

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.

Adirondack Park Agency

NOTICE OF ADOPTION

Wetlands, Non-Conforming Shoreline Structures and On-Site Wastewater Treatment Systems, Floor Space, Hunting and Fishing Cabins

I.D. No. APA-35-08-00021-A

Filing No. 1317

Filing Date: 2008-12-16

Effective Date: 2008-12-31

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

Action taken: Amendment of Parts 570, 573, 575 and 578 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 804(9) and 809(1)(4); Environmental Conservation Law, sections 15-2709.1, 24-0805 and 24-0903(1)

Subject: Wetlands, Non-Conforming Shoreline Structures and On-Site Wastewater Treatment Systems, Floor Space, Hunting and Fishing Cabins.

Purpose: To clarify, simplify and provide better environmental protection.

Substance of final rule: The following summarizes the Adirondack Park Agency's Fifth proposed rulemaking pursuant to its FS/GEIS, accepted October 31, 2008. The Summary is organized by subject area.

SUBJECT: "Involving Wetlands"

SECTIONS: 9 NYCRR 570.3, 573.3 and 4, and 578.3

STATUTORY AUTHORITY: Executive Law Article 27

Section 578.3(n) is amended to delete "subdivision" under subsection one and to add a new section (3) which addresses when a subdivision or portion of a subdivision will require a wetland permit. This amendment

completely revises Agency jurisdiction over subdivisions involving wetlands so as to include those lots, the creation of which may in fact adversely impact wetlands, but also to create criteria for a non-jurisdictional opportunity based on subdivision design. 570.3(x) is proposed to be amended to define "involving wetlands" under the APA Act as identical to "regulated activity" under the Agency regulations implementing the Freshwater Wetlands Act. Section 573.3 is amended to clarify that proposed wetland parcels being retained will be treated the same as those being sold, and to remove what would be conflicts with the new jurisdictional rules. Section 573.4 is amended to clarify how these rules affect the gift exemption provided by Executive Law Section 811(1)(c). Related to these amendments, the Agency also proposes a general permit which can be promptly issued based on specified parameters which are different than those established for the non-jurisdictional determination.

SUBJECT: Expansion of non-conforming shoreline structures

SECTION: 575.5 and 575.7

STATUTORY AUTHORITY: Executive Law Article 27

Section 575.5, subsection 2, of Agency regulations is amended to prohibit any major expansion of pre-existing structures located within the shoreline setback area unless a variance is granted. This removes an exemption which gave lawfully pre-existing non-conforming structures more opportunity to expand than other existing structures. The amendment also includes an opportunity for a "minor" expansion to the rear or the height of the pre-existing non-conforming structure without a variance. A companion Section 575.7, dealing with the shoreline setbacks for on-site wastewater treatment systems, is also amended. A new subsection (c) will require that when a pre-existing non-conforming on-site wastewater treatment system is being replaced, it must be located to meet the shoreline setback requirements to the greatest extent possible. Also, a new subsection (d) is added to require a variance for the expansion of a non-conforming wastewater treatment system in conjunction with an actual or potential proposed increase in occupancy of the associated structure.

SUBJECT: Land division along roads or rights-of-way owned in fee

SECTION: 573.4

STATUTORY AUTHORITY: Executive Law Article 27

Section 573.4(b) is removed. This will eliminate the automatic creation of separate parcels (available for sale without permit) due to the bisection of one large parcel by roads or rights-of-ways owned in fee, which division of lands often violated the overall intensity guidelines.

SUBJECT: "Floor Space"

SECTION: 570.3

STATUTORY AUTHORITY: Executive Law Article 27

A new Section 570.3(bb) is added to provide a definition for "square feet of floor space for a building". A new Section 570.3(bc) is added to define the "square footage of a structure other than a building".

SUBJECT: "Hunting and Fishing Cabin"

SECTION: 570.3

STATUTORY AUTHORITY: Executive Law Article 27

Section 570.3(u) is amended to create a new definition of "hunting and fishing cabin and private club structure". The definition focuses on physical attributes of the structure, but also retains the essential aspects of the existing definition relating to use requirements.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 575.5(b)(2), 575.7(c), (d) and 578.3(n)(3).

Text of rule and any required statements and analyses may be obtained from: John S. Banta, Counsel, Adirondack Park Agency, P.O. Box 99, Ray Brook, NY 12977, (518) 891-4050, email: jsbanta@gw.dec.state.ny.us

Revised Regulatory Impact Statement

The original Regulatory Impact Statement Summary need not be revised due to changes made to the proposed regulations by the Agency at its November 14, 2008 meeting. Agency non-material changes when it approved the new regulations at its November 14, 2008 meeting were

intended to clarify the application of the regulations. The November 2008 revisions relating to non-conforming shoreline structures clarify that the Agency would not review minor expansions of such structures. As a result, the new Section 575.5 will focus on expansions likely to involve non-compliant sanitary systems or those with other potential significant environmental impacts on water quality and shoreline character, and will minimize unnecessary regulatory process.

Further discussion is located in the Assessment of Public Comment.

Revised Regulatory Flexibility Analysis

The Adirondack Park Agency has determined that the proposed regulatory amendments are not expected to impose any new reporting, record keeping or other compliance requirements on small businesses or local governments. Also, there are no initial costs on small businesses or local governments for compliance with these rules. Further, these proposed rules are not expected to have any adverse economic impact on small businesses or rural areas or impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Agency non-material changes when it approved the new regulations at its November 14, 2008 meeting were intended to clarify the application of the regulations. The November 2008 revisions relating to non-conforming shoreline structures clarify that the Agency would not review minor expansions of such structures. As a result, the new Section 575.5 will focus on expansions likely to involve non-compliant sanitary systems or those with other potential significant environmental impacts on water quality and shoreline character, and will minimize unnecessary regulatory process.

The proposed amendments are not expected to have any adverse impact upon regulated small businesses nor upon persons or businesses located in or operating in rural areas nor will it have an adverse impact upon jobs or employment opportunities.

Further discussion is located in the Assessment of Public Comment.

Revised Rural Area Flexibility Analysis

The Adirondack Park Agency has determined that the proposed regulatory amendments are not expected to impose any new reporting or record keeping or other compliance requirements on small businesses or public entities in rural areas. As a result, they are not expected to have any adverse economic impact on small businesses or public entities in rural areas.

Agency non-material changes when it approved the new regulations at its November 14, 2008 meeting were intended to clarify the application of the regulations. The November 2008 revisions relating to non-conforming shoreline structures clarify that the Agency would not review minor expansions of such structures. As a result, the new Section 575.5 will focus on expansions likely to involve non-compliant sanitary systems or those with other potential significant environmental impacts on water quality and shoreline character, and will minimize unnecessary regulatory process.

The proposed amendments are not expected to have a significant adverse impact upon any regulated small businesses nor upon persons or businesses located in or operating in rural areas nor will it have an adverse impact upon jobs or employment opportunities.

Revised Job Impact Statement

The minor changes made to the proposed regulations by the Agency in its November 14, 2008 approval will not change the analysis contained in the Statement in Lieu of Job Impact previously published. Additional explanation can be found in the Agency's Assessment of Public Comment, prepared with this Notice of Adoption.

Assessment of Public Comment

General

General comments received object to the regulation revision proposal as being outside the scope of the authority of the Agency and an expansion of its jurisdiction. Sections 804(9) and 809(14) of the Adirondack Park Agency Act (Executive Law, Article 27), Sections 24-0805 and 24-0903 of the Freshwater Wetlands Act (Environmental Conservation Law, Article 24) and Section 15-2709.1 of the Wild, Scenic, and Recreational Rivers System Act (Environmental Conservation Law, Article 15, Title 27) all specifically grant the Agency the authority to adopt, amend, and repeal regulations consistent with those laws.

