

RULE MAKING ACTIVITIES

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

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

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

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submission and Approval of State Authority Contracts to the Comptroller

I.D. No. AAC-09-10-00013-P

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

Proposed Action: Addition of Part 206 to Title 2 NYCRR.

Statutory authority: NYS Constitution, section 5, art. X; State Finance Law, section 8(14); and Public Authorities Law, section 2879-a

Subject: Submission and approval of State Authority Contracts to the Comptroller.

Purpose: To set forth standards and procedures for submission and approval of State Authority contracts to the Comptroller.

Text of proposed rule: Part 206 is added to Title 2 NYCRR as follows:

PART 206

Comptroller Approval of Contracts Made by State Authorities.

(Statutory Authority: N.Y. Const. art. X, § 5; State Finance Law § 8(14); and Public Authorities Law § 2879-a)

§ 206.1 Purpose. (a) The purpose of this Part is to set forth:

- (1) the standards for the Comptroller's determination of state authority contracts and contract amendments subject to the Comptroller's approval;
- (2) the criteria for the Comptroller's approval of such contracts and contract amendments;
- (3) the responsibilities of state authorities with respect to the filing of

exempt contracts and any amendments thereto, certain eligible contracts and certain eligible contract amendments as defined in this Part; and

(4) the procedural requirements for overall compliance with section two thousand eight hundred seventy nine-a of the Public Authorities Law.

(b) Nothing contained in this Part shall diminish, or in any way adversely affect, the Comptroller's existing authority to approve state authority contracts where such approval is otherwise required, or provided for, by law or by resolution of a state authority, including, but not limited to, contracts made "for" the State by a state authority. A contract is made "for" the State by a state authority where the state authority is entering into a contract with a third party, but the primary role of the state authority is to act on behalf of the State or a state agency. Such third-party contracts are contracts for the State and are subject to the Comptroller's approval under section one hundred twelve of the State Finance Law notwithstanding any of the thresholds or criteria contained in this Part.

§ 206.2 Definitions. For purposes of this Part:

(a) Competitive procurement shall mean a procurement where a state authority has:

(1) published notice of the procurement opportunity in the procurement opportunities newsletter where required by article 4C of the Economic Development Law or, where not required by law, in the procurement opportunities newsletter or another newspaper, journal or periodical which is reasonably designed to give notice to all vendors capable of providing the requisite product, service or work to be performed;

(2) given actual notice of the procurement opportunity to all vendors known to the state authority to be capable of providing the requisite product, service or work to be performed; and

(3) awarded the contract as a result of a balanced and fair method of evaluation and selection.

(b) Contract shall mean any written agreement including, but not limited to: any agreement for the acquisition or sale of goods or services of any kind; public work, construction, alterations, improvements to public facilities; grant contracts; revenue or concession contracts; the exchange of personal or real property; the exchange of services; or any combination thereof.

(c) Eligible contract shall mean any contract executed by a state authority on or after March 1, 2010, other than an exempt contract, where the aggregate consideration proposed for exchange may reasonably be valued in excess of one million dollars and such contract either:

(1) shall be paid in whole or in part with monies appropriated by the State; or

(2) was or shall be awarded on a single source basis, a sole source basis or pursuant to any other method of procurement that is not competitive.

(d) Eligible contract amendment shall mean:

(1) any modification to an eligible contract; or

(2) any modification to a contract entered into by a state authority where such modification was executed on or after March 1, 2010, and where the aggregate consideration under the contract as amended may reasonably be valued in excess of one million dollars and either:

(i) the contract as amended will be paid in whole or in part with monies appropriated by the State;

(ii) the contract was originally awarded on a noncompetitive basis;

or

(iii) the contract was originally awarded on the basis of a competitive procurement, but the modification was not provided for in the solicitation for such competitive procurement.

(e) Executed shall mean that the contract or contract amendment has been signed by all contractors and the state authority.

(f) Exempt contract shall mean any contract or contract amendment, executed by a state authority on or after March 1, 2010, that would otherwise be an eligible contract or eligible contract amendment, but is exempt pursuant to subdivision 3 of section two thousand eight hundred seventy nine-a of the Public Authorities Law because it is:

(1) for the issuance of commercial paper or bonded indebtedness, other than contracts with the state providing for the payment of debt service subject to an appropriation;

(2) entered into by an entity established under article ten-c of the Public Authorities Law and is for:

(i) projects approved by the Department of Health or the Public Health Council in accordance with article twenty-eight, thirty-six or forty of the Public Health Law or article seven of the Social Services Law;

(ii) projects approved by the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, or the Office of Alcoholism and Substance Abuse Services in accordance with article sixteen, thirty-one or thirty-two of the Mental Hygiene Law;

(iii) services, affiliations or joint ventures for the provision or administration of health care services or scientific research;

(iv) payment for direct health care services or goods used in the provision of health care services; or

(v) participation in group purchasing arrangements;

(3) for the procurement of goods, services or both goods and services to meet emergencies arising from unforeseen causes or to effect repairs to critical infrastructure that are necessary to avoid a delay in the delivery of critical services that could compromise the public welfare;

(4) for the purchase or sale of energy, electricity or ancillary services made by an authority on a recognized market for the goods, services or commodities in question in accordance with standard terms and conditions of purchase or sale at a market price;

(5) for the purchase, sale or delivery of power or energy, fuel, costs and services ancillary thereto, or financial products related thereto, with a term of less than five years; or

(6) for the sale or delivery of power or energy and costs and services ancillary thereto for economic development purposes pursuant to title one of article five of the Public Authorities Law or article six of the Economic Development Law.

(g) Monies appropriated by the state shall mean:

(1) monies from the state treasury or any of its funds, or any of the funds under its management pursuant to law; or

(2) the proceeds of bonds, where such bonds shall be paid in whole or in part with monies from the state treasury or any of its funds, or any of the funds under its management pursuant to law.

(h) Procurement record shall mean documentation of the decisions made and the approach taken by the state authority in the procurement process.

(i) Single source shall mean a procurement in which although two or more offerors can supply the required goods or services, the state authority, upon written findings setting forth the material and substantial reasons therefore, may award a contract or amendment to a contract to one offeror over the other.

(j) Sole source shall mean a procurement in which only one offeror is capable of supplying the required goods or services.

(k) State authority shall mean a public authority or public benefit corporation created by or existing under any law of the state of New York, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation.

(l) State Authorities Contract Submission Manual shall mean guidelines for state authorities for contract submission, created by the Office of the State Comptroller and updated as necessary.

(m) Subsidiary shall mean a corporate body or company:

(1) having more than half of its voting shares owned or held by a state authority; or

(2) having a majority of its directors, trustees or members in common with the directors, trustees or members of a state authority or as designees of a state authority.

(n) Written determination shall mean notification provided in writing either in paper or electronic format of the Comptroller's final approval or rejection of any contract submitted for approval by a state authority.

(o) Written notice shall mean notification provided in writing either in paper or electronic format.

§ 206.3 Annual Reporting Requirement. (a) No later than 30 days before the end of the state authority's fiscal year, each state authority shall submit to the Office of the State Comptroller a report, in such form as prescribed by the Comptroller, which includes a description of every eligible contract and eligible contract amendment which the state authority reasonably anticipates entering into in the following fiscal year.

(b) The description for each anticipated contract or contract amendment specified in the report shall include, but not be limited to, the following elements:

(1) the purpose of the contract or contract amendment;

(2) the anticipated value of the contract or contract amendment;

(3) whether it is anticipated that the contract will be awarded on a

competitive basis, and, if not, the basis upon which the contract will be awarded;

(4) the anticipated date for the release of the solicitation, if applicable, or execution of the contract or contract amendment; and

(5) the source of funding for the contract or contract amendment.

(c) The state authority shall provide written notice to the Office of the State Comptroller of any significant change in, or addition to, the information provided in the reports submitted by the state authority pursuant to this section. Such written notice shall be submitted no later than seven days after the state authority has identified the need for such significant change or addition.

§ 206.4 Determination of eligible contracts and eligible contract amendments subject to the Comptroller's approval.

(a)(1) The Comptroller shall periodically determine which eligible contracts and eligible contract amendments shall be subject to the Comptroller's approval.

(2) Once the Comptroller has determined that any eligible contract, eligible contract amendment, category of eligible contracts or category of eligible contract amendments shall be subject to approval by the Comptroller, the Comptroller shall provide written notice of such determination to the affected state authorities.

(3) Such written notice shall include instructions for submitting any such contracts or contract amendments and the period of time during which the state authority is required to submit the contracts and/or contract amendments.

(4) Where the Comptroller has provided written notice pursuant to this section and, where a state authority is subject to the publication requirements contained in article 4C of the Economic Development Law and believes that an eligible contract described in the notice is exempt from such requirements under subdivision (1)(a) of section 144 of such law, the state authority must obtain the Comptroller's approval for such exemption.

(b) The Comptroller's determination of which eligible contracts or eligible contract amendments shall be subject to his or her approval may include, but shall not be limited to, consideration of one or more the following criteria:

(1) number and dollar value of contracts entered into, or anticipated to be entered into, by the state authority;

(2) past practices of the state authority with respect to its contracting or procurement process as identified by audits performed by regulating bodies including, but not limited to, the Office of the State Comptroller;

(3) the types of contracts entered into by the state authority;

(4) the presence or absence of competition in the procurement process;

(5) the level of financial risk posed by the state authority's contracts;

(6) any potential liability for the State posed by the state authority's contracts;

(7) the content and adequacy of the state authority's existing procurement guidelines; and

(8) the state authority's compliance with the provisions in section 206.7 regarding the filing of exempt contracts, certain eligible contracts and certain eligible contract amendments.

§ 206.5 Submission of contracts or contract amendments subject to the Comptroller's approval. (a) Every state authority shall, upon execution of any contract or contract amendment described in a written notice issued pursuant to section 206.4(a), promptly submit to the Comptroller for approval each such contract or contract amendment, for the duration stated in the notice, along with the complete procurement record. A copy of all such contracts and contract amendments shall be retained on file with the Office of the State Comptroller. Such submission should conform to the guidelines set forth in the State Authorities Contract Submission Manual. The Comptroller also reserves the right to request submission of additional materials that are relevant to the Comptroller's review and approval.

(b) For each contract or contract amendment required to be submitted to the Comptroller, the state authority shall include a certification in the procurement record that it has undertaken an affirmative review of the responsibility of any business entity (vendor, contractor or offeror), including significant subcontractors, to which they propose to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed contractor and significant subcontractors are responsible and shall be documented in the procurement record.

(c) Where the Comptroller has provided written notice pursuant to section 206.4 (a), the state authority shall include in each contract or contract amendment described in such notice a clause providing that the contract or contract amendment is subject to the Comptroller's approval before such contract or contract amendment may become valid and enforceable.

(d) The Comptroller shall have ninety days to issue a written determination with respect to the approval or rejection of each contract or contract amendment submitted for approval. Such ninety day period shall

begin upon receipt of the contract or contract amendment, including all required documentation, by the Office of the State Comptroller. No contract or contract amendment submitted to the Comptroller shall become valid and enforceable until such contract or contract amendment has been approved by the Comptroller; provided, however, that if the Comptroller has not issued a written determination within the ninety day period, such contract or contract amendment shall become valid and enforceable without approval by the Comptroller. In the event that the state authority resubmits a contract or contract amendment previously returned by the Comptroller, the Comptroller shall have ninety days from the receipt of such resubmitted contract or contract amendment to issue a written determination.

(e) The Comptroller reserves the right to require state authorities to transmit all or part of the procurement record electronically according to standards developed by the Comptroller.

§ 206.6 Criteria for approval of a contract or contract amendment. The Comptroller's determination as to whether to approve a contract or contract amendment submitted for approval shall include, but not limited to, consideration of the following criteria:

(a) for all contracts and contract amendments:

- (1) compliance with all applicable laws;
- (2) the responsibility of the proposed contractor;
- (3) the reasonableness of the state authority's procurement procedures and, if applicable, compliance with such procedures; and
- (4) the reasonableness of the result;

(b) for single source and sole source contracts, or any contract or contract amendment awarded pursuant to any other method of procurement that is not competitive:

- (1) the justification for not utilizing a competitive procurement; and
- (2) the reasonableness of the selection of the contractor, the cost and the terms of the contract or contract amendment. The procurement record for such contracts or contract amendments shall include: the justification for not using a competitive procurement; the basis for selecting the contractor, including the alternatives considered; and the basis upon which the state authority determined the cost was reasonable; and

(c) for competitive procurements:

- (1) the adequacy of the efforts made to provide notice of the contract opportunity;
- (2) the reasonableness of the product specifications, requirements or work to be performed;
- (3) the reasonableness of the methodology for evaluating bids, proposals or other offers; and
- (4) the state authority's fair application of the established methodology for evaluating bids, proposals or other offers. The procurement record for competitive contracts shall demonstrate a competitive field by providing, at a minimum, a clear statement of the required specifications or work to be performed, a fair and equal opportunity for offerors to submit responsive offers and a balanced and fair method of evaluation and selection.

§ 206.7 Filing requirements for exempt contracts, certain eligible contracts and certain eligible contract amendments.

(a)(1) A state authority shall file with the Office of the State Comptroller:

- (i) a copy of any exempt contract;
- (ii) a copy of any subsequent amendments thereto; and
- (iii) an explanation of why such contract or contract amendment is exempt from the Comptroller's approval.

(2) When an exempt contract or an exempt contract amendment is entered into in order to meet an emergency, the state authority shall document in the explanation the nature of the emergency giving rise to the procurement.

(3) Copies of such exempt contracts, exempt contract amendments and the related explanation shall be filed within sixty day after the execution of such exempt contract or exempt contract amendment.

(b)(1) A state authority shall also file with the Office of the State Comptroller a copy of any eligible contract or eligible contract amendment entered into by the state authority for which the Comptroller has not provided notice pursuant to section 206.4(a).

(2) Copies of such eligible contracts or eligible contract amendments shall be filed within sixty days after their execution.

(3) In addition, where an eligible contract amendment filed pursuant to this section modifies a contract that was not previously filed with the Office of the State Comptroller, the state authority shall also include a copy of the original contract and any prior amendments thereto.

(c) The filing of any contracts or contract amendments pursuant to this section should conform to the guidelines for submission set forth in the State Authorities Contract Submission Manual.

Text of proposed rule and any required statements and analyses may be obtained from: Sara Kenney, Esq., Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 402-3490, email: skenney@osc.state.ny.us

Data, views or arguments may be submitted to: Jamie Elacqua, Esq., Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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

Regulatory Impact Statement

1. Statutory Authority: New York State Constitution article X section 5 states that the "accounts" of public corporations shall be subject to the supervision of the state Comptroller. In addition, State Finance Law section 8(14) authorizes the Comptroller to adopt rules and regulations in order to carry out the duties of his or her Office. Furthermore, Public Authorities Law section 2879-a specifically requires the Comptroller to promulgate rules and regulations as necessary to carry out his or her responsibilities under this section. Public Authorities Law section 2879-a directs state authorities to submit certain contracts to the Comptroller for approval where the Comptroller determines that his or her constitutional supervision of the accounts of such state authorities requires such prior review and approval.

2. Legislative Objectives: These rules will further the goals and policies set forth in the newly added Public Authorities Law section 2879-a; specifically, to provide oversight of the operations and finances of state authorities, and to promote greater transparency and accountability in the way that state authorities conduct business.

3. Needs and Benefits: The rules are necessary to promote the legislative objective of providing greater oversight of the operations and finances of state authorities and to comply with the requirement in Public Authorities Law section 2879-a that the Comptroller issue regulations with respect to certain matters. While Public Authorities Law section 2879-a makes clear that the Comptroller may require certain categories of state authority contracts to be approved prior to becoming effective, these rules provide the procedural framework within which state authorities can comply with the new legal mandate. Specifically, these rules set forth the definitions and procedures necessary to implement this new requirement, including, as required by section 2879-a, the standards for determining the contracts subject to the Comptroller's approval and the criteria for approval of such contracts. The rules also provide for the filing with the Comptroller of exempt contracts and certain other contracts that were not approved by the Comptroller.

These rules will detail and streamline the process by which state authorities are able to comply with Public Authorities Law section 2879-a. Without these rules, state authorities subject to the law would be unaware of what materials they were required to submit to the Comptroller, in what manner they were to submit such materials, and the criteria by which they could obtain approval from the Comptroller. Moreover, these rules will provide notice to private businesses who currently contract with state authorities, or seek to do so in the future, that such state authority contracts may be subject to a new procedural framework and approval process.

4. Costs: (a) Costs to regulated parties. Costs to state authorities will be modest. Implementation will require procedural changes for transmitting the required contract documents and reports to the Office of the State Comptroller. This transmittal may also require state authorities to utilize systems developed by the Office of the State Comptroller, which may accommodate electronic submission of required documents. It is expected that these requirements can be met with existing resources with little additional costs.

