

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; or C for first Continuation.)

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-19-06-00014-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Audit and Control.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by increasing the number of positions of Assistant Counsel from 10 to 12 and Special Investment Officer from 23 to 29.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-19-06-00015-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance under the subheading "Division of the Lottery," be adding thereto the position of Confidential Assistant.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.state.ny.us

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PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-19-06-00016-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of State.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department

of State under the subheading "State Ethics Commission," by increasing the number of positions of Associate Counsel from 3 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.state.ny.us

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

Jurisdictional Classification

I.D. No. CVS-19-06-00017-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Health.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health under the subheading "Office of the Medicaid Inspector General," by adding thereto the positions of Assistant Medicaid Inspector General (4), Deputy Counsel, Deputy Medicaid Inspector General (2), Director of Public Information, Executive Assistant, First Deputy Medicaid Inspector General, Research Associates, Secretary (2) and Special Assistant.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-19-06-00018-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by deleting therefrom the position of Deputy Commissioner and by increasing the number of positions of Special Assistant from 3 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.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

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

Jurisdictional Classification

I.D. No. CVS-19-06-00019-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Family Assistance.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Director, Bureau of Field Operations and Implementation and by increasing the number of positions of Assistant Commissioner from 7 to 8.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-19-06-00020-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by increasing the number of positions of Tax Policy Analyst 3 from 7 to 8.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

Crime Victims Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Fee Guidelines

I.D. No. CVB-19-06-00004-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 repeal section 525.29 and Appendix II of Title 9 NYCRR.

Statutory authority: Executive Law, section 623(3)

Subject: Medical fee guidelines.

Purpose: To repeal an invalid rule.

Text of proposed rule: Section 525.29 is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: David N. Green, Crime Victims Board, 845 Central Ave., South 3, Suite 107, Albany, NY 12206, (518) 457-8068, e-mail: davegreen@cvb.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

Section 525.29 of 9 NYCRR (A-4) provides in relevant part that the Workers Compensation "Medical Fee Schedule Guidelines" (hereinafter "guidelines") in Appendix II of 9 NYCRR (A-4) at pp 8621 to 8700 shall be used by the Board's Crime Victims Specialists in computing the amount of the award payable to victims of crime for medical services.

The Guidelines were published in 1973 and amended and modified for incorporation into the Board's regulatory scheme. The Board adopted the Guidelines in 1983.

Prior to the adoption of the Guidelines, a Crime Victims Specialist would make a determination whether a crime victim's medical expense(s) were "reasonably incurred" based on experience of the Specialist and with the assistance of the Medical Unit supervisor or Board member assigned to the case.

As the fee guidelines became outdated, and as such, inapplicable to current claims, determinations were made pursuant to subsection 525.29(e) which gives the Board the authority to waive the applicability of the guidelines under certain circumstance.

By June of 1998, the Board determined to discontinue the use of the Guidelines altogether as they were no longer valid. Instead, Crime Victims Specialists were directed to revert to the method used prior to the implementation of the Guidelines. Where a bill for medical services appeared to the Specialist to be too high or otherwise questionable, the Specialist is directed to confer with the Medical Unit supervisor or the assigned Board member to determine what action should be taken.

Pursuant to the Board's authority set forth in Section 623(3) of the Executive Law and Section 102(11) of the State Administrative Procedure Act, the Crime Victims Board proposes the repeal of Section 525.29 and Appendix II, (the Medical Fee Schedule Guidelines) as a Consensus Rule. It is expected that no person is likely to object to the adoption of the proposed rule because it merely repeals regulatory provisions which are no longer applicable to any person.

Job Impact Statement

The proposed rule eliminates an outdated and invalid section of the agency's regulations. The agency finds that the rule will have no impact on jobs or employment opportunities as apparent from its nature and purpose.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Program

I.D. No. EDV-19-06-00005-E

Filing date: April 24, 2006

Effective date: April 24, 2006

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

Action taken: Amendment of Parts 10 through 14 of Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 99

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

Specific reasons underlying the finding of necessity: The reforms enacted in L. 2005, ch. 63 require reconfiguration of the existing Empire Zones by January 1, 2006. Immediate guidance to affected parties is required.

Subject: Empire Zones Program.

Purpose: To conform the regulations to existing statute and recent statutory amendments (L. 2005, ch. 63) and clarify and improve administrative procedures.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2005, as well as a comprehensive review of administrative procedures and existing regulations. The amended laws require the existing Empire Zones to identify revised zone boundaries— that is, placement of zone acreage into "distinct and separate contiguous areas"—to the Department of Economic Development by January 1, 2006. The existing regulations are affected by this requirement, but at the same time the zones need immediate guidance which requires amending the existing regulations in an accelerated fashion. At the same time, the existing regulations contain several outdated references, and the Department has also taken the opportunity to improve its administrative procedures. The Empire Zone regulations contained in 5 NYCRR Parts 10 through 14 are hereby amended as follows:

First, pursuant to Chapter 63 of the Laws of 2000 and Chapter 63 of the Laws of 2005, the emergency rule would reflect the name change of the program from Economic Development Zones to the Empire Zones and add reference to three new tax benefits: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

Second, the emergency rule would conform the regulations to existing statutory terminology, definitions and practices. For example, an incorrect reference to a local empire zone administrator is being corrected to read local empire zone certification officer or simply, the local empire zone, if applicable. Pursuant to statute, the chief executive officer must ensure that the information on a designation application is accurate and complete, not the local legislative body. The requirements for a shift resolution did not contain all the criteria as set forth in statute. Certain regulatory provisions regarding application for zone designation were not in accord with the statute, such as whether certain information must be contained in local law rather than the application itself. In addition, tracking the statutory changes from Chapter 63 of the Laws of 2005, census tract zones are renamed "investment zones", county-created zones are renamed "development zones", and the new term "cost-benefit analysis" is defined. The emergency regulation also tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

Third, the emergency rule would amend the Department's discretionary provision that limits the designation of nearby lands in investment zones to 320 acres. Such regulatory limitations are arbitrary and unnecessarily exceed or are inconsistent with State statute, and at the same time place undue limits on the reconfiguration of zones; municipalities cannot effectively utilize zone acreage to create opportunities for business invest-

ment and job growth in economically distressed areas that are not necessarily located in eligible or contiguous census tracts. At the same time, the Department is required to provide guidance in regulation on placement of nearby zone lands, and cannot countenance abuse of the program's requirements on acreage placement. Thus, placement of nearby lands can exceed 320 acres provided that the municipality demonstrates that (1) there is insufficient existing or planned infrastructure within eligible or contiguous tracts to accommodate business development in a highly distressed area, or to accommodate development of strategic businesses or (2) placing up to 960 acres in eligible or contiguous census tracts would be inconsistent with open space and wetland protection or (3) there are insufficient lands available for further business development within eligible or contiguous census tracts or (4) lands previously designated in the eligible or contiguous census tracts that were otherwise suitable for development and have not had any appreciable commercial activity or capital investment or (5) changes to eligible census tracts as a result of the 2000 Census, combined with the requirement in the amended statute that the distinct and separate contiguous areas accommodate already designated lands, alter the amount of nearby acreage used and available for development.

Fourth, the emergency rule clarifies the statutory requirement from Chapter 63, L. 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality. The purpose of this is to fulfill the intent of the new statutory amendments that the counties place a substantial portion of the zone acreage within eligible or contiguous census tracts, and this provision follows essentially the same method for concentrating acreage within distressed areas as the General Municipal Law employed for census tract zones.

Fifth, the emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage, however, any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

Sixth, the emergency rule tracks the new statutory requirement that certain defined "regionally significant" projects can be located outside of the new distinct and separate contiguous areas. There are four categories of projects identified in Chapter 63; only one category of applications, manufacturers projecting the creation of 50 or more jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. The emergency rule identifies a timetable for meeting the minimum job creation requirement: 25% of the minimum jobs required to meet the definition of regionally significant project within 2 years of the date of designation of the project as regionally significant, 50% of the minimum jobs within 3 years, 75% of the minimum jobs within 4 years, and 100% of the minimum jobs within 5 years. Failure to achieve a milestone would trigger a decertification process.

Seventh, the emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

Eighth, the emergency rule clarifies Chapter 63's permission for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The

area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

Ninth, the emergency rule tracks Chapter 63's requirement that new zone development plans, created in the conjunction with the new distinct and separate contiguous areas to be approved by the Empire Zones Designation Board, are to be approved by the Department within 90 days of submission. The emergency rule defines the date of submission for each zone as the date of approval of the distinct and separate contiguous areas by the Empire Zones Designation Board.

