a data subject has filed a statement of disagreement, the authority shall clearly note any portions of the record which are disputed, and shall attach the data subject's statement of disagreement as part of the record. When providing the data subject's statement of disagreement to other persons or governmental units pursuant to paragraph (c) of subdivision 3 of section 94 of the Public Officers Law, the authority may, if it deems appropriate, also include in the record a concise statement of the authority's reasons for not making the requested amendment.

(e) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, a correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed.

(f) The authority shall immediately forward to the committee a copy of any appeal made pursuant to these regulations upon receipt and a copy of the determination thereof.

Section statutory authority: Civil Practice Law & Rules, § A78; Public Officers Law, § 94

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.9 on 2/21/01.

## § 505.10 Fees

Copies of records or personal information shall be provided upon the payment of or offer to pay a fee of 25 cents a page for copies not exceeding 9 X 14 inches, or the actual cost of reproducing such records if larger copies are required. If records are copied electronically to computer disk or to other media, copies will be provided upon the payment of or the offer to pay the cost of the computer disk or other such media, and any other actual costs incurred by the authority. If it is not practical for the authority to photocopy or electronically copy any such record, it will be copied commercially if the person requesting the copy pays or offers to pay the fee equal to the cost of such commercial reproduction.

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.10 on 2/21/01.

§ 505.11 Severability

If any provision of this Part or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgement shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

Statutory authority: Public Officers Law § 94(2); Public Authorities Law § 1855 (4); and State Administrative Procedure Act § 102

Added 505.11 on 2/21/01.

PURCHASE OF ENERGY EFFICIENT PRODUCTS

506.1 Scope and Purpose

(a) The provisions of this Part shall apply to purchases by or for the State or any agency thereof of a new or replacement energy using product and to building designs or specifications for new construction and for substantial renovation of any existing building owned or leased in whole by a State agency.

(b) The purpose of this Part is to establish minimum energy efficiency standards for energy using products purchased by or for a State agency. The standards are designed to achieve cost effective savings to the maximum extent practicable, taking into account market availability.

506.2 Definitions

For purposes of this Part, the terms hereinafter listed shall have the following meanings, unless the context clearly indicates otherwise.

(a) "Btu" means British thermal unit.

(b) "Building addition" means an extension or increase in the floor area or height of an existing building beyond the existing building envelope.

(c) "Building designs or specifications" means any designs, plans, drawings, descriptions, or specifications for new construction or substantial renovation of existing buildings owned or leased in whole by a State agency.

(d) "Energy using product" means any device or product operated by electricity, natural gas, fuel oil, gasoline, methanol, or other energy source for which an energy efficiency standard has been established pursuant to Section 506.4.

(e) "New construction" means construction of a new building or a building addition.

(f) "Purchase" means to acquire from or through a manufacturer, retailer, wholesaler, marketer, builder, developer, or other person in the business of selling, installing, repairing, procuring, or providing an energy using product.

(g) "State agency" means any State department, agency, board, benefit corporation, public authority, or commission.

(h) "Substantial renovation" means the replacement of more than 50 percent of a building subsystem within any consecutive 12-month period.

(i) "Subsystem" means a building assembly or building set of units made up of various components that serve a specific function, including, but not limited to, exterior walls, windows, doors, roofs, ceilings, floors, lighting, piping, duct work, insulation, HVAC system equipment or components, electrical appliances, and plumbing appliances.

### 506.3 Purchase of an Energy Using Product; Building Designs and Specifications

(a) Except as otherwise provided in Section 506.5, neither a State agency nor other person making a purchase on behalf of a State agency for a building owned or leased in whole by a State agency shall purchase an energy using product, unless such energy using product meets the applicable minimum energy efficiency standard set forth in Section 506.4.

(b) All building designs or specifications by or for a State agency shall incorporate energy using products which meet the applicable minimum energy efficiency standards set forth in Section 506.4.

(c) Nothing herein contained shall be construed to prohibit the purchase of an energy using product that is more energy efficient than the applicable minimum energy efficiency standard set forth in Section 506.4.

(d) A written representation stating the energy efficiency of an energy using product from a manufacturer, retailer, wholesaler, marketer, or other person in the business of selling or providing the energy using product; from a builder, developer, or other contractor who procures, sells, or provides the energy using product; or from a person qualified to determine the efficiency of an energy using product such as a nationally recognized independent testing laboratory or certification program may be relied upon in determining whether the requirements of this Part have been met.

### 506.4 Minimum Energy Efficiency Standards

#### (a) Fluorescent Lamp Ballasts

(1) "Fluorescent lamp ballasts" mean devices that are used to start and operate fluorescent lamps by providing starting voltages and current and by limiting the current during normal operation. Fluorescent lamp ballasts shall not include devices capable of being dimmed to 50 percent or less of their maximum output, and devices designed for operation at ambient temperatures of -20 degrees Fahrenheit or less.