(b) Costs to the agency. The Office of the State Comptroller will be required to develop protocols for the selection of contracts or categories of contracts for audit, develop and implement audit protocols, create documents which explain procedural instructions and requirements, develop or enhance automated systems, develop mechanisms for filing contracts which are exempt from review but are still required to be filed, and provide training to state authorities to facilitate the implementation of these rules. The Office of the State Comptroller has already taken steps to realign existing contract procedures to begin implementing its responsibilities under Public Authorities Law section 2879-a. It is expected that additional resources will be required to carry out such responsibilities upon full implementation of this new law. There will be no costs imposed on other state agencies or local governments.

5. Local Government Mandates: Public Authorities Law section 2879-a governs only state authorities, not local authorities. Where a state authority is entering into a contract with a local government, the contract may be subject to review and approval by the Comptroller, and the state authority is required to include in any such contract a clause providing that it is subject to the Comptroller's approval before it may become valid and enforceable. Beyond this limited situation, there will be no impact on local governments.

6. Paperwork: The rules require state authorities to file a new report with the Office of the State Comptroller, on an annual basis, to identify contracts eligible for Comptroller approval that the state authority reason-

ably anticipates entering into in the coming fiscal year. This is to assist state auditors in determining which contracts will be subject to the Comptroller's review. Additionally, the rules direct state authorities to submit all original contracts along with the complete procurement record to the Office of the State Comptroller for approval, where the state authority has received notice from the State Comptroller, as expanded upon below, that such contracts require prior approval. The procurement record consists of full documentation of the decisions made and the approach taken in the procurement process.

Next, the Comptroller is required to send written notice to the state authority of the categories of contracts that the Comptroller determines are subject to his or her approval. Such notification will also include instructions for submitting the contracts and the period of time during which the state authority is required to submit the contracts. Following the Comptroller's review, the Comptroller must also issue a written determination of the final approval or rejection of any contract submitted for approval.

Finally, for contracts that are specifically exempted from the Comptroller's approval under subdivision 3 of Public Authorities Law section 2879-a, state authorities must file copies of any such contract and any subsequent amendments thereto with the Office of the State Comptroller, and must also file an explanation of why such contract is exempt. Additionally, with respect to "eligible contracts" and "eligible contract amendments" that the Comptroller did not require be submitted for approval, the regulations require that state authorities file an executed copy of the contract and/or contract amendment with the Comptroller. Wherever possible, the Office of the State Comptroller will employ electronic means to receive and file documents.

7. Duplication: The Office of the State Comptroller is already authorized to review and approve contracts of certain state authorities, either pursuant to law or at the request of the state authority. The regulations expressly provide that the regulations do not diminish or impair such existing authority. As a result, in any case where such authority otherwise exists, the provisions in the regulations relating to the approval of certain state authority contracts will have no application, and therefore, there is no duplication. Accordingly, these rules will neither overlap nor conflict with contract submissions already made by state authorities.

Next, with respect to the annual reporting requirement contained in these rules, some public authorities are already required to report financial information and procurement activity (see 2 NYCRR 201.2). However, those requirements only apply to the "procurement contracts" of certain public authorities and only require such reporting on a retrospective basis (see Public Authorities Law § 2879[2]; 2 NYCRR 201.1[b]; 2 NYCRR 201.2[e]). These proposed rules impose an additional obligation upon the state authority to report on a prospective basis on all expected "eligible contracts," as defined by the rules based on criteria in Public Authorities Law section 2879-a. Pursuant to Public Authorities Law section 2879-a, the range of contracts and contract amendments that are "eligible" for the Comptroller's approval extends beyond procurement contracts and, therefore, this additional reporting requirement is necessary to fully assess what contracts and contract amendments should be subject to the Comptroller's review. Also, requiring state authorities to report on a prospective basis under these rules is crucial to the Comptroller's determination of which contracts should be subject to review.

8. Alternatives: None.

9. Federal Standards: None.

10. Compliance Schedule: It is expected that all state authorities should comply immediately upon the adoption of these rules.

Regulatory Flexibility Analysis

1. Effect of rule: Pursuant to section 2979-a of the Public Authorities Law, this rule will govern certain contracts of state authorities, including contracts with local governments or small businesses. Where a state authority enters into a contract or contract amendment with a local government or small business, and the contract or amendment is subject to review and approval by the Comptroller, such contract or amendment shall not become enforceable until the Comptroller's approval is given, or after the expiration of ninety days where the Comptroller has failed to give approval or disapproval. The state authority is required to include a clause in the contract or amendment providing that it is subject to the Comptroller's approval before it may become valid and enforceable in order to give notice to the local government or small business. Additionally, the rule provides for the procedures governing the submission of such contracts, the factors the Comptroller will consider in determining which contracts will be subject to review and approval, and the factors the Comptroller will consider in determining whether to approve such contracts. The rule also requires that state authorities file certain documents and reports with the Comptroller. Thus, the primary impact is on the state authorities, not local governments or small businesses, and, in any event, as noted below, such impact should be modest. The number of small businesses and local governments that may be affected cannot be determined at this time. This is an expansion of oversight responsibilities for the Comptroller's Office.

Until the Office of the State Comptroller begins to receive the affected state contracts the Office of the State Comptroller will be unable to speculate what percentage of state authority contracts are entered into with small businesses and local governments.

2. Compliance requirements: The rule will require that certain "eligible contracts" and "eligible contract amendments" as defined by the rule, entered into by a state authority be approved by the Comptroller prior to the contract becoming enforceable. Additionally, state authorities will be required to file with the Comptroller all "eligible contracts" and "eligible contract amendments" for which the Comptroller has not given notice that prior approval is required, and contracts and amendments exempt from the Comptroller's approval as identified in subdivision 3 of section 2879-a of the Public Authorities Law. Finally, state authorities will be required to file a report with the Comptroller prior to the beginning of a new fiscal year listing projected eligible contracts to be entered into in the new fiscal year. No compliance requirements will be passed on to a small business or local government.

3. Professional services: There are no professional services that a small business or local government is likely to need to comply with the rule.

4. Compliance costs: There are no initial capital costs or annual costs for small businesses or local governments to comply with these rules.

5. Economic and technological feasibility: Since there are no compliance requirements imposed upon small businesses or local governments there is no need to conduct an assessment of economic and technological feasibility of compliance with such rule.

6. Minimizing adverse impact: No adverse impact is anticipated for small businesses or local governments. This conclusion was reached because the rule requires state authorities, not small businesses or local governments, to take action. The sole effect, as stated above, will be that any contract or contract amendment subject to the Comptroller's approval that a small business is a party to will not be effective until the Comptroller gives his or her approval, or if ninety days have elapsed since submission to the Comptroller, and the Comptroller has failed to issue a determination. Accordingly, none of the approaches for minimizing adverse economic impact suggested in SAPA section 202-b(1) were considered.

7. Small business and local government participation: In order to ensure small businesses and local governments have an opportunity to participate in the rule making process, a press release will be issued and posted on the Comptroller's website regarding this proposed rule.

Rural Area Flexibility Analysis

1. Types of and numbers of rural areas: Since certain state authorities serve the needs of the public on a state-wide basis, including rural areas, and may contract with vendors on a statewide basis, including vendors in rural areas, it is estimated that this rule will affect every rural area within the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: State authorities must forward certain contracts and contract amendments, defined as "eligible contracts" and "eligible contract amendments" by the proposed rules, upon notification from the Comptroller, to the Comptroller for his final approval. Along with the contracts and contract amendments, the state authority must forward the procurement record. Further, a state authority must file executed contracts and contract amendments that are "eligible contracts" and "eligible contract amendments" that the Comptroller has not given notice to the state authority that such contracts or contract amendments are subject to his prior review and approval, and any contracts and contract amendments that are defined as "exempt" from the Comptroller's approval pursuant to Public Authorities Law section 2879-a(3). Exempt contracts and contract amendments must also contain a brief explanation as to why they are exempt. These requirements will primarily impact the state authorities and it is not anticipated that any professional services will be necessary to complete these submissions. Additionally, state authorities will be expected to file with the Comptroller prior to the beginning of a new fiscal year a report listing anticipated eligible contracts to be entered into in the new fiscal year.

3. Costs: Costs to state authorities will be modest. Implementation will require procedural changes for transmitting the required contract documents and reports to the Office of the State Comptroller. This transmittal may also require Public Authorities to utilize systems developed by the Office of the State Comptroller, which may accommodate electronic submission of required documents. It is expected that these requirements can be met with existing resources with little additional costs.

4. Minimizing adverse impact: There is no anticipated adverse impact upon rural areas, therefore none of the approaches suggested by SAPA section 202-bb(2) were considered.

5. Rural area participation: In order to ensure rural areas have an opportunity to participate in the rule making process a press release will be issued and posted on the Comptroller's website regarding this proposed rule.

Delaware River Basin Commission

INFORMATION NOTICE

Notice of Proposed Rulemaking and Hearing

The Delaware River Basin Commission ("DRBC" or "Commission") is a federal interstate compact agency charged with managing the water resources of the Basin without regard to political boundaries. Its commissioners are the governors of the four Basin states - New Jersey, New York, Pennsylvania and Delaware - and a federal representative, the North Atlantic Division Commander of the United States Army Corps of Engineers. The Commission is not subject to the requirements of the New York Administrative Procedures Act. This notice is published by the Commission for information purposes.

Proposed Rulemaking to Amend Schedule of Water Charges

Summary: The Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendments to the Administrative Manual - Part III - Basin Regulations - Water Supply Charges to revise the schedule of water charges.

Dates: The Commission will hold a public hearing on Tuesday, April 13, 2010, beginning at 1:30 p.m. The hearing will continue until the later of 3:30 p.m. or such time as all those who wish to testify have been afforded an opportunity to do so. Written comments will be accepted until 5:00 p.m. on Friday, April 16.

Addresses: The hearing will take place in the Goddard Room at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's website - www.drbc.net. Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC.

Written comments may be submitted at the hearing and may also be sent as follows: via email to Paula.Schmitt@drbc.state.nj.us; otherwise, to the attention of the Commission Secretary, DRBC, either by fax to (609) 883-9522; U.S. Mail to P.O. Box 7360, West Trenton, NJ 08628-0360; or delivery service to 25 State Police Drive, West Trenton, NJ 08628-0360. Regardless of the method of submission, written comments should include the name, affiliation (if any) and address of the commenter and the subject line "Schedule of Water Charges."

For further information contact: Please contact Paula Schmitt at 609-477-7224 or Katharine O'Hara at 609-477-7205 with questions about the public hearing.

Supplementary Information: Background. In response to the need to fund certain water supply storage facility projects, the Commission between 1964 and 1974 established a system of water supply charges pursuant to section 3.7 of the Delaware River Basin Compact. In December of 1964, it adopted Resolution 64-16A, "A Resolution to establish policy concerning water supply in federal projects authorized in the Comprehensive Plan." This resolution established a revenue stream to repay the obligations the Commission eventually assumed to purchase capacity at the federal government's Beltzville and Blue Marsh water storage facilities. The resolution specifically provided that the debt for DRBC's share of storage in these facilities would be repaid through the sale of water (or other products and services) and through an apportionment of the costs to the states benefiting from those projects. See Resolution No. 64-16A, adopted December 29, 1964 (adding to the Comprehensive Plan a "Section IX - Water Supply Policy", par. 3.a. and b. of which establish the described debt repayment mechanisms).

The Commission subsequently adopted Resolution No. 71-4, "A Resolution to amend and supplement the Comprehensive Plan by the addition of a new article on policy for water supply charges." This resolution established a schedule of rates for basin water withdrawals and provided that the "charges for water supplied will include all costs associated with making basin water supply available and maintaining its continued availability in adequate quantity and quality over time." Res. No. 71-4, adopted April 7, 1971, par. A.2. Resolution No. 71-4 requires the Commission to collect sufficient annual revenue to meet all annual project costs, "including debt service, operation, maintenance, replacement, reserves, and associated administrative costs." Res. No. 71-4, par. A.2.b. The Commission recognized that the waters of the basin formed a "unitary system" and thus applied the charges to water withdrawals made throughout the basin, including up-stream of Commission facilities. See Res. No. 71-4, preamble. The unitary system is sometimes referred to as the "pooled water" theory. See, for example, *Delaware River Basin Commission v. Bucks County Water & Sewer Authority*, 641 F. 2d 1087, 1094 (3rd Cir. 1982) (citing Borough of

Morrisville v. Delaware River Basin Comm'n, 399 F.Supp. 469, 471 (E.D. Pa. 1975), *aff'd per curiam*, 532 F.2d 745 (3d Cir. 1976)). Resolution No. 71-4 imposed charges only on withdrawals from surface waters of the basin. In accordance with Section 15.1(b) of the Compact, it limited charges to the amounts of water withdrawn in excess of those "that could lawfully have been made without charge on the effective date of the Compact." Compact § 15.1(b).

The Commission has historically placed the revenues generated through the sale of water in an account called the "Water Supply Storage Facilities Fund" ("Storage Fund"). The Storage Fund holds funds dedicated to pay the costs of project construction, operation, maintenance, and replacement, as well as associated administrative costs. See Res. No. 71-4, par. A.2. The estimated balance in the Storage Fund as of June 30, 2009 was \$12.1M. A snapshot of the Storage Fund at the close of fiscal year ending July 31, 2009 shows the following: The Storage Fund received approximately \$2.6M in water sale revenue. It disbursed or incurred approximately \$2.2M in expenses, consisting of approximately \$483K in interest paid to the U.S. Treasury, \$423K in asset depreciation, \$310K for operations and maintenance of the Blue Marsh and Beltzville projects, \$86K for contractual services from the U.S. Geological Survey for operation and maintenance of stream gauges, and \$933K associated with Commission administration. The fund lost \$153K on investments (the sole Storage Fund investment loss in 35 years). The approximately \$204K difference between the annual costs and revenue is retained in the Storage Fund as a reserve against the future costs of expected significant repair to the facilities.

Historically, the Commission has not charged its full administrative cost against the Storage Fund. Periodic reviews of the charges have shown that the costs involved in Commission activities properly chargeable to the Storage Fund have exceeded the amounts actually charged for many years. To the extent that the Storage Fund has not been charged its full allocable costs, contributions by the signatory parties of the Delaware River Basin Compact (the states of Delaware, New Jersey, New York, Pennsylvania and the federal government) have made up the difference. In extremely challenging economic times, however, the signatories find themselves less capable of assuming this burden. In fiscal year 2010, an adjustment was made to better align charges to the Storage Fund with actual costs. Even absent this adjustment, the trend evident since 2008 is that retained Storage Fund earnings have leveled off. Recent plant closures in the basin are expected to result in reductions of approximately \$500K annually (about 20 percent) in water sale revenues, while the costs of reservoir maintenance and operations, contractual services and administration continue to rise.

DRBC's Current Schedule of Water Charges. Resolution No. 71-4 provided that water rates would consist of "the weighted-average unit cost of all water stored by or on behalf of the Commission" and specified that the unit cost of all water would be determined "by dividing all of the commission's annual project cost by the net yield of the water supply in federal reservoirs authorized in the commission's Comprehensive Plan." Res. No. 71-4, par. A.2.a. Also see Res. No. 78-14, preamble.

In accordance with this formula, the current schedule of water charges was established by Resolution No. 78-14 in October of 1978, based on the unit cost of water stored by the Commission in the Beltzville and Blue Marsh reservoirs. It was codified at section 5.3.1 of the Commission's Administrative Manual - Part III - Basin Regulations - Water Supply Charges (hereinafter, "WSC"). Section 5.3.1 provides that the Commission "will from time to time, after public notice and hearing, make, amend and revise a schedule of water charges" and that until changed, the charges for water shall be \$.06 per thousand gallons for consumptive use (\$.60 per million gallons) and six-tenths of a mill per thousand gallons (\$.60 per million gallons) for non-consumptive use. WSC § 5.3.1. These rates which have remained unchanged for more than 30 years, lag far behind the rates charged for raw (untreated) water by the Commission's sister agency the Susquehanna River Basin Commission (SRBC) and by the New Jersey Water Supply Authority (NJWSA) for raw water from its Raritan System.

The consumptive use rate established by SRBC in May of 1992, effective January 1, 1993, was \$140 per million gallons, nearly two-and-a-half times the current rate charged by DRBC. In June of 2008, SRBC approved a two-step increase to \$210 per million gallons effective January 1, 2009 and \$280 per million gallons (more than four-and-a-half times DRBC's current rate) effective January 1, 2010. NJWSA charged \$216 per million gallons as of July 1, 2010 and will charge \$220 per million gallons (more than three-and-a-half times DRBC's current rate) as of July 1, 2011 for raw water from its Raritan System. DRBC's proposed 2010 and 2011 rates for consumptively used water remain well below those of its counterparts.