Tenth, the emergency rule fulfills the requirements of Chapter 63 to subject all businesses applying for zone benefits to meet a "cost-benefit analysis". The cost-benefit analysis is to be included in the zone development plan by the applicant municipality. The definition included in the emergency rule lays out the basic formula for calculating the benefits received to the costs incurred.

Eleventh, the emergency rule clarifies the status of community development projects as a result of the reconfiguration of the zones pursuant to Chapter 63. The current regulations require the community development projects to be located in an Empire Zone in order for investments in those projects to qualify for tax benefits. Drawing distinct and separate contiguous areas around community development projects would severely limit the ability of Empire Zones to include as many eligible businesses as possible into the new distinct and separate contiguous areas. Community development projects are not necessarily required to be certified. There is a strong public policy preference for these projects and there is an expectation by their sponsors that they continue to offer tax credits to contributors until fundraising for the projects are completed. To that end, all community development projects approved by the Department before April 1, 2005 would be considered to be located within its respective Empire Zone, and a community development project will be considered to be located in the Empire Zone if it can demonstrate that a zone has been working with the project before April 1, 2005 for the purpose of submitting a boundary revision for inclusion in to the Zone that would include job creation.

Twelfth, the emergency rule would revise the application process in order to ensure timely action and improve efficiency and accountability. For example, the proposed process would no longer require the applicant to submit an application to both the Department and the Department of Labor. In addition, the proposed process allows the applicant to cure incomplete or deficient applications within a set time period.

Lastly, the emergency rule would add certain programmatic information that is helpful to zone administrators, applicants, and practitioners such as the method for determining the effective dates for certifications and boundary revisions.

The full text of the rule is available at www.empire.state.ny.us

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 22, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Donald T. Ross, Deputy Commissioner and General Counsel, Department of Economic Development, 30 S. Pearl St., Albany, NY 12245, (518) 292-5120, e-mail: dtross@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt rules and regulations governing the criteria of eligibility for empire zone designation, the application process, and the joint certification of a business enterprise.

LEGISLATIVE OBJECTIVES:

The rule making accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to recent statutory amendments and the remaining revisions conform the regulations to existing statute or clarify administrative procedures of the program. It is the public policy of the State to offer special incentives and assistance that will promote the development of new businesses, the expansion of existing businesses and the development of human resources within areas designated as Empire Zones. The proposed amendments help to further such objectives by enabling the Department of Economic Development to administer the program in a more efficient manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to bring the regulations into accord with statute and to improve the overall administration and effectiveness of the program. There are several benefits that would be derived from this emergency rule making. First, the emergency regulations would

conform to statutory provisions and thereby eliminate potential confusion to the practitioner. Second, the emergency rule would clarify the application process to ensure timely action and improve efficiency and accountability.

COSTS:

I. Costs to private regulated parties (the Business applicants): None. The emergency regulation will not impose any additional costs to the business applicants beyond the existing program. In fact, there may be a cost savings due to a clearer application and the ability to cure application deficiencies rather than being immediately denied.

II. Costs to the regulating agency for the implementation and continued administration of the rule: While there will be additional costs to the Department of Economic Development associated with the emergency rule making, this is a result of the statutory changes which the emergency regulation language tracks or interprets. All existing Empire Zones have to revise their boundaries as a result of the statutory changes, with certain exceptions tied to specific types of business or the timing of certain applications. This results in more paperwork and additional staff time over the course of the next twelve months as the program is reconfigured. However, over time staff and paperwork costs will be minimized because the statutory changes have clarified eligibility for the program and the revised regulations have made procedures for processing applications easier to understand.

III. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

IV. Costs to local governments (the Local Zone administration): None. The emergency regulation will not impose any additional costs to the local zone administration beyond any additional costs associated with implementing the statutory requirements which reform the program. In the long term, there may be some cost savings in regards to staff time due to a clarification of program requirements.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones Program. If a local government chooses to participate, there is a cost associated with local administration. However, this emergency rule does not impose any additional costs to the local governments beyond any additional costs associated with implementing the statutory requirements which reform the program.

PAPERWORK:

The emergency rule does create additional paperwork, insofar as the various Empire Zones have to refile applications to reconfigure their Zone acreage, identify regionally significant projects and "grandfathered" businesses where necessary, and process boundary revisions before deadlines enumerated in statute which are reproduced verbatim from the statute.

DUPLICATION:

The emergency rule will not duplicate or exceed any other existing Federal or State statute or regulation.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. Certain alternatives to policies seeking to be adopted were considered in certain subject areas where the Legislature provided some room for interpretation; for example, acreage devoted to existing businesses outside of the reconfigured zone areas, creation of investment zones within development zones, the placement of "nearby" acreage, the location of "grandfathered" businesses and the continuation of community development projects. In each case, interpretation was geared to preserving, to the extent possible, the expectation of benefits for existing zone businesses, making zone reconfiguration as clear as possible for existing zones, and enabling zone acreage to be utilized in the most effective manner. Finally, with regard to the application process, an alternative was considered to include more time for review of the application at the State level. This alternative was rejected because it was determined that certification of a business, which has a complete and sufficient application, should not be delayed.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program; it is purely a state program that offers, among other things, state and local tax credits. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The affected State agencies (Economic Development and Labor), local zone administration and the business applicants will be able to achieve compliance with the emergency regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the Empire Zones Program is entirely at the discretion of each eligible municipality and business enterprise. Neither General Municipal Law Article 18-B nor the emergency regulations impose an obligation on any local government or business entity to participate in the program. The emergency regulation does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses and/or local governments. In fact, the emergency regulations may have a positive economic impact on the small businesses and local governments that do participate due to clarifying changes, the added flexibility and a new application process. The administrative structure of the program was designed to offer a streamlined application and approval process by extracting only essential information from the applicants. In addition, the changes to the regulations that track changes in statute and result in a reconfiguration of zones will actually enhance the ability of businesses yet to apply which are located in distressed areas to receive program benefits. Local governments will have the additional short-term burden of taking the legal and administrative steps necessary to reconfigure their zones, but this is a statutorily imposed burden, not solely a regulatory one. Because it is evident from the nature of the emergency rule that it will have either no substantive impact, or a positive impact, on small businesses and local governments, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The program is a statewide program. There are eligible municipalities and businesses in rural areas of New York State. However, participation is entirely at the discretion of eligible applicant municipalities and eligible business enterprises. The program does impose some responsibility on those municipalities and businesses which participate in the program such as submitting applications and reports. The emergency rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency regulation will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency regulation relates to the Empire Zones Program. The Empire Zones Program itself is a job creation incentive. The emergency regulation will not have a substantial adverse impact on jobs and employment opportunities. In fact, the regulations, which result from statutory-based reforms, will enable the program to better fulfill its mission: job creation and investment for economically distressed areas. At the same time, businesses currently receiving benefits will not have their status jeopardized as a result of the regulations. Because it is evident from the nature of the emergency amendment that it will have either no impact, or a positive impact, on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

EMERGENCY RULE MAKING

Enactment of a Serialized New York State Prescription Form

I.D. No. HLT-19-06-00001-E

Filing No. 498

Filing date: April 19, 2006

Effective date: April 19, 2006

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

Action taken: Addition of Part 910 and amendment of Parts 80 and 85 of Title 10 NYCRR; amendment of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for the implementation of the use of statewide forged proof prescriptions by the April 19, 2006 date mandated by the law.

Immediate adoption of these regulations is necessary to allow the implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

Subject: Enactment of a serialized New York State prescription form.

Purpose: To enact a serialized New York State prescription form.

Substance of emergency rule: Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that, until April 19, 2007, hospitals and comprehensive voluntary non-profit community diagnostic and treatment centers designated by the Department are exempted from the requirement for their staff practitioners to prescribe non-controlled substances on an official prescription form. The exemption will continue beyond April 19, 2007 if the hospital and the comprehensive voluntary non-profit community diagnostic and treatment center implements and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department. Section 910.6 also authorizes pharmacies to fill prescriptions for non-controlled substances until October 19, 2006 that are not written on an official prescription provided that the pharmacy notify the Department of the prescribing practitioner so that the practitioner may be contacted and issued official prescriptions for subsequent prescribing.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes have been proposed:

Section 505.3 (18 NYCRR)

- Language included to reflect use of facsimile prescriptions.
- Language included to allow electronically transmitted prescriptions.
- Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.
- Delete language prohibiting telephone orders for OTCs.
- Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).
- Delete Estimated Acquisition Cost—defined in Social Services Law 367-a(9)(b)(ii).
- Delete language referencing “triplicate” prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.
- Delete language referencing other Sections that have been deleted (*i.e.*, 10 NYCRR 85.25).
- Delete language referencing dispensing fees—in Social Services Law 367-a(9)(d).

- Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.

- A change has been made to the prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words “or supplies” has been deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forged proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.

- Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3[6] (3).

Part 85 (10 NYCRR)

- Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.

- Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (*i.e.*, 18 NYCRR 528.2 and 10 NYCRR 85.25)

- Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).

- Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

- Part 80 (10 NYCRR) Part 80 table of contents has been revised to reflect amendments in titles of sections of regulations.

- Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotic Control and Bureau of Controlled Substances’ to the current title of ‘Bureau of Narcotic Enforcement’.

- Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotics and Dangerous Drugs’ to the current title of ‘Drug Enforcement Administration’.

- Section 80.1—language added to define ‘automated dispensing system’.

- Section 80.5—language deleted for 3b Institutional Dispenser license due to registration of facilities to be issued official prescriptions. Language added for retail pharmacy license, installation, and operation of automated dispensing system in Residential Healthcare Facility (RHCF).

- Section 80.11—language added to make requirements for supervising pharmacist of controlled substance manufacturer and distributor consistent with pharmacist licensure requirements in New York State Education Law.

- Section 80.46—language added to require supervising physician countersignature of medical order of physician’s assistant if deemed necessary by supervising physician or hospital to bring regulation into consistency with PHL 3703.

- Section 80.47—language revised to except administration of controlled substances in emergency kits to patients in Title 18 adult care facilities.

- Section 80.49—language revised from prescription serial number to pharmacy prescription number.

- Section 80.50—language added to require pharmacies to maintain separate stocks of controlled substances received for use in automated dispensing system in RHCF and to authorize storage of non-controlled substances in such system.

- Section 80.60—language added for female gender reference to practitioner.

- Section 80.63—deleted definition of written prescription and added definition of out-of-state prescription. Language added to authorize printed prescriptions generated by computer or electronic medical record system. Language added regarding practitioner oral prescribing requirement.

- Section 80.67—midazolam and quazepam added to list of benzodiazepine controlled substances, as per PHL 3306. Language added requiring quantity of dosage units to be indicated in both numerical and written word form. Language amended to include chorionic gonadotropin as controlled substance for prescribing up to a 3-month supply. Language added to assign code letters to medical conditions for prescribing more than a 30-day supply.

- Section 80.67 (con’t)—language deleted regarding Department’s issuance of official New York State prescriptions, due to added language in section 80.72. Language deleted for face and back of prescription to facilitate timely pharmacist dispensing. Language added authorizing prac-

itioner faxing of prescription for hospice or RHC patient and for prescription to be compounded for direct parenteral administration to patient.

- Section 80.68—language added for certain other controlled substances. Language deleted requiring pharmacist to endorse pharmacy DEA number on official NYS prescription to facilitate timely dispensing. Language added requiring electronic transmission of prescription data to Department.

- Section 80.69—language added requiring quantity of dosage units to be indicated in numerical and written word form. Language added to assign letters for condition codes. Deleted reference to PHL sections 3335 and 3336, which were deleted by PHL 21, and added reference PHL sections 3332 and 3333, which are now the relevant sections. Deleted written prescription and added official prescription. Deleted back of the prescription and face of the prescription to facilitate timely dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHC patient and for prescription to be compounded for direct parenteral administration to patient.

- Section 80.70—language added specifying oral prescriptions for 30-day supply or 100 dosage units does not apply to substance limited to 5-day supply by section 80.68. Deleted serial prescription number and added pharmacy prescription number. Added female gender language in reference to pharmacist. Language added requiring filing of prescription information with Department.

- Section 80.71—deleted section (b) to reflect that practitioners are no longer required by PHL 3331 to complete an official prescription when dispensing controlled substances. Corrected spelling of chorionic gonadotropin. Added reference to condition codes in sections 80.67 and 80.69. Added packaging and labeling requirements for practitioner dispensing of controlled substances. Added requirement for practitioners to submit dispensing information to Department by electronic transmission.

- Section 80.72—deleted all references to practitioner dispensing and labeling requirements because practitioner dispensing now covered by section 80.71. Language added regarding practitioner registration with Department and Department issuance of official NYS prescription forms.

- Section 80.73—added language specifying pharmacist dispensing of schedule II and controlled substances listed in section 80.67. Added female gender language in reference to pharmacist. Deleted requirement for pharmacist to endorse pharmacy DEA number on prescription for timely dispensing. Language added requiring pharmacy to verify identity of person picking up dispensed prescription. Language added requiring pharmacy electronic transmission of prescription data to Department.

- Section 80.73 (con't)—language added specifying emergency oral prescriptions for schedule II and controlled substances listed in section 80.67 and filing of emergency oral prescription memorandum. Language added requiring pharmacy electronic transmission of oral prescription data to Department. Language added specifying partial filling of official prescription for schedule II and controlled substances listed in section 80.67. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

- Section 80.74—language added in section title specifying pharmacist dispensing of controlled substances. Language added for prescription labeling requirements. Added female gender reference to pharmacist. Added requirement for filing prescription data with Department. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

- Section 80.74 (con't)—language added for pharmacy requirement to verify identification of person picking up prescription. Deleted reference to schedule II controlled substances and those substances listed in section 80.67 because all controlled substances now require official NYS prescription. Deleted labeling requirement reference to section 80.72 and added reference to section 80.71.

- Section 80.75—deleted language regarding requirement to purchase official prescriptions. Added language regarding registration and issuance of official prescriptions for institutional dispenser.

- Section 80.78—added a new section regarding pharmacist requirements for dispensing of out-of-state prescriptions for controlled substances, to be dispensed in conformity with provisions set forth for official prescriptions.

- Section 80.84—deleted language requiring group practice providing treatment of opiate dependence with buprenorphine to be limited to 30 patients at any one time, making New York State regulations consistent with the federal Drug Addiction Treatment Act. Deleted language requiring practitioners and pharmacies to register with Department to prescribe and dispense buprenorphine. Deleted language requiring pharmacy to file prescription data and report loss of controlled substances because redun-

nant. Deleted reference to PHL 3335 and 3336 because deleted by PHL 21 and added reference to PHL 3332 and 3333 because now relevant sections.

- Section 80.106—added language requiring separate record-keeping for pharmacies installing automated dispensing system in RHC.

- Section 80.107—added language authorizing Department to notify practitioner of patient treatment with controlled substances by multiple practitioners, consistent with PHL 3371.

- Section 80.131—deleted written prescription, added official prescription and out-of-state prescription. Language added increasing oral prescription for hypodermic needles and syringes to quantity of one hundred hypodermic needles and syringes.

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 July 17, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purpose and intent.

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. New Section 21 of the Public Health Law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Needs and Benefits:

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York.

Regulations are being proposed to implement Section 21 of the Public Health Law (PHL). The purpose of the law is to combat and prevent prescription fraud by requiring an official New York State prescription for every prescription written in New York. Official prescriptions contain security features designed specifically to curtail alterations, counterfeiting, and forgeries, all of which divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Regulations have been amended to reflect the implementation of the above Public Health Law and to update obsolete or outdated language in the existing regulations. The proposed regulations also include amendments to authorize a practitioner to deliver a controlled substance prescription to a pharmacy by facsimile transmission in specified circumstances and to authorize a pharmacist to dispense such faxed prescription. By facilitating timely prescribing and dispensing, such facsimile transmission will enhance healthcare for patients enrolled in hospice programs or residing in a Residential Healthcare Facility (RHC) and for patients who require controlled substance prescriptions to be compounded for administration by parenteral infusion.

Regulations have also been amended to authorize the Department to license a retail pharmacy to install and operate an automated dispensing system in a RHC, which will bring New York regulations into consistency with federal regulations. The installation and operation of such systems will significantly benefit patient care through timely and efficient dispensing of prescriptions for controlled substances. Automated dispensing systems will also lessen the cost of medications remaining from waste due to discontinued drug therapy and will simultaneously decrease the amount of such controlled substances that are susceptible to diversion.

These regulations are found in amendments to 10 NYCRR Part 80 and in the newly promulgated regulations in 10 NYCRR Part 910. Included in the Part 910 regulations is an exemption allowing hospital practitioners or practitioners in a comprehensive voluntary non-profit diagnostic and treatment center designated by the Department to prescribe non-controlled substances on a non-official hospital prescription until April 19, 2007. The exemption will continue beyond April 19, 2007 for hospitals and designated comprehensive voluntary non-profit diagnostic and treatment center that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them.