The Agency has also adopted guidance to explain how the rules will be applied to activities which were planned or under way at the time of the Agency's decision. They are generous in comparison to the strict rules for common law vested rights which require that a project be undertaken on the date the rules take effect in order to avoid application of the new rules. The Agency will honor existing permits and non-jurisdictional determinations, and for subdivisions, will honor lawfully filed plats and deeds. The guidance is attached to the full Assessment of Public Comment.

Involving Wetlands

Comments questioned regulatory impact statement conclusions that the cost of administration would be approximately equivalent to the current regulatory rules. The cost of this provision to an applicant involves the drafting of subdivision documents by professional surveyors, including the need to locate wetland boundaries and capture that information on

documents filed with the Agency for jurisdictional determinations or subdivision permission. That requirement is substantially unchanged. Rather, the proposed regulation creates a significant incentive to configure proposed subdivision lots differently than the outcome with the current regulatory framework. Whether a greater volume of subdivision activity would be reviewed by the Agency will depend on the design practices of landowners who propose to subdivide their property, and the effectiveness of the General Permit strategy suggested in the FSGEIS. The regulation provides a non-jurisdictional alternative which can be utilized by the developer with appropriate planning to avoid wetland impacts and Agency jurisdiction.

Questions were posed regarding the source, appropriateness and/or adequacy of the 200-foot separation between the property boundary and the wetland boundary for a non-jurisdictional subdivision. The 200-foot separation is derived directly from Appendix Q-4 of Agency regulations relating to minimum separation from a wetland or water body for a wastewater treatment system located in fast-perking soils. The regulatory 200-foot distance for adjacent parcel boundaries assures that at that boundary there would be a very low potential for impacts from adjacent development.

Several comments assert that the Agency is creating new jurisdiction. The proposed revision makes no change to the fundamental statutory authority provided to the Agency by the Adirondack Park Agency Act and the Freshwater Wetlands Act. Both these laws anticipate Agency review over subdivisions where wetlands could be adversely impacted due to the proposed subdivision plan. Implementing regulations have long been recognized as having unintended consequences that diminish their effectiveness, ensnare individuals in inadvertent violations of the law, and result in creation of lots with no logical reason for existence and no development potential, solely to avoid jurisdiction. The new regulation more closely tailors jurisdiction over subdivisions to the circumstances where there is a significant likelihood that the proposed subdivision will adversely impact the wetlands.

Expansion of Non-Conforming Shoreline Structures

Several comments object to changing a privilege previously granted by the regulations for existing non-conforming structures to expand. Some of these comments assert that the proposed changes are outside the statutory framework of the Adirondack Park Agency Act. In fact, the Agency has opined that the previous regulatory language may have exceeded the limit of authority in the statute; the new regulatory change relies directly on the actual statutory language for authority, and more closely aligns with traditional zoning principles. The expansion of structures within the shoreline setback area has always been limited by statute, and the proposed regulation revision merely quantifies and clearly establishes which activities would constitute an "increase non-compliance" as that term is used in the statute.

In approving this regulatory amendment, the Agency clarified that minor expansions to the rear or to the height of non-conforming structures would be allowed without a variance by an addition of specific language. In addition, the Agency adopted guidance explaining the types of expansions which would be considered a "minor" expansion. The guidance is attached to the full Assessment of Public Comment.

Recent comments assert that the rule change would have an impact on the local construction industry and that the "Job Impact Analysis" is incorrect.

The new rule does not prohibit the replacement of lawfully existing structures located within the shoreline setback area. Rather, it requires a variance for expansion of such structures if such expansion is proposed to be within the statutory shoreline setback area. Where the landowner seeks to significantly expand the non-conforming structure, it can be done without a variance if the expansion is located outside the setback area. In the alternative, the structure can be relocated outside the shoreline setback area, or if that is not a reasonable option, a variance may in fact be appropriate for an expansion.

For the eighteen towns with an Agency-approved local land use program, the regulatory change is not significant since all of those programs already require a variance for any expansion of a non-conforming structure if the expansion is to be located within the shoreline setback area. In addition, the existing review process established by Section 808 (3) of the Adirondack Park Agency Act will not change; the town must continue to refer shoreline variances to the Agency for review as already required. (See "Agency Review of Variance Referrals from Approved Local Land Use Programs," attached to the full Assessment of Public Comment.) Many towns without an Agency-approved local land use program also have shoreline setback and variance requirements, often more rigorous than the Agency requirements. For those towns with no zoning whatsoever, the new rule will impose new requirements, but again, the requirement does not preclude replacement of non-conforming structures, or expansion of such structures outside the shoreline setback area. Similar to the change in wetland jurisdiction, most owners of non-

conforming shoreline structures will have the option to design their expansion to avoid the need for a variance. Moreover, in all cases, minor expansions will be allowed by the Agency without a variance.

Construction, including replacements and expansions, will certainly continue on lots having pre-existing non-conforming shoreline structures in the Park. Minor expansions will not require a variance. This regulation only moves new, major construction and wastewater treatment systems to a compliant location further from the water body in order to protect it. If compliance is not an option, the variance procedure is available. This may slow the initiation of some projects, but as most towns already require a variance for such projects, a delay should not be significant.

Land Division Along Roads or Rights-of-Way Owned in Fee

The Agency received comments in support, and some suggesting the proposed will add cost and delays to subdivisions, and an expansion of Agency jurisdiction without legislative action. Under the old regulation, forest owners could separate large parcels along existing roads without a permit. Under the new rule, such transfers may require a permit.

The Agency believes that proper interpretation of the Adirondack Park Agency Act and its explicit "merger" provision on which density calculations are based requires analysis of a parcel as a whole. Section 811(1)(a) of the Adirondack Park Agency Act creates a merger of all adjacent parcels under one ownership, which merged lands constitute the "pre-existing lot of record". Under this new rule, the Agency clarifies that ownerships separated from each other by an intervening road or right-of-way owned in fee are deemed adjacent, which allows the Agency to properly apply the overall intensity guidelines.

In its action, the Agency specifically noted the significant problems associated with newly created lawful lots, located on one side of a road from the seller's other land holdings, which are too small to meet the overall intensity guidelines of the Adirondack Park Agency Act. Purchasers of such lots often learn too late that the parcel does not have sufficient acreage to support a principal building. This rule will help prevent those unfortunate outcomes.

The Agency already expedites subdivisions which are Minor Projects (those involving only two lots) by issuance of a General Permit (GP 2005G-2). This General Permit will be further adjusted to facilitate sizeable bulk land transfers involving all lands on one side of a road or right-of-way owned in fee. This will address the concerns of forest land managers and simplify certain transfers that formerly would have been addressed as non-jurisdictional under the deleted provision.

Floor Space

Several comments support the proposed addition of the method of measurement of floor space, in that it provides clear guidance and is conveniently measurable. One suggests that the measurement should include both covered and uncovered porches and decks.

Other comments suggest using interior measurements. However, this would involve the Agency (or lease managers) to enter structures like hunting and fishing cabins to measure useable space. An exterior measurement was considered an appropriate and consistent mechanism and far less of an imposition on the landowner.

Other comments referenced different standard methods of measurement of floor space based on the Uniform Building Code and ANSI standards. The purpose of the proposed regulation is neither to facilitate appraisal nor to ensure compliance with other applicable codes, but merely to establish a consistent measurement method to be used when determining Agency jurisdiction.

As the adopted measurement methodology has advantages and disadvantages for every landowner, the regulation serves the intended purpose of creating a fair, simple and consistent methodology for measuring the size of structures for Agency jurisdictional purposes.

Hunting and Fishing Cabins and Hunting and Fishing and other Private Club Structures

The structural elements of this definition have been broadly supported in a multi-year drafting effort involving those who have also submitted new comments. A number of comments object to actual use of the structure as an element of the definition in light of the straightforward structural aspects captured in the amendment. Some comments specifically propose the addition of "open space recreation use" as an allowable use associated with a hunting and fishing cabin.