Proposed Rate Increase. Resolution No. 71-4 provided that "[c]osts, rates and charges will be recomputed. . . as often as necessary to reflect

relevant changes in any cost components associated with sustaining specific base flows.” Res. No. 71-4, par. A.2.a. At this time, in order to maintain net income to the Storage Fund and ensure financial stability to address future operating and maintenance costs, the Commission is proposing its first water charging rate increase in 32 years. Because many people find the expression of the rates confusing, the Commission also is proposing that the new rates be established per million gallons rather than per thousand.

In light of the difficult economic climate, the rate change is proposed in two stages. The proposed rates, calculated using the formula established by Resolution No. 71-4 and set forth above, are as follows: The consumptive use rate is proposed to be increased from \$60 to \$90 per million gallons effective on January 1, 2011 and from \$90 to \$120 per million gallons effective on January 1, 2012. The non-consumptive use rate is proposed to be increased from \$.60 to \$.90 per million gallons effective on January 1, 2011 and from \$.90 to \$1.20 per million gallons effective on January 1, 2012.

Even with the proposed increases, Delaware Basin water will remain inexpensive when compared to raw water in neighboring jurisdictions. Notably, the proposed 2012 rate of \$120 per million gallons for raw water consumptively used in the Delaware Basin is less than half the rate of \$280 currently in effect in the Susquehanna Basin and only a little more than half the rate of \$216 currently charged by the NJWSA for its Raritan System water, which rate will increase to \$220 effective January 1, 2011. The Commission’s proposed 2012 rate is below the current (2010) rate of \$60 per million if adjusted for inflation, which would be approximately \$200 per million gallons.

No Change to Exempt Uses. No change to the list of uses exempt from charges, as set forth at WSC § 5.3.3 is proposed. The following categories of uses are currently exempt from water charges: non-consumptive uses of less than 1,000 gallons a day and less than 100,000 gallons during any quarter (§ 5.3.3 A.); ballast water used for shipping purposes (§ 5.3.3 B.); water taken, withdrawn or diverted from streams tributary to the River Master’s gauging station at Montague, New Jersey (§ 5.3.3 C.); and water taken, diverted or withdrawn below the mouth of the Cohansy River) and such proportion of water withdrawn above that point and below the mouth of the Schuylkill River as the Executive Director may determine would have no discernable effect upon the maintenance of the salt front below the mouth of the Schuylkill River (§ 5.3.3 D.).

PAMELA M. BUSH, ESQ.
Commission Secretary

Education Department

EMERGENCY RULE MAKING

Museum Collections Management Policies

I.D. No. EDU-01-09-00004-E

Filing No. 154

Filing Date: 2010-02-12

Effective Date: 2010-02-13

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

Action taken: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 216 (not subdivided), 217 (not subdivided), 233-aa(1), (2) and (5); and L. 2008, ch. 220

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to protect the public’s interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution’s collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(1) the item or material is not relevant to the mission of the institution;

(2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution’s collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting, and readopted as an emergency rule at the March, April, June, July, October and December 2009 Regents meetings. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009. Notices of Revised Rule Making were published in the State Register on August 26, 2009 and January 20, 2010.

The proposed amendment is consistent with generally accepted professional and ethical standards within the museum and historical society communities. Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public’s interest in collections held by a chartered museum or historical society. State Education Department staff have worked with the Legislature and with museum constituents to develop revised standards for museum deaccessioning that have been incorporated into legislation (A.6959-A and S.3078-A) pending in both houses which would be applicable to all museums. The Department participated in a January 14, 2010, roundtable discussion in New York City organized by the New York State Assembly.

The emergency rule adopted at the December Regents meeting is only effective for 60 days and will expire on February 12, 2010. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the February Regents meeting to readopt the rule, effective February 13, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public’s interest in collections held by a museum or historical society by enumerating the specific criteria under which an institution may deaccession an item or material in its collection, remove the option allowing an institution to designate a structure as a collections item but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008, and specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution’s collection, as above. Emergency action is also necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule.

It is anticipated that the proposed revised rule will be presented for permanent adoption at a subsequent Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed for revised rule makings in the State Administrative Procedure Act.

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text of emergency rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective February 13, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed April 13, 2010:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the institution by vote conducted on or before December 19, 2008*;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective February 13, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed April 13, 2010:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, *including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision*;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision*, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, *for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section*, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

(i) *the item or material is not relevant to the mission of the institution;*

(ii) *the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;*

(iii) *the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or*

(iv) *the institution is unable to conserve the item or material in a responsible manner.*

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a

permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-01-09-00004-EP, Issue of January 7, 2009. The emergency rule will expire April 12, 2010.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, State Education Department, State Education Building, Room 148, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the Chief Administrative Officer of the Department, which is charged with the general management and supervision of all public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 215 authorizes the Regents, the Commissioner, or their representatives, to visit, examine and inspect education corporations and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 216 authorizes the Board of Regents to incorporate educational institutions, including museums and other institutions for the promotion of science, literature, art, history or other department of knowledge, with such powers, privileges and duties, and subject to such limitations and restrictions, as they Regents may prescribe.

Education Law section 217 empowers the Board of Regents to grant a provisional charter to an institution, which shall be replaced by an absolute charter when the conditions for such absolute charter have been fully met.

Education Law section 233-aa, as added by Chapter 220 of the Laws of 2008, enacts provisions governing the ownership and management of properties owned by or lent to museums, requires that the acquisition of property by a museum pursuant to section 233-aa must be consistent with the mission of the museum, and specifies that proceeds derived from the sale of any property title to which was acquired by a museum pursuant to section 233-aa shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by clarifying criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(1) the item or material is not relevant to the mission of the institution;

(2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

4. COSTS:

- (a) Costs to the State: None.
- (b) Costs to local governments: None.
- (c) Costs to private, regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to museums and historical societies with collections chartered by the Board of Regents, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any additional paperwork requirements on such institutions.

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards regarding the chartering and registration of museums and historical societies by the Board of Regents.

10. COMPLIANCE SCHEDULE:

The proposed amendment clarifies criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum chartering database as of November 2008), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

The proposed amendment does not impose any additional professional services requirements.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities, and does not impose any additional compliance requirements or costs on such institutions. Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to museum and historical society collections management, it is not feasible to impose a lesser standard on, or otherwise exempt, institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

The State Education Department consulted with the Museum Association of New York in the development of the proposed amendment.

In addition, the Department asked its museum and historical society constituents to comment on the proposed amendment through announcements on web sites, and copies sent to listservs and electronic mailing lists. All areas of the state, including rural areas, received the announcements.

Job Impact Statement

The proposed amendment applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Veterans Tuition Awards Program

I.D. No. EDU-46-09-00002-A
Filing No. 156
Filing Date: 2010-02-16
Effective Date: 2010-03-03

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

Action taken: Amendment of Part 162 of Title 8 NYCRR.
Statutory authority: Education Law, sections 207 and 669-a
Subject: Veterans Tuition Awards Program.
Purpose: Implement Chapter 57 of the Laws of 2008 and make technical amendments to conform to current practice.
Text or summary was published in the November 18, 2009 issue of the Register, I.D. No. EDU-46-09-00002-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, 89 Washington Avenue, Room 148 EB, (518) 473-8296, email: cmoore@nysed.mail.gov
Assessment of Public Comment
 The agency received no public comment.

Department of Health

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

Circulating Nurse Required
I.D. No. HLT-09-10-00006-P

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

Proposed Action: This is a consensus rule making to amend section 405.12 of Title 10 NYCRR.
Statutory authority: Public Health Law, sections 2800, 2803(2) and 2805-s
Subject: Circulating Nurse Required.
Purpose: To require Registered Nurses (RNs) to be assigned and physically present in the operating room when surgery is being performed.
Text of proposed rule: Subdivision (a) of Section 405.12 is amended to read as follows:

405.12 Surgical Services.

* * *

(a) Organization and direction. The surgical service shall be directed by a physician who shall be responsible for the clinical aspects of organization and delivery of all in-patient and ambulatory surgical services provided to hospital patients. That physician or another individual qualified by training and experience shall direct administrative aspects of the service.

(1) The operating room shall be supervised by a registered professional nurse or physician who the hospital finds qualified by training and experience for this role.

(i) Nursing personnel shall be on duty in sufficient number for the surgical suite in accordance with the needs of patients and the complexity of services they are to receive.

(ii) *A registered professional nurse qualified by the hospital and by training and experience in operating room nursing shall be present as the circulating nurse in any and each separate operating room where surgery is being performed for the duration of the operative procedure. Nothing in this section precludes a circulating nurse from leaving the operating room as part of the operative procedure, leaving the operating room for short periods; or, in accordance with employee rules or regulations, being relieved during an operative*

procedure by another circulating nurse assigned to continue the operative procedure.

(iii) [ii] Licensed practical nurses and surgical technologists may perform scrub functions and may assist in circulating duties under the supervision of [a registered professional nurse; they may assist in circulatory duties under the supervision of a registered professional nurse who is immediately available to respond to emergencies] *the circulating nurse who is present in the operating room for the duration of the procedure, in accordance with policies and procedures established by the medical staff and the nursing service and approved by the governing body.*

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

Data, views or arguments may be submitted to: Same as above.
Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

Statutory Authority:
 The authority for the promulgation of this regulation is contained in Sections 2800, 2803 and 2805-s of the Public Health Law (PHL).

PHL Section 2800 specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

PHL Section 2805-s, created by Chapter 158 of the Laws of 2008, specifies that "a registered nurse, qualified by training and experience in operating room nursing, shall be present as a circulating nurse in any and each separate operating room where surgery is being performed for the duration of the operative procedure. Nothing in this section precludes a circulating nurse from leaving the operating room as part of the operative procedure, leaving the operating room for short periods; or, in accordance with employee rules or regulations, being relieved during an operative procedure by another circulating nurse assigned to continue the operative procedure."

Basis:

The proposed amendment merely conforms State regulation to State Law (PHL Section 2805-s) as created by Chapter 158 of the Laws of 2008. This regulation, as currently written, is out of compliance with PHL Section 2805-s. The Department sent a letter to each hospital executive officer which informed affected parties of the law change and the impact on hospital operations and nurse staffing. Hospitals were directed to ensure that adequate staff is in place to meet needs in accordance with PHL Section 2805-s and were provided with a copy of the law. They are currently required to be in compliance.

Job Impact Statement

Nature of Impact:

This regulation merely conforms Section 405.12 of Title 10 of the New York Rules and Regulations (10 NYCRR) to the requirements of PHL Section 2805-s. These provisions will apply to the 235 general hospitals in New York State. A Dear Chief Executive Officer letter, sent by the Department, informed affected parties of the law change and the impact on hospital operations and nurse staffing. Hospitals were directed to ensure that adequate staff is in place to meet needs in accordance with PHL Section 2805-s and were provided with a copy of the law. Since PHL Section 2805-s became effective October 5, 2008, and this regulatory amendment merely conforms the regulations to the law, they are currently required to be in compliance.

Categories and Numbers Affected:

These provisions will apply to the 235 general hospitals in New York State.

Regions of Adverse Impact:

This rule is not expected to cause any regions in the State to have an adverse job impact.

Minimizing Adverse Impact:

There will be no adverse impact to this proposal because hospitals are already required to be in compliance with PHL Section 2805-s which became effective on of October 5, 2008.

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

Ambulatory Patient Groups (APGs) Methodology

I.D. No. HLT-09-10-00007-P

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

Proposed Action: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

Subject: Ambulatory Patient Groups (APGs) Methodology.

Purpose: Modifies existing APG transition provisions for new providers and the listing of APG reimbursable & non-reimbursable services.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): The amendments to Part 86 of Title 10 (Health) NYCRR are required to update the Ambulatory Patient Groups (APGs) methodology, implemented on December 1, 2008, which governs reimbursement for certain ambulatory care fee-for-service (FFS) Medicaid services. APGs group procedures and medical visits that share similar characteristics and resource utilization patterns so as to pay for services based on relative intensity.

86-8.1 - Scope of services and effective dates

Section 86-8.1 of Title 10 (Health) NYCRR defines the categories of facilities subject to APGs and the time frames for implementation. The revision to subdivision (a) clarifies that ambulatory services provided by diagnostic and treatment centers and ambulatory surgery services provided by free-standing ambulatory surgery centers will be reimbursed on APGs commencing September 1, 2009. The revision to subdivision (b) deletes language that prohibits APG payments to out-of-state facilities.

86-8.2 - Definitions

The proposed amendments to section 86-8.2 of Title 10 (Health) NYCRR provide revised definitions for “discounting”, “packaging”, and “visit”. Additionally, two new subdivisions, (p-1) and (p-2), are proposed to be created to define what constitutes an episode payment and when it is appropriate to use.

86-8.6 - Rates for new facilities during the transition period

The proposed revision to section 86-8.6 of Title 10 (Health) NYCRR stipulates that the operating component of rates shall reflect:

- for general hospital outpatient clinics, effective for the period December 1, 2008 through November 30, 2009, 75% of the historical 2007 average payment per visit as calculated by the department, and 25% of APG rates as computed in accordance with this Subpart, and effective December 1, 2009 through December 31, 2010, 50% of the historical 2007 average payment per visit as calculated by the department, and 50% of APG rates as computed in accordance with this Subpart;

- for diagnostic and treatment centers, effective for the period September 1, 2009 through November 30, 2009, 75% of such rates shall reflect the historical 2007 regional average peer group payment per visit as calculated by the department, and 25% of such rates shall reflect APG rates as computed in accordance with this Subpart, and effective for the period December 1, 2009 through December 31, 2010, 50% of such rates shall reflect the historical 2007 regional average peer group payment per visit as calculated by the department, and 50% of such rates shall reflect APG rates as computed in accordance with this Subpart;

- for free-standing ambulatory surgery centers, effective for the period September 1, 2009 through November 30, 2009, 75% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 25% of such rates shall

reflect APG rates as computed in accordance with this Subpart, and for the period December 1, 2009 through December 31, 2010, 50% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 50% of such rates shall reflect APG rates as computed in accordance with this Subpart;

86-8.7 APGs and relative weights

The proposed amendment to section 86-8.7 of Title 10 (Health) NYCRR adds the following three new APGs and associated weights: APG 428 Education - Individual (weight.1202); APG 429 Education - Group (weight.0668); and APG 448 After Hours Services (weight.0356).

86-8.10 Exclusions from payment

The proposed amendment to section 86-8.10 of Title 10 (Health) NYCRR removes the following APGs from the list of services that are not eligible for reimbursement pursuant to this subpart: APG 094 - Cardiac Rehabilitation; APG 371 - Level 1 orthodontics; and APG 372 level II Orthodontics.

86-8.13 Out-of-State Providers

The proposed amendment adds a new section 86-8.13, which stipulates how out-of-state providers will be reimbursed for services under this subpart.

86-8.14 Non-APG Payments

The proposed amendment adds a new section 86-8.13, which stipulates that the following services will be reimbursed based on specified rates and fees established by the Department: psychotherapy services; wheelchair evaluation services; and eyeglass dispensing services.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Authority for the promulgation of these regulations is contained in section 2807(2-a)(e) of the Public Health Law, section 79(u) of part C of chapter 58 of the laws of 2008 and section 129(l) of part C of chapter 58 of the laws of 2009, which authorizes the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Further, part C of Chapter 58 of the laws of 2009, amended Public Health Law section 2807(2-a). Amendments pertinent to these proposed regulations include: (1) section 14 of part C of chapter 58 of the laws of 2009 alters the schedule under which providers' reimbursement transitions fully to APG reimbursement (2) section 15 of part C of chapter 58 of the laws of 2009 provides authority for the commissioner of health to promulgate regulations establishing alternative payment methodologies, or utilize existing payment methodologies, when the APG methodology is not, or is not yet, appropriate or practical for specified services; and (3) sections 27 and 16-a of part C of chapter 58 of the laws of 2009 provides authority for APG reimbursement of cardiac rehabilitation services and for the commissioner of health to promulgate regulations establishing alternative payment methodologies for certain psychotherapy services.

Legislative Objective:

The Legislature's mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through APGs.

Needs and Benefits:

The proposed regulations are in conformance with statutory amendments to provisions of Public Health Law section 2807(2-a), which

mandated implementation of a new ambulatory care reimbursement methodology based on APGs. This reimbursement methodology provides greater reimbursement for high intensity services and relatively less reimbursement for low intensity services. It also allows for greater payment homogeneity for comparable services across all ambulatory care settings (i.e., Outpatient Department, Ambulatory Surgery, Emergency Department, and Diagnostic and Treatment Centers). By linking payments to the specific array of services rendered, APGs will make Medicaid reimbursement more transparent. APGs provide strong fiscal incentives for health care providers to improve the quality of, and access to, preventive and primary care services.

COSTS

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

There will be no additional costs to providers as a result of these amendments.

