

# RULE MAKING ACTIVITIES

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

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

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

---

---

## Banking Department

---

---

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

#### Authorization of Providers of Education Courses for Mortgage Loan Originators and Establishing Administrative Requirements

I.D. No. BNK-33-08-00002-P

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

**Proposed Action:** Addition of new Supervisory Procedure MB 108 to Title 3 NYCRR.

**Statutory authority:** Banking Law, Article 12-E

**Subject:** Authorization of providers of education courses for mortgage loan originators and establishing administrative requirements.

**Purpose:** To set forth the details of the application procedure and certain administrative responsibilities of education providers.

**Substance of proposed rule (Full text is posted at the following State website: [www.banking.state.ny.us](http://www.banking.state.ny.us)):** Section 108.1 contains definitions of defined terms used in the Supervisory Procedure, including distinguishing between “Approved Providers” (those approved by the Superintendent) and “Authorized Providers” (those authorized by the statute). It also defines Course Records (which are important for the recordkeeping requirements).

Section 108.2 describes the content of an application to be authorized by the Superintendent as an Approved Provider, and what happens when the Superintendent deems an application to be incomplete. It also notes that a list of Approved Providers, approved education courses and each trade association and education institution that has notified the Superintendent that it intends to offer Education Courses to MLOs authorized in New York will be available on the Banking Department’s website.

Section 108.3 repeats the statutory requirement that an Authorized Provider must make its own determination that each Education Course offered by it is consistent with the purpose of Article 12-E of the Banking Law. It also provides that an Authorized Provider may at its discretion apply for prior approval of Education Courses. At the same time, it makes clear that an Approved Provider may not give any Education Course unless the Superintendent has approved it, and may not accept payment for courses until approval has been received. It also sets forth the procedures for obtaining prior approval of courses, including the information about the course that should be provided to the Superintendent and the duration of an approval. Finally, it prohibits a provider from using an Education Course to promote a particular loan product or originating entity, requires each Provider to give the Superintendent a schedule of its course offerings and allow the Superintendent to audit courses, and authorizes the Superintendent to suspend or revoke a course approval if he or she finds that the course does not conform to the requirements of Article 12-E and the Provider does not timely rectify the deficiencies after having been notified thereof.

Section 108.4 sets forth the formats in which courses may be given. It requires Education Courses taken by Inexperienced Originators (those with less than 4 years of experience) to be in one of three formats: (i) a traditional live classroom setting, (ii) fully interactive video or audio conferences, where there is an opportunity for students to ask questions, or (iii) a format where the student cannot progress from one course segment to another or complete the course without answering questions that test the student’s comprehension of subjects previously covered. For experienced MLOs (those with 4 or more years of experience), it requires that half of the credit hours for each biennial or quadrennial continuing education period be in the same formats required for Inexperienced Originators.

Section 108.5 summarizes the subject matter of required courses for inexperienced originators.

Section 108.6 describes the subject matter of required courses for experienced MLOs.

Section 108.7 sets forth the requirements for certificates of course completion and for verifying that the student attended all required classes and sessions. It also explains how the number of credit hours for each course is to be calculated.

Section 108.8 sets forth the required qualifications for instructors of Education Courses.

Section 108.9 sets forth the obligations of providers of Education Courses with respect to record retention, distribution of written course evaluation questionnaires and ensuring that advertisements for Education Courses state whether the course is appropriate for Inexperienced or Experienced Originators.

Section 108.10 provides contact information for obtaining forms, instructions and assistance from the Banking Department.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sam. L. Abram, Secretary to the Banking Board, New York State Banking Department, One State St., New York, NY 10004-1416, (212) 407-1658, email: [sam.abram@banking.state.ny.us](mailto:sam.abram@banking.state.ny.us).

**Data, views or arguments may be submitted to:** Sam L. Abram, Secretary to the Banking Board, New York State Banking Department, One State St., New York, NY 10004-1416, (212) 407-1658, email: [sam.abram@banking.state.ny.us](mailto:sam.abram@banking.state.ny.us).

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

#### Regulatory Impact Statement

1. Statutory Authority. Article 12-E of the Banking Law, as amended by the Legislature in 2007, creates a framework for the regulation of mortgage loan originators (MLOs), who are the individuals employed by or affiliated with mortgage bankers and mortgage brokers and who engage in mortgage loan originating. MLOs must be authorized by the Superintendent of Banks. In addition, Section 599-d of the Banking Law, as a condition to initial authorization and subsequent annual authorization,

requires MLOs to take Education Courses relating to the current business of mortgage loan originating. These courses must include education in the statutory and regulatory requirements and judicial interpretations governing the mortgage industry and mortgage practices in New York, as well as courses in the ethics of mortgage loan originating and mortgage lending. The Banking Law designates certain entities as "Authorized Providers." These include certain trade associations as well as institutions of secondary education approved by the Board of Regents. The Banking Law also allows for other providers of Education Courses for MLOs to be approved by the Superintendent.

Superintendent's Regulation 420 contains rules designed to effectuate the requirements of Article 12-E. Supervisory Procedure MB 107 sets forth additional information on applications for authorization by mortgage loan originators. Both these proposed regulations have been adopted. The Superintendent is now publishing for comment Proposed Supervisory Procedure MB 108, which sets forth additional information on applications for authorization as an Approved Provider of Education Courses, and on applications for approval of individual courses.

2. **Legislative Objectives.** The legislature deems it necessary, in order to ensure the public welfare, that mortgage loan originators be subject to regulation by the Superintendent and that they be required to take a certain number of hours of Education Courses each prescribed education period. The recent problems with respect to sub-prime lending require immediate attention, and requiring MLOs to take Education Courses given by Authorized Providers or Approved Providers, including courses on the laws governing and ethical issues arising out of mortgage loan origination, will address many of the concerns that have been identified in the sub-prime mortgage market by improving the integrity and professionalism of individuals in the mortgage lending industry.

The continuing education requirements of Article 12-E, like those imposed on insurance brokers and real estate brokers, ensure that individuals engaging in the business of mortgage loan origination have a solid understanding of the mortgage business as well as an understanding of ethical business practices and relevant federal and state laws and regulations. In addition, the continuing education component of the law recognizes that laws, regulations and practices governing the mortgage industry are subject to continuing change and requires those individuals involved in mortgage origination to maintain an understanding of these changes.

By authorizing the Superintendent to determine which providers of Education Courses should be approved, the law helps to ensure that the courses taken by MLOs will achieve the legislative objective.

3. **Needs and Benefits.** This proposal is needed to implement the statute and is a natural outgrowth of the requirement for MLOs to take Education Courses. By increasing the level of knowledge of the laws and ethical practices in the industry, the proposed Supervisory Procedure will help to address the problems that led to the adoption of Article 12-E.

4. **Costs.** Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval, as well as record retention. Providers may, however, charge MLOs fees for attending the continuing education courses. The Department's increased effectiveness in fighting mortgage fraud and predatory lending is expected to lower costs related to litigation and to decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

The proposal will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. **Local Government Mandates.** None.

6. **Paperwork.** Supervisory Procedure MB 108 establishes an application process to apply for authorization as an Approved Provider of Education Courses for MLOs. Applicants must submit an application for provider approval and separate applications for course approval. Providers must retain certain records with respect to each course for at least four years.

7. **Duplication.** The proposed regulation does not duplicate, overlap or conflict with any other regulations.

8. **Alternatives.** The industry has supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of the statute, and its supporting regulation and Supervisory Procedures. In addition, the industry has been involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight where none previously existed. The purpose of the proposed regulation is to address problems that have arisen in the mortgage market while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. For example, the Department considered whether

it was desirable to require that MLO's with less than four years' experience to obtain continuing education only in a traditional live classroom setting, to facilitate the answering of questions and to ensure a high level of attention. Although the Department believes this may be the most desirable educational setting for inexperienced MLOs, the Department, concluded that alternative settings for continuing education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties or proposed providers of Education Courses. Such alternative settings may include fully interactive video or audio conferences or a format where the student cannot progress from one course segment to another or complete the course without answering questions that test the student's comprehension of subjects previously covered. In addition, experienced MLO may fulfill half their requirements for credit hours of Education Courses with an even broader selection of course formats.

9. **Federal Standards.** While federal regulators have issued guidance on the origination of mortgage products, the responsibility for regulating non-bank entities such as mortgage bankers and mortgage brokers is largely assumed by the states. Moreover, as the mortgage industry has fragmented in recent years, a significant share of the residential mortgage business, particularly the non-prime sector, has been served by these entities, which are typically licensed through state agencies. Although the U.S. House of Representatives has passed a bill, HR 3915, which would require the registration of MLOs and would require MLOs to fulfill certain pre-registration education course and testing requirements, it is not certain when or if such federal legislation will be passed. The existing bill relies heavily on the National Mortgage Licensing System developed by the Conference of State Bank Supervisors (CSBS), which is part of the registration system being adopted by the Superintendent under Article 12-E.

10. **Compliance Schedule.** The proposed regulation will become effective when approved. Individuals who engaged in mortgage loan origination before January 2008 will have until January 1, 2010 to comply with the initial education requirements. Those who became employed on or after January 1, 2008 must complete the initial education requirements by the end of the year in which the first anniversary of their authorization occurs. Approved Providers may not give Education Courses (or accept money for Education Courses) until they have been approved by the Superintendent.

#### **Regulatory Flexibility Analysis**

1. **Effect of the Rule:** The proposal will not have any impact on local governments. However, a large number of providers of education courses may be considered small businesses.

2. **Compliance Requirements:** In order to provide education courses to Mortgage Loan Originators that satisfy the education requirements under Article 12-E of the Banking Law, a provider of education course that is not (i) a trade association controlled by and whose membership comprises mortgage bankers, mortgage brokers or banking institutions, or (ii) an institution of post-secondary education chartered, approved or licensed by the Board of Regents, must be authorized by the Superintendent as an "Approved Provider." Moreover, trade associations that meet the requirements of clause (i) of this paragraph must maintain supervision of education courses satisfactory to the Superintendent. Approved Providers must also submit applications for approval of education courses they offer.