(2) For replacement T8 fluorescent lamp ballasts powering 32 watt or 59 watt lamps that are designed to operate at nominal input of 120 or 277 volts and have input current frequencies of 60 Hertz, the minimum energy efficiency standards shall be the minimum ballast efficacy factors set forth in Table 5.1 determined in accordance with the test procedures set forth in 10 Code of Federal Regulations (CFR) Part 430, Subpart B, Appendix Q (last amended April 24, 1991). For fluorescent lamp ballasts in new construction, no T12 ballast shall be purchased and the minimum energy efficiency standards for T8 ballasts powering 32 watt or 59 watt lamps that are designed to operate at nominal input of 120 or 277 volts and have input current frequencies of 60 Hertz shall be the ballast efficacy factors set forth in Table 5.1 determined in accordance with the test procedures set forth in 10 Code of Federal Regulations (CFR) Part 430, Subpart B, Appendix Q (last amended April 24, 1991).

| Table 5.1: Minimum Energy Efficient Standards: Ballast Efficacy Factors <sup>a</sup> for T8 Fluorescent Lamp Ballasts |                          |        |        |        |                 |
|---|--------------------------|--------|--------|--------|-----------------|
| Ballast type  | Type and number of lamps |        |        |        |                 |
|   | F32T8 (32 Watt)          |        |        |        | F96T8 (59 Watt) |
|   | 1 lamp                   | 2 lamp | 3 lamp | 4 lamp | 2 lamp          |
| Rapid Start   | 2.61                     | 1.41   | 0.96   | 0.72   | NA              |
| Instant Start   | 2.84                     | 1.49   | 1.04   | 0.79   | 0.79            |

<sup>a</sup> *Ballast Efficacy Factor* ("BEF") means the ratio of the ballast factor to input watts; it identifies the efficacy of a lamp/ballast system in comparison to other systems using the same type and number of lamps. Ballast factor means the ratio of the light output of a lamp(s) operated by a ballast, to the light output of the same lamp(s) operated by a reference ballast at rated current and voltage.

(b) Residential Central Air Conditioners and Heat Pumps

(1) "Residential central air conditioners" means products, other than packaged terminal air conditioners (as defined in section 506.4(d)(1)), that: (A) are powered by single phase electric current, (B) are air cooled, (C) are rated below 65,000 Btu per hour, (D) are not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and (E) consist of a cooling unit only.

(2) "Residential heat pumps" means products, other than packaged terminal heat pumps (as defined in section 506.4(d)(2)), which (A) consist of one or more assemblies, (B) are powered by single phase electric current, (C) are rated below 65,000 Btu per hour, (D) utilize an indoor conditioning coil, compressor(s), and refrigerant-to-outdoor air heat exchanger to provide air heating, and (E) may also provide cooling, dehumidifying, humidifying, circulating, and air cleaning.

(3) The minimum energy efficiency standards for residential central air conditioners and heat pumps shall be the levels set forth in Table 5.2 determined in accordance with the test procedures set forth in 10 Code of Federal Regulations (CFR) Part 430, Subpart B, Appendix M (last amended February 7, 1989). Residential central air conditioners and the cooling mode for residential heat pumps shall meet the applicable seasonal energy efficiency ratio. The heating mode for residential heat pumps shall meet the applicable heating seasonal performance factor.

| Table 5.2: Minimum Energy Efficiency Standards for Residential Central Air Conditioners and Heat Pumps |   |  |
|--|---|--|
| Type of Product  | Seasonal Energy Efficiency Ratio <sup>a</sup> | Heating Seasonal Performance Factor <sup>b</sup> |
| Split System   | 13  | 8  |
| Single Package System  | 12  | 7.6  |

<sup>a</sup> *Seasonal Energy Efficiency Ratio* ("SEER") means the total cooling output of a central air conditioner or heat pump in Btus during its normal annual usage period for

cooling divided by the total electric energy input in watt-hours during the same period.

<sup>b</sup> *Heating Seasonal Performance Factor* ("HSPF") means the total heating output of a heat pump during its normal annual usage period for heating divided by the total electric energy input during the same period.

(c) Commercial Central Air Conditioners and Heat Pumps

(1) "Commercial central air conditioners" means air-cooled, water-cooled, or evaporatively cooled electrically operated, unitary central air conditioners for commercial application.

(2) "Commercial heat pumps" means air-cooled, water-cooled, evaporatively cooled, or water-source (not including ground water-source) electrically operated, unitary central air-conditioning heat pumps for commercial application.

(3) "Ground source heat pumps" means space conditioning systems that employ a geothermal resource - the ground, groundwater, or surface water - as both a heat source and sink. Ground source heat pumps use a reversible refrigeration cycle to provide either heating or cooling.

(4) The minimum energy efficiency standards for commercial central air conditioners and heat pumps shall be the levels set forth in Table 5.3 determined in accordance with the test procedures set forth in such Table 5.3. Commercial central air conditioners and the cooling mode of commercial heat pumps of less than 65,000 Btu per hour shall meet the applicable seasonal energy efficiency ratio and energy efficiency ratio. The heating mode of commercial heat pumps of less than 65,000 Btu per hour shall meet the applicable heating seasonal performance factor. Commercial central air conditioners and the cooling mode of commercial heat pumps equal to or greater than 65,000 Btu per hour shall meet the applicable energy efficiency ratio, and when they have capacity modulation, shall meet the applicable integrated part-load value. The heating mode of commercial heat pumps equal to or greater than 65,000 Btu per hour shall meet the applicable coefficient of performance.