Costs to Local Governments:

There will be no additional costs to local governments as a result of these amendments.

Costs to State Governments:

There will be no additional costs to NYS as a result of these amendments. All expenditures under this regulation are fully budgeted in the SFY 09/10 enacted budget.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

These regulations are in conformance with Public Health Law section 2807(2-a). Alternatives would require statutory amendments.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b(1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009, and June 10, 2009.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb(2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Opportunity for Rural Area Participation:

Rural areas were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009 and June, 10, 2009.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and

purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

Department of Labor

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Worker Adjustment and Retraining Notification Act (WARN)

I.D. No. LAB-09-10-00005-EP

Filing No. 155

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Proposed Action: Addition of Part 921 to Title 12 NYCRR.

Statutory authority: Labor Law, section 860-f

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

Specific reasons underlying the finding of necessity: The effective date of the regulations coincides with the effective date of their authorizing legislation, the New York Worker Adjustment and Retraining Notification (WARN) Act, a new law that becomes effective February 1, 2009. The Act governs the provision of notice to certain employees who will lose employment through plant closings, mass layoffs, or reductions in work hours. The purpose of the authorizing statute is to ensure that the employees are aware of future actions that will affect their employment so that they can take steps to secure new employment, be retrained for more readily available work, and otherwise make arrangements to provide for their needs and those of their families when their employment ends. The law is also intended to ensure the ability of the Department of Labor and its partner, the Workforce Investment Board, to provide Rapid Response services to the affected employees prior to their employment loss. These services include providing employees with information regarding unemployment insurance, job training, and reemployment services. These regulations fill in gaps found in the law in order to more fully inform employees of their obligations and workers of their rights under the law.

The emergency promulgation of these regulations is necessitated by the dramatic job losses currently being suffered within the state and the need to ensure that the notice requirements detailed in the regulation are available to protect workers affected by such job losses and return them quickly to work. After seasonal adjustment, New York State's private sector job count decreased by 3,100, or less than 0.1 percent, to 7,050,700 in December 2009. The statewide total nonfarm job count (private plus public sectors) decreased over the month by 5,900, or 0.1 percent, to 8,544,900 in December 2009. New York State's seasonally adjusted unemployment rate climbed over the month from 8.6 percent in November to 9.0 percent in December 2009, matching a 26-year high. New York City's rate increased from 10.0 percent in November to 10.6 percent in December 2009. The number of unemployed state residents increased from 832,200 in November to 868,600 in December 2009.

The impact of these job losses on workers, their families, and their communities can be staggering, more so if workers are unaware that plant closings and layoffs are coming. The state WARN Act is designed to give workers time to avoid long periods of unemployment by affording them time to search for new work, retrain for more secure long-term employment, and take advantage of reemployment services which will ensure a quick return to work after their former employment ends. The proposed rules will ensure timely notice to the Department and early intervention of Rapid Response teams in situations involving employment losses so that workers can quickly transition into new employment or retraining following the loss of their jobs. Such activities also avoid or shorten periods of unemployment, thereby reducing employer charges associated with the receipt of unemployment insurance by their former employees. On the other hand, employees need to know of the availability of unemployment insurance benefits following these employment losses since the program is designed to provide an economic safety net to the workers and their families. All efforts that will quickly transition workers into new employment when their former jobs end, or that ensure some continued income during unemployment, will allow workers to continue to make needed

purchases such as housing, food, heat and other utilities and to maintain the payment of school and property taxes that support their local community.

Enacting emergency regulations, which will immediately clarify the scope, timing, and content of the notice requirements, supports the goals set forth above and protects the general welfare of the state.

Subject: New York State Worker Adjustment and Retraining Notification Act (WARN).

Purpose: To provide government enforcement and more advance notice to a larger number of workers than under the federal WARN law.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.labor.ny.gov): The proposed rule creates a new section of regulations designated as 12 NYCRR Part 921 entitled "New York State Worker Adjustment and Retraining Notification Act" created under Chapter 475 of the Laws of 2008. This Act requires employers of fifty (50) or more employees to provide at least ninety (90) days notice to affected employees and representatives of affected employees, the New York State Department of Labor, and local workforce partners before ordering a plant closing, mass layoff, or reduction in work hours that falls within the employment losses covered by the law. At least twenty-five (25) employees must be affected for the notice requirement to be triggered. The rule contains exceptions to the notice requirement for certain employers who are making good faith efforts to avoid employment losses and have reasonable expectation that these efforts will successfully forestall the plant closing, mass layoff, or reduction in work hours.

Many employers in the State are already subject to the federal WARN Act (29 USC §§ 2101 - 2109 and 20 CFR 639.3). The State WARN Act expands the notice requirements to a larger group of employers and, concomitantly, extends its protections to more employees. The State Act also gives the Commissioner of Labor the authority to enforce the law on behalf of affected employees who did not receive appropriate notice of a plant closing, mass layoff, or covered reduction in work hours from their employer in violation of the law. Labor Law § 860-f(1) states that the Commissioner of Labor "shall prescribe such rules as may be necessary to carry out this article."

Subpart 921-1, entitled "Purpose and Definitions" sets forth the purpose and defines the terms used in the part. Section 921-1.1(d) defines "employer" as "any business enterprise, whether for-profit or not-for-profit, that employs fifty (50) or more employees within New York State, excluding part-time employees, or fifty (50) or more employees within the state that work in aggregate at least 2,000 hours per week." Section 921-1.1(a) defines "affected employee" as "an employee who may reasonably be expected to experience an employment loss as the result of a proposed plant closing, mass layoff, relocation, or covered reduction in hours by the employer."

Subpart 921-2, entitled "Notice," requires covered employers to provide notice to affected employees at least 90 calendar days prior to an event that triggers the notice requirement. This section enumerates the factors that trigger the notice requirement. It further spells out the contents of the notice, how notice is to be served and who must receive notice.

Subpart 921-3, entitled "Extension or Postponement of Mass Layoff Period" requires an employer to give additional notice if the triggering event is extended or postponed. Section 921-3.1 states that an "employer that previously announced and carried out a short-term layoff of six (6) months or less which is being extended beyond six (6) months due to business circumstances (e.g., unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff must give notice required under the Act and this Part as soon as it becomes reasonably foreseeable that an extension is required." Section 921-3.2 states that "if, after notice has been given, an employer decides to postpone a plant closing, mass layoff, or covered reduction in work hours for less than ninety (90) days, additional notice shall be given as soon as possible after the decision to postpone." This subpart also prohibits "rolling notice".

Subpart 921-4, entitled "Transfers," states that "notice is not required when an employer offers to transfer an employee to a different site of employment within a reasonable commuting distance with no more than a six (6)-month break in employment, regardless of whether the employee accepts such employment, or when an employer offers to transfer the employee to any other site of employment regardless of distance with no more than a six (6)-month break in employment and the employee accepts within thirty (30) days of the offer or of the closing or layoff, whichever is later."

Subpart 921-5, entitled "Temporary Employment," states that "notice is not required if the closing is of a temporary facility, or if the closing or layoff results from the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project, or undertaking." This subpart also makes clear that the employer must demonstrate that the employee understood the job was temporary either from having received notice or industry practice.

Subpart 921-6, entitled "Exceptions," provides exceptions to the 90-day notice period for which the employer bears the burden of proof. This subpart includes exceptions for faltering companies, unforeseeable business circumstances, natural disasters, strikes or lockouts, and economic strikers.

Subpart 921-7, entitled "Enforcement by the Commissioner of Labor," describes the administrative procedure followed by the Department when a WARN violation is suspected or alleged. Section 921-7.2 states that an employer who fails to give notice, as required, is subject to a civil penalty of \$500 for each day of the employer's violation. Section 921-7.3 states that an employer who fails to give notice is liable to each employee for back pay and the value of any benefits to which the employee would have been entitled. Further this subpart provides for an administrative appeal to the Commissioner and then an appeal under Article 79 of the CPLR.

Subpart 921-8, entitled "Confidentiality of Information Obtained by the Commissioner of Labor," requires that information obtained by the Commissioner through the administration of this Act be maintained as confidential and not be published or open to public inspection.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 12, 2010.

Text of rule and any required statements and analyses may be obtained from: Maria Colavito, Esq., New York State Department of Labor, State Office Campus, Building 12, Room 508, Albany, New York 12240, (518) 458-4380, email: nysdol@labor.state.ny.us

Data, views or arguments may be submitted to: Kevin E. Jones, Esq., New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, New York 12240, (518) 457-4380, email: nysdol@labor.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

Labor Law § 860 as added by Chapter 475 of the Laws of 2008 sets forth the requirements of the State Worker Adjustment and Retraining Notification Act. Section 860-f states that the Commissioner of Labor shall prescribe rules necessary to carry out Article 25-A of the Labor Law.

The Department previously published a Notice of Proposed Rulemaking on February 18, 2009 and extended several times, which added a new Part 921 to 12 NYCRR entitled the New York State Worker Adjustment and Retraining Notification Requirements. The previously published proposed rulemaking prescribed rules to carry out Article 25-A of the Labor Law. The current proposed rulemaking incorporates much of the prior proposed rulemaking with revisions made based upon comments received from various interested parties.

2. Legislative objectives:

Article 25-A establishes the New York State Worker Adjustment and Retraining Notification (WARN) Act intended to provide more advance notice to a larger number of workers who are laid off from their jobs than under the federal WARN law. Under the State WARN, companies with at least 50 employees must provide at least 90 days' notice to affected employees and their representatives, the New York Department of Labor, and the local Workforce Investment Board(s) where 25 or more employees where such number makes up at least 33% of the workforce, or 250 employees regardless of what percentage of the workforce is involved, will suffer an employment loss. This notice allows the Department to provide workers reemployment and retraining services in advance of their employment loss. This early intervention will reduce or avoid periods of unemployment, ensure that workers are aware of job placement and retraining services, and, if attempts to transition workers into new employment are unsuccessful, make them aware of the availability of unemployment insurance benefits as an economic safety net for them and their families. Under the Act, the Commissioner of Labor is required to enforce the law by recovering back wages and the value of the cost of any benefits to which the employee would have been entitled and by imposing penalties against such employers.

3. Needs and benefits:

Workers whose employment is affected as a result of plant closings, mass layoffs, or significant reduction of hours require early and adequate notice to find new employment and prepare for their future. As the downturn in the economy increasingly impacts companies large and small, larger numbers of workers are impacted by such events. At the time of this writing, New York State's seasonally adjusted unemployment rate climbed over the month from 8.6 percent in November to 9.0 percent in December 2009, matching a 26-year high. The number of unemployed state residents increased from 832,200 to 868,600 over the same period.

Certain job sectors in the state, such as manufacturing, continue to decline, signaling a growing need to retrain workers exiting jobs in this sector. All in all, the current economic climate makes it essential to provide

the Department with early access to workers who will be losing employment so that they can receive information and assistance that will return them to work as soon as possible following their job loss. During 2009, the Department received 400 WARN notices involving approximately 41,000 employees. Many of these workers would not have received notice under the federal WARN Act which only applies to businesses with 100 or more employees.

Early intervention to assist workers with obtaining new jobs is also essential to avoiding the economic impact of large-scale employment losses on workers, their families, and their communities. Large-scale job losses addressed by the state law impact employee spending and lead to the general decline of the local economy. This affects businesses that serve the workforce, adversely impacts local sales and property taxes, housing values, and the like. Early intervention leading to reemployment also reduces dependence upon unemployment insurance benefits for laid-off workers. Although such benefits are a critical economic safety net for workers and their families, reemployment is always preferable and provides greater income to workers. Reemployment reduces UI charges to individual employers and also UI benefit costs. Reduction of UI benefit costs is particularly beneficial to the State at this point in time since the State's UI Trust Fund has a deficit balance which is expected to last for several years.

Finally, the state Act and regulations also meet a significant need by providing workers with an effective mechanism to seek redress for employer violations of the notice requirements. Currently, the federal WARN law requires aggrieved employees to bring private lawsuits to sue for redress, a remedy that has been infrequently used over the years. The State WARN Act and these regulations give the Commissioner of Labor the authority to recover back wages and benefits on behalf of such workers and to impose civil penalties against employers who fail to provide the required WARN notice.

Since the WARN Act took effect February 1, 2009, the Department has issued four (4) Notices of Violation and collected \$7,500 in penalties. A number of employers also extended their notice period or voluntarily paid back wages and benefits to employees upon being notified of a potential violation by the Commissioner. There are approximately twenty (20) WARN investigations currently underway.

4. Costs:

It is impossible to predict the potential cost of the rule on regulated parties with any certainty. As noted elsewhere in this document, employers with 100 or more employees are already required to provide WARN notice for covered employment losses. The rule extends notification requirements to covered employment losses involving employers with 50 or more employees. There are 9,388 employers in the state who have between 50 and 100 employees. However, these employers will not be impacted by the rule unless they engage in an employment loss that meets the triggers set forth in the Act and the rule. Moreover, the number of employers set forth above is inflated because it includes employers with part-time employees who are not included in the numerical trigger computations referenced in the rule.

For those employers who are subject to the rule, costs of providing notice include preparation of the notice and mailing or delivery of the notice to affected workers, their representatives, the Department, and the local Workforce Investment Boards. The rule minimizes costs by permitting delivery of the notice with employee paychecks or direct deposit statements or by employer-sponsored electronic mail. First class mail delivery costs would still be minimal as the notice is a one or two page document. Moreover, for those employers already required to provide notice under the federal WARN Act, additional costs will be limited to those associated with providing notice to more employees. The rule would not preclude an employer from utilizing the same notice to meet both state and federal notice requirements so long as all information required under the rule is included.

Apart from employee notice, only three other notices (Department of Labor, employee representatives, and local Workforce Investment Boards) are required. Where an employer has given notice of a mass layoff and extends the duration of that layoff, or where an employer has given notice of an employment loss and postpones that action, that employer must give notice of the extension or postponement as soon as possible. Finally, an employer who elects to pay affected employees sixty days of pay and benefits to avoid liability and penalties for failure to provide the required notice, must still provide notice to affected employees notifying them of the potential availability of unemployment insurance and reemployment services with the final paycheck or through a separate notice provided at the time of termination. The rule specifically provides the content of the notice for the convenience of regulated parties.

Employers who wish to assert an exception to the notice requirement must provide the Commissioner evidence establishing entitlement to such exception. Such evidence should already exist in many circumstances, e.g. copies of loan or grant applications soliciting capital to continue business

operations, or be readily available, e.g. documentation of the effects of an unexpected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay, and other damages, as well as costs associated with their defense. During the first year of its enforcement of the rule, the Department has assessed penalties in only a handful of cases; in most situations, employers who failed to provide notice have either extended the notice period voluntarily to come into compliance or have paid back wages and benefits due under the rule to employees.

5. Paperwork:

The Department's enforcement will require paperwork associated with investigations and, where necessary, hearings to determine violations and to impose appropriate penalties.

Employers charged with violating the law will have to document their entitlement to exemptions from the notice provisions. In the event of appeals, there will be additional paperwork for the Department and employers to reproduce the hearing record and prepare necessary court filings.

6. Local government mandates:

The state WARN Act and the proposed rule do not apply to state, local, or tribal governmental entities except under circumstances where such otherwise exempt entities are engaging in commercial operations, as already provided in federal WARN regulations.

7. Duplication:

There is no duplication of existing state rules or regulations. There is some overlap of the proposed rule with federal WARN regulations. The Department has drafted the state regulations to be consistent with federal rules to the extent possible, while still meeting the spirit and intent of the more stringent state law.

The Department's procedural rules for other Departmental hearings under 12 NYCRR Part 701 will be used for any administrative hearings conducted under the WARN Act, thereby avoiding duplication in this regard.

8. Alternatives:

The Department has considered a number of alternatives to various provisions of the proposed rule and, where possible, has selected those that will minimize the adverse impact of the rule. Wherever state and federal WARN laws contain identical requirements, these regulations track federal regulations. For example, rather than requiring a separate state and federal notice for employers subject to both notice requirements, the Department allows a single notice to be used so long as it contains all the information required under state regulation. The Department also chose optional methods of delivery of the notice including enclosing notice with employee paychecks or direct deposit slips to avoid costs associated with separate delivery. Notice may also be provided by electronic mail (e-mail), if certain requirements are met.

The Department also considered alternatives regarding the scope of employee notice under the proposed rule. The Department believes it is critical that the notice contain information which employees can use to hasten their return to work following termination of employment. While the Federal WARN rules encourage, but do not require the inclusion of useful information on dislocated worker assistance programs, the Department chose to require the notices to contain information on the potential availability of unemployment insurance and reemployment services. By providing the actual language which employers can use to satisfy this requirement, the Department minimized the impact of the requirement on the regulated community.

The Department recognized that, in computing the average regular rate of compensation, salary and commission employees may not work on a regular schedule. Instead of using the number of days worked to calculate the average regular rate of compensation, the number of days the salary or commission employee was in active employment status will be used. Otherwise, the average regular rate of compensation may be unrepresentative of the actual rate of compensation.