The definition as proposed, particularly the structural elements, reflects substantial consensus after a long contentious dialogue. During the hearing process it was clear that the administrative history of this proposed rule should reflect a presumption of compliance when the structural requirements are met, based on exterior observations. However, use is also an important consideration for the qualification of the structure as a "hunting and fishing cabin." The actual use of the structure may be important to resolve ambiguity in situations where a structure is fully compliant by structural components, but is utilized in an inconsistent manner, for instance as a tourist accommodation or residential dwelling.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-17-08-00019-A

Filing No. 1287

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the April 23, 2008 issue of the Register, I.D. No. CVS-17-08-00019-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

One public comment was received from the New York State Public Employees Federation, AFL-CIO ("PEF"), during the public comment period. PEF maintains that the titles of Immigrant Workers Specialist 1 and 2 ("IWS" 1 and 2) in the Department of Labor ("DOL") perform duties and responsibilities currently performed by the competitive class titles of Labor Service Representative (Rural), Supervising Labor Standards Representative (Rural), Labor Standards Investigator and Senior Labor Standards Investigator. Based upon similar duties, PEF contends that the IWS 1 and 2 titles belong in the competitive jurisdictional class. No comments were received regarding the title of Director Immigrant Workers' Services.

Although there may be similarities in certain duties between IWS 1 and 2 and the titles referenced by PEF, the Civil Service Commission ("CSC") recognizes that the subject positions emphasize understanding the special needs of immigrant workers, providing information/education and building rapport and trust with immigrant communities as essential job functions. Some immigrants and their communities may be wary of governmental representatives who are seen only as enforcement agents or cultural "outsiders." IWS incumbents must embrace collaboration, community involvement and coalition-building activities with advocacy groups which are outside of traditional DOL regulatory enforcement functions.

PEF has not demonstrated how the cultural sensitivities/background/identification and other key personal characteristics required for IWS 1 and 2 can be assessed through competitive examination. Testable knowledge, skills and abilities previously identified by the Department of Civil Service and/or highlighted in PEF's submission can be addressed through carefully drawn non-competitive minimum qualifications. Accordingly, the CSC determined that based upon the record, competitive examination is impracticable and there are no viable significant alternatives to placement of the IWS 1 and 2 positions in the non-competitive jurisdictional class. The resolution shall be adopted as proposed.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-08-00020-A

Filing No. 1288

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the May 14, 2008 issue of the Register, I.D. No. CVS-20-08-00020-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00001-A

Filing No. 1289

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00002-A

Filing No. 1295

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00003-A

Filing No. 1290

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00004-A

Filing No. 1292

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00005-A

Filing No. 1294

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00006-A

Filing No. 1301

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00007-A

Filing No. 1296

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00008-A

Filing No. 1293

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the exempt class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00009-A

Filing No. 1297

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-08-00010-A

Filing No. 1291

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the June 25, 2008 issue of the Register, I.D. No. CVS-26-08-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-08-00003-A

Filing No. 1300

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. CVS-31-08-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-08-00004-A

Filing No. 1305

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. CVS-31-08-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-08-00005-A

Filing No. 1299

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. CVS-31-08-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-08-00006-A

Filing No. 1303

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. CVS-31-08-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-08-00007-A

Filing No. 1304

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. CVS-31-08-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-08-00008-A

Filing No. 1302

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the non-competitive class.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. CVS-31-08-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-31-08-00009-A

Filing No. 1298

Filing Date: 2008-12-11

Effective Date: 2008-12-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the non-competitive class.

Text or summary was published in the July 30, 2008 issue of the Register, I.D. No. CVS-31-08-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Crime Victims Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prohibited Disclosure of Personal Identifying Information

I.D. No. CVB-53-08-00001-P

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

Proposed Action: This is a consensus rule making to add section 525.33 to Title 9 NYCRR.

Statutory authority: Chapter 279 of the Laws of 2008

Subject: Prohibited disclosure of personal identifying information.

Purpose: To codify the Crime Victims Board's policy related to the disclosure of personal identifying information.

Text of proposed rule: A new section 525.33 is added to read as follows:

525.33 *Prohibited use of personal identifying information. 1. The Board shall not do any of the following, unless otherwise required by law:*

(a) *Intentionally communicate to the general public or otherwise make available to the general public in any manner an individual's social security account number. This paragraph shall not apply to any individual intentionally communicating to the general public or otherwise making available to the general public his or her social security account number.*

(b) *Print an individual's social security account number on any card or tag required for the individual to access products, services or benefits provided by the Board.*

(c) *Require an individual to transmit his or her social security account number over the internet, unless the connection is secure or the social security account number is encrypted.*

(d) *Require an individual to use his or her social security account number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the internet website.*

(e) *Include an individual's social security account number, except the last four digits thereof, on any materials that are mailed to the individual, or in any electronic mail that is copied to third parties, unless state or federal law requires the social security account number to be on the document to be mailed. Notwithstanding this paragraph, social security account numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate a claim, account, contract or policy, or to confirm the accuracy of the social security account number. A social security account number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.*

(f) *Encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.*

(g) *No person may file any document available for public inspection with the Board that contains a social security account number of any other person, except as required by federal or state law or regulation, or by court rule.*

2. *Regarding employee personal identifying information, the Board shall not do any of the following, unless otherwise required by law:*

(a) *Publicly post or display an employee's social security number;*

(b) *Visibly print a social security number on any identification badge or card, including any time card;*

(c) *Place a social security number in files with unrestricted access;*

or

(d) *Communicate an employee's personal identifying information to the general public. For purposes of this section, "personal identifying information" shall include social security number, home address or telephone number, personal electronic mail address, Internet identification name or password, parent's surname prior to marriage, or drivers' license number.*

(e) *The provisions of this subdivision shall also be provided in the Board's employee handbook.*

3. *As used in this section "social security account number" shall include the nine digit account number issued by the federal social security administration and any number derived therefrom. Such term shall not include any number that has been encrypted.*

4. *This section shall not prevent the collection, use or release of a social security account number as required by state or federal law, or the use of a social security account number for internal verification, fraud investigation or administrative purposes.*

Text of proposed rule and any required statements and analyses may be obtained from: John Watson, General Counsel, New York State Crime Victims Board, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us

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

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(b), it implements or confirms to non-discretionary statutory provisions.

Sections 3 and 6 of Chapter 279 of the Laws of 2008 added new sections 96-a to the Public Officers Law and 203-d to the Labor Law, respectively. These new sections relate to the prohibited conduct of sharing all individuals' social security numbers generally and other personal identifying information of employees specifically. Section 96-a of the Public Officers Law is to take effect on January 1, 2010, and section 203-d of the Labor Law is to take effect on January 7, 2009. The Commissioner of the Department of Labor may impose a civil penalty of up to \$500 on any employer for any knowing violation of section 203-d of the Labor Law. Failure to have in place a policy to safeguard a violation of section 203-d of the Labor Law, including procedures to notify relevant employees of its provisions, is presumptive evidence of a violation.

Section 96-a of the Public Officers Law reads as follows: § 96-a. Prohibited conduct. 1. Beginning on January first, two thousand ten the state and its political subdivisions shall not do any of the following, unless required by law:

(a) *Intentionally communicate to the general public or otherwise make available to the general public in any manner an individual's social security account number. This paragraph shall not apply to any individual intentionally communicating to the general public or otherwise making available to the general public his or her social security account number.*

(b) *Print an individual's social security account number on any card or tag required for the individual to access products, services or benefits provided by the state and its political subdivisions.*

(c) *Require an individual to transmit his or her social security account number over the internet, unless the connection is secure or the social security account number is encrypted.*

(d) *Require an individual to use his or her social security account number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the internet website.*

(e) *Include an individual's social security account number, except the last four digits thereof, on any materials that are mailed to the individual, or in any electronic mail that is copied to third parties, unless state or federal law requires the social security account number to be on the document to be mailed. Notwithstanding this paragraph, social security account numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the social security account number. A social security account number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.*

(f) *Encode or embed a social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.*

(g) *Nothing in this section shall prohibit a county clerk or court from making available a document publicly recorded or filed prior to the effective date of this section, provided that if any individual requests redaction of a social security number from a publicly recorded document available to the public online, such number shall be promptly redacted by the county clerk. Nothing in this section shall limit disclosure of criminal history record information currently permitted.*

2. *As used in this section "social security account number" shall include the nine digit account number issued by the federal social security administration and any number derived therefrom. Such term shall not include any number that has been encrypted.*

3. *This section does not prevent the collection, use or release of a social security account number as required by state or federal law, or the use of a social security account number for internal verification, fraud investigation or administrative purposes.*

Section 203-d of the Labor Law reads as follows: § 203-d. Employee

personal identifying information. 1. An employer shall not unless otherwise required by law:

- (a) Publicly post or display an employee's social security number;
- (b) Visibly print a social security number on any identification badge or card, including any time card;
- (c) Place a social security number in files with unrestricted access; or
- (d) Communicate an employee's personal identifying information to the general public. For purposes of this section, "personal identifying information" shall include social security number, home address or telephone number, personal electronic mail address, Internet identification name or password, parent's surname prior to marriage, or drivers' license number.