| Table 5.3: Minimum Energy Efficiency Standards for Commercial Central Air Conditioners (AC) and Heat Pumps (HP) |                |  |   |                             |
|---|----------------|--|---|-----------------------------|
| Cooling capacity  | Sub-category   | Efficiency Level   | Test Procedure for determining efficiency level                                 |                             |
| Type: Air Source, 3 Phase   |                |  |   |                             |
| <65,000 Btu/h   | Split-System   | AC   | 13 SEER <sup>a</sup> , 11 EER <sup>c</sup>                                      | ARI <sup>b</sup> 210/240-94 |
|   |                | HP   | 13 SEER <sup>a</sup> , 11 EER <sup>c</sup> ,<br>8 HSPF <sup>d</sup>             |                             |
|   | Single Package | AC   | 12 SEER <sup>a</sup> , 10.5 EER <sup>c</sup>                                    | ARI <sup>b</sup> 210/240-94 |
|   |                | HP   | 12 SEER <sup>a</sup> , 10.5 EER <sup>c</sup><br>7.6 HSPF <sup>d</sup>           |                             |
| Type: Air Source  |                |  |   |                             |
| ≥65,000 Btu/h and <135,000 Btu/h  | AC             | 11 EER <sup>c</sup> , 11.4 IPLV <sup>e</sup>                             | ARI <sup>b</sup> 210/240-94   |                             |
|   | HP             | 10.1 EER <sup>c</sup> , 10.4 IPLV <sup>e</sup> ,<br>3.2 COP <sup>f</sup> |   |                             |
| ≥135,000 Btu/h and <240,000 Btu/h   | AC             | 10.8 EER <sup>c</sup> , 11.2 IPLV <sup>e</sup>                           | ARI <sup>b</sup> 340/360-93   |                             |
|   | HP             | 9.3 EER <sup>c</sup> , 9.5 IPLV <sup>e</sup> ,<br>3.1 COP                |   |                             |
| ≥240,000 Btu/h and <760,000 Btu/h   | AC             | 9.5 EER <sup>c</sup> , 9.7 IPLV  | ARI <sup>b</sup> 340/360-93   |                             |
|   | HP             | 9 EER <sup>c</sup> , 9.2 IPLV <sup>e</sup> ,<br>3.1 COP                  |   |                             |
| ≥760,000 Btu/h  | AC             | 9.2 EER <sup>c</sup> , 9.4 IPLV <sup>e</sup>                             | ARI <sup>b</sup> 340/360-93   |                             |
|   | HP             | 9 EER <sup>c</sup> , 9.2 IPLV <sup>e</sup> ,<br>3.1 COP                  |   |                             |
| Type: Water Cooled, Evaporatively Cooled, and Water-Source  |                |  |   |                             |
| <17,000 Btu/h   | AC             | 12.1 EER <sup>c</sup>  | ARI <sup>b</sup> 210/240-94<br>(For Water-Source use ISO <sup>g</sup> -13256-1) |                             |
|   | HP             | 11.2 EER <sup>c</sup> , 4.2 COP <sup>f</sup>                             |   |                             |
| ≥17,000 Btu/h and <65,000 Btu/h   | AC             | 12.1 EER <sup>c</sup>  | ARI <sup>b</sup> 210/240-94<br>(For Water-Source use ISO-13256-1)               |                             |
|   | HP             | 12 EER <sup>c</sup> , 4.2 COP <sup>f</sup>                               |   |                             |
| ≥65,000 Btu/h and <135,000 Btu/h  | AC             | 11.5 EER <sup>c</sup>  | ARI <sup>b</sup> 210/240-94<br>(For Water-Source use ISO-13256-1)               |                             |
|   | HP             | 12.8 EER <sup>f</sup> , 4.5 COP <sup>f</sup>                             |   |                             |
| ≥135,000 Btu/h and <240,000 Btu/h   | AC             | 11 EER <sup>c</sup>  | ARI <sup>b</sup> 340/360-93   |                             |
| ≥240,000 Btu/h  | AC             | 11 EER <sup>c</sup> , 10.3 IPLV <sup>e</sup>                             | ARI <sup>b</sup> 340/360-93   |                             |
| Type: Ground water-source   |                |  |   |                             |
| <135,000 Btu/h  | HP             | 16.2 EER <sup>c</sup> , 3.6 COP <sup>f</sup>                             | ISO <sup>g</sup> -13256-1   |                             |
| Type: Ground source   |                |  |   |                             |
| <135,000 Btu/h  | HP             | 14.1 EER <sup>c</sup> , 3.3 COP <sup>f</sup>                             | ISO <sup>g</sup> -13256-1   |                             |

<sup>a</sup>SEER ("Seasonal Energy Efficient Ratio") means the total cooling output of a central air conditioner or heat pump in Btus during its normal annual usage period for cooling divided by the total electric energy input in watt-hours during the same period.

<sup>b</sup> ARI means the Air-Conditioning & Refrigeration Institute.

<sup>c</sup> EER ("Energy Efficiency Ratio") means the ratio of net cooling capacity in BTUs per hour to the total rate of electric input in watts, under designated operating conditions.

<sup>d</sup> HSPF ("Heating Seasonal Performance Factor") means the total heating output of a heat pump during its normal annual usage period for heating divided by the total electric energy input during the same period.

<sup>e</sup> IPLV ("Integrated Part-Load Value") means a single number figure of merit based on part-load EER, COP, or kilowatt per ton expressing part-load efficiency for air-conditioning and heat pump equipment on the basis of weighted operation at various load capacities for the equipment.

<sup>f</sup> COP ("Coefficient of Performance") means a unitless ratio of the rate of heat removal or heat delivery to the rate of energy input, in consistent units, for a complete refrigerating or heat pump system under designated operating conditions.

<sup>g</sup> ISO means the International Standards Organization.

(d) Packaged Terminal Air Conditioners and Heat Pumps

(1) "Packaged terminal air conditioners" means a wall sleeve and a separate un-encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. They include a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability energy by builder's choice of hot water, steam, or electricity.