Also included in the Part 910 regulations is an exemption allowing pharmacies to dispense prescriptions for non-controlled substances that are not issued on an official prescription until October 19, 2006 in order that optimum care may continue to be provided to patients. The regulation requires pharmacies to notify the Department so that the practitioner may be contacted and issued official prescriptions for all subsequent prescribing.

Costs:

Costs to Regulated Parties:

This program is being funded by an assessment on the State Insurance Department. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize millions of dollars in savings due to the reduction of fraudulent prescription claims.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

There will be a slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements for controlled substance prescriptions.

Costs to State and Local Government:

There will be no costs to state or local government.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and record keeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances as opposed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, there are approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions, there are approximately 18,000 licensed and registered pharmacists in New York.

Compliance Requirements:

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments:

(1) Eliminating the fee to practitioners and institutions for official prescriptions;

(2) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;

(3) Bar coding of the serial number on the official prescription to expedite the dispensing process; and

(4) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all prescriptions for controlled substances.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to participating pharmacies, practitioners and institutions located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated.

Compliance Requirements:

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and pharmacies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

Professional Services:

None necessary.

Compliance Costs:

None.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally,

the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from pharmacist, health plan and practitioner associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas was expressed.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

Hudson River Park Trust

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

FOIL Regulations

I.D. No. HPT-19-06-00002-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 repeal section 750.5, amend section 750.7 and add a new section 750.5 to Title 21 NYCRR.

Statutory authority: L. 1988, ch. 592

Subject: FOIL regulations.

Purpose: To amend Part 750 of Title 21 NYCRR.

Text of proposed rule: Amend Address In 21 NYCRR 750.2, 3 & 7 To Read:

Hudson River Park Trust
Pier 40, 2nd Floor
West Street at West Houston Street
New York, NY 10014
(212) 627-2020

Part 750.5 is repealed and new Part 750.5 is adopted to 21 NYCRR:
750.5 Requests for Public Access to Records:

(a) Records requests shall be in writing.

(b) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(c) A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of request by:

(1) informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;

(2) granting or denying access to records in whole or in part;

(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or

(4) if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or

in part within twenty business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within twenty business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.

(d) In determining a reasonable time for granting or denying a request under the circumstances of a request, personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.

(e) A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an officer or employee:

(1) fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five business days of the receipt of a request;

(2) acknowledges the receipt of a request within five business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;

(3) furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;

(4) fails to respond to a request within a reasonable time after the approximate date given or within twenty business days after the date of the acknowledgment of the receipt of a request;

(5) determines to grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;

(6) does not grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part; or

(7) responds to a request, stating that more than twenty business days is needed to grant or deny the request in whole or in part and provides a date certain within which that will be accomplished, but such date is unreasonable under the circumstances of the request.

Part 750.7 (e), (f) and (g) are renumbered (f), (g) and (h) and a new section (e) is added to read as follows:

750.7 Denial of Access to Records.

(e) A failure to determine an appeal within ten business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.

Text of proposed rule and any required statements and analyses may be obtained from: Laura Blackman, Hudson River Park Trust, Pier 40, 2nd Fl., West St. at W. Houston St., New York, NY 10014, (212) 627-2020, e-mail: lblackman@hrpt.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 following statement is provided pursuant to State Administrative Act (SAPA) 202(1)(b)(i):

The Hudson River Park Trust (HRPT) is amending FOIL regulations under the belief that no party will object to such amendments. The proposed amendments to our FOIL regulations, including minor alterations, meet the standards of the model regulations prepared by the State of New York Department of State Committee on Open Government.

Job Impact Statement

The following statement is provided pursuant to the State Administrative Procedure Act (SAPA) 201-a(2)(a).

The Hudson River Park Trust (HRPT) has determined that the proposed FOIL regulations will have no impact on jobs and employment opportunities. It is evident from the subject matter of the regulations; i.e., to allow the public to access documents and statistics leading to government decision-making would have no impact on jobs and employment opportunities.

Ogdensburg Bridge and Port Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Increase in Bridge Toll Structure

I.D. No. OBA-19-06-00003-P

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

Proposed action: Amendment of Part 5704 of Title 21 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1630, subsection 4, and Public Authorities Law, section 703-b

Subject: Increase in bridge toll structure.

Purpose: To substantially increase bridge toll revenues in order to become financially self-supporting.

Text of proposed rule: 1. Section 5704.1 Schedule of Tolls is amended to read as follows:

Section 5704.1 Schedule of tolls.

Effective [July 6, 1988] *July 12, 2006*, tolls are as follows:

Type of vehicle	Proposed toll rate
Auto (one-way)	\$ [2.00] 2.75
2-axle truck	[4.00] 5.00
3-axle truck	[5.50] 6.00
4-axle truck	[6.00] 6.50
5-axle truck	[8.00] 8.50
6-axle truck	[9.50] 10.00
7-axle truck	[11.00] 11.50
8-axle truck	[12.50] 13.00
9-axle truck	[14.00] 14.50
10-axle truck	[15.50] 16.00
Additional axles	1.00
Buses:	[5.00]
School	2.00
Commercial	5.00

2. Section 5704.4 shall be amended to read as follows:

5704.4 Special toll rates.

The authority's special toll rates, effective [July 6, 1988] *July 12, 2006*, are as follows:

(a) Truck toll scrip. 120 [50¢] *fifty-cent* tickets for \$60, less 10 percent discount for payment in advance.

[(b) Commuter card. 60 crossings for \$80, valid for a six-month period from date of issuance.]

(b) Passenger Discount Program:

75 trips for \$90, valid for a two-month period from the date of issuance.

60 trips for \$100, valid for a six-month period from the date of issuance.

20 trips for \$37, valid for a six-month period from the date of issuance.

[(c) Passenger car toll scrip. 20 crossings for \$30, valid for a six-month period from date of issuance.]

[(d)] *(c)* Special toll promotions are specifically authorized by the authority as follows:

(1) Retail organizations shall receive a 25 percent discount from the normal \$2.00 fare by purchasing a book containing 50 crossings for \$75.

(2) School, community and/or not-for-profit organizations shall receive a 50 percent discount from the normal \$2.00 fare by purchasing a book containing 50 crossings for \$75.

[(e)] *(d)* [Volume truck discount.] Commercial discount program (volume-based discount):

Truck charges [between] \$20,000 [and less than] to \$29,999 annually – [15] 5 percent discount – based upon a rebate annually.

Truck charges [between] \$30,000 [and less than] to \$39,999 annually – [20] 8 percent discount – based upon a rebate annually.

Truck charges [over] \$40,000 and over annually – [25] 10 percent discount – based upon a rebate annually.

Text of proposed rule and any required statements and analyses may be obtained from: Wade A. Davis, Executive Director, Ogdensburg Bridge and Port Authority, One Bridge Plaza, Ogdensburg, NY 13669, (315) 393-4080, e-mail: wadavis@ogdensport.com

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

OBJECTIVE: In accordance with Part 5707, Section 5707.1, Amendments, the Ogdensburg Bridge and Port Authority shall amend from time to time by resolution of the Authority duly adopted Rules and Regulations governing the operation of the Ogdensburg-Prescott International Bridge.

STATUTORY AUTHORITY: Vehicle and Traffic Law, Section 1630, Subsection 4, allows the Ogdensburg Bridge and Port Authority as a bridge authority to make rules, taxes, fees, licenses, or permits for use of the Ogdensburg-Prescott International Bridge or any of its parts, where the imposition thereof is authorized by law. Section 703-b of the Public Authorities Law gives the Authority the power to make rules and regulations for the preservation and use of the bridge and for the payment and collection of tolls, fees, fares, and special charges.

LEGISLATIVE OBJECTIVES: Based on the authority to charge tolls as set forth in Section 1630 of the Vehicle and Traffic Law, as well as the power to make rules and regulations for use of the bridge and for the payment and collection of tolls, fees, fares, and special charges as set forth in Section 703-b of the Public Authorities Law, the Authority believes this proposed rule making fits within the legislature's objective in writing the statute.