Section 108.2 describes the application process to become an Approved Provider. Paragraph (c)(14) of that Section notes that, in determining whether to grant approval of an application, the Superintendent expects that the applicant will have regularly sponsored or organized education courses in the past. Moreover, the applicant must demonstrate that it is capable of organizing education courses, including instructors with the requisite knowledge and experience, and is capable of administering the education course requirements of Article 12-E. The applicant must provide information as to the course formats it will use, as well as a description of the applicant's facilities for conducting or distributing education courses in those formats. Finally, the applicant must provide a copy of its refund policy and its procedures for verifying attendance at its courses.

Section 108.3 describes the process of approval of individual education courses. Such an application requires a detailed course outline that describes the topics covered and the time devoted to each topic, as well as information regarding the method the applicant will use to determine that the qualifications and criminal history of course instructors satisfy regulatory requirements.

Approved Providers of education courses have a number of obligations under Supervisory Procedure 108. This includes the requirement to retain, for at least four years from the date a course was given, certain records with respect to each course, the obligation to distribute written evaluation questionnaires in which students may evaluate the course content, instruction and materials and retain completed questionnaires for at least four years, and the obligation to ensure that course advertisements that describe individual education courses state whether the course is appropriate for inexperienced or experienced originators.

Some education providers seeking to participate in the MLO continuing education program may be small businesses. Those providers must submit an application for provider approval and separate applications for course approval and maintain records of course programs and attendance. The Department believes that this rule will not impose a burdensome set of requirements on small businesses, except to the extent required by Article 12-E.

3. Professional Services: None.

4. Compliance Costs: Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval, as well as in making provisions for monitoring or verifying attendance and in recordkeeping. Providers may, however, recover these expenses by charging fees for attending the continuing education courses.

5. Economic and Technological Feasibility: The proposed rule-making should impose no adverse economic or technological burden on education providers who are small businesses.

6. Minimizing Adverse Impacts: The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, these businesses were involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight where none previously existed without having an adverse impact on small business. The Department worked with mortgage businesses during rule development to minimize adverse impacts in many instances. For example, the Department considered an examination requirement for mortgage loan originators, as is currently the practice with real estate brokers and sales persons. The Department, however, believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. Similarly, the Department discussed whether it was desirable to require that MLOs with less than four years' experience to obtain continuing education only in a traditional live classroom setting, to facilitate the answering of questions and to ensure a high level of attention. Although the Department believes this may be the most desirable educational setting for inexperienced MLOs, the Department, concluded that alternative settings for continuing education would adequately address the intent of the statute, without imposing undue burdens upon regulated parties. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute.

7. Small Business and Local Government Participation: Representatives of the following entities participated in a number of outreach meetings that were conducted during both the statutory and regulatory drafting process: New York Association of Mortgage Brokers; New York Bankers Association; Empire State Mortgage Bankers Association; Citigroup; HSBC; Mortgage Bankers Association; and representatives from GORR.

#### **Rural Area Flexibility Analysis**

Types and Estimated Numbers: The New York State Banking Department currently licenses over 2,700 mortgage bankers and brokers throughout the state and anticipates that up to 40,000 mortgage loan originators may register in 2008. Many of these entities and MLOs will be operating in rural areas of New York State. Consequently, it is possible that the education providers that seek to provide education courses to MLOs will also be operating in rural areas of New York State and would be impacted by the proposal.

Compliance Requirements. In order to provide education courses to Mortgage Loan Originators that satisfy the education requirements under Article 12-E of the Banking Law, an education course provider that is not (i) a trade association controlled by and whose membership comprises mortgage bankers, mortgage brokers or banking institutions, or (ii) an institution of post-secondary education chartered, approved or licensed by the Board of Regents, must be authorized by the Superintendent to be an "Approved Provider." Moreover, trade associations that meet the requirements of clause (i) of this paragraph must maintain supervision of education courses satisfactory to the Superintendent. Approved Providers must also submit applications for approval of education courses they offer.

Section 108.2 describes the application process to become an Approved Provider. Paragraph (c)(14) of that Section notes that, in determining whether to grant approval of an application, the Superintendent expects that the applicant will have regularly sponsored or organized education courses in the past. Moreover, the applicant must demonstrate that it is capable of organizing education courses, including instructors with the requisite knowledge and experience, and is capable of administering the education course requirements of Article 12-E. The applicant must provide information as to the course formats it will use, as well as a description of the applicant's facilities for conducting or distributing education courses

in those formats. Finally, the applicant must provide a copy of its refund policy and its procedures for verifying attendance at its courses.

Section 108.3 describes the process of approval of individual Education Courses. Such an application requires a detailed course outline that describes the topics covered and the time devoted to each topic, as well as information regarding the method the applicant will use to determine that the qualifications and criminal history of course instructors satisfy regulatory requirements.

Approved Providers of Education Courses have a number of obligations under Supervisory Procedure 108. This includes the requirement to retain, for at least four years from the date a course was given, certain records with respect to each course, the obligation to distribute written evaluation questionnaires in which students may evaluate the course content, instruction and materials and retain completed questionnaires for at least four years, and the obligation to ensure that course advertisements that describe individual education courses state whether the course is appropriate for inexperienced or experienced originators.

The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs. Education providers will not be charged fees for submission of applications for provider and course approval. Providers may incur administrative costs associated with preparing applications for provider and curriculum approval. Providers may, however, charge MLOs fees for attending the continuing education courses. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts. The industry has supported passage of Article 12-E and has had substantial opportunity to comment on the specific requirements of this statute and its supporting regulations. In addition, the industry has been involved in an on-going policy dialogue with the Department during rule development. Meetings have been held with representatives of the mortgage industry to ensure regulation that will impose an adequate level of supervisory oversight while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on mortgage companies in rural areas. The Department believes that the education and continuing education requirements will be sufficient to raise the knowledge of originators to acceptable levels. Certain industry representatives objected to an earlier Department proposal to requiring MLOs with less than four years experience to obtain continuing education only in a traditional face-to-face setting. The Department has revised this requirement so that inexperienced MLOs may take courses in one of three formats. The Department also added a requirement that experienced MLOs take half the required credit hours in one of these three formats. The Department believes that the two alternative formats for continued education courses adequately address the intent of the statute, without imposing undue burdens upon regulated parties in rural areas. The ongoing discussion with the industry helped the Department achieve a workable, efficient and effective regulation to implement the statute and minimize adverse impacts wherever possible.

Rural Area Participation. Representatives of the following entities have been invited to participate in a number of outreach meetings that were conducted during both the statutory and regulatory drafting process: New York Association of Mortgage Brokers; New York Bankers Association; Empire State Mortgage Bankers Association; Citigroup; HSBC; Mortgage Bankers Association. These entities include mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas.

#### **Job Impact Statement**

Article 12-E of the Banking Law requires Mortgage Loan Originators, as a condition of initial and subsequent annual authorization, to have completed education requirements by taking education courses. Section 599-b of the Banking Law defines the persons who may provide such education courses. Section 599-h authorizes the Superintendent of Banks to make rules and regulations that in his judgment are necessary or appropriate for the effective administration or enforcement of Article 12-E. This proposed Supervisory Procedure provides information on how to become an Approved Education Provider and on the continuing substantive and procedural requirements for education courses. Applicants who fail to qualify for authorization to provide continuing education courses will still be able to give courses, but their offerings will be less attractive to Mortgage Loan Originators in New York because they will not fulfill the education course requirements in New York. Any impact on jobs and employment opportunities is due to the nature and purpose of the statute rather than the provisions of this proposal.

## Department of Environmental Conservation

### EMERGENCY RULE MAKING

#### 328.6(c) Is Amended to Allow Use of a Higher Dosage of Rotenone to Control Invasive Species by State and Federal Agencies

**I.D. No.** ENV-33-08-00001-E

**Filing No.** 765

**Filing Date:** 2008-07-24

**Effective Date:** 2008-07-24

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

**Action taken:** Amendment of section 328.6(c) of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law Article 15, section 0313; and Article 33, sections 0301 and 0303

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

**Specific reasons underlying the finding of necessity:** An invasive species of fish, the northern snakehead, has been confirmed in Orange County. The allowable dosage of rotenone must be increased to levels necessary to eradicate this species and allow for the restoration of the aquatic ecosystem.

**Subject:** 328.6(c) is amended to allow use of a higher dosage of rotenone to control invasive species by State and federal agencies.

**Purpose:** Allow the use of a higher dosage level of rotenone necessary to eradicate the northern snakehead identified in Orange County.

**Text of emergency rule:** Subdivision 328.6(c) is amended to read as follows:

(c) Dosage. Not to exceed .5 to 1.0 ppm rotenone and vehicle of five percent by weight emulsifiable rotenone, or two and one-half percent synergized emulsifiable rotenone. The high dosage should be considered only for waters which are weedy, turbid or of high alkalinity. *The application rate of .5 to 1.0 ppm rotenone may be exceeded to allow for the control of invasive species by State and Federal agencies. This use will be authorized only by special permit and shall only be used in accordance with the label and labeling directions or as modified and approved by the Department.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires October 21, 2008.

**Text of rule and any required statements and analyses may be obtained from:** Anthony Lamanno, Department of Environmental Conservation, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7254, (518) 402-8781, email: pestmgt@gw.dec.state.ny.us

#### Regulatory Impact Statement

##### 1. Statutory Authority

Section 15-0313 of the Environmental Conservation Law ("ECL") authorizes the Department of Environmental Conservation ("Department") to adopt and enforce rules and regulations governing the direct application of pesticides to or in surface waters. In addition, such rules and regulations may specify the pesticides, chemicals, quantities, and concentrations thereof which may be directly applied or used in such waters.

##### 2. Legislative Objectives

Specifying allowable dosage limits of authorized chemicals in regulation for the extermination of entire fish complexes where reasonable and for purposes of sound fisheries management is an important and valuable function of the Department, consistent with intent of the Legislature to protect the welfare of the people. Dosage limits were set in regulation over four decades ago to deal with certain types of fish species. However, with the transport of invasive species through the live food trade and secondarily through the aquarium trade, it is a reality that invasive species are being introduced into water bodies in New York State and can pose a threat to many of our rare fish and wildlife species. When the Department confirms the presence of an invasive species, immediate action may be necessary. Current dosage limits for rotenone in regulation are known to be ineffective against invasive species based on actions that other states have taken. A regulatory change to allow a higher dosage of authorized chemicals, in certain situations, to eliminate an invasive fish is within the

legislative intent when the chemical is used properly and for a valuable and necessary purpose.