(2) "Packaged terminal heat pumps" means packaged terminal air conditioners that utilize reverse cycle refrigeration as their prime heat source and may have a supplementary heat source available with the choice of hot water, steam, or electricity.

(3) The minimum energy efficiency standards for packaged terminal air conditioners and heat pumps shall be the levels set forth in Table 5.4 determined in accordance with the test procedures set forth in Air-Conditioning & Refrigeration Institute Standard 310/380-93. Packaged terminal air conditioners and the cooling mode of packaged terminal heat pumps shall meet the applicable energy efficiency ratio. The heating mode of packaged terminal heat pumps shall meet the applicable coefficient of performance.

| Table 5.4: Minimum Energy Efficiency Standards for Packaged Terminal Air Conditioners and Heat Pumps |   |   |  |
|--|---|---|--|
| Type of Product  | Capacity                                      |   |  |
|  | <7,000 Btu/h                                  | ≥7,000 - ≤15,000 Btu/h  | >15,000 Btu/h                                |
| Air Conditioners   | 11.0 EER <sup>a</sup>                         | 12.5-(0.213 x CAP <sup>c</sup> ) EER <sup>a</sup>   | 9.3 EER <sup>a</sup>                         |
| Heat Pumps   | 11.0 EER <sup>a</sup> ,<br>3 COP <sup>b</sup> | 12.5-(0.213 x CAP <sup>c</sup> ) EER <sup>a</sup><br>3.2-(0.026 x CAP <sup>c</sup> ) COP <sup>b</sup> | 9.3 EER <sup>a</sup><br>2.8 COP <sup>b</sup> |

<sup>a</sup> EER ("Energy Efficiency Ratio") means the ratio of net cooling capacity in Btus per hour to the total rate of electric input in watts, under designated operating conditions.

<sup>b</sup> COP ("Coefficient of Performance") means the unitless ratio of the rate of heat removal or heat delivery to the rate of energy input, in consistent units, for a complete refrigerating or heat pump system under designated operating conditions.

<sup>c</sup> CAP means capacity in KBtu/h.

(e) Room Air Conditioners

(1) "Room air conditioners" means consumer products, other than packaged terminal air conditioners (as described in section 506.4(d)(1)), which are powered by a single phase electric current and which are an encased assembly designed as a unit for mounting in a window or through a wall for the purpose of providing delivery of conditioned air to an enclosed space. They include a prime source of refrigeration and may include a means for ventilating and heating.

(2) The minimum energy efficiency standards for room air conditioners shall be the levels set forth in Table 5.5 determined in accordance with the test procedures set forth in 10 Code of Federal Regulations (CFR) Part 430, Subpart B, Appendix F (last amended June 29, 1979). The minimum efficiency standards set forth in Table 5.5 shall apply solely to room air conditioners without reverse cycles, but with louvers.

| Table 5.5: Minimum Energy Efficiency Standards for Room Air Conditioners |                       |                       |                       |                      |
|--|-----------------------|-----------------------|-----------------------|----------------------|
| Capacity in Btus per hour  | <8,000                | ≥8,000 - <16,000      | ≥16,000 - ≤20,000     | >20,000              |
| Efficiency Level   | 10.7 EER <sup>a</sup> | 10.8 EER <sup>a</sup> | 10.7 EER <sup>a</sup> | 9.4 EER <sup>a</sup> |

<sup>a</sup> EER ("Energy Efficiency Ratio") means the ratio of net cooling capacity in BTUs per hour to the total rate of electric input in watts, under designated operating conditions.

(f) Electric Motors

(1) "Electric motor" means a machine which converts electrical power into rotational mechanical power and which:

(i) is a general purpose motor, including but not limited to motors with explosion-proof construction; "General purpose motor" means any motor which is designed in standard ratings with either: (A) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1-2003, paragraph 14.02, "Usual Service Conditions," and without restriction to a particular application or type of application; or (B) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1-2003, paragraph 14.03, "Unusual Service Conditions," or for a particular type of application, and which can be used in most general purpose applications.

(ii) is a single-speed, induction motor;

(iii) is rated for continuous duty operation, or is rated duty type S1;

(iv) contains a squirrel-cage or cage rotor, and has foot-mounting with flanges or detachable feet;

(v) is built in accordance with NEMA T-frame dimensions, or International Electrotechnical Commission (IEC) metric equivalents;

(vi) has performance in accordance with NEMA Design A or B characteristics, or equivalent designs such as IEC Design N; and

(vii) operates on polyphase alternating current 60-Hertz sinusoidal power; and (A) is rated 230 volts or 460 volts, or both, including any motor that is rated at multi-voltages that include 230 volts or 460 volts, or (B) can be operated on 230 volts or 460 volts, or both.