NEEDS AND BENEFITS: The Ogdensburg Bridge and Port Authority, faced with level traffic numbers and therefore revenue for the past eleven years and increasing expenses as a result of inflation, increasing costs for maintenance, and security needs, found no other alternative to requesting a toll increase. This bridge has not increased tolls since 1988 when truck tolls were increased; the last toll increase for autos was in 1985. As a Public Authority, we are required to raise our own operating revenues and submit an annual operating budget to Albany for approval. Our budget submitted for our 2005-06 fiscal year projected an operating loss of \$256,416. The proposed toll increase would have generated an additional \$393,464 in revenue to produce a projected profit at year-end. In reality, we are experiencing further decline in traffic as a result of increased proof of citizenship for persons traveling across our border with Canada and the unwillingness of persons to go through the current required inspection. In order to balance our budget and meet the increased operating expenses for this bridge, it is necessary to increase tolls as projected in our application.

The Ogdensburg Bridge and Port Authority, although it explored alternatives to increasing the bridge toll structure of the Ogdensburg-Prescott International Bridge, could not come up with any feasible options other than leaving the current toll structure in place or unchanged. The bridge is 45 years old, traffic numbers have been virtually stagnant the last five years, and costs continue to escalate.

A comparison of neighboring bridge tolls, analysis of traffic patterns and the trends affecting vehicular crossings, analysis of revenues and expenditures, analysis of the U.S. dollar, as well as multi-year projections were developed. Given the increasing costs of conservation, maintenance, operation, and protection of the structure against terrorist attack, it was determined that a rate hike was necessary.

The expected loss from bridge operations for the year ending March 31, 2007, is expected to be approximately \$360,000. Along with cutting costs, the proposed toll increase should provide approximately \$350,000 in additional revenue. Therefore, amendment to the toll structure, in comparison with other neighboring bridge toll structures, will ensure sufficient revenues to properly administer the Ogdensburg Bridge International Bridge.

COSTS: There will be no fiscal impact on State, local governments, regulated parties, nor incremental costs to the Ogdensburg Bridge and Port Authority. However, there will be a negative fiscal impact on individuals utilizing this crossing due to the proposed increase in tolls. Based on "The Inflation Calculator," a \$2.00 item in 1985 (the last time the passenger car toll was increased) should cost \$3.38 today (<http://westegg.com/inflation/>). Our proposal is to increase the passenger car toll from \$2.00 to \$2.75, although a substantial increase still a bargain compared to the 1985 dollar.

LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with the amendment of the Authority's Rules and Regulations.

PAPERWORK: The proposed amendment will not create new reporting or documentation to be prepared.

DUPLICATION: The proposed amendment does not duplicate any existing State or Federal regulations.

ALTERNATIVES: As pointed out above, the Ogdensburg Bridge and Port Authority explored other alternatives to meet its increased costs but could not find any viable alternative to the proposed toll increase. Traffic

patterns are flat and actually starting to decline, and costs continue to escalate upwards. These factors, coupled with an aging asset in need of increased maintenance, force us to seek the requested toll increase.

FEDERAL STANDARDS: There are no Federal standards associated with the amendment of the Authority's Rules and Regulations.

COMPLIANCE SCHEDULE: A compliance schedule has not been developed since regulated persons are not affected by this proposed ruling.

IMPLEMENTATION DATE: July 12, 2006.

Regulatory Flexibility Analysis

EFFECT OF RULE: Although this proposed rule will increase the cost to those businesses using this bridge to cross into and out of Canada, we do not feel the increase proposed is burdensome. The last increase for passenger vehicles was in 1985 when the toll went to \$2.00. The "Inflation Calculator" calculates that an item costing \$2.00 in 1985 should cost the consumer \$3.38 in 2003 (<http://westegg.com/inflation/>). The \$2.75 proposed is almost 23 percent less than the rate of inflation.

COMPLIANCE REQUIREMENTS: It is not anticipated that any additional reporting, recordkeeping, or other affirmative action will be required by small businesses or local government.

PROFESSIONAL SERVICES: It is not expected that any types of professional services will be required by small businesses or local government in order to comply with the proposed rule.

COMPLIANCE COSTS: It is not expected that any initial capital costs will be incurred by regulated businesses, industry, or local governments to comply with the proposed rule.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY: Although there is some impact on small businesses and individuals, it will be less than the rate of inflation since the last toll increase. A 75-cent increase is not deemed meaningful, nor is it deemed sufficient to warrant further economic feasibility study.

MINIMIZING ADVERSE IMPACT: In developing the proposed toll structure, the Authority developed comparisons of neighboring bridge toll structures, analysis of traffic patterns and the trends affecting vehicular crossings, analysis of revenues and expenditures, analysis of inflation of the U.S. dollar, and multi-year projections. The proposed rule was also designed so that implementation of the proposed toll structure would be less than the inflationary effect on the basic toll. For this reason, it is not anticipated that the proposed rule would have an adverse economic impact on small businesses or local government.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: The Ogdensburg Bridge and Port Authority holds public monthly Board Meetings, and notice of our meetings are distributed to media (radio, television, and newspaper organizations). Meeting notices are then broadcasted and published in newspapers. The Authority's intent to increase the toll structure of the Ogdensburg-Prescott International Bridge has been reported at these meetings, and our reports have been broadcasted and published in local newspapers.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS: This rule will have a minimal affect the Ogdensburg and the surrounding communities of St. Lawrence County.

REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES: The proposed rule will not require reporting, recordkeeping, or other compliance requirements nor will it require professional services.

COSTS: There will be no fiscal impact on State and local governments nor incremental costs to the Ogdensburg Bridge and Port Authority. There will be a minimal fiscal impact on those individuals and businesses that use this bridge to go into and out of Canada. The impact is deemed minimal based on comparison to toll structures of other bridges in the area and the fact that the last toll increase for passenger vehicles was in 1985. The proposed increase for passenger vehicles raises the toll from \$2.00 to \$2.75. Based on the "Inflation Calculator," an item purchased in 1985 for \$2.00 should cost \$2.38 in 2003 (<http://westegg.com/inflation/>). The toll increase proposed is less than the cumulative rate of inflation over the past ten years. There will be no costs incurred by the regulating agency for implementation and continued administration of this rule.

MINIMIZING ADVERSE IMPACT: The Ogdensburg Bridge and Port Authority, although it explored alternatives to increasing the bridge toll structure of the Ogdensburg-Prescott International Bridge, could not come up with any feasible options other than leaving the current toll structure in place or unchanged. As a result of leaving the current toll structure unchanged, the expected loss from bridge operations for the year ending March 31, 2006, is expected to be approximately \$360,000.

RURAL AREA PARTICIPATION: The proposed rule was presented for authorization and approval at the Ogdensburg Bridge and Port Authority Board of Directors at its February 7, 2006, Board Meeting which was an open meeting for the public and was therefore made a part of the public record.

Job Impact Statement

A Job Impact Statement is not submitted since it is not expected that the proposed rule will have a substantial adverse impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Deferral and Recovery of Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-46-03-00015-A

Filing date: April 21, 2006

Effective date: April 21, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order in Case 03-E-1332, approving the petition of Consolidated Edison Company of New York, Inc. to recover the direct and administrative costs of the Demand Management Program.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Consolidated Edison Company of New York, Inc.'s petition to recover the costs to administer and execute the demand-management contracts that were received in response to its June 2003 Demand Side Management Program.

Purpose: To approve Consolidated Edison Company of New York, Inc.'s request to recover costs associated with the implementation of a Demand Side Management Program.

Substance of final rule: The Commission approved a request by Consolidated Edison Company of New York, Inc. to recover the direct and administrative costs of the demand management program that is the subject of its September 18, 2003 petition on an as incurred basis over five-year periods, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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-1332SA1)

NOTICE OF ADOPTION

Real Time Pricing of Electric Utility Commodity Service

I.D. No. PSC-41-05-00026-A

Filing date: April 24, 2006

Effective date: April 24, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order in Case 03-E-0641, concerning mandatory real time pricing of electric utility commodity service for additional large customer service classifications.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12)

Subject: Real time pricing of electric utility commodity service.

Purpose: To approve mandatory real time pricing of electric utility commodity service for additional larger customers service classifications.

Substance of final rule: The Commission adopted an order approving making real time pricing of electric utility commodity service mandatory for additional large customer service classifications, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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-0641SA2)

NOTICE OF ADOPTION

Implementation of a Surcharge by Aquarion Water Company of New York

I.D. No. PSC-47-05-00012-A

Filing date: April 21, 2006

Effective date: April 21, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order approving the request of Aquarion Water Company of New York (Aquarion) for permission to surcharge to recover increased costs of purchased water from Westchester Join Water Works and Aquarion Water Company of Connecticut.

Statutory authority: Public Service Law, section 89-c(10)

Subject: To implement a surcharge to recover increased costs of purchased water.