The Department also considered creating a separate enforcement procedure for the state WARN Act, but instead decided to utilize the administrative procedure currently in place for other administrative hearings conducted by the Department.

9. Federal standards:

Federal standards implementing the federal WARN law exist and are found at 29 USC §§ 2101 - 2109 and 20 CFR 639. However, consistent with a less stringent federal law, such regulations provide a shorter period of notice, cover fewer employers, and do not permit administrative enforcement of the law. Since the Commissioner of Labor is required to enforce the Act, additional provisions not contained in the federal WARN regulations were included to ensure that information regarding notice requirements, investigations, and determinations in the state regulations sufficiently inform all affected parties of their rights and obligations and ensure a fair and thorough determination of violations based on the requirements of the Act.

10. Compliance schedule:

The Act took effect February 1, 2009.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Worker Adjustment and Retraining Notification (WARN) Act (Chapter of the Laws of 2008, effective February 1, 2009) requires businesses in New York with 50 or more employees to provide notice at least 90 days prior to a plant closing, mass layoff, relocation, or covered reduction in work hours where at least 25 of the employees will experience an employment loss from such event. Prior to the Act, only larger firms with at least 100 workers covered by the federal WARN law were required to provide 60 days notice of such events. The state WARN notice must be given to the affected employees and their representatives, the New York Department of Labor, and the local Workforce Investment Board(s) where the employment losses occur. During 2009, the Department received 400 WARN notices involving approximately 41,000 employees. These notices allowed the Department to deploy Rapid Response staff to assist workers with information regarding unemployment insurance benefits, and retraining or other reemployment services.

State, local, and tribal governmental entities are not subject to the requirements of the rule.

2. Compliance requirements:

Employers of 50 or more employees, other than part-time employees, will be required to provide a WARN notice to the required parties under the WARN Act containing information set forth in the rule. Such employers must also maintain records to support any exception they may claim from the notice requirement so that they may share this information with the Department should it commence an investigation into the employer's failure to provide timely notice. Employers in New York are already required to maintain accurate and complete payroll records in order to comply with state laws relating to wages and unemployment taxes. These records help employers calculate the size of their workforce and the hours worked by employees in order to determine whether a WARN notice is required. Information regarding employees who will be affected by a plant closing, mass layoff, relocation, or covered reduction in work hours would have been developed and documented during the planning phase for such actions; therefore necessary information should be readily available to employers to assure compliance with the WARN notice requirements. To the extent that bumping rights might exist in the place of employment, these rights would be established in the employer's collective bargaining agreement with the union representing its workers. The rule acknowledges that information identifying specific individuals affected by bumping rights may not be available at the time notice is required. Consequently, the rule simply requires that the notice contain a statement whether bumping rights exist. Finally, the records required to support a WARN exception claim are records that should already be in the employer's possession as, for example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open. Where an employer asserts a right to an exemption, they must include the basis for such exemption in the notice provided to all parties.

3. Professional services:

Employers covered by this rule are not expected to require professional services to comply with the rule. As noted above, information that must be included in the notice to the Department, the Workforce Investment Board, employees, and their representatives is simple, straightforward, and already available to the employer. It includes information regarding the planned action, the individuals who will be impacted, and employer contact information. The Department has included a requirement that the notice contain a statement for employees and their representatives regarding potential eligibility for unemployment insurance benefits and various reemployment services available from the Department. In order to minimize the impact of this requirement on the employer, the Department has included the content of this notice in the rule.

Employers who are cited for a violation of the notice requirement and who are subject to imposition of penalties may elect to hire legal counsel to defend such action.

The rule recognizes agreements for services entered into between employers and Professional Employer Organizations under Article 31 of the Labor Law and allows provisions in those agreements to address issues of WARN compliance and liability. Such agreements are entirely voluntary.

4. Compliance costs:

The adoption of the regulations is expected to result in minimal costs to employers. They will be required to file a WARN notice with the required parties; costs associated with providing the notice will depend upon the number of employees affected and the means of delivery selected by the employer. The rule minimizes costs associated with providing notice by permitting delivery of the notice with employee pay or direct deposit statements or by employer-sponsored electronic mail. Notice may also be

personally delivered to individual employees at the workplace. Should employers choose to send the notice via first class mail, postage costs would still be minimal as the notice should be no more than a one or two page document. Apart from employee notice, which must be provided individually to all affected employees, notices to the Department of Labor, employee representatives, and local Workforce Investment Boards are required. Again, postage costs associated with such delivery should be nominal. In some circumstances, employees suffering an employment loss may be represented by different unions. In those cases, notices would be required to be sent to each of the different unions. In rare circumstances where places of employment are served by multiple Workforce Investment Boards, more than one notice may be required.

In the event an employer has already given notice of a mass layoff and extends the duration of that layoff, or in the event an employer has given notice of a plant closing, mass layoff, relocation, or covered reduction in work hours and postpones that action for which notice was given, that employer must give notice of the extension or postponement as soon as possible.

Employers who wish to assert an exception to the notice requirement will have to provide the Commissioner with documentary and other evidence establishing that they qualify for a WARN exception under one or more of the various exception categories. While such evidence should already exist in many circumstances, e.g. copies of loan or grant applications soliciting capital to continue business operations, other evidence may have to be compiled by the employer in response to an investigation of the employer's failure to provide timely notice, e.g. documentation of the effects of a unexpected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay and other damages, as well as costs associated with their defense. The rule allows the Commissioner to forego damages and penalties where the employer timely makes payment equivalent to sixty days of pay and benefits to employees within three weeks of termination. During the first year of its enforcement of the rule, the Department has assessed penalties in only a handful of cases; in most situations, employers who have failed to initially provide the requisite notice have either extended the notice period voluntarily to come into compliance or have paid back wages and benefits due under the rule to employees who did not receive the requisite notice.

Minimal costs may be incurred by labor unions representing employees affected by plant closings, layoffs, relocations, and covered reductions in work hours but these costs would typically involve normal representational and information activities. Similarly, costs associated with WIB and Departmental responses to employment losses would be part of regularly funded workforce services and unemployment insurance activities.

5. Economic and technological feasibility:

The adoption of these emergency regulations is not expected to create an undue burden on employers. Larger employers (i.e. those who employ 100 or more employees) will typically be required to file a notice with the Commissioner under the federal WARN Act in any case. Where this requirement overlaps with the state WARN requirements, the employer may file a single notice so long as it meets the notice requirements set forth in the regulations. Consistent with current federal WARN regulations, notice must be provided using a method that ensures the timely receipt of notice by the required parties. Delivery methods approved under the rule include personal delivery or first class mail. The rule also permits notice to be provided to affected employees along with paychecks or direct deposit receipts and by electronic mail (e-mail). The burden of proof is on the employer to show that each employee received the e-mail. The employee e-mail addresses must be addresses provided to the employees by the employer and used in the conduct of business. The e-mail notice must be identified as "urgent." These alternative methods of delivery should provide sufficient alternatives to covered employers to address issues of both convenience and cost.

6. Minimizing adverse impact:

The proposed rule is being promulgated in response to numerous requests received from employers, their attorneys, workers, and worker representatives seeking clarification and guidance on the scope and requirements of the state WARN statute. The Department has sought to minimize adverse impact upon the regulated community by including provisions in the rule that address the issues and concerns raised in these inquiries. These provisions allow employers to better understand their obligations under the law, and inform employees of their rights under the law. This proposal is intended to assist employers to avoid violations while ensuring that workers receive the notice that will provide them with an opportunity to plan for their futures and to support their families following employment termination.

At the same time, the Department has taken a number of steps to minimize the adverse impact of the rule. With few exceptions that reflect the legislative intent of the state WARN Act, wherever state and federal

WARN laws contain identical requirements, the provisions of this rule track federal regulations for the federal WARN which have been in place for more than a decade. This compatibility of provisions will allow for greater ease of compliance by regulated parties. For those employers who are subject to both state and federal notice requirements, the Department will allow a single form of notice to be used so long as the notice contains all the information elements required under the state regulation. Where the Department included a requirement that the WARN notice apprise affected employees of the availability of unemployment insurance and reemployment services, the rule contains the actual language to be used by employers for this purpose. The rule allows delivery of the notice along with paychecks or direct deposit slips, by personal delivery, or by electronic transmission, in order to avoid costs associated with separate delivery by first class mail. The rule permits employers who already have Professional Employer Organization agreements to address issues related to WARN notice and liability in those agreements in order to facilitate compliance.

The statute and regulation also minimize adverse impact by including exceptions to the length of notice requirement where the employer can demonstrate that providing the notice would adversely impact the business' efforts to obtain financing, customers, or other financial support that would allow it to remain open or avoid employment losses. Employers who assert this defense to a failure to provide timely notice must be able to demonstrate such efforts to the satisfaction of the Department and must notify affected employees of the basis for the claimed notice limitations. While the Department will strictly construe such limitations on notice requirements, numerous employers have successfully demonstrated to the Department over the past year that they met the statutory and regulatory criteria for notice limitations.

As a whole, the proposed rules ensure the early intervention of the Department in situations involving employment losses so that workers can quickly transition into new employment or retraining following the loss of their jobs. Where such activities lead to reemployment, employers will not face benefit charges associated with the receipt of unemployment insurance by their former employees. Under circumstances where early intervention activities do not serve to avoid unemployment, unemployment insurance benefits will provide an economic safety net to the workers and their families. All efforts which will either keep the workers employed, move them quickly into new employment, or ensure some continued income will assist the workers' communities. Income allows workers to continue to make needed purchases including housing, food, utilities, etc. and to maintain the payment of school and property taxes that support their local community. This income is particularly important in rural communities which often have fewer commercial and industrial businesses to support their tax base and depend upon employed residents to financially support local business and governmental services.

The state WARN Act and the proposed rule do not apply to state, local, or tribal governmental entities except under circumstances where such otherwise exempt entities are engaging in commercial operations. This limitation on the exemption from WARN that would otherwise apply to governmental entities also mirrors the language found in federal WARN regulations.

7. Small business and local government participation:

Prior to and during the initial emergency rulemaking for this rule, the Department discussed the WARN Act at a meeting of the Labor and Employment section of the New York State Bar Association and at a meeting of the New York Chapter of the Association of Corporate Counsel. Many individuals attending these meetings represented small businesses impacted by the rule. In addition, the Department published information on its website, issued press releases, and held press conferences regarding the passage of the state WARN Act. All of these activities prompted numerous contacts from businesses, corporate counsel, and worker representatives identifying areas of the statute which they felt required clarification in the regulations. The Department has attempted to address all these requests for clarification in the rule.

The Department intends to publish a copy of this rule on its website and to mail copies to organizations representing business and labor for distribution to their members. These information activities will be in addition to the formal publication of the proposed rule in the State Register. Department staff will also be available, where possible, to organizations that wish to have presentations on the changes to the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Employers of fifty (50) or more employees in the state who engage in plant closings, mass layoffs, relocations, or reductions in work hours covered under the Act and the rule must provide notice of such employment losses under both the statute and the emergency rule. Such employers are located throughout the state and, therefore, all the state's rural areas are affected by the rule.

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

Rural area employers of 50 or more employees, other than part-time employees, who have a plant closing, mass layoff, relocation, or reduction in work hours covered by the Act will be required to provide a WARN notice to the required parties under the WARN Act containing information set forth in the rule. Such employers must also maintain records to support any exception they may claim from the notice requirement so that they may share this information with the Department should it commence an investigation into the employer's failure to provide timely notice. Employers in New York are already required to maintain accurate and complete payroll records in order to comply with state laws relating to wages and unemployment taxes. These records help employers calculate the size of their workforce and the hours worked by employees in order to determine whether a WARN notice is required. Information regarding employees who will be affected by a plant closing, mass layoff, relocation, or covered reduction in work hours would have been developed and documented during the planning phase for such actions; therefore necessary information would be readily available to employers to assure compliance with the WARN notice requirements. To the extent that bumping rights might exist in the place of employment, these rights would be established in the employer's collective bargaining agreement with the union representing its workers. The rule acknowledges that information specifically identifying individuals affected by bumping rights may not be available at the time notice is required and simply requires that the notice contain a statement whether bumping rights exist. Finally, the records required to support a WARN exception claim are records that should already be in the employer's possession as, for example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open.

Rural area employers covered by this rule are not expected to require professional services to comply with the rule. As noted above, information that must be included in the notice to the Department, the Workforce Investment Board, affected employees, and their representatives is simple, straightforward, and already available to the employer. It includes information regarding the planned action, the individuals who will be impacted, and employer contact information. The Department has included a requirement that the notice contain a statement for employees and their representatives regarding potential eligibility for unemployment insurance benefits and various reemployment services available from the Department. The Department has included the content of this notice in the rule to minimize the impact of the requirement on the employers. Where a rural area employer wishes to assert an exception to the WARN notice requirement, the records required to support such a WARN exception claim are records that should already be in the employer's possession. For example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open. Where an employer asserts a right to an exemption, it must include the basis for such exemption in the notice provided to all parties.

3. Costs:

It is impossible to predict the potential cost of the rule on regulated parties with any certainty. As noted elsewhere in this rulemaking, employers with 100 or more employees are already required to provide WARN notice for covered employment losses under the federal WARN Act. The rule extends notification requirements to covered employment losses involving employers with 50 or more employees. There are 9,388 employers in the state who have between 50 and 100 employees. Some of these employers will undoubtedly be located in rural areas. However, these employers will not necessarily be impacted by the rule unless they engage in a plant closing, mass layoff, relocation, or reduction in work hours that meets the numerical notice triggers set forth in the Act and the rule. Moreover, the number of employers set forth above is inflated because it includes employers with part-time employees who are not included in the numerical trigger computations referenced in the rule.

For those rural employers who are subject to the rule, costs of providing notice include preparation of the notice and mailing or delivery of the notice to affected workers, their representatives, the Department, and the local Workforce Investment Boards. The Department has attempted to keep such costs to a minimum by allowing employers to include notices with paychecks or direct deposit statements already provided to affected employees and allowing notification to affected employees by electronic mail. Moreover, for those employers in New York already required to provide notice under the federal WARN Act, additional costs will be associated with providing notice to more employees, i.e. nominal postage costs or somewhat higher costs associated with other delivery methods which the employer may elect to use. However, since the notice will be a one page sheet of information, such postage charges should be minimal. The rule would not preclude an employer from utilizing the same notice to meet both state and federal notice requirements so long as the notice includes all information required under the proposed rule.

Apart from employee notice, which must be provided individually to all affected employees, only three other notices (Department of Labor, em-

ployee representatives, and local Workforce Investment Boards) are typically required. The only exceptions to this would involve circumstances in which employees may be represented by different unions, or where covered employment sites are served by multiple Workforce Investment Boards. Under these circumstances, more than one notice may be required. In the event an employer has already given notice of a mass layoff and extends the duration of that layoff, or in the event an employer has given notice of a plant closing, mass layoff, relocation, or covered reduction in work hours and postpones that action for which notice was given, that employer must also give notice of the extension or postponement as soon as possible. Finally, the rule also requires that an employer, who elects to pay affected employees sixty days of pay and benefits to avoid liability and penalties for failure to provide the required 90-day notice, must provide notice to affected employees notifying them of the potential availability of unemployment insurance and reemployment services. This notice must be provided with the final paycheck or through a separate paper or electronic mail notice provided at the time of termination. As elsewhere, the rule specifically provides the content of the notice for the convenience of regulated parties.

Employers who wish to assert an exception to the notice requirement will have to provide the Commissioner with documentary and other evidence showing that they fit one or more of the various exception categories. While such evidence should already exist in many circumstances, e.g. copies of loan or grant applications soliciting capital to continue business operations, other evidence may have to be compiled by the employer in response to an investigation of the employer's failure to provide timely notice, e.g. documentation of the effects of an unexpected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay and other damages, as well as costs associated with their defense. The rule allows the Commissioner to forego damages and penalties where the employer timely makes payment equivalent to sixty days of pay and benefits to employees within three weeks of termination. During the first year of its enforcement of the rule, the Department has assessed penalties in only a handful of cases; in most situations, employers who have failed to initially provide the requisite notice have either extended the notice period voluntarily to come into compliance or have paid back wages and benefits due under the rule to employees who did not receive the requisite notice.

Minimal costs may be incurred by labor unions representing employees affected by plant closings, layoffs, relocations, and covered reductions in work hours but these costs would typically involve normal representational and information activities. Similarly, costs associated with WIB and Departmental responses to employment losses would be part of regularly funded workforce services and unemployment insurance activities.

To the extent that early intervention and reemployment services offered by the Department through its Rapid Response activities reduce the number of workers who will ultimately claim unemployment insurance benefits as a result of the adverse employment action, rural employers will see UI charges decrease as a result of the rule.