2. A social security number shall not be used as an identification number for purposes of any occupational licensing.

3. The commissioner may impose a civil penalty of up to five hundred dollars on any employer for any knowing violation of this section. It shall be presumptive evidence that a violation of this section was knowing if the employer has not put in place any policies or procedures to safeguard against such violation, including procedures to notify relevant employees of these provisions.

The proposed rule simply mirrors the provisions of these two new sections of law in a new section of 9 NYCRR Part 525. Specifically, the provisions of section 203-d of the Labor Law, require the agency to have in place such a policy. Generally, these provisions are useful for both employees and public alike, so all are made aware of their protections and rights under the laws of New York State.

Job Impact Statement

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change simply implements the new statutory requirements of Chapter 279 of the Laws of 2008 as they relate to the prohibited disclosure of social security numbers or personal identifying information. Since nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.

Division of Criminal Justice Services

NOTICE OF WITHDRAWAL

Availability of Records

I.D. No. CJS-42-08-00007-W

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

Action taken: Notice of proposed rule making, I.D. No. CJS-42-08-00007-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 15, 2008.

Subject: Availability of records.

Reason(s) for withdrawal of the proposed rule: The Division has determined that revisions to the text of the rule may be necessary.

Agency contact person: Mark Bonacquist, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-8413.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Administration of Ability-to-Benefit Tests for Purposes of Eligibility for Awards of State Aid

I.D. No. EDU-53-08-00008-P

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

Proposed Action: Amendment of section 145-2.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 661(4)

Subject: Administration of ability-to-benefit tests for purposes of eligibility for awards of state aid.

Purpose: To clarify the requirements for the independent administration of ability-to-benefit tests.

Text of proposed rule: Section 145-2.15 of the Regulations of the Commissioner of Education is amended, effective April 9, 2009, as follows:

§ 145-2.15 Administration of ability-to-benefit tests for purposes of eligibility for awards [and loans].

- (a) . . .
- (b) Definitions. For purposes of this section:
 - (1) [Assessment] *Testing center* means a center that:
 - (i) . . .
 - (ii) is located at an eligible institution if the following requirements are met:
 - (a) . . .
 - (b) . . .
 - (c) the center is staffed by professional employees who have been trained in test administration and Federal guidelines regarding the administration of ability-to-benefit tests and [who are] *such employees shall not be employed through, or perform the duties of,* the admissions, student financial aid, or registrar's offices of the institution; and
 - (d) . . .
 - (2) . . .
 - (3) . . .
 - (4) . . .
 - (c) Ability-to-benefit tests approved by the Board of Regents for eligibility for awards under section 661 of the Education Law.
 - (1) . . .
 - (2) For purposes of eligibility for awards [and loans] under section 661 of the Education Law, the department shall publish a list of ability-to-benefit tests that the Board of Regents has identified as satisfactory in determining eligibility to receive a first award in the academic year 2007-2008 and each year thereafter for students without a certificate of graduation from a school providing secondary education from a state within the United States or the recognized equivalent of such a certificate. The identification of such tests shall be without term unless the department determines that a test is no longer satisfactory in determining eligibility for awards under section 661 of the Education Law or the secretary discontinues Federal recognition of such test.
 - (d) Satisfactory passing score. For purposes of eligibility for awards under section 661 of the Education Law, an eligible institution shall submit for approval by the Board of Regents[,] the passing score it proposes to utilize on any ability-to-benefit test approved by the Board of Regents under subdivision (c) of this section, in a form prescribed by the commissioner. Such score shall not be lower than the score set by the secretary and the eligible institution shall submit an explanation of its reasons for selecting such passing score and any other information the commissioner may require. Approval of such passing score shall be without term unless the department determines that the passing score is no longer satisfactory in determining eligibility for awards under section 661 of the Education Law or the institution seeks to change such passing score or no longer offers the approved ability-to-benefit test.

(1) . . .

(2) For purposes of eligibility for awards [and loans] under section 661 of the Education Law, the department shall publish a list of ability-to-benefit tests that the Board of Regents has identified as satisfactory in determining eligibility to receive a first award in the academic year 2007-2008 and each year thereafter for students without a certificate of graduation from a school providing secondary education from a state within the United States or the recognized equivalent of such a certificate. The identification of such tests shall be without term unless the department determines that a test is no longer satisfactory in determining eligibility for awards under section 661 of the Education Law or the secretary discontinues Federal recognition of such test.

(d) Satisfactory passing score. For purposes of eligibility for awards under section 661 of the Education Law, an eligible institution shall submit for approval by the Board of Regents[,] the passing score it proposes to utilize on any ability-to-benefit test approved by the Board of Regents under subdivision (c) of this section, in a form prescribed by the commissioner. Such score shall not be lower than the score set by the secretary and the eligible institution shall submit an explanation of its reasons for selecting such passing score and any other information the commissioner may require. Approval of such passing score shall be without term unless the department determines that the passing score is no longer satisfactory in determining eligibility for awards under section 661 of the Education Law or the institution seeks to change such passing score or no longer offers the approved ability-to-benefit test.

In determining whether to approve the proposed score or scores, the commissioner shall take into consideration the following factors:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .

(e) Independent administration and evaluation of ability-to-benefit test. For purposes of meeting the eligibility requirements for awards under section 661 of the Education Law, the institution shall independently administer and evaluate ability-to-benefit tests approved by the Board of Regents in accordance with the requirements of this subdivision. The department will consider an ability-to-benefit test to be independently administered and evaluated if the following requirements are met:

(1) The test is administered [at an assessment] *at one of the following locations:*

(i) *a testing center* that is not located at and/or affiliated with the institution for which the student is seeking enrollment and the test administrator is an employee of such center; or

[(2)] (ii) [the test is administered at] a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution and the chief executive officer of such institution certifies annually, in a form prescribed by the commissioner, that:

[(i)] (a) the test is administered by a unit of the institution that is responsible for other forms of testing or for [a] provision of academic support services, or both, and such unit does not report to officers responsible for admissions or the administration of student financial aid for such institution;

[(ii)] (b) . . .

[(iii)] (c) . . .

[(iv)] (d) . . .

[(v)] (e) the scoring of ability-to-benefit tests *is in accordance with the test publisher's instructions* and is overseen by institutional employees who are not employed through, *or perform the functions of* the admissions, student financial aid, or registrar's offices and such scores are verified by more than one employee;

[(vi)] (f) all tests, test results, and test databases, if any, are kept [in locked and secure containers] *secure*;

[(vii)] (g) . . .

[(viii)] (h) the test administrator is not a current or former member of the board of directors, a current or former employee *of* or a consultant to a member of the board of directors or a chief executive officer;

[(ix)] (i) the test administrator is not a current [or former] student of the institution;

[(x)] (j) the test administrator is not scoring the test; and

[(xi)] (k) the annual certification shall also include the following information relating to the previous academic year: the number of students examined, the number of re-tests administered, the scores on all ability-to-benefit tests for each student examined, the number of students achieving passing scores on such tests, the number of students tested that are enrolling in such institution and the success of tested students in terms of retention and graduation; *or*

[(3)] (iii) [the test is administered at] an eligible institution that does not have degree-conferring authority *and such institution is not a public vocational institution* and the test is given by a test administrator who:

[i] (a) . . .