##### 3. Needs and Benefits

Subdivision 328.6(c) of 6 NYCRR allows a dosage limit not to exceed .5 to 1.0 ppm rotenone to be used for the extermination of entire fish complexes where reasonable as a basis for sound fisheries management. This regulation was promulgated July 16, 1964 and has not been amended since that time. CFT Legumine, which contains rotenone, has an allowable limit of rotenone up to 5 ppm, for specific fish species, pursuant to a Federal and State approved label. However, the dosage limitation in regulation prohibits a dosage beyond 1.0 ppm rotenone. By amending the regulation to allow a dosage beyond 1.0 ppm rotenone, State and Federal agencies will be able to use rotenone at a higher dosage in full compliance with the Federal and State approved label, for certain fish species. Depending on the type of invasive fish species, it may be necessary for the Department to issue a Special Local Need label to control invasive species. Such label will permit the use of rotenone on a target pest not specified on the label currently registered with EPA and the Department, such as the northern snakehead.

In late May 2008, Department Fisheries staff conducted an investigation and verified the presence of the Northern Snakehead (*Channa argus*), a species native to Asia, in Catlin Creek near Ridgebury Lake in the Town of Waywayanda, Orange County. The Department has determined that the use of rotenone to eradicate the northern snakehead will not be effective at the current dosage limits allowable by regulation. Although there is little information available on the toxicity of rotenone to this species, recent work indicates that a higher dosage of rotenone is required to ensure complete mortality of adult snakehead. (North American Journal of Fisheries Management 26:628 - 630, 2006). Eradication using 5 ppm rotenone was successful in a small pond in Crofton, MD. Rapid response using effective treatment is critical to successful eradication. Once into a large lake or riverine system, eradication is impossible. Eradication may be effective in smaller waters, particularly if the population is isolated.

The northern snakehead entered the U.S. primarily through the live food trade and secondarily through the aquarium trade. This species has been prohibited from importation by the US Fish and Wildlife Service under the Lacey Act 18 U.S.C. 42. The draft National Management Plan for the Northern Snakehead lists several objectives including: prevent new introductions and control the spread of established populations in new areas; detect and rapidly respond to northern snakehead introductions in U.S. waters; and contain and eradicate newly discovered populations of northern snakehead. Two populations of northern snakehead have been confirmed in New York State - one identified in Queens (Meadow Lk and Flushing Meadows Corona Park) in 2005 and second confirmed in May 2008 in Ridgebury Lake and Catlin Creek, in Orange County. The first population is confined by the high salinity of ocean waters just downstream; however the second population is in a tributary to the Walkkill River which flows into the Rondout Creek: a direct tributary to the Hudson River. Northern snakehead, unlike native fishes, can breathe air and may survive days out of water. Juveniles have the ability to move across land following flood conditions. Their preferred habitat is wetland and marsh; however they tolerate a wide habitat range, thus posing a threat to many of our rare fish and wildlife species. Northern snakehead are voracious predators and can begin to feed on small crustaceans and fish larvae when they are less than an inch long. They reach lengths of nearly three feet and are highly fecund with females producing eggs up to five time per year and releasing 22,000 - 55,000 eggs per spawn. It is a hardy fish that can survive in all contiguous US states. Northern snakehead is a clear threat to our aquatic ecosystems.

##### 4. Costs

Enactment of the emergency regulation described herein allowing a higher dosage of rotenone to be used by State and Federal agencies will not result in any cost to regulated parties, State or local governments, or the general public.

##### 5. Local Government Mandates

The amendment of Subdivision 328.6(c) of 6 NYCRR will not impose any programs, services, duties, or responsibilities upon any county, city, town, village, school district, or fire district.

##### 6. Paperwork

No additional paperwork will be required as a result of this change in regulation.

##### 7. Duplication

There are no other state or federal regulations which govern a dosage limit of rotenone.

##### 8. Alternatives

Options that have been evaluated include an alternate piscicide, electrofishing, and netting. An alternative piscicide, Prentox Preenfish Toxicant, was originally contemplated for use for this treatment. However, CFT Legumine is a better option since it is nearly odorless and has a special emulsifier and solvent that reduces the presence of petroleum

hydrocarbons. In addition, electrofishing and/or netting would remove only a portion of the population due to accessibility and size selectivity of the gear.

The alternative to the regulatory change would be to take no action against this invasive species, which the Department finds unacceptable. In the absence of a regulatory change, there will be no viable way to control this invasive fish species, which poses a threat to many of our rare fish and wildlife species. The northern snakehead will have the ability to enter other bodies of water and change the ecosystem of our water bodies in New York State.

#### 9. Federal Standards

There are no minimum federal standards that apply to the dosage limit regulations.

#### 10. Compliance Schedule

This regulation will take effect immediately upon filing with the Department of State. The allowable dosage limit of 1.0 ppm rotenone can be exceeded by State and Federal agencies when controlling invasive species as of July 24, 2008.

#### Regulatory Flexibility Analysis

This rulemaking will not impose an adverse impact on small businesses or local governments. In addition, it will not impose reporting, recordkeeping or other compliance requirements on small businesses or local government.

The new regulation will give State and Federal agencies the ability to use rotenone at a higher dosage in order to eradicate invasive species. The regulation, on its face, will not require any reporting or recordkeeping requirements for anyone. State and Federal agencies that use rotenone at a higher dosage than currently allowed under regulation will need to comply with permitting requirements and obtain a permit for such application.

However, since the regulation will not apply to small businesses or local government, there will be no adverse effect. For these reasons, the Department has determined that a regulatory flexibility analysis for small businesses and local government is not required.

#### Rural Area Flexibility Analysis

This rulemaking will not impose any adverse impacts on rural areas and will not impose reporting, recordkeeping or other compliance requirements on public and private entities in rural areas. There will be no initial capital costs or any annual costs to comply with the rule.

The new regulation will give State and Federal agencies the ability to use rotenone at a higher dosage in order to eradicate invasive species. The regulation, on its face, will not require any reporting or recordkeeping requirements for anyone. State and Federal agencies that use rotenone at a higher dosage than currently allowed under regulation will need to comply with permitting requirements and obtain a permit for such application.

However, since the regulation will not apply to public and private entities, there will be no adverse effect. For these reasons, the Department has determined that a rural area flexibility analysis is not required.

#### Job Impact Statement

The Department has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities. There are no jobs or employment opportunities that will be affected, since the nature and purpose of the emergency rulemaking simply increases the allowable dosage of rotenone that can be used by State and Federal agencies to exterminate undesirable, invasive fish species.

This rule will not eliminate any jobs or limit what a certified applicator can apply. The allowable dosage of rotenone that can be used under an aquatic permit will remain the same for certified applicators. However, the emergency regulation will allow State and Federal agencies to use rotenone at a higher dosage in order to eradicate invasive species. Therefore, the Department has determined that a job impact statement is not required.

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

#### Addition of Specialized Regulations to Control Use on Stewart State Forest

I.D. No. ENV-33-08-00004-P

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

**Proposed Action:** Addition of section 190.34 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), 3-0301(2)(m) and 9-0105(1)

**Subject:** Addition of specialized regulations to control use on Stewart State Forest.

**Purpose:** To provide the department with necessary control of the Stewart State Forest as public recreational demands on the area increase.

**Text of proposed rule:** Repeal Part 92 and add a new section 190.34 to Title 6 of NYCRR to read as follows:

#### § 190.34 Stewart State Forest.

In addition to other applicable general provisions of this Part, the following requirements apply to Stewart State Forest. In the event of a conflict, these specific requirements will control.

(a) **Description.** For the purposes of this section, Stewart State Forest means all those state lands lying and situated in the Towns of New Windsor, Montgomery, Hamptonburgh and the Village of Maybrook in Orange County and consisting of the State-owned lands designated by the department as State Reforestation Area Orange #4, Stewart State Forest.

(b) No person shall operate or possess a mechanically propelled vessel other than an electric powered vessel on any water body on the property.

(c) No person shall possess or discharge a rifle or handgun on the property, with the exception of .22 caliber rimfire handguns.

(d) Camping is by permit only and limited to designated sites. The permit must be obtained prior to set-up. Camping is prohibited from the first day of the early bowhunting season in the Southern Zone to the last day of the late muzzleloading and bowhunting season in the Southern Zone.

(e) No person shall operate or possess a snowmobile except:

(1) on trails designated and marked by the department as a "Snowmobile Trail" and only when the trail is completely covered with snow and/or ice; and

(2) on frozen lakes and ponds when access to same may be gained by public highways lawfully designated for snowmobile use, or by trails designated and marked by the department as a "Snowmobile Trail".

(f) No person shall kindle, build, maintain or use a fire except by permit from the Department.

(g) No person shall operate a motor vehicle on the property, except:

(1) persons possessing a permit for such use from the Department; or

(2) licensed hunters and trappers entering the area between one hour before sunrise and one hour after sunset for the purpose of hunting or trapping from October 1 to December 31, except when unsafe conditions prohibit such access; or

(3) adults accompanying youth pheasant hunters participating in the statewide youth pheasant hunt.

(h) From October 1 to December 31:

(1) Any person hunting must park their motor vehicle in a designated parking area and only then if the parking quota for that parking area is not filled.

(2) Hunters shall hunt only on the same side of the road as their vehicles are parked.

(3) Crossing of roads while hunting is prohibited.

(4) No person shall hunt or trespass in areas posted as restricted areas, except as permitted by the Department.

(i) No person shall enter Stewart State Forest during the Regular Hunting Season for deer as provided by Environmental Conservation Law section 11-0907, except for licensed hunters and trappers for the purpose of hunting or trapping or by permit from the Department.

(j) No person shall enter Stewart State Forest during the first three days of the Regular Hunting Season for deer and the following weekend (Saturday and Sunday) without obtaining a reservation from the Department prior to entrance.

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert Messenger, Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255, (518) 402-9428, email: [stewart@gw.dec.state.ny.us](mailto:stewart@gw.dec.state.ny.us)

**Data, views or arguments may be submitted to:** Robert Messenger, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255, (518) 402-9428, email: [stewart@gw.dec.state.ny.us](mailto:stewart@gw.dec.state.ny.us)

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

**Additional matter required by statute:** A Negative Declaration has been prepared in compliance with Article 8 of the Environmental Conservation Law.