4. Minimizing adverse impact:

The Department has sought to minimize adverse impact upon rural employers by including provisions in the rule that address the issues and concerns raised in inquiries received from regulated and interested parties throughout the first year of implementation of the WARN Act. While it is not possible to know whether individuals contacting the Department are rural employers or represent rural employers, we believe that the changes made to the rule clarifying certain provisions or adding alternatives for compliance would benefit rural employers. These changes will allow rural employers to better understand their obligations under the law and inform employees of their rights under the law. This proposal is intended to assist employers to avoid violations while ensuring that workers receive the notice that will provide them with an opportunity to plan for their futures and to support their families following employment termination.

At the same time, the Department has taken a number of steps to minimize the adverse impact of the rule upon employers. With few exceptions that reflect the legislative intent of the state WARN Act, wherever state and federal WARN laws contain identical requirements, the provisions of this rule track federal regulations for the federal WARN which have been in place for more than a decade. This compatibility of provisions will allow for greater ease of compliance by regulated parties. For those employers who are subject to both state and federal notice requirements, the Department will allow a single form of notice to be used so long as the notice contains all the information elements required under the state regulation. Where the Department included a requirement that the WARN notice apprise affected employees of the availability of unemployment insurance and reemployment services, the rule contains the actual language to be used by employers for this purpose. The rule allows delivery of the notice along with paychecks or direct deposit slips, by personal delivery, or by electronic transmission, in order to avoid costs associated with sepa-

rate delivery by first class mail. The rule also permits employers who already have Professional Employer Organization agreements to address issues related to WARN notice and liability in those agreements in order to facilitate compliance.

The statute and regulation also minimize adverse impact by including exceptions to the length of notice requirement where the employer can demonstrate that providing the notice would adversely impact the business' efforts to obtain financing, customers, or other financial support that would allow it to remain open or avoid employment losses. Rural employers who assert this defense to a failure to provide timely notice must be able to demonstrate such efforts to the satisfaction of the Department and must notify affected employees of the basis for the claimed notice limitations. While the Department will strictly construe such limitations on notice requirements, numerous employers have successfully demonstrated to the Department over the past year that they met the statutory and regulatory criteria for notice limitations.

As a whole, the proposed rules ensure the early intervention of the Department in situations involving employment losses so that workers can quickly transition into new employment or retraining following the loss of their jobs. Where such activities lead to reemployment, employers will not face benefit charges associated with the receipt of unemployment insurance by their former employees. Under circumstances where early intervention activities do not serve to avoid unemployment, unemployment insurance benefits will provide an economic safety net to the workers and their families. All efforts which will either keep the workers employed, move them quickly into new employment, or ensure some continued income will assist the workers' communities. Income allows workers to continue to make needed purchases including housing, food, utilities, etc. and to maintain the payment of school and property taxes that support their local community. This income is particularly important in rural communities which often have fewer commercial and industrial businesses to support their tax base and depend upon employed residents to financially support local business and governmental services.

The state WARN Act and the proposed rule do not apply to state, local, or tribal governmental entities - including those located in rural areas - except under circumstances where such otherwise exempt entities are engaging in commercial operations. This limitation on the exemption from WARN that would otherwise apply to governmental entities also mirrors the language found in federal WARN regulations.

5. Rural area participation:

Prior to and during the initial emergency rulemaking for this rule, the Department discussed the WARN Act at a meeting of the Labor and Employment section of the New York State Bar Association and at a meeting of the New York Chapter of the Association of Corporate Counsel. Many individuals attending these meetings represented small businesses impacted by the rule. In addition, the Department published information on its website, issued press releases, and held press conferences regarding the passage of the state WARN Act. All of these activities prompted numerous contacts from businesses, corporate counsel, and worker representatives identifying areas of the statute which they felt required clarification in the regulations. The Department has attempted to address all these requests for clarification in the rule.

The Department intends to publish a copy of this rule on its website and to mail copies to organizations representing business and labor for distribution to their members. These information activities will be in addition to the formal publication of the proposed rule in the State Register. Department staff will also be available, where possible, to organizations that wish to have presentations on the changes to the rule.

Job Impact Statement

This rule requires notice to be provided to employees and other parties 90 days prior to covered plant closings, mass layoffs, relocations, and reductions in work hours at sites of employment subject to the rule. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

Department of Motor Vehicles

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

Warren County Motor Vehicle Use Tax

I.D. No. MTV-09-10-00001-P

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

Proposed Action: This is a consensus rule making to add section 29.12(ah) of Title 15 NYCRR.

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

Subject: Warren County motor vehicle use tax.

Purpose: To impose a Warren County motor vehicle use tax.

Text of proposed rule: Section 29.12 is amended by adding a new subdivision (ah) to read as follows:

(ah) Warren County. The Warren County Board of Supervisors adopted a local law on December 18, 2009, to establish a Warren County Motor Vehicle Use Tax. The Chairman of the Warren County Board of Supervisors entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after May 1, 2010 and upon the renewal of registrations expiring on and after July 1, 2010. The County Treasurer is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Warren County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3,500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3,500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Warren County, except for vehicles used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.

Text of proposed rule and any required statements and analyses may be obtained from: Monica J. Staats, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.state.ny.us

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

Consensus Rule Making Determination

This proposed regulation would create a new 15 NYCRR Part 29.12(ah) to provide for the collection of a Warren County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On December 18, 2009, the Warren County Board of Supervisors enacted a local law requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Warren County local law. The merits of the tax may have been debated before the Warren County Board of Supervisors, but are no longer the subject of debate — it is now the law. DMV is merely carrying out the will expressed by the County Board of Supervisors.

Job Impact Statement

A Job Impact Statement is not submitted with this rulemaking, because it will not have any impact on job creation or development in New York State.

Public Service Commission

NOTICE OF ADOPTION

Alternative Treatment of a Supplier Refund

I.D. No. PSC-21-09-00004-A

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Action taken: On 2/11/10 the PSC denied the petition of National Fuel Distribution Corporation and approved an alternative refund methodology.

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

Subject: Alternative treatment of a supplier refund.

Purpose: To deny the petition of National Fuel Distribution Corporation and approve an alternative refund methodology.

Substance of final rule: The Commission on February 11, 2010, denied the petition of National Fuel Distribution Corporation and approved an alternative refund methodology, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-G-0354SA1)

NOTICE OF ADOPTION

St. Lawrence Gas Company, Inc.'s Request for Additional EEPS Residential Gas HVAC Program Funds

I.D. No. PSC-36-09-00006-A

Filing Date: 2010-02-16

Effective Date: 2010-02-16

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

Action taken: On 2/11/10 the PSC adopted an order approving St. Lawrence Gas Company, Inc.'s August 6, 2009 request, with modifications for additional Energy Efficiency Program (EEPS) Residential Gas HVAC Program funds.

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

Subject: St. Lawrence Gas Company, Inc.'s request for additional EEPS Residential Gas HVAC Program funds.

Purpose: To adopt with modifications, St. Lawrence Gas Company, Inc.'s request for additional EEPS Residential Gas HVAC Program funds.

Substance of final rule: The Commission on February 11, 2010, adopted an order approving St. Lawrence Gas Company, Inc.'s August 6, 2009 request, with modifications for additional Energy Efficiency Program (EEPS) Residential Gas HVAC Program funds, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-G-1021SA2)

NOTICE OF ADOPTION

Waiver of the Requirements of 16 NYCRR Section 255.233(a)

I.D. No. PSC-37-09-00013-A

Filing Date: 2010-02-11

Effective Date: 2010-02-11

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

Action taken: On 2/11/10 the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid NY's request for a waiver of the requirements of 16 NYCRR section 255.233(a).

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Waiver of the requirements of 16 NYCRR section 255.233(a).

Purpose: To approve the waiver of the requirements of 16 NYCRR section 255.233(a).

Substance of final rule: The Commission on February 11, 2010, adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid NY's request for a waiver of the requirements of 16 NYCRR § 255.233(a), subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-G-0552SA1)

NOTICE OF ADOPTION

Waiver of the Commission's Rate Setting Authority

I.D. No. PSC-39-09-00020-A

Filing Date: 2010-02-16

Effective Date: 2010-02-16

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

Action taken: On 2/11/10, the PSC adopted an order granting Yellow Barn Water Company, Inc. a waiver of the Commission's rate setting authority pursuant to Public Service Law section 5(4) and directed the company to file its initial tariff to become effective on March 1, 2010.

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

Subject: Waiver of the Commission's rate setting authority.

Purpose: To approve a waiver of the Commission's rate setting authority.

Substance of final rule: The Commission, on February 11, 2010, adopted an order granting Yellow Barn Water Company, Inc. a waiver of the Commission's rate setting authority pursuant to Public Service Law § 5(4) and directed the company to file its initial tariff to become effective on March 1, 2010, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-W-0260SA1)

NOTICE OF ADOPTION

Modifications of the RPS Goals, Targets, Procurement Rules, Budgets and Collections**I.D. No.** PSC-40-09-00009-A**Filing Date:** 2010-02-16**Effective Date:** 2010-02-16

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

Action taken: On 1/19/10, the PSC adopted an order authorizing the New York State Energy Research and Development Authority (NYSERDA) to continue the Renewable Portfolio Standard (RPS) Customer-Sited Tier programs for the period January 2010 through June 2010.

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

Subject: Modifications of the RPS goals, targets, procurement rules, budgets and collections.

Purpose: To authorize NYSEDA to continue the RPS Customer-Sited Tier programs for the period January 2010 to June 2010.

Substance of final rule: The Commission, on January 19, 2010, adopted an order authorizing the New York State Energy Research and Development Authority (NYSERDA) to continue the Renewable Portfolio Standard (RPS) Customer-Sited Tier programs for the period January 2010 through June 2010. The Commission also authorized the use of \$20,937,500 in RPS funds for Customer-Sited Tier purposes, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-0188SA22)

NOTICE OF ADOPTION

Implementation of Hourly Pricing for Customers for Electric Service**I.D. No.** PSC-43-09-00010-A**Filing Date:** 2010-02-11**Effective Date:** 2010-02-11

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

Action taken: On 2/11/10, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's plan to expand Hourly Pricing Provisions to customers with demand greater than 500 kW in any two months during the twelve months ended August 31, 2009.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Implementation of hourly pricing for customers for electric service.

Purpose: To adopt Central Hudson Gas and Electric Corporation's plan to expand Hourly Pricing Provisions.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving Central Hudson Gas and Electric Corporation's (company) Plan to expand Hourly Pricing Provisions to customers with demand greater than 500 kW in any two months during the twelve months ended August 31, 2009 and directing the company to file the requisite tariff amendments to effectuate the Hourly Pricing Provisions, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-E-0887SA3)

NOTICE OF ADOPTION

Transfer of Property**I.D. No.** PSC-48-09-00014-A**Filing Date:** 2010-02-11**Effective Date:** 2010-02-11

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

Action taken: On 2/11/10, the PSC adopted, as a permanent rule, an order approving the transfer of property and granting easements to Dutchess County in connection with the Dutchess Rail Trail Project.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To approve as a permanent rule, the transfer of property to Dutchess County for the Dutchess Rail Trail Project.

Substance of final rule: The Commission, on February 11, 2010, adopted, as a permanent rule, an order approving the transfer of property and granting easements to Dutchess County, located in LaGrange, New York, in connection with the Dutchess Rail Trail Project.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-M-0739EA2)

NOTICE OF ADOPTION

Net Metering for Micro-Combined Heat and Power Generating Systems**I.D. No.** PSC-49-09-00016-A**Filing Date:** 2010-02-12**Effective Date:** 2010-02-12

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

Action taken: On 2/11/10, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC 220 – Electricity, effective February 26, 2010.

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

Subject: Net Metering for Micro-Combined Heat and Power Generating Systems.

Purpose: To approve amendments to PSC 220 – Electricity, effective February 26, 2010.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (company) amendments to PSC 220 – Electricity, effective February 26, 2010, to effectuate change to PSL Section 66-j in relation to the net metering for micro-combined heat and power generating systems and directed the company to comply with the conforming revised Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0819SA1)

NOTICE OF ADOPTION**Net Metering for Micro-Combined Heat and Power Generating Systems**

I.D. No. PSC-49-09-00017-A

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Action taken: On 2/11/10, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC 9 – Electricity, effective February 26, 2010.

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

Subject: Net Metering for Micro-Combined Heat and Power Generating Systems.

Purpose: To approve amendments to PSC 9 – Electricity, effective February 26, 2010.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving Consolidated Edison Company of New York, Inc.'s (company) amendments to PSC 9 – Electricity, effective February 26, 2010, to effectuate change to PSL Section 66-j in relation to the net metering for micro-combined heat and power generating systems and directed the company to comply with the conforming revised Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0820SA1)

NOTICE OF ADOPTION**Clarification of the Commission's October 23, 2009**

I.D. No. PSC-50-09-00005-A

Filing Date: 2010-02-16

Effective Date: 2010-02-16

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

Action taken: On 2/11/10, the PSC further clarified its October 23, 2009 Order in response to Consolidated Edison Company of New York, Inc.'s petition for clarification.

Statutory authority: Public Service Law, sections 4(1), 5, 8, 20(1), 22, 65 and 66

Subject: Clarification of the Commission's October 23, 2009.

Purpose: To further clarify the October 23, 2009 Order in response to Consolidated Edison Company of New York, Inc.'s petition.

Substance of final rule: The Commission, on February 11, 2010, further clarified the October 23, 2009 Order Adopting in Part and Modifying in Part Con Edison's Demand Response Programs, in response to Consolidated Edison Company of New York, Inc.'s petition for clarification, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents

per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0115SA2)

NOTICE OF ADOPTION**Net Metering for Micro-Combined Heat and Power Generating Systems**

I.D. No. PSC-50-09-00007-A

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Action taken: On 2/11/10, the PSC adopted an order approving New York State Electric & Gas Corporation's amendments to PSC 120 – Electricity, effective February 26, 2010.

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

Subject: Net Metering for Micro-Combined Heat and Power Generating Systems.

Purpose: To approve amendments to PSC 120 – Electricity, effective February 26, 2010.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving New York State Electric & Gas Corporation's (company) amendments to PSC 120 – Electricity, effective February 26, 2010, to effectuate change to PSL Section 66-j in relation to the net metering for micro-combined heat and power generating systems and directed the company to comply with the conforming revised Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0829SA1)

NOTICE OF ADOPTION**Net Metering for Micro-Combined Heat and Power Generating Systems**

I.D. No. PSC-50-09-00008-A

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Action taken: On 2/11/10, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's amendments to PSC 15 – Electricity, effective February 26, 2010.

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

Subject: Net Metering for Micro-Combined Heat and Power Generating Systems.

Purpose: To approve amendments to PSC 15 – Electricity, effective February 26, 2010.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving Central Hudson Gas and Electric Corporation's (company) amendments to PSC 15 – Electricity, effective February 26, 2010, to effectuate change to PSL Section 66-j in relation to the net metering for micro-combined heat and power generating systems and directed the company to comply with the conforming revised Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0830SA1)

NOTICE OF ADOPTION

Net Metering for Micro-Combined Heat and Power Generating Systems

I.D. No. PSC-50-09-00010-A

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Action taken: On 2/11/10, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC 19 – Electricity, effective February 26, 2010.

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

Subject: Net Metering for Micro-Combined Heat and Power Generating Systems.

Purpose: To approve amendments to PSC 19 – Electricity, effective February 26, 2010.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving Rochester Gas and Electric Corporation's (company) amendments to PSC 19 – Electricity, effective February 26, 2010, to effectuate change to PSL Section 66-j in relation to the net metering for micro-combined heat and power generating systems and directed the company to comply with the conforming revised Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0832SA1)

NOTICE OF ADOPTION

Net Metering for Micro-Combined Heat and Power Generating Systems

I.D. No. PSC-50-09-00011-A

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Action taken: On 2/11/10, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC 2 – Electricity, effective February 26, 2010.

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

Subject: Net Metering for Micro-Combined Heat and Power Generating Systems.

Purpose: To approve amendments to PSC 2 – Electricity, effective February 26, 2010.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving Orange and Rockland Utilities, Inc.'s (company)

amendments to PSC 2 – Electricity, effective February 26, 2010, to effectuate change to PSL Section 66-j in relation to the net metering for micro-combined heat and power generating systems and directed the company to comply with the conforming revised Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-E-0834SA1)

NOTICE OF ADOPTION

Authorization to Transfer an Easement in Certain Real Property

I.D. No. PSC-50-09-00013-A

Filing Date: 2010-02-16

Effective Date: 2010-02-16

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

Action taken: On 2/11/10, the PSC adopted an order approving the Petition of Astoria Energy II LLC (AE II) and Consolidated Edison Company of New York, Inc. to transfer easements in certain real property in Queens County to AE II.

Statutory authority: Public Service Law, section 70

Subject: Authorization to transfer an easement in certain real property.