(2) The minimum energy efficiency standards for open and totally enclosed fan cooled (TEFC) electric motors used in general purpose applications shall be the levels set forth in Table 5.6. These levels are the same levels identified in the NEMA Premium™ Efficiency Electric Motors Program. The efficiency of electric motors is to be determined in accordance with the procedures set forth in 10 Code of Federal Regulations (CFR) Part 431, Subpart B, Section 431.24 (see section 506.6 of this Part).

| hp  | Open Motors |          |          | TEFC Motors |          |          |
|-----|-------------|----------|----------|-------------|----------|----------|
|     | 3600 rpm    | 1800 rpm | 1200 rpm | 3600 rpm    | 1800 rpm | 1200 rpm |
| 1   | 77.0        | 85.5     | 82.5     | 77.0        | 85.5     | 82.5     |
| 1.5 | 84.0        | 86.5     | 86.5     | 84.0        | 86.5     | 87.5     |
| 2   | 85.5        | 86.5     | 87.5     | 85.5        | 86.5     | 88.5     |
| 3   | 85.5        | 89.5     | 88.5     | 86.5        | 89.5     | 89.5     |
| 5   | 86.5        | 89.5     | 89.5     | 88.5        | 89.5     | 89.5     |
| 7.5 | 88.5        | 91.0     | 90.2     | 89.5        | 91.7     | 91.0     |
| 10  | 89.5        | 91.7     | 91.7     | 90.2        | 91.7     | 91.0     |
| 15  | 90.2        | 93.0     | 91.7     | 91.0        | 92.4     | 91.7     |
| 20  | 91.0        | 93.0     | 92.4     | 91.0        | 93.0     | 91.7     |
| 25  | 91.7        | 93.6     | 93.0     | 91.7        | 93.6     | 93.0     |
| 30  | 91.7        | 94.1     | 93.6     | 91.7        | 93.6     | 93.0     |
| 40  | 92.4        | 94.1     | 94.1     | 92.4        | 94.1     | 94.1     |
| 50  | 93.0        | 94.5     | 94.1     | 93.0        | 94.5     | 94.1     |
| 60  | 93.6        | 95.0     | 94.5     | 93.6        | 95.0     | 94.5     |
| 75  | 93.6        | 95.0     | 94.5     | 93.6        | 95.4     | 94.5     |
| 100 | 93.6        | 95.4     | 95.0     | 94.1        | 95.4     | 95.0     |
| 125 | 94.1        | 95.4     | 95.0     | 95.0        | 95.4     | 95.0     |
| 150 | 94.1        | 95.8     | 95.4     | 95.0        | 95.8     | 95.8     |
| 200 | 95.0        | 95.8     | 95.4     | 95.4        | 96.2     | 95.8     |

| Table 5.6: Minimum Energy Efficiency Standards: Nominal Full Load Efficiency <sup>a</sup> (%) for Electric Motors |             |          |          |             |          |          |
|---|-------------|----------|----------|-------------|----------|----------|
| hp  | Open Motors |          |          | TEFC Motors |          |          |
|   | 3600 rpm    | 1800 rpm | 1200 rpm | 3600 rpm    | 1800 rpm | 1200 rpm |
| 250   | 95.0        | 95.8     | 95.4     | 95.8        | 96.2     | 95.8     |
| 300   | 95.4        | 95.8     | 95.4     | 95.8        | 96.2     | 95.8     |
| 350   | 95.4        | 95.8     | 95.4     | 95.8        | 96.2     | 95.8     |
| 400   | 95.8        | 95.8     | 95.8     | 95.8        | 96.2     | 95.8     |
| 450   | 95.8        | 96.2     | 96.2     | 95.8        | 96.2     | 95.8     |
| 500   | 95.8        | 96.2     | 96.2     | 95.8        | 96.2     | 95.8     |

<sup>a</sup> *Nominal Full Load Efficiency* of an electric motor means a representative value of efficiency selected from Column A of Table 12-8, NEMA Standards Publication MG1-2003, that is not greater than the average full load efficiency of a large population of motors of the same design.

(g) Residential Water Heaters

(1) "Residential water heater" means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including

(i) "Electric storage water heater" means a water heater that uses electricity as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180F, has a nominal input of 12 kilowatts or less, and has a rated storage capacity of not less than 20 gallons nor more than 120 gallons.

(ii) "Gas storage water heater" means a water heater than uses gas as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180F, has a nominal input of 75,000 Btu per hour or less, and has a rated storage capacity of not less than 20 gallons nor more than 100 gallons.

(iii) "Oil water heater" means a water heater than uses oil as the energy source, is designed to heat and store water at a thermostatically controlled temperature of less than 180F, has a nominal input of 105,000 Btu per hour or less, and has a rated storage capacity of 50 gallons or less.

(iv) "Gas instantaneous water heater" means a water heater that uses gas as the energy source, initiates heating based on sensing water flow, is designed to deliver water at a controlled temperature of less than 180F, has an input greater than 50,000 Btu per hour but less than 200,000 Btu per hour, and has a manufacturer's specified storage capacity of less than 2 gallons.

(2) The minimum efficiency standards for residential water heaters shall be the levels set forth in Table 5.7 determined in accordance

with the test procedures set forth in 10 Code of Federal Regulations (CFR) part 430, Subpart B, Appendix E (see section 506.6 of this Part).

| Table 5.7: Minimum Energy Efficiency Standards: Energy Factor for Residential Water Heaters |   |
|---|---|
| Electric storage water heater   | $0.97 - 0.00132 \times \text{Volume}$ (the rated storage volume of water storage capacity as specified by the manufacturer) |
| Gas-fired storage water heater  | $0.67 - 0.0019 \times \text{Volume}$ (the rated storage volume of water storage capacity as specified by the manufacturer)  |
| Oil-fired water heater  | $0.59 - 0.0019 \times \text{Volume}$ (the rated storage volume of water storage capacity as specified by the manufacturer)  |
| Gas-fired instantaneous water heater  | $0.62 - 0.0019 \times \text{Volume}$ (the rated storage volume of water storage capacity as specified by the manufacturer)  |

(h) Commercial Water Heaters

(1) "Commercial water heater" means a product which utilizes oil, gas or electricity to heat potable water for use outside the heater upon demand, including

(i) "Electric storage water heater" means a water heater that uses electricity as the energy source, has a nominal input greater than 12 kilowatts, and/or has a rated storage capacity greater than 120 gallons.