Purpose: To approve Aquarion's request for a surcharge that would recover amounts associated with the increased costs of purchased water.

Substance of final rule: The Commission adopted an order approving Aquarion Water Company of New York's request to implement a surcharge to recover increased purchased water costs by Westchester Joint Water Works and Aquarion Water Company of Connecticut, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (05-W-1399SA1)

NOTICE OF ADOPTION

Competitive Opportunities Development Plan by Niagara Mohawk Power Corporation

I.D. No. PSC-01-06-00013-A

Filing date: April 20, 2006

Effective date: April 20, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's joint proposal on retail access issues.

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

Subject: To implement Niagara Mohawk Power Corporation d/b/a National Grid's joint proposal on certain retail access issues in accordance with its competitive opportunities development plan.

Purpose: To approve Niagara Mohawk Power Corporation d/b/a National Grid's joint proposal on certain retail access issues in accordance with its competitive opportunities development plan.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's d/b/a National Grid joint proposal on retail access issues in accordance with its Competitive Opportunities Development Plan, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (05-M-0333SA1)

NOTICE OF ADOPTION

Supplemental Home Energy Assistance Benefits by Central Hudson Gas & Electric Corporation

I.D. No. PSC-06-06-00003-A

Filing date: April 24, 2006

Effective date: April 24, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order in Case 00-G-1274, making permanent the April 24, 2006 order approving Central Hudson Gas & Electric Corporation's request to use certain surplus ratepayer funds from the Powerful Opportunities Program to provide a supplemental benefit to low-income customers that are HEAP recipients.

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

Subject: To supplement home energy assistance benefits for low-income customers for the winter heating season.

Purpose: To approve, as a permanent rule, a supplemental benefit to Central Hudson's low-income customers to help them meet expected high bills during the winter heating season due to unprecedented high market prices for gas and electricity.

Substance of final rule: The Commission adopted as a permanent rule Central Hudson Gas and Electric Corporation's proposal to give its low-income customers a supplemental home energy assistance benefit of \$200 per customer to assist in paying their energy bills this winter.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (00-E-1273SA11)

NOTICE OF ADOPTION

Supplemental Home Energy Assistance Benefits by Central Hudson Gas & Electric Corporation

I.D. No. PSC-06-06-00004-A

Filing date: April 24, 2006

Effective date: April 24, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order in Case 00-G-1274, making permanent the April 24, 2006 order approving Central Hudson Gas & Electric Corporation's request to use certain surplus ratepayer funds from the Powerful Opportunities Program to provide a supplemental benefit to low-income customers that are HEAP recipients.

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

Subject: To supplement home energy assistance benefits for low-income customers for the winter heating season.

Purpose: To approve, as a permanent rule, a supplemental benefit to Central Hudson's low-income customers to help them meet expected high bills during the winter heating season due to unprecedented high market prices for gas and electricity.

Substance of final rule: The Commission adopted as a permanent rule Central Hudson Gas and Electric Corporation's proposal to give its low-income customers a supplemental home energy assistance benefit of \$200 per customer to assist in paying their energy bills this winter.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (00-G-1274SA5)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Property Tax Refunds by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-19-06-00011-P

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

Proposed action: The commission is considering whether to approve, modify or reject, in whole or in part, the petition of Niagara Mohawk Power Corporation d/b/a National Grid regarding: (1) the disposition of \$4 million of property tax refunds received from the Town of Marcy after challenges to its tax assessments were made for 1995 - 2004; (2) the disposition of property tax expense reductions related to 2005 - 2007 assessment reductions; and (3) request for waiver of the 60 day deadline under 16 NYCRR section 89.3(b) for submitting notification of the property tax refund.

Statutory authority: Public Service Law, section 113-2

Subject: Disposition of the property tax refund received from the Town of Marcy by National Grid.

Purpose: To determine the disposition of the property tax refund received by National Grid from the Town of Marcy.

Public hearing(s) will be held at: 10:00 a.m., June 28, 2006* at the Public Service Commission, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*There could be requests to reschedule the hearing. Notification of any subsequent scheduling changes will be available at the DPS Web Site (www.dps.state.ny.us) under Case No. 06-M-0377.

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

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

Substance of proposed rule: The Commission is considering whether to approve, reject or modify, in whole or in part, the petition of Niagara Mohawk Power Corporation d/b/a National Grid for the disposition of property tax refunds it has received/will receive for tax years 1995-2004. National Grid challenged certain property tax assessments and a Stipulation of Settlement was reached with the Town of Marcy, County of Oneida, and the Whitesboro and Holland Patent School Districts calling for \$4.0 million in refunds. In addition, the Stipulation of Settlement reduces the challenged property tax assessments for the years 2005 - 2007. National Grid proposes that the refund amount be included in its calculation of earnings, and be subject to the Earnings Sharing Mechanism established in the Merger Rate Plan in Case 01-M-0075. National Grid's filing did not address the ratemaking for the 2005 - 2007 property tax assessment reductions.

In addition, National Grid requests waiver of the 60 day deadline under 16 NYCRR § 89.3(b) for submitting its notification of the property tax refund.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

Data, views or argument may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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.

(06-M-0377SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Telephone Network Reliability by the New York Coalition of Rural Independent Companies

I.D. No. PSC-19-06-00006-P

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

Proposed action: On February 23, 2006, the commission issued its "order granting in part and denying in part requests for exemptions" in case 03-C-0922 - Proceeding on Motion of the Commission to Examine Telephone Network Reliability. That order directs the implementation of geographic route diversity for some offices of specific telephone companies. On March 27, 2006, a petition was filed by the New York Coalition of Rural Independent Telephone Companies seeking clarification or, in the alternative, rehearing of that February order. The commission is considering further action with respect to issues raised by the petition in this proceeding.

Statutory authority: Public Service Law, art. 5, sections 91 and 98

Subject: Telephone network reliability.

Purpose: To clarify or modify requirements that specific telecommunications carriers implement geographic route diversity to enhance telephone network reliability in New York State.

Substance of proposed rule: On February 23, 2006, the Commission issued its "Order Granting in Part and Denying in Part Requests for Exemptions" in Case 03-C-0922 - Proceeding on Motion of the Commission to Examine Telephone Network Reliability. That Order directs the implementation of geographic route diversity for some offices of specific telephone companies on March 27, 2006, a petition was filed by the New York Coalition of Rural Independent Telephone Companies seeking clarification or, in the alternative, rehearing of that February Order. That petition concerns who pays for the cost of redundant facilities in those instances when more than one carrier is needed to establish the required diversity. The Commission may or may not clarify its Order, allow for a rehearing, or take further action with respect to issues raised by the petition in this proceeding.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(03-C-0922SA3)

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

Interconnection Agreement between Citizens Telecommunications Company of New York and Granite Telecommunications, LLC

I.D. No. PSC-19-06-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York and Granite Telecommunications, LLC for approval of an interconnection agreement executed on March 9, 2006.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Citizens Telecommunications Company of New York and Granite Telecommunications, LLC have reached a negotiated agreement whereby Citizens Telecommunications Company of New York and Granite Telecommunications, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until March 9, 2007, or as extended.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-C-0442SA1)

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

Interconnection Agreement between Frontier Communications of New York, Inc. and Granite Telecommunications, LLC

I.D. No. PSC-19-06-00008-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 approve or reject, in whole or in part, a proposal filed by Frontier Communications of New York, Inc. and Granite Telecommunications, LLC for approval of an interconnection agreement executed on March 9, 2006.

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

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Frontier Communications of New York, Inc. and Granite Telecommunications, LLC have reached a negotiated agreement whereby Frontier Communications of New York, Inc. and Granite Telecommunications, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until March 9, 2007, or as extended.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-C-0443SA1)

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

Electric Service Agreement between the City of Salamanca Board of Public Utilities and the Seneca Territory Gaming Corporation

I.D. No. PSC-19-06-00009-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 approve, modify or reject, in whole or in part, a petition filed by the City of Salamanca Board of Public Utilities for approval of an electric service agreement between the City of Salamanca Board of Public Utilities and the Seneca Territory Gaming Corporation.

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

Subject: Electric services agreement.

Purpose: To approve an electric service agreement.