[ii] (b) . . .

[iii] (c) . . .

[iv] (d) . . .

[v] (e) . . .

[vi] (f) . . .

[vii] (g) . . .

[(viii)] (h) . . .

[(ix)] (i) . . .

[(x)] (j) upon request, gives the [commission] *Commissioner*, guaranty agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an examination, audit, investigation, or program review of the institution or test publisher[.];

[(4)] (2) The commissioner will not consider a test independently administered if an institution:

(i) . . .

(ii) . . .

(iii) otherwise interferes with the test administrator's independence or test administration[.];

[(5)] (3) Any institution administering an ability-to-benefit test shall maintain a record for each student who sat for an ability-to-benefit test under this section, including the name of the test taken by such student, the date of the test and the student's scores on such tests[.]. *This information shall be retained in the student's permanent record.*

[(6)] (4) Upon request, the eligible institution shall provide the commissioner with access to test records or other documents related to an audit, investigation or program review of the institution[.];

[(7)] (5) If the commissioner finds that an institution has violated the certification procedures or the ability-to-benefit test procedures under this section, the commissioner shall have the authority to require an eligible institution to employ [an assessment] *a testing center* independent of such institution.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa Struffolino, New York State Education Department, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 473-4921, email: lstruffo@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of P16, New York State Education Department, 2M West Wing, Education Building, Albany, New York 12257, (518) 474-3862, email: p16education@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority

to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Paragraph (e) of subdivision (4) of section 661 of the Education Law, as added by Chapter 57 of the Laws of 2007, requires institutions participating in State student aid programs to require that eligible students seeking aid for the first time in the 2007-08 academic year or thereafter, who do not have U.S. high school diplomas or the recognized equivalent, achieve approved passing scores on a federally approved "ability-to-benefit" test identified by the Board of Regents that is independently administered as defined by the Commissioner.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statute by clarifying the requirements for the independent administration of ability-to-benefit tests.

3. NEEDS AND BENEFITS:

Education Law § 661 sets forth the eligibility requirements and conditions for general awards, academic performance awards and student loans. Chapter 57 of the Laws of 2007 added a new paragraph (e) to subdivision (4) to that section, establishing requirements for students seeking aid under State student financial aid for the first time in the 2007-08 academic year and thereafter, who do not hold diplomas from high schools located within the United States or their recognized equivalent.

The Department developed § 145-2.15 with the advice and assistance of a Work Group comprised of academic and financial aid officers of public, independent, and proprietary colleges and universities, SUNY, CUNY, CICU, APC, and HESC. Upon subsequent review by the Work Group and through experience in administering, monitoring, and auditing compliance, the Work Group has identified certain amendments to the regulation that are needed to reduce uncertainty and confusion and to eliminate unnecessary and overly burdensome requirements.

For instance, § 145-2.15 of the Commissioner's regulations makes reference to "assessment centers" that may be either free-standing entities or centers operated by higher education institutions or public vocational institutions. However, federal regulations governing the administration of HEA Title IV student aid funds (34 CFR 668.142) also make use of the phrase, "assessment center" with a meaning different from that in § 145-2.15 of the Commissioner's regulations. To reduce confusion, the proposed amendment replaces the phrase "assessment center" with "testing center".

The amendment also makes several technical amendments and clarifies the limitations on employees of a testing center. Specifically, the amendment adds to the existing prohibition on test center employees, a prohibition on not only the use of any person employed through the admissions, student financial aid, or registrar's offices at an institution, but a prohibition on the use of any employee who carries out the functions of such offices.

The proposed amendment also requires that the scoring of an ability-to-benefit test be "in accordance with the test publisher's instructions."

In light of the fact that tests may be offered on computer as well as in paper-and-pencil format, the proposed amendment requires that tests, results, and databases be kept "secure" instead of "in locked and secured containers".

The proposed amendment also eliminates the prohibition against an institution employing a former student as a test administrator because it is unnecessarily restrictive, given the other constraints § 145-2.15 of the Commissioner's regulations places on the administration of ability-to-benefit tests.

Section 145-2.15(e) of the Commissioner's regulations is also amended to clarify that in order for the Department to consider a test "independently administered", it must be administered at one of the following locations: (1) a testing center that is not located at and/or affiliated with the institution for which the student is seeking enrollment; (2) a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution provided that the chief executive officer certifies annually that certain procedures have been followed; or (3) an eligible non-degree granting institution that is not a public vocational institution provided that the test is given by a test administrator meeting certain requirements delineated in the proposed amendment.

4. COSTS:

(a) Costs to State government. This amendment will not impose any additional costs on State government over and above those resulting from the existing provisions of § 145-2.15 of the Commissioner's regulations. The State Education Department will use existing personnel and resources to administer the amendment's provisions.

(b) Costs to local government. This amendment will not impose any additional costs on local governments over and above those resulting from the existing terms of § 145-2.15.

(c) Costs to private regulated parties. This amendment will not impose any additional costs on private regulated parties over and above those resulting from the existing requirements set forth in § 145-2.15 of the Commissioner's regulations.

(d) Costs to the regulatory agency. As stated above under Costs to State Government, the proposed amendment would not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment clarifies the requirements for the independent administration of ability-to-benefit tests for students applying for State student financial aid for the first time in 2007-08 and thereafter, who do not hold diplomas from high schools located in the United States or its recognized equivalent. The proposed amendment will not affect local governments in New York State. The measure will not impose any adverse economic impact, reporting, recordkeeping, or any other compliance requirements on local governments.

6. PAPERWORK:

The proposed amendment would impose no additional paperwork beyond that already required by § 145-2.15 of the Commissioner's regulations.

7. DUPLICATION:

The definition for testing center is similar to the federal definition of assessment center set forth in Section 668.142 of the Code of Federal Regulations for requirements for federal aid and the criteria set forth in the proposed amendment for the independent administration of ability-to-benefit tests build upon the federal requirements set forth in Section 668.151 of the Code of Federal Regulations.

8. ALTERNATIVES:

In developing the proposed amendment, the State Education Department consulted with a Work Group that comprised of The City University of New York Central Administration, the State University of New York System Administration, Clarkson University, The College of New Rochelle, Touro College, the Commission on Independent Colleges and Universities, Monroe College, Plaza College, the Association of Proprietary Colleges, and the New York State Higher Education Services Corporation. The proposed amendment represents the result of that consultation. There are no viable alternatives to the proposed amendment.

9. FEDERAL STANDARDS:

There are no federal standards applicable to the administration of State student financial aid programs. However, the definition for testing center is similar to the federal definition of assessment center set forth in Section 668.142 of the Code of Federal Regulations for requirements for federal aid and the criteria set forth in the proposed amendment for the independent administration of ability-to-benefit tests build upon the federal requirements set forth in Section 668-151 of the Code of Federal Regulations.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment clarifies the requirements for the independent administration of ability-to-benefit tests for students applying for State student financial aid for the first time in the 2007-2008 academic year and thereafter, who do not hold diplomas from high schools located in the United States or their recognized equivalent. State Education Department data indicate that 20 of the eligible 39 proprietary colleges in the State (51 percent) are small businesses with 100 or fewer employees.

2. COMPLIANCE REQUIREMENTS:

The Department developed § 145-2.15 with the advice and assistance of a Work Group comprised of academic and financial aid officers of public, independent, and proprietary colleges and universities, SUNY, CUNY, CICU, APC, and HESC. Upon subsequent review by the Work Group and through experience in administering, monitoring, and auditing compliance, the Work Group has identified certain amendments to the regulation that are needed to reduce uncertainty and confusion and to eliminate unnecessary and overly burdensome requirements.