(ii) "Gas storage water heater" means a water heater than uses gas as the energy source, has a nominal input of greater than 75,000 Btu per hour, and/or has a rated storage capacity greater than 100 gallons.

(iii) "Oil storage water heater" means a water heater than uses oil as the energy source, has a nominal input greater than 105,000 Btu per hour, and/or has a rated storage capacity greater than 50 gallons.

(iv) "Gas instantaneous water heater" means a water heater that uses gas as the energy source, is designed to deliver water at a controlled temperature of less than 180F, has an input greater than 200,000 Btu per hour, and an input rating of at least 4,000 Btu per hour per gallon of stored water,

(v) "Oil instantaneous water heater" means a water heater than uses oil as the energy source, has an input greater than 210,000 Btu per hour, and an input rating of at least 4,000 Btu per hour per gallon of stored water.

(2) The minimum efficiency standards for commercial water heaters shall be the levels set forth in Table 5.8. determined in accordance with the test procedures set forth in ANSI Z21.10.3-2001 (see section 506.6 of this Part) with the following modification to the Method of Test for STANDBY LOSS described in section 2.10: the duration of the test shall be the shorter of either 1) until the first cutout following 24 hours from the initiation of data collection or 2) until 48 hours from the initiation of data collection if the water heater is not in the heating mode at that time.

| Table 5.8: Minimum Energy Efficiency Standards: Thermal Efficiency and Standby Losses for Commercial Water Heaters |  |
|--|--|
| Electric storage water heater  | Maximum Standby Loss: $0.3 + 27/V$   |
| Gas-fired storage water heater   | Minimum Thermal Efficiency 80%<br>Maximum Standby Loss: $Q/800+110(\text{sqrt}Vr)$ |
| Oil storage water heater   | Minimum Thermal Efficiency 78%<br>Maximum Standby Loss: $Q/800+110(\text{sqrt}Vr)$ |
| Gas instantaneous water heater   | Storage Capacity: ( Volume < 10 gallons)   |
|  | Minimum Thermal Efficiency 80%   |
|  | Storage Capacity: ( Volume $\geq$ 10 gallons)                                      |
|  | Minimum Thermal Efficiency 80%<br>Maximum Standby Loss: $Q/800+110(\text{sqrt}Vr)$ |
| Oil instantaneous water heater   | Size: ( Volume < 10 gallons)   |
|  | Minimum Thermal Efficiency 80%   |
|  | Size: ( Volume $\geq$ 10 gallons)  |
|  | Minimum Thermal Efficiency 78%<br>Maximum Standby Loss: $Q/800+100(\text{sqrt}Vr)$ |

(i) Residential Refrigerators and Freezers

(1) "Residential refrigerator-freezer" means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food at temperatures above 32° F. and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8° F. which may be adjusted by the user to a temperature of 0° F. or below. The source of refrigeration requires single phase, alternating current electric energy input only.

(i) "Residential refrigerator" means a cabinet designed for the refrigerated storage of food at temperatures above 32 deg. F and below 39 deg. F, configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 deg. F, but does not

provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 deg.F.

(ii) "Compact refrigerator" means any refrigerator, refrigerator-freezer, or freezer with total volume less than 7.75 cubic feet and 36 inches or less in height.

(2) The minimum efficiency standards for residential refrigerator-freezers shall be the levels set forth in Table 5.9 determined in accordance with the test procedures set forth in 10 Code of Federal Regulations (CFR) part 430, Subpart B, Appendix A1 and B1 (see section 506.6 of this Part). These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet (1104 liters) or freezers with total refrigerated volume exceeding 30 cubic feet (850 liters).

| Table 5.9: Minimum Energy Efficiency Standards for Residential Refrigerators-Freezers            |                        |
|--|------------------------|
| Automatic Defrost Units (kWh/yr)   |                        |
| Top-mounted freezer w/ No TTD Ice  | 0.90 (9.80 AV +276.0)  |
| Top-mounted freezer w/ TTD Ice   | 0.90 (10.20 AV +356.0) |
| Side-mounted freezer w/ No TTD Ice   | 0.90 (4.91 AV + 507.5) |
| Side-mounted freezer w/ TTD Ice  | 0.90 (10.1 AV + 406.0) |
| Compact Refrigerator (kWh/yr)  |                        |
| w/ Manual Defrost  | 0.90 (10.70AV + 299.0) |
| w/ Partial Automatic Defrost   | 0.90 (7.00AV + 398.0)  |
| w/ Automatic defrost with top-mounted freezer and compact all-refrigerators -- automatic defrost | 0.90 (12.70AV + 355.0) |
| w/ Automatic defrost with side-mounted freezer   | 0.90 (7.60AV + 501.0)  |
| w/ Automatic defrost with bottom-mounted freezer   | 0.90 (13.10AV + 367.0) |

AV = Total adjusted volume, expressed in ft<sup>3</sup>, as determined in 10 Code of Federal Regulations (CFR) part 430, Subpart B, Appendix A1 and B1.