#### Regulatory Impact Statement

##### 1. Statutory Authority

The Environmental Conservation Law (ECL) provides statutory authority for guaranteeing beneficial use of the environment without risk to health and safety (ECL Section 1-0101(3)(b)); promoting and coordinating the management of lands (ECL Section 3-0301(1)(b)); adopting rules and regulations (ECL Section 3-0301(2)(m)); and exercising care, custody, control of reforestation areas (ECL Section 9-0105(1)).

##### 2. Legislative Objectives

By repealing the current provisions of 6 NYCRR Part 92 ("Part 92") and adding a new Section 190.34 to 6 NYCRR Part 190 ("Section 190.34"), public use restrictions on the property will be lessened, thereby

furthering the fulfillment of the legislative objective of the ECL to guarantee that the "widest range of beneficial uses of the environment is attained without risk to health or safety" (ECL Section 1-0101(3)(b)).

Part 92 prohibits non-hunters from using the property from the beginning of small game hunting season until the end of big game season; proposed Section 190.34 will allow non-hunters to use the property from the beginning of small game hunting season until the beginning of big game hunting season. Part 92 prohibits fishing on certain waters within the property and prohibits the use of boats on Wilkins, Rowe's and Maroney's ponds; proposed Section 190.34 will allow fishing and the use electric and human powered boats on all waters within the property. Part 92 does not allow camping or the building of campfires on the property; proposed Section 190.34 will allow camping and campfires at designated sites under permit from the department. Part 92 prohibits hunting parties larger than three people and the use of more than two dogs while hunting; these provisions will be repealed and not replaced. Part 92 prohibits the possession and use of handguns on the property; proposed Section 190.34 will allow only the possession and use of .22 caliber rimfire handguns.

### 3. Needs and Benefits

The Department's regulations regarding Stewart State Forest located in Orange County need to be updated to eliminate the overlap between existing Parts 92 and 190 of 6 NYCRR, to reflect the fact that additional lands have been incorporated into the property, and to reflect this area's new name and revised land use classification from what was a Fish and Wildlife Cooperator Area (which was managed as a wildlife management area) to a State Forest. Public use of State Forests (also known as Reforestation Areas), is governed by Article 9 of the ECL whereas Cooperator Areas are governed by Article 11 of the ECL. Historically, the Department managed this area through a cooperative agreement with the Department of Transportation (DOT). In 2006, jurisdiction over the remaining acreage was transferred to the Department. In the past, Part 92 governed public use of the area, then known as the Stewart Airport Cooperator Area, which has since become Stewart State Forest. The lands that were transferred to DEC jurisdiction are actually larger than the area that was constituted the Cooperator Area, and therefore the boundary description in Part 92 is no longer accurate. The boundary description in the proposed rule reflects this change.

Currently, Part 190 relating to public use of state lands applies to this area; however, specialized regulations are necessary given the unique history of public use of this area for hunting and fishing. In addition, now that the area is managed as a State Forest, a specialized regulation is needed to address potential user conflicts due to the increasing public recreational demands for snowmobiling, camping, boating, and hiking unique to this State Forest. Stewart State Forest is approximately 6,700 acres in size, and is the largest parcel of state land in Orange County, the fastest growing county in the State. Consequently, there is a high demand for public recreational use of the property. Proposed Section 190.34 will actually reduce the public use restrictions of Part 92, and will allow for more public use throughout the year. Only a select few of the Part 92 restrictions will be retained in the proposed regulation. Finally, the proposed regulation will address public safety issues related to the property's proximity to Stewart Airport.

The Stewart State Forest Unit Management Plan (UMP), approved on December 19, 2006, set forth the underlying reasons for this proposed regulation and was subject to public comment in the Fall of 2006. Proposed Section 190.34 reflects the management actions and needed regulatory amendments discussed in the UMP. Public comment was received at two public meetings on October 26, 2006 and a subsequent 30 day comment period. Public comments in their entirety are on file in the Region 3 DEC Lands and Forests office.

Public comment received in connection with the UMP was considered in drafting this proposed regulation, with hunter access to the property being extended to "one hour after sunset," and the property now being left open for hunters through December 31. A total of forty-five public comments and several petitions were received supporting the continued use of snowmobiles, while thirteen comments were received opposing the use of snowmobiles. The original proposal, which did not allow snowmobiles on the property, was changed to allow snowmobiles and is reflected in the proposed regulation.

ATVs and other off-road vehicles are different from snowmobiles since they do not have the protective cover of snow to buffer their effects on the trail surface. The DEC stands by the guidelines prohibiting ATV's presented in the UMP; thus, ATV's will be prohibited on the property.

This proposed rulemaking has three purposes, the first of which is updating the regulations to reflect the area's new designation as a State Forest by clarifying the rules for public use of the area.

The second purpose is to allow the Division of Lands and Forests to continue to manage and balance recreational uses consistent with past management under Part 92, by restricting the operation of snowmobiles to designated trails, prohibiting all but electric and human powered vessels

on all waters, requiring permits for camping and fires, prohibiting rifles and handguns except .22 caliber rimfire handguns, and limiting the use of motor vehicles on the property. Twenty-two caliber rimfire handguns are commonly used by trappers to quickly and humanely dispatch animals in their traps. Shotguns have a shorter effective range than rifles, and do not pose a significant threat to the safety of adjacent landowners or the airport, and therefore will not be prohibited under the proposed rule. Also, the proposed restrictions on motor vehicle access and campfires at the Stewart State Forest will protect the nearby airport property.

The third purpose is to continue the management of a safe and high quality hunting experience as created under Part 92, by continuing to limit non-hunter use during the Regular Hunting Season for deer, allowing hunters to enter the property by motor vehicles from October 1 through December 31, continuing a limited reservation system around the first two weekends of the Regular Hunting Season for deer, and continuing existing guidelines for hunter use of the property.

This "special regulation" is needed because its unique restrictions are not provided for in Part 190 at this time. In addition, the proposed regulation will allow for more access to the property by the general public in October and November by removing existing hunting provisions which are deemed unnecessarily restrictive to non-hunter use of the property.

Changes to existing regulations reflected in the proposed Section 190.34 are as follows:

(1) The use of boats is prohibited on Wilkins Pond and Rowe's Pond under Part 92. Under the proposed regulation the use of electric and human powered vessels will be permitted on all waters, but gasoline-powered motors will be prohibited;

(2) The use of rifles and handguns continues to be prohibited as in Part 92, but an exception will be made for .22 caliber rimfire handguns;

(3) Camping, prohibited under Part 92, will be permitted under the proposed regulation, but by permit only and limited to designated sites. Camping will be prohibited from early bowhunting season in the Southern Zone to the last day of the late muzzleloading/bowhunting season in the Southern Zone;

(4) Although snowmobile use is currently allowed everywhere on the property that use will be limited to designated trails and frozen water;

(5) Fires are currently prohibited under Part 92, but will be allowed by permit under the proposed regulation;

(6) Access to the property for hunting will be expanded from one-half hour before sunrise and after sunset to one hour before sunrise and after sunset; and

(7) A special permit is required under Part 92 for hunter use of the area. This special permit will be replaced with a reservation requirement limited to just the first three days of the Regular Hunting Season for deer and the following weekend.

The "no action" alternative is not acceptable due to the overlap of existing regulations and management issues which are not addressed by the current rules, and the change in jurisdiction and management of the property from a Fish and Wildlife Cooperator Area to a Reforestation Area. The regulatory overlap causes confusion and unnecessary regulation of users on the property. The option of repealing Part 92 without changing Part 190 is not acceptable for the same reasons.

### 4. Costs

These changes clarify and codify existing practices, replacing for the most part existing regulations which no longer apply because of the transfer of the land making up Stewart State Forest from DOT (governed by a Cooperative Hunting Area agreement, Part 92) to the DEC (governed by State land regulations, Part 190). If anything, financial costs and staff time may be reduced by these changes. Property taxes are already being paid on the property, and will not change as a result of the proposed rule. Law enforcement staff already patrol the property to enforce existing rules and regulations. Staff time for this purpose will not change as a result of the proposed rule. Printed materials such as signs and brochures educating the public about the use of state lands will be produced as part of the approved UMP. The proposed rule will not affect the cost of producing them. Consequently, there are no direct financial impacts attributable to the rule change. The potential cost impact is expected to be negligible.

#### (a) Costs to State Government

There are no costs projected for state government.

#### (b) Costs to Local Governments

There are no costs projected for local government. No local governments will be required to take any action as a result of the proposed rule (See Local Government Mandates below).

#### (c) Costs to Private Regulated Parties

There are no costs projected for private regulated parties. The proposed rule does not require any fee to be paid for camping permits or hunting reservations.

#### (d) Costs to the Regulating Agency

There are no costs projected for the Regulating Agency.

#### 5. Paperwork

The Department of Environmental Conservation must issue camping permits for State lands as part of its programs. These permit issuance requirements already exist. There will be no other new reporting, or monitoring requirements, and no new forms and other paperwork, as a result of the proposed changes.

6. Local Government Mandates

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

7. Duplication

The only relevant state rules are 6 NYCRR Part 92, which is being repealed in its entirety, and 6 NYCRR Part 190, which is proposed to be modified; there is no relevant state or federal rule which adequately protects the environment, health and safety of Stewart State Forest, so there is no duplication, overlap, or conflict with state or federal rules. The purpose of these changes is to eliminate overlap and conflicts between existing Parts 92 and 190, and to clarify management issues/practices that are currently not addressed by existing regulations.

The proposed changes will eliminate management guidelines for the Stewart Airport Cooperator Area since the property is now a State Reformation Area. Simultaneously, only the necessary management guidelines have been incorporated into proposed Section 190.34. This proposed regulation is needed to manage an area with unique characteristics for a State Forest located in a relatively densely populated area experiencing rapid growth, adjacent to a major airport, and experiencing heavy recreational use.

8. Alternative Approaches

The alternatives to the proposed action are the “no action” option, or “repeal Part 92 without changes to Part 190” option, which are discussed in detail in Section 3. “Needs and Benefits,” above.

9. Federal Standard

There is no relevant federal standard governing the use/management of Stewart State Forest.