Substance of proposed rule: The Public Commission is considering whether to approve, modify or reject, in whole or in part, an Electric Service Agreement (ESA) filed by the City of Salamanca Board of Public Utilities (BPU). The ESA is between the BPU and the Seneca Territory Gaming Corporation (STGC) and sets the charges and rates to be charged by the BPU for provision of energy and power services to the STGC for use at a Casino, Hotel and Tourist Destination Project, including associated retail and restaurant establishments that STGC is constructing on the Seneca Nation of Indians Allegany Reservation. In addition, associated water and wastewater treatment facilities being constructed by the Seneca Nation of Indians will also be charged rates set in the ESA.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-E-0447SA1)

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

Transfer of Ownership Interests by Central Hudson Gas and Electric Corporation

I.D. No. PSC-19-06-00010-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 whether to approve or reject, in whole or in part, a petition filed by Central Hudson Gas and Electric Corporation requesting approval of the transfer of its

ownership interest in the Neversink Hydroelectric Generating Facility and related assets to the City of New York.

Statutory authority: Public Service Law, section 70

Subject: Transfer of the Neversink Hydroelectric Generating Facility and related assets.

Purpose: To consider the petition filed by Central Hudson Gas and Electric Corporation.

Substance of proposed rule: The Commission is considering whether to approve or reject in whole or in part a petition filed by Central Hudson Gas and Electric Corporation (Central Hudson) requesting approval of the transfer of its ownership interest in the Neversink Hydroelectric Generating Facility and related assets to the City of New York (City). Central Hudson's request for permission to transfer the Neversink Plant is based on an agreement dated April 21, 1948 entered into by Central Hudson and the City in settlement of damage claims that arose in connection with the City having acquired the right to divert waters of the Rondout Creek which impaired the productive capacity of two hydroelectric sites owned by Central Hudson. The 1948 Agreement allowed Central Hudson to construct, operate and maintain a hydroelectric generating plant that used water flowing through the Neversink Tunnel to power the turbine generator for a period of fifty years from the commencement of operations of the hydroelectric plant. The 1948 Agreement states that upon its termination the complete hydroelectric plant to be built by Central Hudson and facilities used to connect the plant with the transmission systems of Central Hudson shall become the property of the City and Central Hudson shall agree to formally convey such property to the City at that time, free and clear of any and all encumbrances.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-E-0452SA1)

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

Transfer of Property by Consolidated Edison Company of New York, Inc. and 405 West 53rd Development Group, LLC

I.D. No. PSC-19-06-00012-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 approve or reject, in whole or in part, a joint petition by Consolidated Edison Company of New York, Inc. and 405 West 53rd Development Group, LLC for approval of the transfer of certain real property located at 405-427 W. 53rd St., New York, NY and for related relief.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To transfer property.

Substance of proposed rule: The Commission is considering a request by Consolidated Edison Company of New York, Inc., (Con Edison) and 405 West 53rd Development Group, LLC for authority under Section 70 of the Public Service Law to transfer certain real property located at 405-427 West 53rd Street, New York, New York from D.C.K. Management, a subsidiary of Con Edison, to West 53rd Development Group, LLC and for related relief. The property is to be transferred pursuant to a sale and

purchase agreement between D.C.K. Management and West 53rd Development Group. The Commission may approve, reject or modify, in whole or in part, the parties' request.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-M-0407SA1)

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

Transfer of Certain Bill Inserter Equipment by Niagara Mohawk Power Corporation d/b/a National Grid and Pitney Bowes Management Services, Inc.

I.D. No. PSC-19-06-00013-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 approve or reject, in whole or in part, a joint petition filed by Niagara Mohawk Power Corporation d/b/a (National Grid) and Pitney Bowes Management Services, Inc. (PBMS) for authority to transfer certain bill inserter equipment to PBMS.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain bill inserter equipment by National Grid.

Purpose: To approve the transfer of certain bill inserter equipment from National Grid to PBMS.

Substance of proposed rule: The Public Services Commission is considering whether to approve, modify or reject, in whole or in part, a joint petition filed on April 13, 2006, by Niagara Mohawk Power Corporation d/b/a (National Grid) an Pitney Bowes Management Services, Inc. (PBMS) for authority, pursuant to Public Service Law Section 70, to transfer certain bill inserter equipment to PBMS. The equipment has a remaining book value of \$766,995 as of December 31, 2004, and is being sold to PBMS for \$363,800. The parties state that the sales price was determined based on the mutually agreed upon value of the equipment. The transfer of the equipment is part of a continuing arrangement between PBMS and National Grid, wherein PBMS will utilize the equipment to continue to provide bill handling services to National Grid.

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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(06-M-0444SA1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-10-06-00002-A

Filing No. 500

Filing date: April 25, 2006

Effective date: April 25, 2006

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 of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning April 1, 2006, and ending June 30, 2006, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-10-06-00002-P, Issue of March 8, 2006.

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, Bldg., 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Bartlett@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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-19-06-00021-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 of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning July 1, 2006, and ending Sept. 30, 2006, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

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 (xlili) to read as follows:

Sales Tax Component	Motor Fuel		Aggregate Rate	Sales Tax Component	Diesel Motor Fuel	
	Composite Rate	Aggregate Rate			Composite Rate	Aggregate Rate
(xlii) April - June 2006	15.7	23.7	39.6	17.2	25.2	39.35
(xlili) July - September 2006	17.2	25.2	41.10	17.9	25.9	40.05

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, Bldg., 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Bartlett@tax.state.ny.us

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Technical Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153, e-mail: Marilyn_Kaltenborn@tax.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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Taxpayer Record Retention Formats

I.D. No. TAF-19-06-00022-P

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

Proposed action: This rule is proposed pursuant to SAPA § 207(3), 5-Year Review of Existing Rules. This is a consensus rule making to amend section 2402.1(a) of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subdivisions First and Fourteenth

Subject: Taxpayer record retention formats.

Purpose: To update the Department's procedural regulations to reflect L. 2004, ch. 437.

Text of proposed rule: Section 1. Subdivision (a) of section 2402.1 of such regulation is amended to read as follows:

(a) "Taxpayer's option to choose." Notwithstanding any other provision of this Title and unless specifically provided for otherwise by law, any record that is required to be retained by a taxpayer may be retained pursuant to the provisions of this Part in either hard-copy format or electronic format (or both) at the discretion of the taxpayer. For examples of statutory exceptions to allowing the retention of records electronically, see section [107] 307 of the State Electronic Signatures and Records Act ([Laws 1999, chapter 4] *New York State Technology Law, section 301 "et seq."*) and section [103] 7003 of the Federal Electronic Signatures in Global and National Commerce Act ([Public Law 106-229] *15 USCS, section 7001 "et seq."*).

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, Bldg., 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Bartlett@tax.state.ny.us

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Technical Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153, e-mail: Marilyn_Kaltenborn@tax.state.ny.us

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

Reasoned Justification For Modification Of The Rule

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 4, 2006, State Register a list of rules that were adopted by the Commissioner of Taxation and Finance in 2001 and a notice of the Department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. This information was also posted to the Department's Web site (http://www.tax.state.ny.us/rulemaker/regulations/regulatory_agenda.htm) on December 29, 2005. Comments from the public concerning the continuation or modification of these rules were invited until February 21, 2006. No public comments were received by the Department concerning the amendments made in 2001 that added Part 2402, "Taxpayer Record Retention Formats," to the Procedural Regulations, as published in Chapter IX of Title 20 NYCRR. Such amendments were adopted by the Commissioner on an emergency basis on May 22, 2001, and published in the State Register on June 6, 2001, (I.D. # TAF-23-01-00043-EP). The permanent adoption was later published in the Register on August 8, 2001, (I.D. # TAF-23-01-00043-A).

This notwithstanding, the Department has determined as a result of its 2006 review that because of recent statutory changes enacted by Chapter 437 of the Laws of 2004, the 2001 amendments are now dated and should be modified. Chapter 437 renumbered the Electronic Signatures and Records Act from Article I of the State Technology Law to Article III of

such Law. Because section 2402.1(a) of the subject regulations cites a section within former Article I, this section of the regulations should be amended to reflect the current statute as renumbered.

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 these amendments merely repeal regulatory citations to law that are no longer applicable and conform to nondiscretionary statutory changes that were enacted in 2004; the amendments are simply technical changes that are not controversial in nature.

Chapter 437 of the Laws of 2004 renumbered the Electronic Signatures and Records Act from Article I of the State Technology Law to Article III of such Law. Because section 2402.1(a) of the Department's Procedural Regulations cites a section within former Article I, it was determined during the five-year statutory review (State Administrative Procedure Act, section 207) that this section of the regulations was dated and should be modified. This rule merely updates section 2402.1(a) to reflect Chapter 437 and, tangentially, updates references to the underlying State and Federal legislation.