(j) Commercial Refrigeration

(1) "Commercial refrigerators and freezers" means reach-in cabinets, pass-through cabinets, roll-in cabinets, and roll-through cabinets that have less than 85 cubic feet of capacity and that are not walk-in models or consumer products regulated under the National Appliance Energy Conservation Act of 1987 (Public Law 100-12).

(i) "Reach-in cabinet" means a commercial refrigerator, commercial refrigerator-freezer, or commercial freezer with hinged or sliding

doors or lids, but excluding roll-in or roll-through cabinets and pass through cabinets.

(2) The minimum efficiency standards for commercial refrigerators and freezers shall be the levels set forth in Table 5.10 determined in accordance with the test procedures set forth in ASHRAE 117 (see section 506.6 of this Part). These standards apply only to solid door products.

| Table 5.10: Minimum Energy Efficiency Standards for Commercial Refrigerators and Freezers (kWh/day) |              |
|---|--------------|
| Reach-in Cabinet Freezer  | 0.40V + 1.38 |
| Reach-in Cabinet Refrigerator   | 0.10V + 2.04 |

(k) Luminaires

(1) "Luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast. Standards shall not cover vandal proof fixtures or other products not specifically identified in the table.

(2) The minimum efficiency standards for fluorescent luminaires shall be the levels set forth in Table 5.11 determined in accordance with the test procedures set forth in NEMA LE5-2001 (see section 506.6 of this Part).

| Table 5.11: Minimum Energy Efficiency Standards: Luminaire Efficacy Ratings for Fluorescent Luminaires |           |            |            |    |    |                  |    |    |                    |    |              |    |            |      |
|--|-----------|------------|------------|----|----|------------------|----|----|--------------------|----|--------------|----|------------|------|
|  | Recessed  |            |            |    |    |                  |    |    | Plastic Wraparound |    | Strip Lights |    | Industrial |      |
|  | 2x2 U VDT | 2x2 U Lens | 2x4 Lensed |    |    | 2x4 VDT Louvered |    |    | 4 Ft               |    | 4 Ft         |    | 4 Ft       | 8 Ft |
| No. of lamps   | 2         | 2          | 2          | 3  | 4  | 2                | 3  | 4  | 2                  | 4  | 1            | 2  | 2          | 2    |
| LER  | 41        | 49         | 62         | 61 | 61 | 50               | 51 | 54 | 63                 | 62 | 70           | 70 | 67         | 68   |

(1) Compact Fluorescent Lamps (CFLs)

(1) "Compact Fluorescent Lamp" means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp, including (A) Single based compact fluorescent lamps with twin tube, triple tube, quad tube, square or multiple limb configurations and having integral electronic ballasts; (B) Circle and square lamps with a maximum diameter of 9 inches or a maximum side length of 8 inches and having electronic ballast adapters that are packaged with the lamp; (C) Single based compact fluorescent lamps with integral electronic ballasts and which have a translucent cover over the bare fluorescent tube. The cover may be globe, bullet, pear or other shape; and (D) Single based compact

fluorescent lamps with integral electronic ballasts and which have a reflector that may be open or enclosed. The lamp shall be primarily intended to replace wide beam incandescent reflector lamps.

(2) The minimum efficiency standards for compact fluorescent lamps shall be the levels set forth in Table 5.12 determined in accordance with the test procedures set forth in 10 Code of Federal Regulations (CFR) part 430, Subpart B, Appendix R (see section 506.6 of this Part).

| Table 5.12: Minimum Energy Efficiency Standards: Lumens per Watt (LPW) for Compact Fluorescent Lamps |            |       |                               |               |               |       |                |       |
|--|------------|-------|-------------------------------|---------------|---------------|-------|----------------|-------|
|  | Bare Bulbs |       | Covered Lamp w/ No Reflectors |               |               |       | Reflector Type |       |
| Lamp Wattage   | <15W       | >=15W | <15W                          | >=15-<br><19W | >=19-<br><25W | >=25W | <20W           | >=20W |
| LPW  | 45         | 60    | 40                            | 48            | 50            | 55    | 33             | 40    |

(m) Mercury Vapor Luminaires and Lamps

(1) "Mercury Vapor Luminaire" means a complete lighting unit consisting of a mercury vapor lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(2) "Mercury vapor lamp" means a high-intensity discharge lamp that uses mercury as the primary light-discharging element.

(3) No mercury vapor luminaires and/or lamps shall be purchased.

506.5 Waivers

(a) A State agency may waive a minimum energy efficiency standard set forth in Section 506.4 for any purchase or for inclusion in any building designs or specifications, if it determines that the purchase for a particular building or the inclusion in any particular building designs or specifications of an energy using product meeting such standard:

(1) would be inconsistent with public health or safety;

(2) would not be in compliance with Federal, State, or local law or regulation, permit, administrative or judicial order, or other requirement;

(3) would be incompatible with or adversely affect the operation of other building systems or equipment in accordance with the purposes for which they are to be used;

(4) would cause energy losses or inefficiencies in other systems, equipment, or elements of the building that would exceed the energy savings of using such energy using product;

(5) would necessitate substantial revisions or alterations to other existing systems, equipment, or elements of the building, or would create an undue burden in operating and maintaining the building;

(6) cannot be done in a timely manner because purchase of such energy using product is immediately necessary on a limited and temporary basis for the protection or preservation of life, property, or health;

(7) would apply to an historic building eligible for or listed on the State or National Register of Historic Places or be significantly inconsistent with the historic, aesthetic, cultural, or archeological character of the building; or

(8) would result in a substantial delay of the purchase of an energy using product or have a substantial adverse effect on the construction of a new building or substantial renovation of an existing building because: (A) the energy using product is not widely available, or (B) the building specifications have been approved, construction or pre-installation renovation or other work has commenced, or substantial design has been completed prior to the effective date of a standard.