10. Compliance Schedule

The proposed rule changes will become effective on the date of filing, with a target date of August 30, 2008, preceding the Fall 2008 hunting season.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Government is not submitted with these regulations because the proposal will impose no adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal. The proposed regulation will guarantee the widest range of beneficial uses of the environment without risk to health or safety, while protecting the natural resources of the Stewart State Forest.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record keeping or other compliance requirements on Rural Areas within Orange County.

The proposed rulemaking change will only be used for the management of Stewart State Forest, Orange County, New York, to guarantee the widest range of beneficial uses of the environment without risk to health or safety, while protecting the natural resources of the property.

**Job Impact Statement**

A Job Impact Statement is not submitted with this proposal because the proposal will have no adverse impact on existing or future jobs and employment opportunities. The rule change will only be used for the management of Stewart State Forest, Orange County, to guarantee the widest range of beneficial uses of the environment without risk to health or safety, while protecting the natural resources of the property.

Department of Health

EMERGENCY  
RULE MAKING

Controlled Substances Data Submissions

I.D. No. HLT-33-08-00003-E

Filing No. 766

Filing Date: 2008-07-28

Effective Date: 2008-07-28

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

**Action taken:** Amendment of sections 80.2, 80.23, 80.67, 80.68, 80.69, 80.71, 80.73, 80.74, 80.132 and 80.134 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, Section 3308(2)

**Finding of necessity for emergency rule:** Preservation of public health and public safety.

**Specific reasons underlying the finding of necessity:** We are proposing that these regulations be adopted on an emergency basis as authorized by Section 21 of the Public Health Law because immediate adoption is necessary to protect the public health from the threat posed by prescription drug abuse. Statistics from the National Institute on Drug Abuse indicate that the abuse of prescription pain relievers, stimulants, sedatives, and depressants is second only to the abuse of marijuana. The federal Drug Abuse Warning Network reports that emergency room visits due to abuse of prescription drugs are more than the visits due to abuse of cocaine and heroin combined. Experts in addiction medicine estimate that for every person addicted to heroin, there are two persons addicted to prescription narcotics. The trafficking in prescription controlled substances increases the threat to the public health by exponential proportions.

Immediate adoption of these regulations is necessary to protect the public health from an alarming increase in the non-medical use of prescription controlled substances, by both adults and children. The emergency regulations will provide immediate enhancements to the monitoring capability of the Official Prescription Program to detect and prevent drug diversion by allowing the Department to immediately begin more efficient monitoring of the acquisition of controlled substances by healthcare professionals authorized to possess them for legitimate medical use. Such monitoring will detect non-legitimate use and protect the public health from professionals who are impaired by their own drug abuse or traffic in drugs for profit. The regulations will also immediately allow practitioners increased flexibility to treat chronic pain from conditions other than diseases and afford hospice patients with more time to partial fill their controlled substance prescriptions to better meet their medication needs at this crucial stage in their lives.

Immediate adoption of these regulations is also necessary to facilitate more humane euthanasia of animals in animal control facilities through the utilization of additional drugs. Immediate adoption is also necessary to bring Part 80 regulations regarding euthanasia of animals in conformity with statute. Section 3305(1)(d) of the Public Health Law was previously enacted to authorize the safe and efficient use of ketamine hydrochloride and sodium pentobarbital for euthanasia in animal shelters, however, regulations implementing the statute were not promulgated at the time.

**Subject:** Controlled Substances Data Submissions.

**Purpose:** To prevent diversion of prescription controlled substances; provide practitioners increased flexibility when treating chronic pain from conditions other than diseases; increase the time for hospice patients to partial fill their controlled substance prescriptions; and allow more humane euthanasia of animals in municipal animal shelters.

**Text of emergency rule:** Pursuant to the authority vested in the Commissioner of Health by Article 33 of the Public Health Law, Sections 80.2, 80.23, 80.67, 80.68, 80.69, 80.71, 80.73, 80.74, 80.132 and 80.134 of Part 80, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended to be effective upon filing with the Department of State as follows:

Part 80

RULES AND REGULATIONS ON CONTROLLED SUBSTANCES

Section 80.2, subdivision (a), paragraph (6), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.2 Exemptions.

(a) Pursuant to section 3305 of the Public Health Law, the provisions of

this Part restricting the possession of controlled substances shall not apply to:

\* \* \*

(6) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing sodium pentobarbital to registered and certified personnel, to euthanize animals and ketamine hydrochloride to anesthetize animals prior to euthanasia.

\* \* \*

Section 80.23, a new subdivision (f), of Title 10 NYCRR is hereby added to read as follows:

Section 80.23 - Records and reports

\* \* \*

(f) Reports. Manufacturers and distributors shall report to the Department, in a manner approved by the Department, information from the sale of controlled substances. Such information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the Department. The information filed with the Department shall include, but not be limited to:

(i) the manufacturer's or distributor's name, address, phone number, DEA registration number and controlled substance license number issued by the Department;

(ii) the name, address and DEA registration number of the entity to whom the controlled substance was sold;

(iii) the date of the sale of the controlled substance;

(iv) the name and National Drug Code (NDC) of the controlled substance sold; and

(v) the number of containers and the strength and metric quantity of controlled substance in each container of controlled substance sold.

Section 80.67, subdivision (d), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.67 - Schedule II and certain other substances

\* \* \*

(d)(1) A practitioner may issue a prescription for up to a three month supply of a controlled substance, including chorionic gonadotropin, or up to a six month supply of an anabolic steroid if used in accordance with the directions for use, provided that the prescription has been issued for the treatment of:

(i) panic disorders, designated as code A;

(ii) attention deficit disorder, designated as code B;

(iii) chronic debilitating neurological conditions characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, designated as code C;

(iv) relief of pain in patients suffering from conditions or diseases known to be chronic [and] or incurable, designated as code D;

(v) narcolepsy, designated as code E; or

(vi) hormone deficiency states in males, gynecologic conditions that are responsive to treatment with anabolic steroids or chorionic gonadotropin, metastatic breast cancer in women, anemia and angioedema, designated as code F.

\* \* \*

Section 80.68, subdivision (d), paragraph (2), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.68 - Emergency oral prescriptions for schedule II substances and certain other controlled substances

\* \* \*

(d)(1) The pharmacist filling the prescription shall endorse upon the prescription the date of delivery, and his/her signature.

(2) The endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. The prescription information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the Department, not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

(i) pharmacy prescription number;

(ii) pharmacy's National Identification Number;

(iii) patient name;

(iv) patient address, including street, city, state, zip code;

(v) patient date of birth;

(vi) patient's sex;

(vii) date prescription filled;

(viii) metric quantity;

(ix) National Drug Code number of the drug;

(x) number of days supply;

(xi) prescriber's Drug Enforcement Administration (DEA) number;

(xii) date prescription written; [and]

(xiii) serial number of official prescription form or an identifier designated by the department[.]; and

(xiv) payment method.

Section 80.69, subdivision (d), of Title 10 NYCRR is hereby amended to read as follows:

80.69 Schedule III, IV and V substances.

\* \* \*

(d)(1) A practitioner may issue a prescription for up to a three month supply of a controlled substance if used in accordance with the directions for use, provided that the prescription has been issued for the treatment of:

(i) panic disorders, designated as code A;

(ii) attention deficit disorder, designated as code B;

(iii) chronic debilitating neurological conditions characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, designated as code C;

(iv) relief of pain in patients suffering from conditions or diseases known to be chronic [and] or incurable, designated as code D;

(v) narcolepsy, designated as code E; or

(vi) hormone deficiency states in males, gynecologic conditions that are responsive to treatment with anabolic steroids or chorionic gonadotropin, metastatic breast cancer in women, anemia and angioedema, designated as code F.

\* \* \*

Section 80.71, subdivision (e), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.71 Practitioner; dispensing controlled substances

\* \* \*

(e) The practitioner shall submit dispensing information, for all controlled substances dispensed, electronically to the department utilizing a transmission format acceptable to the department by not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

(1) dispenser [practitioner] identifier;

(2) patient name;

(3) patient address, including street, city, state, zip code;

(4) patient date of birth;

(5) patient's sex;

(6) date controlled substance dispensed;

(7) metric quantity;

(8) National Drug Code number of the drug;

(9) number of days supply; [and]

(10) prescriber's Drug Enforcement Administration (DEA) number[.]; and

(11) payment method.

Section 80.73, subdivision (f) and subdivision (l), paragraph (5), of Title 10 NYCRR are hereby amended to read as follows:

Section 80.73 - Pharmacists; dispensing schedule II substances and certain other controlled substances

\* \* \*

(f) The endorsed official New York State prescription shall be retained by the proprietor of the pharmacy for a period of five years. The prescription information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the department, not later than the 15th day of the next month following the month in which the substance was delivered. The information filed with the department shall include but not be limited to:

(1) pharmacy prescription number;

(2) pharmacy's National Identification Number;

(3) patient name;

(4) patient address, including street, city, state, zip code;

(5) patient date of birth;

(6) patient's sex;

(7) date prescription filled;

(8) metric quantity;

(9) National Drug Code number of the drug;

(10) number of days supply;

(11) prescriber's Drug Enforcement Administration number;

(12) date prescription written; [and]

(13) serial number of official prescription form, or an identifier designated by the Department;

- (14) payment method;
- (15) number of refills authorized; and
- (16) refill number.

\* \* \*

(1) A pharmacist may partially fill an official New York State prescription for a schedule II controlled substance or those schedule III or schedule IV controlled substances listed in section 80.67(a) of this Part provided that:

\* \* \*

(5) The official New York State prescription shall be valid for a period not to exceed 30 days from the date the prescription was issued by the practitioner unless terminated sooner upon notification from the practitioner of the discontinuance of medication. All partial fillings filled under subdivision (1) of this section must occur within 30 days from the date the prescription was issued[.], *except that partial fillings of prescriptions issued for more than a 30 day supply for patients residing in a residential healthcare facility or for patients enrolled in a hospice program that is licensed or approved by the Department must occur within 60 days from the date the prescription was issued.*

\* \* \*

Section 80.74, subdivision (e), of Title 10 NYCRR is hereby amended to read as follows:

Section 80.74 - Pharmacists; dispensing schedule III, IV and V controlled substances

\* \* \*

(e) The pharmacist filling the official prescription shall endorse on such prescription his/her signature, the date of filling, and the number of the prescription under which it is recorded in the pharmacy prescription file. Such endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. Prescription information from the [original] filling of such prescription shall be filed with the department in accordance with section 80.73(f) of the Part.