For instance, § 145-2.15 of the Commissioner's regulations makes reference to "assessment centers" that may be either free-standing entities or centers operated by higher education institutions or public vocational

institutions. However, federal regulations governing the administration of HEA Title IV student aid funds (34 CFR 668.142) also make use of the phrase, "assessment center" with a meaning different from that in § 145-2.15 of the Commissioner's regulations. To reduce confusion, the proposed amendment replaces the phrase "assessment center" with "testing center".

The amendment also makes several technical amendments and clarifies the limitations on employees of a testing center. Specifically, the amendment adds to the existing prohibition on test center employees, a prohibition on not only the use of any person employed through the admissions, student financial aid, or registrar's offices at an institution, but a prohibition on the use of any employee who performs the duties of such offices. The proposed amendment also requires that the scoring of an ability-to-benefit test be "in accordance with the test publisher's instructions."

In light of the fact that tests may be offered on computer as well as in paper-and-pencil format, the proposed amendment requires that tests, results, and databases be kept "secure" instead of "in locked and secured containers".

The proposed amendment also eliminates the prohibition against an institution employing a former student as a test administrator because it is unnecessarily restrictive, given the other constraints § 145-2.15 of the Commissioner's regulations places on the administration of ability-to-benefit tests.

Section 145-2.15(e) of the Commissioner's regulations is also amended to clarify that in order for the Department to consider a test "independently administered", it must be administered at one of the following locations: (1) a testing center that is not located at and/or affiliated with the institution for which the student is seeking enrollment; (2) a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution provided that the chief executive officer certifies annually that certain procedures have been followed; or (3) an eligible non-degree granting institution that is not a public vocational institution provided that the test is given by a test administrator meeting certain requirements delineated in the proposed amendment.

3. PROFESSIONAL SERVICES:

The proposed amendment will not require eligible institutions that are classified as small businesses to hire professional services to comply. The State Education Department expects that existing staff at eligible institutions will have the necessary expertise to satisfy the requirements of the proposed amendment as part of their ongoing responsibilities.

4. COMPLIANCE COSTS:

The amendment will not impose any additional costs on institutions eligible to participate in State student aid programs that are classified as small businesses and that admit students without diplomas from U.S. high schools and seek to qualify such students for State student financial aid over and above those resulting from the existing terms of § 145-2.15. In fact, by increasing flexibility for such institutions, the amendment's repeal of unnecessary mandates may have the effect of reducing costs on those entities. The State Education Department expects that existing staff at eligible institutions that are classified as small businesses will satisfy the requirements of the proposed amendment as part of their ongoing responsibilities.

The proposed amendment will not impose any capital costs on eligible institutions that are classified as small businesses.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any technological requirements on eligible institutions that are classified as small businesses. See above "Compliance Costs" for the economic impact of the amendment.

6. MINIMIZING ADVERSE IMPACT:

Paragraph (e) of subdivision (4) of section 661 of the Education Law, as added by Chapter 57 of the Laws of 2007, applies equally to all institutions eligible to participate in State student aid programs that admit students without a diploma from a U.S. high school and seek to qualify such students for State student financial aid, including those classified as small businesses. Consequently, the State Education Department believes that the proposed amendment to § 145-2.15 also must apply uniformly to all such institutions.

7. SMALL BUSINESS PARTICIPATION:

Before drafting the proposed amendment, the State Education Department convened a Work Group comprised of persons from all four sectors of higher education knowledgeable about student financial aid and about academic affairs, including proprietary colleges that are classified as small businesses, as well as the president of the association of proprietary colleges, many of which are classified as small businesses. The comments they provided were taken into account in drafting the proposed amendment.

(b) Local Governments:

The proposed amendment will not affect local governments in New York State. The measure will not impose any adverse economic impact, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one was not prepared.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment clarifies the requirements for the independent administration of ability-to-benefit tests, for students applying for State student financial aid for the first time in the 2007-08 academic year and thereafter, who do not hold diplomas from high schools located in the United States or their recognized equivalent. The proposed amendment applies only to institutions eligible to participate in State student financial aid programs that admit students without diplomas from U.S. high schools and seek to qualify such students for State student financial aid, including such institutions located in the State's 44 rural counties with fewer than 200,000 inhabitants and 71 towns in urban counties with a population density of 150 per square mile or less.

There are 271 degree-granting institutions in the State, including 64 campuses and community colleges in the State University of New York, 19 senior and community colleges of The City University of New York, 149 independent colleges and universities, and 39 proprietary colleges. Excluding The City University of New York's 19 campuses, there are 252 degree-granting institutions, of which 218 (80.4 percent) admit undergraduates. At least 54 of the 218 institutions (24.8 percent) reportedly use Ability-to-Benefit tests for admission, placement, or financial aid purposes. Of the 218 institutions that admit students to undergraduate study, 62 (28.4 percent) are located in rural areas, including 13 that reportedly make use of Ability-to-Benefit tests. Consequently, the Department estimates that the number of degree-granting institutions located in rural areas that would be affected by the proposed amendment is not less than 13 and is not likely to be more than 15 (24.8 percent of the 62 institutions located in rural areas).

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

The purpose of the proposed amendment is to clarify the requirements for the independent administration of ability-to-benefit tests for students applying for State student financial aid for the first time in the 2007-08 academic year and thereafter, who do not hold diplomas from high schools located in the United States or their recognized equivalent.

For instance, § 145-2.15 of the Commissioner's regulations makes reference to "assessment centers" that may be either free-standing entities or centers operated by higher education institutions or public vocational institutions. However, federal regulations governing the administration of HEA Title IV student aid funds (34 CFR 668.142) also make use of the phrase, "assessment center" with a meaning different from that in § 145-2.15 of the Commissioner's regulations. To reduce confusion, the proposed amendment replaces the phrase "assessment center" with "testing center".

The amendment also makes several technical amendments and clarifies the limitations on employees of a testing center. Specifically, the amendment adds to the existing prohibition on test center employees, a prohibition on not only the use of any person employed through the admissions, student financial aid, or registrar's offices at an institution, but a prohibition on the use of any employee who performs the duties of such offices. The proposed amendment also requires that the scoring of an ability-to-benefit test to be "in accordance with the test publisher's instructions."

In light of the fact that tests may be offered on computer as well as in paper-and-pencil format, the proposed amendment requires that tests, results, and databases be kept "secure" instead of "in locked and secured containers".

The proposed amendment also eliminates the prohibition against an institution employing a former student as a test administrator because it is unnecessarily restrictive, given the other constraints § 145-2.15 of the Commissioner's regulations places on the administration of ability-to-benefit tests.

Section 145-2.15(e) of the Commissioner's regulations is also amended to clarify that in order for the Department to consider a test "independently administered", it must be administered at one of the following locations: (1) a testing center that is not located at and/or affiliated with the institution for which the student is seeking enrollment; (2) a degree-

granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution provided that the chief executive officer certifies annually that certain procedures have been followed; or (3) an eligible non-degree granting institution that is not a public vocational institution provided that the test is given by a test administrator meeting certain requirements delineated in the proposed amendment.

The proposed amendment will not require eligible institutions, including those located in rural areas, to hire professional services to comply.

3. COSTS:

The proposed amendment will not impose any additional costs on institutions eligible to participate in State student aid programs that admit students without diplomas from U.S. high schools, or the recognized equivalent, and that seek to qualify such students for State student financial aid, including such institutions located in rural areas, over and above those resulting from the current requirements of § 145-2.15 of the Commissioner's regulations. On the contrary, by increasing flexibility for such institutions, the amendment's repeal of unnecessary mandates may have the effect of reducing those costs. The State Education Department expects that existing staff at eligible institutions, including those located in rural areas, will satisfy the requirements of the proposed amendment as part of their ongoing responsibilities.