Purpose: To approve the transfer of an easement in certain real property.

Substance of final rule: The Commission, on February 11, 2010, adopted an order approving the Petition of Astoria Energy II LLC (AE II) and Consolidated Edison Company of New York, Inc. (Con Edison), pursuant to Public Service Law (PSL) § 70, for Con Edison to transfer easements in certain real property in Queens County to AE II to construct, operate and maintain the GIS Substation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-M-0745SA1)

NOTICE OF ADOPTION

Authorization to Transfer an Easement in Certain Real Property

I.D. No. PSC-50-09-00014-A

Filing Date: 2010-02-16

Effective Date: 2010-02-16

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

Action taken: On 2/11/10, the PSC adopted an order approving the Petition of Astoria Energy II LLC (AE II) and Consolidated Edison Company of New York, Inc. to transfer easements in certain real property in Queens County to AE II.

Statutory authority: Public Service Law, section 70

Subject: Authorization to transfer an easement in certain real property.

Purpose: To approve the transfer of an easement in certain real property.

Substance of final rule: The Commission, on February 11, 2010, adopted

an order approving the Petition of Astoria Energy II LLC (AE II) and Consolidated Edison Company of New York, Inc. (Con Edison), pursuant to Public Service Law (PSL) § 70, for Con Edison to transfer easements in certain real property in Queens County to AE II to construct, operate and maintain the overhead transmission line, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-M-0746SA1)

NOTICE OF ADOPTION

Installed Reserve Margin for the NY Control Area for the Capability Year Beginning May 1, 2010 to April 30, 2011

I.D. No. PSC-51-09-00026-A

Filing Date: 2010-02-12

Effective Date: 2010-02-12

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

Action taken: On 2/11/10, the PSC adopted the Installed Reserve Margin of 18.0% for the New York Control Area for the Capability Year beginning May 1, 2010, and ending April 30, 2011.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: Installed Reserve Margin for the NY Control Area for the Capability Year beginning May 1, 2010 to April 30, 2011.

Purpose: To adopt the Installed Reserve Margin for the NY Control Area for the Capability Year beginning May 1, 2010 to April 30, 2011.

Substance of final rule: The Commission, on February 11, 2010, adopted the Installed Reserve Margin of 18.0% for the New York Control Area for the Capability Year beginning May 1, 2010, and ending April 30, 2011, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-E-0088SA4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lost and Unaccounted for Factor for S.C. No. 21 - Transport of Third Party Gas to Interstate Pipeline System

I.D. No. PSC-09-10-00009-P

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

Proposed Action: The Commission is considering a tariff filing by Corning Natural Gas Corporation to establish a loss factor used to recover the cost of lost and unaccounted for gas for S.C. No. 21 — Transport of Third Party Gas to Interstate Pipeline System.

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

Subject: Lost and Unaccounted for Factor for S.C. No. 21 - Transport of Third Party Gas to Interstate Pipeline System.

Purpose: To establish a Lost and Unaccounted for Factor for S.C. No. 21 - Transport of Third Party Gas to Interstate Pipeline System.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Corning Natural Gas Corporation (Corning) to establish a loss factor for S.C. No. 21 – Transport of Third Party Gas to Interstate Pipeline System. The loss factor is used to recover the cost of lost and unaccounted for gas in Corning's monthly computation of the gas cost adjustment. The Commission may adopt, reject, or modify, in whole or in part, Corning's proposal.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(10-G-0035SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lightened Regulation of Steam Operations

I.D. No. PSC-09-10-00010-P

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

Proposed Action: The Public Service Commission is considering a petition dated February 4, 2010 from Parkchester South Condominium, Inc. requesting that the steam service it provides in Bronx County, New York be regulated lightly if regulated at all.

Statutory authority: Public Service Law, sections 2(22), 5(1)(b), 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 88, 89, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened regulation of steam operations.

Purpose: Consideration of lightened regulation of steam operations.

Substance of proposed rule: The Public Service Commission is considering a petition dated February 4, 2010 from Parkchester South Condominium, Inc. requesting that the steam service it provides under a cost sharing arrangement to Parkchester North Condominium, Inc. and Parkchester Preservation Company, at adjacent properties in Bronx County, New York, be subject to lightened regulation, if regulated at all. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(10-S-0060SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-09-10-00011-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 400 Fifth Realty LLC to submeter electricity at 400 Fifth Avenue, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 400 Fifth Realty LLC to submeter electricity at 400 Fifth Avenue, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 400 Fifth Realty LLC to submeter electricity at 400 Fifth Avenue, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaelyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-E-0078SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

A Specific Agriculture Energy Efficiency Program

I.D. No. PSC-09-10-00012-P

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

Proposed Action: The Commission is considering a proposal submitted February 11, 2010 by the New York State Energy Research and Development Authority for an electric and natural gas energy efficiency program for utility customers in the State's agriculture industry.

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

Subject: A specific agriculture energy efficiency program.

Purpose: To enhance energy efficiency in the State's agriculture sector.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to the terms of a proposal entitled "New York State Agriculture Energy Efficiency Program Proposal" submitted by the New York State Energy Research and Development Authority (NYSERDA) on February 11, 2010. NYSEDA submitted the proposal in compliance with the Commission's "Order Approving Certain Commercial and Industrial Customer Energy Efficiency Programs with Modifications and Addressing Independent Program Administrator Filings." The Commission issued the order on November 13, 2009 as part of the Energy Efficiency Portfolio Standard program in Case 07-M-0548 et al. The proposed program would operate as part of NYSEDA's Existing Facilities Program and make incentives available to all farm and on-farm agricultural producers for the installation of electric and natural gas energy efficiency measures.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaelyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-E-1132SP2)

Department of State

EMERGENCY RULE MAKING

Qualifying Experience and Education for Real Estate Appraisers

I.D. No. DOS-09-10-00004-E

Filing No. 152

Filing Date: 2010-02-11

Effective Date: 2010-02-11

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

Action taken: Amendment of sections 1103.1, 1103.3, 1103.7, 1103.8, 1103.10, 1103.12(a), 1103.21, 1103.22(f), 1107.2, 1107.4(b)-(d), 1107.5 and 1107.9; repeal of sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6, 1105.7 and 1105.8; and addition of new sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6 and 1105.7 to Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

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

Specific reasons underlying the finding of necessity: The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to do would have resulted in the State losing Federal recognition of the State program. Legislation was therefore passed permitting the Department of State to adopt the required revisions by rule making. The Department has adopted emergency rules which have been in place since January 1, 2008 so that New York's appraiser program would not lose federal recognition.

If New York were to lose Federal recognition of its appraiser program, federal financial institutions and many State financial institutions would be prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would be prohibited from preparing an appraisal for any such transaction and New York consumers would be forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant.

Subject: Qualifying experience and education for real estate appraisers.

Purpose: To amend current regulations in order to conform said regulations with recent statutory amendments.

Substance of emergency rule: Section 1103.1 of Title 19 NYCRR is amended to specify the course work and education required for licensure as an appraiser assistant, licensed real estate appraiser and certified real estate appraiser.

Section 1103.3(f) of Title 19 NYCRR is amended to specify that course waivers may only be granted in 15 hour segments.

Section 1103.7 of Title 19 NYCRR is amended to permit the Department of State to approve courses of study for appraiser assistants.

Section 1103.8 of Title 19 NYCRR is repealed and a new section 1103.8 is added to specify the course content and hours of study required for licensure as an appraiser assistant, licensed and certified real estate appraiser.

Section 1103.9 of Title 19 NYCRR is repealed and a new section 1103.9 is added to specify the course content and hours of study required for general real estate appraiser certification.

Section 1103.10 of Title 19 NYCRR is amended to specify the educational requirements for the 15 hour National USPAP course.

Section 1103.12(a) of Title 19 NYCRR is amended to provide that students must physically attend 90 percent of each course offering in order to satisfactorily complete said course.

Sections 1103.21 and 1103.22(f) of Title 19 NYCRR is amended to set forth the registration fees for schools and instructors.

Section 1105.1 of Title 19 NYCRR is repealed and a new section 1105.1 is adopted to permit test providers who are approved by the Appraiser Qualifications Board to administer appraiser examinations in New York State.

Section 1105.2 of Title 19 NYCRR is repealed and a new section 1105.2 is adopted to set forth the procedure for test providers to obtain approval from the Department of State to administer appraiser examinations in New York State.

Section 1105.3 of Title 19 NYCRR is repealed and a new section 1103 is adopted to set forth the procedure and requirements for registering and scheduling exam candidates for appraiser examinations.

Section 1105.4 of Title 19 NYCRR is repealed and a new section 1105.4 is adopted to permit the Department to prescribe New York State specific examination questions.

Section 1105.5 of Title 19 NYCRR is repealed and a new section 1105.5 is adopted to require exam providers to report examination results to the Department of State in such form and manner as prescribed by the Department of State.

Section 1105.6 of Title 19 NYCRR is repealed and a new section 1105.6 is adopted to set forth the procedures associated with suspension and denials of approval to offer appraiser examinations.

Section 1105.7 of Title 19 NYCRR is repealed and a new section 1105.7 is adopted to require test providers to copy the Department of State on any reports sent to the Appraisal Qualifications Board.

Section 1105.8 of Title 19 NYCRR is repealed.

Section 1107.2 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.4(b)-(d) of Title 19 NYCRR is amended to specify that no more than 14 hours of continuing education credit may be offered for authorship of an appraisal course of study or publication.

Section 1107.5 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.9 Title 19 NYCRR is amended to remove a dated provision that, for all licenses and certifications expiring on or before December 31, 2003, licensees were required to complete the 15 hour Ethics and Professional Practice Program or a course prescribed by subdivision b of section 1107.9.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 11, 2010.

Text of rule and any required statements and analyses may be obtained from: Whitney A. Clark, Esq., NYS Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 22001, Albany, NY 12231, (518) 473-2728.

Regulatory Impact Statement

1. Statutory Authority:

Executive Law section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers meet certain minimum requirements for licensure. To meet this purpose, the Department of State, in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1103, 1105 and 1107 of Title 19 NYCRR and is proposing this rule making.

2. Legislative Objectives:

Executive Law, Article 6-E, requires the Department of State to license and regulate real estate appraisers. The statute requires prospective licensees to meet certain minimum requirements for licensure, including completion of approved qualifying education. These statutory requirements were changed during the 2007 Legislative Session in order to require the Department of State to implement such minimum requirements for licensure as are imposed on the State by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact such minimum standards for licensure and/or certification. The rule making advances the legislative objective by conforming the education regulations with the requirements of the Appraisal Subcommittee in accordance with the 2007 statutory amendment.

3. Needs and Benefits:

The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination require-

ments for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to have done so would have resulted in the State losing Federal recognition of the State program.

During the 2007 legislative session, a bill was passed to require the Department of State to adopt education requirements that are no less stringent than those required by the AQB. In response to this bill, the Department has adopted emergency rules which have been in effect since January 1, 2008. If the Department had failed to adopt these requirements, the New York appraisal program would have lost Federal recognition. This would have resulted in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would have been prohibited from preparing an appraisal for any such transaction and New York consumers would have been forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would have been significant.

To ensure that the AQB mandate is met, and to conform the existing education regulations with the statutory amendments, this rule making is necessary.

4. Costs:

a. Costs to Regulated Parties:

The Department of State currently licenses and certifies 7,311 real estate appraisers. Prospective licensees will face increased education costs due to a greater number of required course hours. Currently, each appraiser course costs approximately \$300 resulting in an anticipated cost of \$2,100 for the assistant appraiser courses, \$3,000 for the certified residential courses and \$3,300 for the certified general courses. The costs for continuing education are not expected to increase as a result of this rule making.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local government for the implementation and continuation of the rule.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements. Insofar as prospective licensees are already required to satisfactorily complete qualifying education, conforming the regulations with the recent statutory amendments will not result in additional paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State discussed the need to adopt the rule making at several meetings of the New York State Appraisal Board. Few comments were received that suggested alternatives to the current proposal. General comments were received, including the expressed concern that increasing the educational hours required for certification and licensure would make it more difficult to become licensed and certified. Because the Department is required to propose this rule making by Federal mandate, the hour requirements as set forth in the rule making could not be reduced.

One alternative that is being considered is a legislative amendment to permit on-line qualifying education. While this would not decrease the hours of education required for certification and licensure, it would provide an educational option and flexibility to prospective students.

9. Federal Standards:

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 establishes the Appraisal Qualifications Board (AQB) which establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB. This rule making conforms the education regulations with the required federal standard.

10. Compliance Schedule:

Prospective licensees were required to comply with the rule on January 1, 2008. Insofar as the AQB conducted outreach to the regulated public about the relevant changes effected by this rule making, licensees and prospective licensees were notified about the changes and have been able to comply with the rule on the effective dates found in previous emergency adoptions of the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to prospective real estate appraisers who are apply-

ing for licensure pursuant to Article 6-E of the Executive Law after January 1, 2008. During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law to require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

The rule does not apply to local governments.

2. Compliance requirements:

Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record-keeping or other compliance requirements.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Licenses will not need to rely on any new professional services in order to comply with the rule. Licensees are already required to satisfy minimum education and experience qualifications pursuant to Article 6-E of the Executive Law. Insofar as licensees must already attend and complete approved education courses, conforming the regulations with the statute will not result in the need to rely on any new professional services. The Department expects existing education providers to begin offering new approved courses in accordance with the amended statute and the rule making.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The rule making will not result in any new compliance costs. Prospective licensees are already required to complete, and pay for, qualifying education pursuant to Article 6-E of the Executive Law. Insofar as licensees must already complete and pay for approved education courses, conforming the education regulations with the recent statutory amendments will not result in any new compliance costs.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the rule does not provide any new recordkeeping requirements on prospective licensees, it will be technologically feasible for these persons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or recordkeeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E.

7. Small business participation:

Prior to proposing the rule, the Department discussed the proposal at numerous public meetings of the New York State Real Estate Appraisal Board, the minutes of which were posted on the Department's website. The public was given an opportunity to issue comments during the public comment period of these meetings. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rule making. Additional comments will be received and entertained.

Rural Area Flexibility Analysis

A rural flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Article 6-E of the Executive Law was amended during the 2007 legislative session, to, in relevant part, require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for licensed or certified real estate appraisers.

During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law. In pertinent part, the bill required the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. This rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Amendments to the Traffic and Parking Regulations at the State University of New York College at Oneonta

I.D. No. SUN-09-10-00008-P

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

Proposed Action: Amendment of section 564.4 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Proposed amendments to the traffic and parking regulations at the State University of New York College at Oneonta.

Purpose: To amend existing regulations to add or modify locations of certain stop and yield signs, and address uninspected vehicles.

Text of proposed rule: Section 574.5 is amended to read as follows:

§ 574.5 Penalties for violations.

(a) Any person who violates any applicable section of the Vehicle and Traffic Law shall be guilty of a misdemeanor or traffic infraction and shall be punished as provided in the Vehicle and Traffic Law. Such laws shall be enforced in any court having jurisdiction. A complaint regarding any violation of such laws shall be processed in accordance with the requirements of applicable law.

(b) Any person who violates regulations or rules approved by the college council shall be subject to a fine, revocation of campus registration, or other penalty provided after a hearing conducted by a hearing officer designated by the chief administrative officer.

(c) Such fine for each violation shall be [\$25]\$30 for the first and \$40 for each subsequent violation. In addition, for each violation of regulations or rules related to handicapped parking areas, the fine shall be [\$50]\$150 for the first and each subsequent violation.

(d) Upon receipt of six campus traffic or parking violations during an academic year, a campus motor vehicle registration may be revoked for the balance of the academic year.

(e) Any vehicle parked on campus in violation of this Part may be towed away and stored at the expense of the owner of the vehicle.

* * *

Section 574.6 is amended to read as follows:

§ 574.6 Notice and processing of charges.

(a) A complaint regarding any violation of a campus rule approved by the college council shall be in writing reciting the time and place of the violation and the title, number, or substance of the applicable rule.

(1) The complaint must be subscribed by the officer witnessing the violation and shall be served upon the violator or attached to the vehicle involved.

(2) The complaint shall also indicate the amount of the fine imposed for the violation, and advise that if the person charged does not dispute the violation, such fine shall be paid as designated by the college administration within five calendar days. Fines not collected within the designated time may be deducted from the salary or wages of an offending officer or employee of the college or college-related organization. Grades and transcripts may be withheld until all fines are paid in the event fines are not collected within the designated time from an offending student of the college.

(3) The notice shall recite that [a hearing]an appeal may be requested within [72 hours]five working days after service of the charges by appearing in person at the [offices of the campus public safety director]SUNY Delhi University Police Office.

(4) Should the alleged violator fail to [appear at the time fixed for the hearing or should no hearing be requested within the prescribed time]file an appeal within the prescribed time frame, the complaint is proved and shall warrant such action or penalty as may [then] be deemed appropriate.