\* \* \*

Section 80.132, subdivision (a), paragraph 14, of Title 10 NYCRR is hereby amended to read as follows:

Section 80.132 Hypodermic syringes and needles; designation of persons or classes of persons.

\* \* \*

(14) a duly authorized agent of an incorporated society for the prevention of cruelty to animals or a municipal animal control facility for the limited purpose of purchasing, possessing and dispensing (i) sodium pentobarbital to registered and certified personnel to euthanize animals, and (ii) *ketamine hydrochloride to registered and certified personnel to anesthetize animals prior to euthanasia;*

\* \* \*

Section 80.134, subdivision (a), paragraphs (3) and (4) and subdivision (f) of Title 10 NYCRR are hereby amended to read as follows:

Section 80.134. Authorization for the purchase, possession and dispensing of *ketamine hydrochloride only to anesthetize animals for euthanasia, and of sodium pentobarbital to euthanize animals.*

\* \* \*

(3) Solution shall mean:

(i) a premixed solution of sodium pentobarbital, manufactured only and specifically for the euthanasia of animals, which contains such other ingredients as to place such solution within schedule III of the Controlled Substances Act (article 33, Public Health Law);

(ii) *schedule II sodium pentobarbital; and*

(iii) *ketamine hydrochloride only for the purpose of anesthetizing animals for euthanasia.*

(4) An agent is a person or persons other than a licensed veterinarian appointed by the incorporated society or municipal animal control facility, and duly registered with the department, authorized to purchase, possess and dispense (i) *ketamine hydrochloride only to anesthetize animals for euthanasia, and (ii) sodium pentobarbital to euthanize animals.*

\* \* \*

(f) Registration and certification of individuals to administer solution for euthanasia of animals. (1) No person other than a licensed veterinarian shall receive a controlled substance from a duly authorized agent of a society or facility to euthanize [dogs and cats] *animals unless the person is certified and registered with the department.*

\* \* \*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 25, 2008

**Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, , (518) 473-7488.

**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 purposes and intent. Section 21 of the Public Health Law authorizes the Commissioner to promulgate any emergency regulations in furtherance of Section 21, which expanded the Official Prescription Program, the Department's Prescription Drug Monitoring Program(PDMP).

Section 3305(1)(d) authorizes the Department to adopt regulations that provide for the safe and efficient use of ketamine hydrochloride to anesthetize animals only as part of the euthanasia procedure and sodium pentobarbital to euthanize animals by incorporated societies for the prevention of cruelty to animals and animal control facilities.

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. The legislative purposes of Article 33 are to combat the illegal use of and trade in controlled substances and to allow the legitimate use of controlled substances in health care, including palliative care, veterinary care, research and other uses authorized by the law.

Needs and Benefits:

The Department of Health's most valuable means of combating drug abuse is its Official Prescription Program, which effectively monitors the prescribing and dispensing of controlled substances highly prone to diversion and trafficking. Current Part 80 regulations require pharmacies to submit specific information from the original fillings of all prescriptions dispensed for controlled substances. These regulations also require practitioners to submit information when they dispense controlled substances. Analysis of the prescription and dispensing data curtails diversion of controlled substances by detecting individuals who seek drugs because of addiction or for trafficking.

Because the existing regulations do not require pharmacies to submit information from the refilling of controlled substance prescriptions, the data may indicate that an individual has only obtained a controlled substance once, when it may have been obtained numerous times as refills. Because the regulations also do not require pharmacies or practitioners to submit prescription or dispensing information indicating method of payment, drug-seeking individuals can obtain controlled substances or prescriptions from multiple practitioners. They do so by filling the prescriptions at different pharmacies, paying cash to evade detection by pharmacies and third party payers. Drug-seekers obtaining controlled substances directly from dispensing practitioners also avoid detection when the payment for dispensing the drugs is included in the practitioner's overall fee for the office visit.

The Department is proposing amendments to Part 80 regulations to require pharmacies to submit prescription information indicating whether a controlled substance was dispensed as a new prescription or a refill. Proposed amendments will also require pharmacies and practitioners who dispense controlled substances to patients to submit information on the method of payment for the dispensed substance. These amendments will prevent diversion by allowing the Department to continue to monitor the dispensing of controlled substance prescriptions, as well as controlled substances dispensed to patients by practitioners, but with a more complete history of a drug-seeking individual's prescription and controlled substance activity.

The Department also combats drug diversion through the analysis of records and reports of licensed manufacturers and distributors to detect inappropriate procurement of controlled substances by practitioners, pharmacies and institutional dispensers. While four companies voluntarily submit reports to the Bureau of Narcotic Enforcement regarding their sales of controlled substances, more than 500 do not because it is not required by existing regulations.

Amendments to Part 80 will require all such companies to submit to the Department information from distribution of controlled substances. Such information will be reported electronically through a secure account established with the Department's Health Provider Network. These amendments will protect the public health by enhancing the Department's monitoring capability—through the use of remote analyses comparing distribution and dispensing records—to detect and prevent controlled substance diversion by healthcare professionals who are authorized by law

to purchase and possess these drugs solely for legitimate use within their scope of practice.

In the past, the Bureau has discovered diversion by monitoring and analysis of company distribution records indicating individual practitioners ordering large quantities of controlled substances. These identified practitioners have obtained controlled substances under the guise of dispensing them to their patients. However, they instead abused these substances to sustain their own addiction or trafficked in them for profit. Requiring that these records of distribution be reported electronically to the Department on a monthly basis will ensure a more efficient method of monitoring by the Bureau and result in timely identification of those practitioners who divert controlled substances to non-legitimate use. Controlled substance distribution records can be compared with controlled substance administration and dispensing records to detect unlawful activity.

While one purpose of the regulations is to prevent the diversion of controlled substances, an equally important purpose is to ensure access to controlled substances for treatment of legitimate medical conditions. The Department proposes to amend the regulations to allow practitioners who treat patients for chronic pain from conditions other than diseases the ability to issue prescriptions for greater than a thirty-day supply when such prescriptions are designated with the Code D. This flexibility in issuing prescriptions for larger quantities will aid those patients by not requiring them to obtain a new prescription from their practitioner each month, which they then must bring to their pharmacy. This amendment will ease some of the burden for these patients, who may be experiencing decreased mobility in addition to their chronic pain. By also amending the regulations to allow hospice patients up to 60 days to partial fill their controlled substance prescriptions, it will allow the patients to better adjust their changing medication needs.

Part 80 regulations authorize an incorporated society for the prevention of cruelty to animals and a municipal animal control facility to utilize sodium pentobarbital to euthanize animals. Such facilities and their agents also must first register with the Department and the federal Drug Enforcement Administration in order to purchase, possess, and dispense sodium pentobarbital for euthanasia.

Animal control facilities provide a valuable public service by treating stray, injured, aged, sick, and feral animals. However, current Part 80 regulations authorize such animal shelters to euthanize animals only with a schedule III formulation of sodium pentobarbital, which is not approved by the U.S. Food and Drug Administration for use with cats and smaller animals. While licensed veterinarians are authorized to euthanize with Schedule II sodium pentobarbital, they are not regularly available to perform the euthanasia in animal shelters.

Humane Societies and animal control facilities have apprised the Department that the available schedule III sodium pentobarbital formulation is recommended only for the euthanizing of dogs and larger animals. The formulation's high viscosity renders it difficult to utilize for cats and other small pets. Required use of this drug often results in seizures, fear and pain to the animals at the time of euthanasia and creates a hardship for the shelters. The facilities state that such difficulty results in less humane treatment of the animals when necessary to euthanize.

The Department is proposing amendments to Part 80 that authorize animal control facilities to utilize ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and a schedule II formulation of sodium pentobarbital for euthanasia. The amendments will allow pets and animals of all sizes to be more humanely treated when these drugs are indicated for use.

Costs:

Costs to Regulated Parties:

Pharmacies currently collect and maintain the dispensing information that the Department proposes to be additionally included with the information that is now submitted; therefore, there are only minor anticipated additional costs to pharmacies. Because practitioners are currently required to electronically submit dispensing information to the Department, there are only minor anticipated increased costs to practitioners to submit a minimal addition to that information. Practitioners and pharmacies who dispense small amounts of controlled substances submit dispensing information through the Department's Health Provider Network (HPN) by manually uploading the data into fields already provided on the HPN site. A minimal addition to those data fields should only incur a minor increase in data submission costs. The American Society for Automation in Pharmacy (ASAP) is the nationwide software system that pharmacies and practitioners that dispense large amounts of controlled substances utilize to submit required dispensing information to the Department. The ASAP software already contains the capability to transmit the additional data fields required by the proposed regulations. Activating those additional ASAP data fields will require only minor programming costs by pharmacies and dispensing practitioners.

Manufacturers and distributors are required to maintain records of

distribution. The requirement to report this information electronically to the Department may create a slight expenditure, but because manufacturers and distributors currently maintain these records in an electronic format, such expense is anticipated to be minimal to make the format compatible with the Department's system of receiving the information.

There will be no increased costs associated with the proposed amendment to allow practitioners to issue controlled substance prescriptions in quantities greater than a 30-day supply to treat patients suffering from chronic pain caused by an incurable condition or disease. No increased costs are anticipated by allowing hospice patients more time to partial fill their controlled substance prescriptions.

There may be a minimal cost to the incorporated society for the prevention of cruelty to animals, municipal animal control facility or animal shelter utilizing the additional drugs proposed for euthanasia. This cost is associated with the purchase of ketamine hydrochloride and schedule II pentobarbital for more humane euthanasia of all sizes of animals.

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 for pharmacies, practitioners, manufacturers and distributors. Pharmacies and practitioners currently maintain the records that the Department will require to be transmitted electronically. Manufacturers and distributors are required to maintain records of distribution of controlled substances. The electronic transmission of such records will not create any additional paperwork, and may actually reduce some paperwork.

There will not be any additional paperwork associated with the proposed amendment to allow practitioners to issue controlled substance prescriptions in quantities greater than a 30-day supply to treat patients suffering from chronic pain caused by an incurable condition or disease. In fact, there may be less paperwork, as practitioners would be able to issue a controlled substance prescription every three months as opposed to monthly.