The amendment will not impose any additional costs on eligible institutions, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes no exception for eligible institutions that are located in rural areas. Paragraph (e) of subdivision (4) of section 661 of the Education Law applies equally to all institutions eligible to participate in State student aid programs that admit students without diplomas from U.S. high schools, or their recognized equivalent, and seek to qualify such students for State student financial aid, including those located in rural areas. Consequently, the State Education Department believes that the proposed amendment, which clarifies the requirements for the independent administration of such tests must apply uniformly to all such institutions, including those located in rural areas and that it would be inappropriate to establish different standards for eligible institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

Before drafting the proposed amendment, the State Education Department convened a Work Group comprised of persons from all four sectors of higher education knowledgeable about student financial aid and about academic affairs. The group included representatives of eligible institutions located in rural areas, as well as of the Association of Proprietary Colleges, the Commission on Independent Colleges and Universities, and the State University of New York system administration, many of whose institutions or campuses are located in rural areas. The comments they provided were taken into consideration when drafting the proposed amendment.

Job Impact Statement

The proposed amendment clarifies the requirements for the independent administration of ability-to-benefit tests for students applying for State student financial aid for the first time in the 2007-2008 academic year who do not hold diplomas from high schools located in the United States, or their recognized equivalent.

Because it is evident from the nature of the proposed amendment that it will not affect jobs or employment opportunities at institutions eligible to participate in State student financial aid programs, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

NOTICE OF ADOPTION**Immunization Registry****I.D. No.** HLT-35-08-00012-A**Filing No.** 1311**Filing Date:** 2008-12-16**Effective Date:** 2008-12-31

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

Action taken: Amendment of section 66-1.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2168

Subject: Immunization Registry.

Purpose: Establishment of a statewide immunization registry.

Substance of final rule: Effective January 1, 2008, Section 2168 of the Public Health Law requires that a statewide immunization registry be implemented. In order to define requirements for establishment of this statewide immunization registry, including rules for submission of immunization information by health care providers and methods by which providers and others can access needed information, a revised Section 66-1.2 is proposed for Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. This section will allow physicians and designated others to generate a child's immunization record in place of the nonspecific requirement previously in Section 66-1.2 for physicians or other authorized persons to prepare "certificates of immunization."

Section 66-1.2 will have the following subsections:

66-1.2 (a) Definitions, including statewide immunization registry (which will be the reporting vehicle for all health care providers practicing outside of New York City (NYC)), Citywide Immunization Registry (the pre-existing NYC registry that these regulations will affect only minimally), health care providers, schools, registrants (the patients whose immunizations are reported to the system), authorized users and timely reporting.

66-1.2 (b) Mandated reporting. Mandated reporters are health care providers ordering immunizations, and their designees.

66-1.2 (c) Information required to be reported to the statewide system. Such information includes the minimum data requirements for immunization registries, with the addition of patient address in order to allow for geographic tracking of immunization patterns in response to disease outbreaks and vaccine recall events.

66-1.2 (d) Levels of access and authorized uses of the New York State Immunization Information System ("NYSIIS") data. Such levels and uses vary by types of authorized users, with health care providers ordering immunizations allocated sole responsibility for submitting information, although they may in turn designate staff to submit information on their behalf. However, health care providers also receive significant benefits from use of the system, including the ability to print immunization histories for patients on demand, print reminder and recall notices and use the system to help with vaccine inventory. Other types of users will have read-only access, and only for registrants who fall under their administrative or clinical responsibilities.

66-1.2 (e) Methods of accessing NYSIIS data will be primarily electronic. Authorized users will be required to submit an application for access to the system, and have this application accepted, in order to log on to the system. These regulations will only permit users to access data for registrants within their scope of responsibility.

66-1.2 (f) Maintenance of security and confidentiality. This will be assured by following standard Department of Health security and confidentiality procedures for electronic data, requiring all individuals accessing the system to have pre-approved applications for access, with distinct passwords and system IDs that conform to the latest industry standards, and with level and type of access tied to the type of user, as defined in the regulations. All users will submit an attestation to maintain confidentiality, and will be required to update application information on an ongoing basis, as needed.

66-1.2 (g) Provision of NYSIIS information to registrant's family/guardian. All mandated reporters must provide the parent or legal guardian of each registrant with a copy of the appropriate department of health's informational brochure or letter at the time of each registrant's initial entry into the system.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 66-1.2(c)(2)(iii), (3)(i) and (4).

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

Revised Regulatory Impact Statement

Statutory Authority:

In 2006, Public Health Law section 2168 was enacted. This new law required the development and implementation of a statewide immunization registry by January 1, 2008. Public Health Law section 2168, subsection 13 specifically authorizes the commissioner to promulgate regulations as necessary to effectuate the provisions of Public Health Law section 2168. The regulations proposed set forth procedures and protocols assisting providers and consumers in utilizing the statewide system.

Legislative Objectives:

This section establishes a statewide immunization registry as required

by Public Health Law section 2168. Physicians and others may now systematically generate a child's immunization record as needed by parents, schools, etc. The immunization information system permits population-based review and tracking of immunizations; critical markers of well-child care. A statewide system will also allow health care providers to track timeliness and receipt of important and potentially life-saving immunizations. It facilitates vaccine recall letters and allows the state to monitor patterns of immunizations related to infectious disease outbreaks.

Needs and Benefits:

The Centers for Disease Control and Prevention (CDC) cite the reduction of infectious diseases resulting from the use of vaccines as the greatest success story in public health. The virtual eradication of smallpox from the globe, near elimination of the wild polio virus, and the reduction of preventable infectious diseases to an all-time low are among the accomplishments of immunizations. However, CDC also cites the fact that vaccines are not 100 percent safe or effective as yet, that different immune systems react differently to different vaccines and, on rare occasions, side effects occur. For these reasons, CDC strongly advocates that all states collect and maintain immunization information. Immunization registries provide states with the ability to track administration of vaccines to children for public health purposes, monitor effectiveness and side effects of these vaccines, and respond quickly and effectively in case of outbreaks.

The system will be able to track which children have received immunizations, the vaccine manufacturer, and lot number. Previously, if it were discovered that a particular batch of vaccine was ineffective, tracking recipients of that lot would have been slow at best and incomplete at worst, leaving some children vulnerable to the disease the immunization was designed to prevent. With NYSIIS, recipients of ineffective vaccines could be quickly notified via their providers of the need for re-immunization to occur. The immunization information will also be used by schools, HMOs, local health departments, local districts of social services, the Office of Children and Family Services, and other entities responsible for providing services to children.

COSTS:

Costs to Private Regulated Parties:

The costs to regulated parties for the implementation of and continuing compliance with the rule are expected to be negligible, except in the initial implementation period. The system is expected to generate a long term savings. Equipment and service requirements needed by health care providers to access NYSIIS parallel current requirements needed by providers to order prescription pads from the Department, i.e., internet access and an HPN account. The costs associated with completing the initial entry of historical immunization information for all persons less than the age of 19 years who are administered immunizations after January 1, 2008 represent an obstacle, especially to small providers without existing data systems, and to those providers with data systems who do not have service contracts requiring the development of compliant software. While these costs represent a burden to providers, the overall system benefits are fully expected to outweigh initial burden once the implementation period is complete.

In September 2006, the American Academy of Pediatrics (AAP) Committee on Practice and Ambulatory Medicine issued a policy statement in Pediatrics strongly supporting the use of immunization information systems. The statement indicates that the savings to pediatricians of using an automated immunization information system are significant. The savings from not having to manually pull a chart for immunization records is estimated to be \$14.70 per chart. AAP's Policy Statement also mentions that in 2004 there was a reported increase in cost of \$0.56 per shot after implementation of an immunization registry in the private sector, with nurses spending 3.4 minutes per shot on registry activities. Again, though, this would be sufficiently offset by the savings generated of \$14.70 per chart that would no longer need to be manually pulled to generate an immunization history. It is impossible to estimate with any degree of certainty the cost to practices of entering historical immunization data on patients to populate the database of the system.