(b) No State agency may waive a minimum energy efficiency standard set forth in Section 506.4, unless all models of the energy using product meeting the standard qualify for a waiver pursuant to subdivision (a) of this section. If a minimum energy efficiency standard may be waived, a State agency may purchase an energy using product which does not meet the minimum energy efficiency standard contained in Section 506.4.

(c) No State agency may waive a minimum energy efficiency standard set forth in Section 506.4, if the alternate energy using product would also qualify for the same waiver for the same reason, *e.g.*, if all models of a room air conditioner, both those meeting the minimum energy efficiency standard and those that do not meet the standard, are larger in size than the units being replaced, then a State agency may not waive the minimum energy efficiency standard on the basis that the standard would necessitate substantial revisions or alterations to the walls of the building.

(d) A State agency shall document the procedure used for each purchase of an energy using product which does not meet the applicable minimum energy efficiency standard set forth in Section 506.4. Such documentation may be incorporated within any other existing records that a State agency maintains, such as the Procurement Record as required by Section 163 of the State Finance Law.

#### 506.6 Referenced Material

The following referenced documents have been filed with the New York State Department of State. The documents are available from the addresses listed or, in the case of federal publications, from the Superintendent of Documents, U.S. Government Printing Office, 732 Capitol Street, NW, Washington, D.C. 20401, and for inspection and copying at the offices of the New York State Energy Research and Development Authority. For each reference, additional sources for hard copy materials and web sites, where appropriate, are provided.

| Location of Test Procedure  | Description of Test Procedure   | Where to Obtain a Copy of the Test Procedure  |
|---|---|---|
| 10 CFR <sup>a</sup> 430, Subpart B, Appendix Q (last amended April 24, 1991)      | Test Procedure for Fluorescent Lamp Ballasts  | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |
| 10 CFR <sup>a</sup> 430, Subpart B, Appendix M (last amended February 7, 1989)    | Test Procedure for Residential Central Air Conditioners and Heat Pumps  | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |
| ARI <sup>b</sup> 210/240-94   | Test Procedure for Air-Source, Water-Cooled, and Evaporatively Cooled Commercial Central Air Conditioners and Heat Pumps less than 135,000 BTUs per hour                | <a href="http://www.ari.org">www.ari.org</a>  |
| ARI <sup>b</sup> 340/360-93   | Test Procedure for Air-Source, Water-Cooled, and Evaporatively Cooled Commercial Central Air Conditioners and Heat Pumps equal to or greater than 135,000 BTUs per hour | <a href="http://www.ari.org">www.ari.org</a>  |
| ISO <sup>c</sup> -13256-1   | Test Procedure for Water-Source, Ground Water-Source, and Ground- Source Commercial Central Air Conditioners and Heat Pumps   | <a href="http://www.iso.org">www.iso.org</a>  |
| ARI <sup>a</sup> 310/380-93   | Test Procedure for Packaged Terminal Air Conditioners and Heat Pumps  | <a href="http://www.ari.org">www.ari.org</a>  |
| 10 CFR <sup>a</sup> 430, Subpart B, Appendix F (last amended June 29, 1979)       | Test Procedure for Room Air Conditioners  | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |
| 10 CFR <sup>a</sup> 431, Subpart B, Section 431.24 (last amended January 1, 2002) | Determination of Efficiency for Electric Motors   | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |
| 10 CFR <sup>a</sup> 430, Subpart B, Appendix E (last amended January 1, 2002)     | Test Procedure for Residential Water Heaters  | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |
| ANSI <sup>a</sup> Z21.10.3-2001   | Test Procedure for Commercial Gas Water Heaters   | <a href="http://www.ansi.org">www.ansi.org</a>  |

|  |  |   |
|--|--|---|
| 10 CFR <sup>a</sup> 430, Subpart B, Appendix A1 (last amended January 1, 2002) | Test Procedure for Electric Refrigerators and Electric Refrigerator-Freezers                     | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |
| 10 CFR <sup>a</sup> 430, Subpart B, Appendix B1 (last amended January 1, 2002) | Test Procedure for Residential Freezers  | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |
| ASHRAE <sup>e</sup> 117-2002   | Test Procedure for Closed Refrigerators and Freezers   | <a href="http://www.ashrae.org">www.ashrae.org</a>                                    |
| NEMA <sup>f</sup> LE5-2001   | Test Procedure for Fluorescent Luminaires  | <a href="http://www.nema.org">www.nema.org</a>  |
| 10 CFR <sup>a</sup> 430, Subpart B, Appendix R (last amended January 1, 2002)  | Test Procedure for Measuring Average Lamp Efficiency and Color Rendering Index of Electric Lamps | <a href="http://www.gpoaccess.gov/index.html">http://www.gpoaccess.gov/index.html</a> |

<sup>a</sup> CFR means Code of Federal Regulations.

<sup>b</sup> ARI means the Air-Conditioning & Refrigeration Institute.

<sup>c</sup> ISO means the International Standards Organization.

<sup>d</sup> ANSI means the American National Standards Institute.

<sup>e</sup> ASHRAE means the American Society of Heating, Refrigerating, and Air-Conditioning Engineers.

<sup>f</sup> NEMA means the National Electrical Manufacturers Association.