There may be a minimal increase in paperwork for pharmacies to document partially filled prescriptions for hospice patients.

Including ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and schedule II formulation of sodium pentobarbital for euthanasia may involve a minimal increase in record-keeping paperwork for animal control facilities.

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 information the Department is seeking through these new regulations is not available from any other source.

Federal Standards:

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

Compliance Schedule:

These regulations will become effective upon filing with the Department of State.

#### **Regulatory Flexibility Analysis**

Effect of Rule on Small Business and Local Government:

This proposed rule would affect retail pharmacies that partially dispense controlled substance prescriptions for hospice patients. The rule will also affect practitioners who dispense controlled substances and prescribe them for the treatment of chronic pain. The rule will also affect licensed manufacturers and distributors of controlled substances.

According to the New York State Board of Pharmacy, there are approximately 4,500 registered pharmacies in New York State. According to the Bureau of Narcotic Enforcement, there are approximately 600 manufacturers and distributors licensed by the Department to distribute controlled substances in New York State.

Compliance Requirements:

The proposed regulations follow the intent of Article 33 of Public Health Law and will further enhance the Department's ability to curtail diversion of controlled substances.

Currently, pharmacies are required to submit the dispensing data for the original dispensing of all controlled substance prescriptions. The only new compliance requirement is the submission of the method of payment for the controlled substance prescription and whether the drug was the original dispensing or the refill dispensing of a controlled substance prescription. The only new compliance requirement for dispensing practitioners is to submit a minimal amount of additional information.

Manufacturers and distributors are required to maintain records of distribution of controlled substances. The proposed regulations will require reports based upon these records to be electronically transmitted to the Department.

Proposed regulations place compliance requirements on animal control facilities only if they choose to utilize ketamine hydrochloride for anesthesia only as part of the euthanasia procedure and/or schedule II sodium pentobarbital for euthanasia of animals.

**Professional Services:**

No additional professional services are necessary.

**Compliance Costs:**

Pharmacies and dispensing practitioners may require minor adjustments in computer software programming due to additional dispensing and prescription data submission requirements; however, this should require only minimal additional costs. The system utilized by pharmacies and practitioners already contains the additional data fields for submission of information. A slight expenditure may be necessary for activation of those fields by an Information Technology technician. Manufacturers and distributors may incur a slight expenditure due to the requirement for electronic transmission of data, but such expenditure should not create a financial hardship. There will be no compliance costs for authorizing practitioners to prescribe more than a 30-day supply of a controlled substance to treat a patient for chronic pain cause by an incurable condition or disease. Compliance costs to animal control facilities will be as a result of utilizing the proposed drugs for more humane euthanasia of animals, however, while the proposed regulations authorize the use of the additional drugs, the regulations do not require their use.

**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 and practitioners. The regulations will create new requirements for manufacturers and distributors but the Department expects most of these entities to currently maintain the required records of distribution in an electronic format. There are minimal technological and economic constraints anticipated for animal control facilities because the proposed rule authorizes the use of ketamine hydrochloride and schedule II pentobarbital for the euthanasia process but does not require that facilities utilize the additional drugs.

**Minimize Adverse Impact:**

The regulations require only a minimal increase in reporting requirements. These requirements are for the electronic transmission of records that current regulations require pharmacies, practitioners, manufacturers and distributors to maintain.

**Small Business and Local Government Participation:**

During the drafting of these regulations, the Department met with or solicited comment from the Pharmaceutical Society of the State of New York, the Medical Society of the State of New York, the National Association of Pharmaceutical Manufacturers, the Humane Society of the United States, the Community Hospice and the Mohawk & Hudson River Humane Society. Local governments are not affected, except for those municipalities operating animal shelters.

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers of Rural Areas:**

The proposed rule will apply to pharmacies, practitioners, manufacturers and distributors 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 for the electronic transmission of information to the Department that pharmacies, practitioners, manufacturers and distributors are required by current regulations to maintain.

**Professional Services:**

None necessary.

**Compliance Costs:**

The systems utilized by pharmacies and practitioners to submit dispensing data already contain the additional data fields. The compliance costs to activate those fields are anticipated to be minimal. The cost for an Information Technology technician to make electronic record systems of manufacturers and distributors compatible with the Department's system of receipt of controlled substance sales information is also anticipated to require minimal expenditures.

**Minimizing Adverse Impact:**

The regulations require only a minimal increase in reporting and record-keeping requirements.

**Rural Area Participation:**

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

**Job Impact Statement**

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion is curtailed through enhanced analysis of information from controlled substance prescriptions and the dispensing and distribution of controlled substances, the proposed amendments are not expected to either increase or decrease jobs overall. No overall increase or decrease in jobs is anticipated for animal control facilities utilizing the proposed additional drugs for more humane euthanasia of animals.

---



---

## Department of Labor

---



---

### ERRATUM

A Notice of Emergency Rule Making, I.D. No. LAB-29-08-00013-E, pertaining to Provision of Safety Rope and System Components for Firefighters at Risk of being Trapped at Elevations, published in the July 16, 2008 issue of the *State Register* contained an incorrect type of notice. Following is the correct type of notice:

**This notice is intended** to serve only as a notice of emergency adoption; however, the agency intends to submit a notice of proposed rule making in the future.

---



---

## Power Authority of the State of New York

---



---

### NOTICE OF ADOPTION

**Rates for the Sale of Power and Energy**

**I.D. No.** PAS-21-08-00006-A

**Filing Date:** 2008-07-28

**Effective Date:** 2008-08-01

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

**Action taken:** Revision in rates for Village of Solvay.

**Statutory authority:** Public Authorities Law, section 1005(5)

**Subject:** Rates for the sale of power and energy.

**Purpose:** Maintain system's fiscal integrity; this increase in rates does not result from a Power Authority rate increase to the Village.

**Text or summary was published** in the May 21, 2008 issue of the Register, I.D. No. PAS-21-08-00006-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Anne B. Cahill, Corporate Secretary, New York Power Authority, 123 Main Street, 15-M, White Plains, New York 10601, (914) 390-8036, email: secretarys.office@nypa.gov

**Revised Regulatory Impact Statement**

A revised regulatory impact statement 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.

**Revised Regulatory Flexibility Analysis**

A revised regulatory flexibility analysis 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.

**Revised Rural Area Flexibility Analysis**

A revised rural area flexibility analysis 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.

**Revised Job Impact Statement**

A revised job impact statement 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.

**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.

## Public Service Commission

### NOTICE OF ADOPTION

#### Issues of Stock, Bonds and Other Forms of Indebtedness

**I.D. No.** PSC-24-05-00008-A

**Filing Date:** 2008-07-28

**Effective Date:** 2008-07-28

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

**Action taken:** On July 16, 2008, the Public Service Commission adopted an order, with conditions, approving the petition of Emerald Green Lake Louise Marie Water Company, Inc. for a loan agreement of \$330,000 for financing a new water filtration system.

**Statutory authority:** Public Service Law, section 89-f

**Subject:** Issues of stock, bonds and other forms of indebtedness.

**Purpose:** To approve Emerald Green Lake Louise Marie Water Company, Inc. for a loan agreement of \$330,000.

**Substance of final rule:** The Commission, on July 16, 2008, adopted an order, with conditions, approving the petition of Emerald Green Lake Louise Marie Water Company, Inc., (Company) for a loan agreement of \$330,000, to reimburse short term debt for financing new water filtration system at the Company, subject to the terms and conditions set forth in the order.

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

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

#### Assessment of Public Comment

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

(05-W-0617SA1)

### NOTICE OF ADOPTION

#### Master Metering of Water to a Multiple Dwelling

**I.D. No.** PSC-49-07-00012-A

**Filing Date:** 2008-07-23

**Effective Date:** 2008-07-23

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

**Action taken:** On July 16, 2008, the Public Service Commission adopted an order approving the petition of CPC Resources Inc. for the Village of Spring Valley to waive United Water New York's individual metering tariffs and allow master metering for low income & senior housing projects.

**Statutory authority:** Public Service Law, section 65(1), (2), (3), (4), (5), (12) and (14)

**Subject:** Master metering of water to a multiple dwelling.

**Purpose:** To waive individual metering tariffs and allow master metering at Spring Valley Family and Senior Apts.

**Substance of final rule:** The Commission, on July 16, 2008, adopted an order approving CPC Resources Inc.'s petition for the Village of Spring Valley to waive United Water New York's individual metering tariffs and allow master metering at the Spring Valley Family Apartments and Spring Valley Senior Apartments located at North Main Street, Spring Valley, New York.

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

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

#### Assessment of Public Comment

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

(07-W-1327SA1)

### NOTICE OF ADOPTION

#### Petition For the Submetering of Electricity

**I.D. No.** PSC-08-08-00015-A

**Filing Date:** 2008-07-23

**Effective Date:** 2008-07-23

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

**Action taken:** On July 16, 2008, the PSC adopted an order approving the petition filed by Bay City Metering Company, Inc., on behalf of The O'Connor Capital Partners, to submeter electricity at 200 East 66th Street, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Petition for the submetering of electricity.

**Purpose:** To grant the petition of Bay City Metering Company, Inc., to submeter electricity at 200 E. 66th St., New York, NY.

**Substance of final rule:** The Commission, on July 16, 2008, adopted an order approving a petition by Bay City Metering Company, Inc., on behalf of The O'Connor Capital Partners, to submeter electricity at 200 E. 66th St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

#### Assessment of Public Comment

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

(08-E-0070SA1)

### NOTICE OF ADOPTION

#### Approval of New Types of Gas Meters and Accessories

**I.D. No.** PSC-12-08-00027-A

**Filing Date:** 2008-07-23

**Effective Date:** 2008-07-23

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

**Action taken:** On July 16, 2008, the Public Service Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s petition for the use of the Itron 100G Series Gas ERT Module Automatic Meter Reading device for gas meters.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of new types of gas meters and accessories.

**Purpose:** To approve the use of Itron 100G Series Gas ERT Module Automatic Meter Reading device.

**Substance of final rule:** The Commission, on July 16, 2008, adopted an order approving Consolidated Edison Company of New York, Inc.'s petition for the use of the Itron 100G Series Gas ERT Module Automatic Meter Reading device, manufactured by Itron Incorporated, for gas meters.