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 and employment opportunities. This rule simply updates the Department's Procedural Regulations to reflect Chapter 437 of the Laws of 2004 (which renumbered provisions of the State Technology Law) and, tangentially, updates references to the underlying State and Federal legislation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting and Paying Unpaid Sales and Compensating Use Taxes by Purchasers

I.D. No. TAF-19-06-00023-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 sections 531.6, 532.1(e), 533.4(b)(3), and 537.3(e) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First; 1133, subdivisions (b) and (c); 1142, subdivisions (1) and (8); 1250 (not subdivided); and L. 2003, ch. 62, Part R3, as amended by L. 2003, ch. 686, Part V

Subject: Reporting and paying unpaid sales and compensating use taxes by purchasers.

Purpose: To update the sales and compensating use tax regulations to reflect L. 2003, chs. 62 and 686.

Text of proposed rule: Section 1. Subdivision (a) of section 531.6 of the regulations is amended to read as follows:

(a) Any person[,] *who is* not required to file periodic returns under section 533.3(a) of this Title[,] *and* who purchases or uses property or services subject to the *sales or compensating use tax* must file a [Purchaser's Report of Sales and Use Tax] *report of sales and use tax with the Department of Taxation and Finance and pay the taxes that are due.* [Also, any person not required to file periodic returns who purchases or uses property or services subject to the sales tax and who has not paid the tax to the seller must file a Purchaser's Report of Sales and Use Tax.]

Section 2. The examples in subdivision (b) of section 531.6 of the regulations are REPEALED, and the opening clause of such subdivision is amended to read as follows:

(b) [The Purchaser's Report of Sales and Use Tax] *Except as otherwise provided in this section, the report of sales and use tax* must be filed and the tax paid within 20 days from the date that:

Section 3. Subdivision (c) of section 531.6 of the regulations is amended to read as follows:

(c) A [Purchaser's Report of Sales and Use Tax] *report of sales and use tax* may be obtained from the Department of Taxation and Finance [by contacting the Taxpayer Assistance Bureau at the phone number or address listed in section 525.3(c) of this Title. In the case of]. *For sales and purchases of motor vehicles, snowmobiles, vessels, and all terrain vehicles, however, see subdivision (f) of this section.*

Section 4. Subdivision (d) of section 531.6 of the regulations is amended to read as follows:

(d) A properly completed [Purchaser's Report of Sales and Use Tax] *report of sales and use tax* is to be prepared in accordance with the instructions provided by the Department of Taxation and Finance.

Section 5. Subdivision (f) of section 531.6 of the regulations is amended to read as follows:

(f) "Purchases and uses of motor vehicles, snowmobiles, vessels, and all terrain vehicles." (1) Before any motor vehicle, snowmobile, vessel, or all terrain vehicle may be registered or any application for a certificate of title of a motor vehicle or vessel may be accepted, the *appropriate* State and [any appropriate] local sales or use taxes due on its purchase or use (accompanied by the form or forms approved by the Commissioner of Taxation and Finance and the Commissioner of Motor Vehicles) must be paid. If sales or use tax has not been paid to a vendor registered pursuant to section 533.1 of this Title, then it must be paid to the: [(1)]

(i) clerk of any county performing the functions of registering motor vehicles, snowmobiles, vessels, and all terrain vehicles and accepting applications for [a certificate]*certificates* of title for motor vehicles and vessels; or [(2) to the]

(ii) Commissioner of Motor Vehicles in all other counties. Proper forms may be obtained from such county clerks or the Commissioner of Motor Vehicles.

(2) If *the tax has not been paid to a registered vendor* and the motor vehicle, snowmobile, vessel, or all terrain vehicle is not registered or titled, then the purchaser or user must file a [Purchaser's Report of Sales and Use Tax] *report of sales and use tax* and pay the tax due in accordance with [subdivisions (a) through (e)] *the provisions* of this section.

Section 6. Subdivision (g) of section 531.6 of the regulations is amended to read as follows:

(g) In lieu of filing a separate compensating use tax return within the time set forth in subdivision (b) of this section, the Department of Taxation and Finance may require that the State and local compensating use tax imposed on liquors imported into the State, whether under the authority of a distributor's special permit as prescribed in section [323.3] 68.3 of this Title or otherwise, be reported and paid in the same manner and at the same time as the alcoholic beverage taxes imposed upon such liquors.

Section 7. A new subdivision (h) is added to section 531.6 of the regulations to read as follows:

(h) Part R3 of Chapter 62 of the Laws of 2003, as amended by Part V of Chapter 686 of the Laws of 2003, directed the Commissioner of Taxation and Finance to insert new lines in such personal income tax forms and other tax forms as the commissioner deems appropriate to report unpaid sales and compensating use tax. Therefore, notwithstanding any other provision of this Title, unpaid sales and compensating use taxes may be reported and paid to the department as prescribed in such personal income tax forms or other tax forms as the commissioner deems appropriate.

Section 8. Subdivision (e) of section 532.1 of the regulations is amended to read as follows:

(e) "Payment and [returns] *report* by customer." Where any customer has authority to pay sales tax imposed by article 28 and pursuant to the authority of article 29 of the Tax Law to the person required to collect the tax, such tax shall be payable by the customer directly to the Department of Taxation and Finance, and it shall be the duty of the customer to file a [return] *report of sales and use tax* with the Department of Taxation and Finance and to pay the tax [within 20 days of the date the tax was required to be paid] *as provided in section 531.6 or 533.3 of this Title.* For special rules concerning direct payment permit holders, see section 532.5 of this Part.

Section 9. Paragraph (3) of subdivision (b) of section 533.4 of the regulations is amended to read as follows:

(3) Payment of tax on casual sales. Any person who, although not required to register as a vendor, is otherwise required to collect or pay sales tax on casual sales[,] must pay over to the Department of Taxation and Finance, within 20 days of the date of the sale if the sale occurred in New York State, the amount provided for in paragraph (1) of this subdivision. If [the] *a* sale to a resident of New York occurred outside New York State, then the tax must be paid over to the Department of Taxation and Finance [within 20 days after the property is brought into New York State] by the New York resident *as provided in section 531.6 of this Title.*

Section 10. Subdivision (e) of section 537.3 of the regulations is amended to read as follows:

(e) The purchaser may pay any taxes due on the purchase of any tangible personal property directly to the Department of Taxation and Finance [within 20 days after the date of sale] *as provided in section 531.6 or 533.3 of this Title.*

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, Bldg., 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Bartlett@tax.state.ny.us

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Technical Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153, e-mail: Marilyn_Kaltenborn@tax.state.ny.us

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 these amendments merely repeal regulatory provisions that are no longer applicable; implement and conform to nondiscretionary statutory provisions that were enacted in 2003; and make other technical, editorial, and conforming changes that are not controversial in nature.

Part R3 of Chapter 62 of the Laws of 2003, as amended by Part V of Chapter 686 of the Laws of 2003, reads, in part, as follows:

Notwithstanding any provision of law, rule or regulation to the contrary, the commissioner of taxation and finance shall insert new lines in such personal income tax forms and other tax forms as the commissioner deems appropriate to report unpaid sales and compensating use tax imposed pursuant to articles 28 and 29 of the tax law....

Pursuant to this legislative directive, the Department included lines in the personal income tax returns to report and pay unpaid sales and use taxes, and created Form ST-140, Individual Purchaser's Annual Report of Sales and Use Tax, to allow individuals, estates, and trusts that are not otherwise required to file personal income tax returns to also report and pay their sales and use tax liabilities on an annual basis. The Department also created Form ST-141, Individual Purchaser's Periodic Report of Sales and Use Tax, to be filed at the discretion of individuals, estates, and trusts that choose not to defer payment of tax to an annual basis. In conjunction with these efforts, the Department revised existing Form ST-130, now the Business Purchaser's Report of Sales and Use Tax, for use by New York State businesses that are not registered or required to be registered for sales tax purposes. In accordance with the existing regulation, the revised ST-130 continues to be filed within 20 days after the date of a taxable transaction, as was the former ST-130, Purchasers Report of Sales and Use Tax.

This rule updates section 531.6 of the Department's regulations, "Reporting of sales and use tax by purchasers not required to file periodic returns," to delete erroneous references to a form that no longer exists (i.e., Purchaser's Report of Sales and Use Tax) and to codify the statutory exception. The rule also makes technical, editorial, and conforming changes to update pertinent sections 532.1(e), 533.4(b)(3), and 537.3(e) of the 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 and employment opportunities. This rule simply updates the sales and compensating use tax regulations to reflect Part R3 of Chapter 62 of the Laws of 2003, as amended by Part V of Chapter 686 of the Laws of 2003.