(b) The director of campus public safety shall serve as a hearing officer to hear complaints for violation of campus traffic and parking regulations enforceable on campus. The hearing officer shall not be bound by the rules of evidence, but may hear or receive any testimony or evidence directly relevant and material to the issues presented.

(c) At the conclusion of a hearing or not later than five days thereafter, the hearing officer shall file a decision and report in such location as may be designated by the [chief administrative officer]vice president for student life. A notice of the decision shall be promptly transmitted to the violator. The report shall include:

- (1) the name and address of the defendant;
- (2) the time and place when the complaint was issued;
- (3) the campus rule violated;
- (4) a concise statement of the facts established on the hearing based upon the testimony or other evidence offered;
- (5) the time and place of the hearing;
- (6) the names of all witnesses;
- (7) each adjournment stating upon whose application and to what time and place it was made; and
- (8) the decision (guilty or not guilty) of the hearing officer.

(d) In the event that the decision of the hearing officer is that the alleged violator is guilty, the violator may appeal the decision within 72 hours after notification of the decision by filing a written appeal with the vice president for [administration]student life of the college. Within 72 hours after receipt of the appeal, the vice president for [administration]student life will transmit the appeal to a hearings appeal board for appropriate action. The decision of the hearings appeal board shall be final and shall be promptly transmitted to the appellant.

(e) The hearings appeal board shall consist of three members of the college community appointed by the president of the college.

* * *

Section 574.7(d) is amended to read as follows:

§ 574.7 Traffic controls.

(d) The following intersections are designated at STOP intersections:

Intersection of	With stop sign on	Entrance(s) from
(1) NYS Route 10	south campus entrance	west
(2) Main campus roadway	south exit from parking lot I	west
(3) Main campus roadway	north exit from parking lot I	west
(4) Main campus roadway	roadway west of Bldg. #32	west
(5) Main campus roadway	roadway from service area between Bldgs. #32 and #8	west
(6) Roadway from service	exit from parking lot H area between Bldgs. #32 and #8	north
(7) Main campus roadway	south exit from parking lot E	east
(8) Main campus roadway	roadway from Bldg. #6	west
(9) Main campus roadway	roadway from Bldgs. #5 and #28	west
(10) Main campus roadway	north exit from parking lot E	east
(11) Main campus roadway	roadway southwest of Bldg. #16	west
(12) Main campus roadway	main campus roadway from northwest (back roadway)	northwest
(13) Main campus roadway	roadway from parking lot G	southeast
(14) Main campus roadway	exit from parking lot A	west
(15) Main campus roadway	exit from parking lot D	north
(16) Main campus roadway	exit from parking lot B	north
(17) Main campus roadway	roadway from Bldg. #9 and parking lot J	east
(18) Main campus roadway	roadway from service area between Bldgs. #8 and #32	east
(19) NYS Route 10	north (main) campus entrance	west
(20) Back River Road [FN*]	automotive service yard	west
(21) Back River Road [FN*]	farm service roadway	west

- (22) Main campus roadway south exit from parking lot K east
- (23) Main campus roadway north exit from parking lot K east
- (24) Main campus roadway exit from Murphy service area east
- (25) Main campus roadway exit from Field House parking area east

FN* Back River Road is a Town of Delhi roadway at the intersections indicated.

* * *

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, System Administration, State University Plaza, S325, Albany, NY 12246, (518) 443-5400, email: isa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory authority: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure makes technical amendments to the parking and traffic regulations applicable to the State University of New York College at Oneonta.

3. Needs and benefits: Posted speed limits and placement of stop and yield signs at intersections have not been changed for a number of years. The revisions proposed will result in safer travel on campus. Additionally, it will allow the campus to deal with vehicles that are uninspected or have expired inspection certificates.

4. Costs: None.

5. Local government mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY Oneonta will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Oneonta.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Oneonta.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Oneonta.

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Public Hearing and Commission Meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on March 18, 2010, in State College, Pa. At the public hearing, the Commission will consider: 1) action on certain water resources projects;

2) action on one project involving a diversion; 3) compliance matters involving three projects; and 4) the rescission of a previous docket approval. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: March 18, 2010, at 8:30 a.m.

ADDRESS: Toftrees Golf Resort & Conference Center, One Country Club Lane, State College, PA 16803.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: 1) a presentation by the Pennsylvania Department of Conservation and Natural Resources Deputy Secretary James Grace on natural gas exploration on state forest and park lands; 2) a presentation on hydrologic conditions of the basin with emphasis on National Flood Safety Week; 3) an update on the recently authorized SRBC Remote Water Quality Monitoring Network; 4) ratification/approval of grants/contracts; and 5) revision of the FY-2011 budget. The Commission will also hear a Legal Counsel's report.

Public Hearing - Compliance Matters:

1. Project Sponsor: Chesapeake Energy Corporation - Eastern Division. Pad ID: Ward (ABR 20090519), Burlington Township, and Sullivan 1 (ABR-20080715), Athens Township, Bradford County, Pa.

2. Project Sponsor: Novus Operating, LLC. Pad ID: Sylvester 1H and North Fork 1H, Brookfield Township, Tioga County, Pa.

3. Project Sponsor: Southwestern Energy Production Company. Pad ID: Ferguson, Wyalusing Township, Bradford County, Pa.

Public Hearing - Projects Scheduled for Action:

1. Project Sponsor and Facility: Carrizo Oil & Gas, Inc. (Mosquito Creek - Hoffman), Karthaus Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.720 mgd.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for groundwater withdrawal of 0.190 mgd (30-day average) from two wells and three collection sumps.

3. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for consumptive water use of up to 0.075 mgd.

4. Project Sponsor and Facility: EQT Production Company (West Branch Susquehanna River - Kuntz), Greenwood Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.900 mgd.

5. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (West Branch Susquehanna River - Johnson), Clinton Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

6. Project Sponsor and Facility: Fortuna Energy Inc. (Fall Brook - Bense), Troy Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.000 mgd.

7. Project Sponsor and Facility: Fortuna Energy Inc. (Unnamed Tributary to North Branch Sugar Creek - Besley), Columbia Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

8. Project Sponsor and Facility: Fortuna Energy Inc. (South Branch Sugar Creek - Shedden), Troy Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.900 mgd.

9. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek - Hoffman), West Burlington Township, Bradford County, Pa. Modification to increase the surface water withdrawal from 0.250 mgd up to 2.000 mgd (Docket No. 20090327).

10. Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Application for groundwater withdrawal of 0.099 mgd (30-day average) from the Plant Make-up Well.

11. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, Pa. Modification to add a groundwater withdrawal of 0.144 mgd (30-day average) from Well CW-20 to the remediation system, without any increase to total system withdrawal quantity (Docket No. 19980901).

12. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, Pa. Modification to project features of the withdrawal approval (Docket No. 19900715).

13. Project Sponsor and Facility: Healthy Properties, Inc. (Sugar Creek - owner), North Towanda Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.450 mgd.

14. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek - Deer Park Lumber, Inc.), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

15. Project Sponsor and Facility: Randy M. Wiernusz (Bowman Creek - owner), Eaton Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

16. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River - 1 - owner), Curwensville Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 1.270 mgd.

17. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River - 2 - owner), Curwensville Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 0.710 mgd.

18. Project Sponsor and Facility: Sunnyside Ethanol, LLC, Curwensville Borough, Clearfield County, Pa. Application for consumptive water use of up to 1.980 mgd.

19. Project Sponsor and Facility: TerraAqua Resource Management (Tioga River - Larson Design Group), Lawrenceville Borough, Tioga County, Pa. Application for surface water withdrawal of up to 0.543 mgd.

20. Project Sponsor and Facility: TerraAqua Resource Management, Lawrenceville Borough, Tioga County, Pa. Application for consumptive water use of up to 0.543 mgd.

21. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, Pa. Modification to increase the total groundwater system withdrawal limit (30-day average) from 0.523 mgd to 0.962 mgd (Docket No. 20070905).

22. Project Sponsor and Facility: XTO Energy, Inc. (Lick Run - Dincher), Shrewsbury Borough, Lycoming County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

23. Project Sponsor and Facility: XTO Energy, Inc. (Little Muncy Creek - Temple), Moreland Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

Public Hearing - Project Scheduled for Action Involving a Diversion:

1. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for an existing into-basin diversion of up to 0.050 mgd from the Delaware River Basin.

Public Hearing - Project Scheduled for Rescission Action:

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, Pa.

Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, e-mail: srichardson@srbc.net. Comments mailed or electronically submitted must be received prior to March 12, 2010, to be considered.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808

Dated: February 16, 2010.

Thomas W. Beauduy

Deputy Director.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-49-09-00001-A

Filing No. 150

Filing Date: 2010-02-11

Effective Date: 2010-02-11

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2010 through March 31, 2010.

Text or summary was published in the December 9, 2009 issue of the Register, I.D. No. TAF-49-09-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Assessment of Public Comment

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

NOTICE OF ADOPTION

Informational Returns for Wholesale Dealers of Cigarettes and Tobacco Products

I.D. No. TAF-49-09-00002-A

Filing No. 151

Filing Date: 2010-02-11

Effective Date: 2010-03-03

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

Action taken: Amendment of sections 75.2 and 90.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First; 475 (not subdivided); and 1142 (12)

Subject: Informational returns for wholesale dealers of cigarettes and tobacco products.

Purpose: To require quarterly filing of informational returns for cigarette and tobacco products wholesale dealers.

Text or summary was published in the December 9, 2009 issue of the Register, I.D. No. TAF-49-09-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Statutory Interest Rates and Fraud Penalties

I.D. No. TAF-09-10-00002-P

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

Proposed Action: This is a consensus rule making to amend Parts 7, 22, 38, 78, 185, 415, 416, 487, 488, 534, 536, 561, 575, 2393, 2395 and 2397 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 475 (not subdivided), 509(7), 697(a), 1096(a), 1142(1), (8), 1250 (not subdivided) and 1415(a)

Subject: Statutory interest rates and fraud penalties.

Purpose: To update the regulations concerning statutory rates of interest and the computation of certain fraud penalties.

Substance of proposed rule (Full text is posted at the following State website: www.nystax.gov): This rule updates the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I; the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I; the Corporate Tax Procedure and Administration Regulations, as published in Subchapter D of Chapter I; the Cigarette Tax, Cigarette Marketing Standards and Tobacco Products Tax Regulations, as published in Subchapter I of Chapter I; the New York State Personal Income Tax Under Article 22 of the Tax Law Regulations, as published in Subchapter A of Chapter II; the Motor Fuel and Diesel Motor Fuel Tax Regulations, as published in Subchapter A of Chapter III; the Truck Mileage and Fuel Use Taxes Regulations, as published in Subchapter C of Chapter III; the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV; the Real Estate Transfer Tax Regulations, as published in Subchapter B of Chapter IV; and the Procedural Regulations, as published in Chapter IX of Title 20 of NYCRR. As explained in the Statement of Consensus Rule Making Determination that is being filed with this rule, Part 2393 of the Procedural Regulations sets the overpayment and underpayment rates of interest for periods prior to September 1, 1989. Chapter 61 of the Laws of 1989 amended the Tax Law (and other applicable laws) to prescribe by statute the methods for determining the overpayment and underpayment rates of interest and to provide that such rates are to be published quarterly in the section for miscellaneous notices of the *State Register* without promulgation by regulation. Part 2393, with the exception of section 2393.1(e)(1), is now obsolete and is being repealed. Section 2393.1(e)(1), which reflects the 1989 statutory changes, is being retained and technically updated.

Accordingly, sections 1, 2, 3, 6, 7, 8, 11, 12, 15, 18, 19, 20, 26, 27, 28, and 32 of the rule amend sections 7-3.7, 22-3.7, 38.2, 78.5(b), 185.3(a)(1), 415.6(a), 416.6(b), 487.4, 488.4(b) and (c), 536.1(b), 536.1(c), 536.1(d), 561.10(e)(4), 575.16(d), 575.20(b), and 2397.7(b)(1) of the regulations, respectively, to delete erroneous and dated information, including specific references to Part 2393 that no longer apply, and to reference pertinent sections of the Tax Law.

Sections 4 and 5, 9 and 10, 13 and 14, as well as section 23 of the rule update sections 78.3, 416.4, 488.3, and 536.3 of the regulations, respectively, to reflect the new statutory computation of the civil penalty charges for fraud in accordance with Subpart J of Part V-1 of Chapter 57 of the Laws of 2009.

Section 16 of the rule amends paragraph (2) of subdivision (e) of section 534.2 of the regulations, and section 17 of the rule repeals paragraph (3) of such subdivision. Much of the information in these paragraphs is out of date, and both paragraphs are incomplete in so far as they do not incorporate all of the current interest allowances and limitations provided in Articles 28 and 29 of the Tax Law.

Section 21 of the rule repeals subdivision (f) of section 536.1 of the regulations because this subdivision is dated and misplaced. That is, interest on overpayments is not relevant to "[p]enalties and interest" on underpayments.

Section 22 of the rule makes technical amendments to the heading of section 536.2 of the regulations to better reflect the penalty imposed by section 1145(a)(1)(vi) of the Tax Law. Interest is not a component of this penalty and should not be mentioned in this regulation.

Section 24 of the rule adds a new section 536.4 to the regulations to reference section 1145 and Article 37 of the Tax Law for information concerning additional penalties.

Section 25 of the rule repeals dated and incomplete section 536.6 of the regulations, which information is accounted for in new section 536.4, as added by section 24 of the rule.

Sections 29 and 30 of the rule repeal obsolete provisions of Part 2393 of

the regulations regarding interest rates and update the remaining provisions.

Section 31 of the rule repeals obsolete subdivisions (a), (b), (c), and (e) of section 2395.1 of the regulations and updates subdivision (d) to correct the reference to Part 2393 of the regulations and to reference the applicable section of the New York State Real Property Tax Law.

Editorial and technical changes have also been made throughout these sections of the regulations.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

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

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

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because it merely repeals regulatory provisions that are no longer applicable, conforms to non-discretionary statutory changes, and makes technical changes that are not controversial in nature.

Prior to September 1, 1989, and except as otherwise specifically provided by law, “[t]he tax commission, by regulation... set the rates of interest” (e.g., Tax Law, former section 697[j]). The rates in effect for periods prior to September 1989 are set in what is now Part 2393 of the Procedural Regulations, as published in Chapter IX of 20 NYCRR. Chapter 61 of the Laws of 1989 amended the Tax Law (and other applicable laws) to prescribe by statute the methods for determining the overpayment and underpayment rates of interest and to provide that such rates are to be published quarterly in the section for miscellaneous notices of the State Register without promulgation by regulation. Part 2393, with the exception of section 2393.1(e)(1), is now obsolete and is being repealed. Section 2393.1(e)(1), which reflects the 1989 statutory changes, is being retained and technically updated.

Part V-1 of Chapter 57 of the Laws of 2009, among other tax compliance measures, increased the underpayment rates of interest and amended the computation of civil penalty charges for fraud with respect to various taxes (see Subparts D and J, respectively). The primary purpose of this rule is to update the department’s regulations where necessary to defer to revised Part 2393 and the Tax Law for this (and overpayment rate) information since interest rates and penalty charges are often subject to change. The rule also makes editorial changes to the affected regulations.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs or employment opportunities. This rule simply updates the department’s regulations concerning statutory interest rates and civil penalty charges for fraud, as amended by Chapter 57 of the Laws of 2009.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-09-10-00003-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2010 through June 30, 2010.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lviii) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lvii) January - March 2010					
15.0	23.0	39.3	15.5	23.5	38.05
(lviii) April - June 2010					
16.0	24.0	40.3	16.0	24.0	38.55

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Employment Programs

I.D. No. TDA-14-09-00010-A

Filing No. 101

Filing Date: 2010-02-11

Effective Date: 2010-03-03

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

Action taken: Amendment of sections 351.2, 352.30, 369.2, 370.2, 372.2, 387.14 and 403.1 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and title 9-B of art. 5; and L. 2005, ch. 57, part C

Subject: Employment Programs.

Purpose: Update references from the former Title 12 NYCRR Part 1300, which was repealed and replaced by Title 18 NYCRR Part 385.

Text or summary was published in the April 8, 2009 issue of the Register, I.D. No. TDA-14-09-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Assistance Budgeting

I.D. No. TDA-15-09-00006-A

Filing No. 102

Filing Date: 2010-02-11

Effective Date: 2010-03-03

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

Action taken: Amendment of sections 352.2, 352.3, 352.30 and 352.31 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34, 131(1) and 131-a

Subject: Public Assistance Budgeting.

Purpose: Update regulations regarding the treatment of public assistance budgets when the family unit includes a member who is a recipient of Supplemental Security Income.

Text or summary was published in the April 15, 2009 issue of the Register, I.D. No. TDA-15-09-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.state.ny.us

Assessment of Public Comment

The agency received no public comment.