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

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

#### Assessment of Public Comment

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

(08-G-0175SA1)

## NOTICE OF ADOPTION

**Resolution of the Prudence Proceeding in the Connection with the 2006 Long Island City Network Outages****I.D. No.** PSC-18-08-00006-A**Filing Date:** 2008-07-24**Effective Date:** 2008-07-24

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

**Action taken:** On July 16, 2008, the Public Service Commission adopted an order approving, with a minor modification, the joint proposal of Consolidated Edison Company of New York, Inc. and the parties, resolving the prudence investigation of the 2006 Long Island City network outage.

**Statutory authority:** Public Service Law, sections 4(1), 65(1), 66(1) and (12)

**Subject:** Resolution of the prudence proceeding in the connection with the 2006 Long Island City Network Outages.

**Purpose:** To adopt the terms & conditions of a joint proposal resolving the investigation of the 2006 Long Island City network outage.

**Substance of final rule:** The Commission, on July 16, 2008, adopted an order approving the terms and conditions of a joint proposal of Consolidated Edison Company of New York, Inc. (the Company), Staff of the Department of Public Service, the New York State Consumer Protection Board, Western Queens Power for the People, New York Assemblyman Richard L. Brodsky, the City of New York, and the Public Utility Law Project (the parties), with one minor exception regarding the form and format of the Company's apology to its customers, and resolving the prudence investigation of the 2006 Long Island City network outage, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(06-E-0894SA6)

## NOTICE OF ADOPTION

**Major Rate Filing****I.D. No.** PSC-19-08-00010-A**Filing Date:** 2008-07-23**Effective Date:** 2008-07-23

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

**Action taken:** On July 16, 2008, the Public Service Commission adopted an order approving, with exceptions and conditions, Orange and Rockland Utilities, Inc.'s request to make various changes contained in its Schedule for Electric Service PSC No. 2—Electricity, eff. August 1, 2008.

**Statutory authority:** Public Service Law, section 80(10)

**Subject:** Major Rate Filing.

**Purpose:** To approve, with exceptions and conditions, the terms of a three-year electric delivery service rate plan.

**Substance of final rule:** The Commission, on July 16, 2008, adopted the terms of an April 18, 2008 joint proposal, with exceptions and conditions, executed by Orange and Rockland Utilities, Inc., Department of Public Service Staff, the Town of Ramapo, the Small Customer Marketer Coalition, and the Retail Energy Supply Association, for Orange and Rockland Utilities, Inc.'s three-year electric delivery service rate plan, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(07-E-0949SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Transfer of Ownership and Light Regulation of an Approximately 55 MW Gas Fired Electric Generation Facility****I.D. No.** PSC-33-08-00005-P

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

**Proposed Action:** The Public Service Commission is considering a joint petition from IPP Energy LLC and Standard Binghamton LLC requesting approval of the transfer of ownership interests in an approximately 55 MW natural gas fired electric generation facility.

**Statutory authority:** Public Service Law, sections 2(13), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Transfer of ownership and light regulation of an approximately 55 MW gas fired electric generation facility.

**Purpose:** Consideration of approval of the transfer of ownership and light regulation of an 55 MW gas fired electric generation facility.

**Substance of proposed rule:** The Public Service Commission is considering a joint petition from IPP Energy LLC and Standard Binghamton LLC requesting approval of the transfer of ownership interests in an approximately 55 MW natural gas fired electric generation facility located in Binghamton, New York and that the facility be lightly regulated. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(08-E-0738SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Continuation and Expansion of Con Edison's Residential and Small Business DLC Programs****I.D. No.** PSC-33-08-00006-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, and to what extent, it should grant a petition by Consolidated Edison Company of New York, Inc., (Con Edison or Company) to continue and expand its residential and small business direct load control (DLC) programs.

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

**Subject:** Continuation and expansion of Con Edison's residential and small business DLC programs.

**Purpose:** Whether and to what extent the Commission should grant a petition by Con Edison to continue and expand its DLC programs.

**Substance of proposed rule:** The Commission is considering whether, and to what extent, it should grant a petition by Consolidated Edison Company of New York, Inc., (Con Edison or Company) to continue and

expand its residential and small business direct load control (DLC) programs. The Commission may accept, reject, or modify, in whole or in part, any proposals made by the Company in its petition or any proposals that may be developed there from, and it may also consider related matters.

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

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

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

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

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

(00-E-2054SA37)

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

**The Commission is Considering Granting in Whole or in Part the Petition of Nucor Steel Auburn, Inc**

**I.D. No.** PSC-33-08-00007-P

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

**Proposed Action:** On June 23, 2008 the Commission issued an Order, in Case 07-M-0548, establishing an Energy Efficiency Portfolio Standard and Approving Programs. Nucor Steel Auburn, Inc. has filed a Petition for Rehearing or Clarification.

**Statutory authority:** Public Service Law, section 22

**Subject:** The Commission is considering granting in whole or in part the Petition of Nucor Steel Auburn, Inc.

**Purpose:** To consider whether large electricity customers should be allowed to propose self-directed efficiency programs.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Nucor Steel Auburn, Inc. for Rehearing or Clarification. The proposed rule is to allow large utility customers to implement self-directed energy efficiency measures and to be exempt from contributing to the System Benefits Charge or other surcharges for funding energy efficiency programs. The Commission shall consider all other related matters.

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

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

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

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

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

(07-M-0548SA11)

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

**Noble Allegany's Request for Lightened Regulation**

**I.D. No.** PSC-33-08-00008-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, an application by Noble Allegany Windpark, LLC (Noble Allegany) for an order providing for lightened regulation as an electric corporation.

**Statutory authority:** Public Service Law, sections 4(1), 66(1), 69, 70 and 110

**Subject:** Noble Allegany's request for lightened regulation.

**Purpose:** To consider Noble Allegany's request for lightened regulation as an electric corporation.

**Substance of proposed rule:** In a petition filed July 8, 2008 Noble Allegany Windpark, LLC (Noble) seeks a Certificate of Public Convenience and Necessity to construct and operate a wind-power generating facility and related facilities in the Towns of Centerville and Rushford, Allegany County. In connection with this request for licensing, Noble requests lightened regulation as an electric corporation.

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

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

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

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

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

(08-E-0807SA1)

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

**Joint Petition to Enter into a Lease for Transmission Tower Space**

**I.D. No.** PSC-33-08-00009-P

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

**Proposed Action:** The Commission is considering whether, and to what extent, it should approve the Joint Petition of Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc. to enter into a lease for transmission tower space.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1), 66(1) and 70

**Subject:** Joint Petition to enter into a lease for transmission tower space.

**Purpose:** To consider the Joint Petition to enter into a lease for transmission tower space.

**Substance of proposed rule:** The Commission is considering whether, and to what extent, it should approve the Joint Petition of Consolidated Edison Company of New York, Inc., (Con Edison) and Orange and Rockland Utilities, Inc. (O & R) to enter into a lease for transmission tower space. Specifically, Con Edison requests authorization to transfer to O & R a leasehold interest that will allow O & R to construct, install, operate and maintain a second circuit (Transmission Line 28) in the open position on certain Con Edison transmission towers located between the Ramapo 345kV electric substation and the Rock Tavern 345kV electric substation, and to run Transmission Line 28 along the northwest edge of the Ramapo 345 kV substation. The Commission may accept, reject, or modify, in whole or in part, the Joint Petition or any proposals that may be developed there from, and it may also consider related matters.

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

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

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

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**  
 Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (08-M-0772SA1)

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

**Street Lighting**

**I.D. No.** PSC-33-08-00010-P

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

**Proposed Action:** The Commission is considering a tariff filing by Central Hudson Gas & Electric Corporation for revisions to Service Classification No. 8 — Public Street and Highway Lighting.

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

**Subject:** Street lighting.

**Purpose:** To remove light fixtures that have had no inventory over the last two years.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (Central Hudson) to revise Service Classification No. 8 Public Street and Highway Lighting. Central Hudson proposes to remove light fixtures that have had no inventory over the last two years.

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

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

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

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

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

(08-E-0870SA1)

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

**Water Rates and Charges**

**I.D. No.** PSC-33-08-00011-P

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

**Proposed Action:** On July 23, 2008, Top O' The World Water Co. Inc. (TOTW) filed a correction to its January 30, 2008 request to increase its annual revenues. TOTW originally filed for an increase of \$29,973 or 132% but now requests an increase of \$54,732 or 241%.

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

**Subject:** Water rates and charges.

**Purpose:** For approval to increase Top O' The World Water Co., Inc.'s annual revenues by about \$54,732 or 241%.

**Substance of proposed rule:** On January 30, 2008, Top O' The World Water Co., Inc. (TOTW or the company) filed, to become effective on June 1, 2008, tariff amendments (Leaf No. 12, Revision 1) to its electronic tariff schedule P.S.C. No. 3 – Water containing new rates designed to produce additional annual revenues of about \$29,973 or 132%. However, the company found that it made an error in its filing. As a result, the company requested that its filing be postponed to December 1, 2008 to allow it time to update its filing. Subsequently, on July 23, 2008 TOTW filed revised amendments (Leaf No. 12, Revision 2) bearing an effective date of

December 1, 2008 and containing rates that will now produce additional annual revenues of \$54,732 or 241%. The company provides metered water service to approximately 69 residential and 2 commercial customers in the Town of Queensbury, Warren County. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under File Room – Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's 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:** Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

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

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

(08-W-0081SA2)

---



---

**Department of Taxation and  
 Finance**

---



---

**NOTICE OF ADOPTION**

**Cigarette Tax**

**I.D. No.** TAF-24-08-00006-A

**Filing No.** 768

**Filing Date:** 2008-07-29

**Effective Date:** 2008-08-13

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

**Action taken:** Amendment of sections 70.1, 80.2 and 526.5 and Parts 74 and 82; renumbering of section 79.3 to section 79.4; and addition of new section 79.3 to Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 475 (not subdivided); 1142(1), 1250 (not subdivided); and L. 2008, ch 57, part RR-1, section 4

**Subject:** Cigarette tax.

**Purpose:** To implement statutory provisions and set commissions to agents for affixing cigarette stamps relating to the new rate of tax.

**Text or summary was published** in the June 11, 2008 issue of the Register, I.D. No. TAF-24-08-00006-EP.

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

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

**Assessment of Public Comment**

The agency received no public comment.