Costs to the Department of Health and Local Government:

All costs to the Department of Health for implementation and maintenance of the system will be offset by funds as part of the categorical grant from CDC. There will be no costs to local governments for implementation. Local government will access and submit limited immunization data through existing HIN connections. Significant time savings will be experienced by local health department staff by accessing the data in NYSIIS for assessment and quality activities.

Cost Information:

Cost information was developed based on estimated number of positions needed to implement the system. Expenses for initial hardware and software, ongoing system maintenance, help desk services, system changes, programming needed to download existing data systems for billing and charts into the system. The cost of development in year one is approximately \$3.8 million. The cost of implementation and maintenance thereafter approximately \$4 million per year.

Local Government Mandates:

No mandates for any local government entities are included in these regulations, separate and apart from their responsibilities as health care providers when the local health department administers vaccines to children. However, there are provisions made for local health departments, local districts of social services, schools, day care centers, the Office of Children and Family Services, and other agencies to access this system to obtain information required in performance of their duties. Accessing immunization information system data should facilitate performance of their duties, which include verifying immunization history for specific children who fall under their administrative or clinical responsibilities.

Paperwork:

While CDC has an extensive list of variables they recommend for inclusion in a state's immunization information system, only the minimum required elements will be included in NYSIIS, plus the address, which is critical to determining regional vaccine-preventable illness patterns. Although some providers may need to defer electronic submission pending availability of internet access, ultimately submission will be electronic for all providers. This will reduce data errors through use of automated error checking and value range monitoring during data entry.

Duplication:

Every effort is being made to minimize provider burden and avoid duplication of effort. However, a uniform collection method applied to all providers is essential to ensuring that the database is complete and effective for the required purposes. Where an existing registry already exists, i.e., the Citywide Immunization Registry, no additional registry submission is being required of providers. Where existing regional registries have been supplanted by the statewide immunization system, the information will be downloaded to the statewide system, making the transition as seamless as possible for current contributors to the registries. In addition, submission of information from existing electronic billing or clinical systems is available.

Alternatives Considered:

For the past ten years, regional prototype immunization registries have been tested in two areas of the state outside of New York City. These regulations allow regional prototype immunization registries to be incorporated, to the extent feasible in the statewide system. Providers may download immunization information from existing electronic data systems. A similar registry has also been in operation in NYC. In order to minimize impact on providers, this statewide system will not change the requirement for NYC providers to report immunizations to the NYC-DOHMH ("Citywide Immunization Registry") registry. There is no viable alternative to the mandate for reporting of all immunizations to a centralized database, other than attempting, as stated above, to minimize the impact by permitting NYC's registry to co-exist and by utilizing downloads from other existing regional electronic systems.

Federal Standards:

The statewide immunization system conforms to minimum data set standards for immunization registries as published by the Centers for Disease Control and Prevention in their "Recommended Core Data Set" publication (http://www/cdc.gov/nip/registry/st_terr/tech/stds/core.htm). The New York State data set includes less than half of the CDC-recommended data elements, including only the required data elements plus one federally recommended element (patient address). The benefit of conducting regional analyses of immunization status in the event of disease outbreaks or vaccine-related incidents necessitates the inclusion of one additional (recommended but not required) data element.

Compliance Schedule:

The regulations permit deferrals for submission of electronic forms in order to minimize hardship to smaller providers who have equipment or internet access issues. Region-wide deferrals will be made available to providers who have not yet had interactive training in their areas. Also, the Department is making every effort to assist providers with existing electronic data systems to download this information into files that meet system specifications. In a further attempt to minimize provider burden and ensure accurate reporting, providers currently working on providing downloaded files will be granted deferrals, on request, providing that they document their efforts and present a realistic plan of their anticipated progress and start date.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published RFA.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published RAFA.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The Department received one written comment on the proposed rule making changes to section 66-1.2 of Title 10 New York Codes, Rules and

Regulations regarding implementation of Article 21, Title 6, Section 2168F of Public Health Law (PHL) during the 45-day public comment period. The written comment was submitted by the Medical Society of the State of New York (MSSNY). In their comment, MSSNY clearly reiterates their full support of PHL 2168 and the New York State Immunization Information System (NYSIIS).

"The Medical Society strongly believes that the overall goal of this legislation will greatly enhance New York State's health prevention goals. Without a doubt, childhood immunizations have led to significant reduction in preventable infectious diseases and to the elimination of diseases such as small pox. And, the Medical Society of the State of New York does agree that such a system, once successfully implemented throughout the state, will provide an invaluable resource to physicians, other health care providers and the state, in tracking infectious disease outbreaks, rates of immunizations, and in monitoring the effectiveness of immunizations."

The letter addresses two items for the Department's consideration regarding the PHL and implementation of NYSIIS.

Item 1:

"The Medical Society of the State of New York also recognizes the strong commitment of the New York State Department of Health to work with the various statewide physician organizations throughout the last year in mitigating the financial impact to the physician community. The Medical Society, however, does remain concerned about the initial financial burden that a solo or small group pediatric or family physician practice that will incur. These practices serve in many of the state's underserved areas and may be located in remote areas where access to even the internet is difficult. Over the last year, these physicians have informed the Medical Society that the inputting of data into the registry necessitates additional staff time and salary expense. Moreover, physicians indicate that there will be ongoing staff costs to continuously access and upload immunizations, as well as costs associated with updating their computer system.

One clear improvement that could be made of the statewide Immunization Registry is the requirement that information be provided by managed care or insurance plans. Children may have a variety of pediatricians throughout their life, but the one constant may very well be the insurer. The insurer has immunization data that should be readily available to the registry—thus easing the administrative costs to the physicians, other health care providers and to the state. The Medical Society strongly urges that through this regulation or by legislative means the New York State Department of Health require the input of this insurance information into the Immunization Registry. This will enable all of us to get to the goal of having all immunizations recorded in a more expeditious manner."

Response:

The Department does not plan to pursue insurance companies or managed care plans to submit immunization information. PHL 2168 does not grant the Department authority to mandate this change. As well, the Department is concerned about the potential for data inaccuracy this would create. Ultimately, only the provider of immunizations can verify the accuracy of the information reported to NYSIIS. As such, to ensure ownership and accuracy of the information, data reporting should initiate with the health care provider. PHL 2168 does allow health maintenance organizations to obtain immunization information from NYSIIS for the purpose of conducting quality assurance activities.

Item 2:

"The New York State Department of Health has worked diligently to educate physicians and other providers. The Medical Society recognizes that the regulations do permit for deferral of the deadline for submission of electronic forms for smaller providers who have equipment or internet access issues. We are also aware that the Department plans additional training to give physicians and other providers an opportunity to comply with the law in recognition that many physicians have not yet taken the educational component. The Medical Society respectfully asks for an extension of the enforcement provisions granted in the January 16, 2008 letter from Department of Health to ensure that physicians are appropriately trained and have the necessary equipment and staff to comply.

The Medical Society at its 2008 House of Delegates unanimously supported efforts for such extension to allow sufficient time to become familiar with the immunization registry and to allow physicians and their staff time to be educated, trained and to obtain the necessary equipment to use the registry. The Medical Society also supports procedures that will ease the administrative burden to physicians such as faxing and mailing of vaccination records to the New York State Department of Health."

Response:

The Department will continue our current approach of extensive outreach and training of health care providers in New York State in order to facilitate their participation in NYSIIS. This will likely extend far beyond January 1, 2009, and will continue until the Department is confident that the majority of providers have been reached and have been afforded every opportunity to become active reporters to NYSIIS. To consider a

paper-based alternative system at this early time would undermine the overall success of NYSIIS.

NOTICE OF ADOPTION

Re-numbers Subpart 86-8 to Subpart 86-9 of Part 86 of Title 10 NYCRR

I.D. No. HLT-37-08-00001-A

Filing No. 1314

Filing Date: 2008-12-16

Effective Date: 2008-12-31

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

Action taken: Renumbering of Subpart 86-8 to Subpart 86-9 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803, 2807 and 2808

Subject: Re-numbers Subpart 86-8 to Subpart 86-9 of Part 86 of Title 10 NYCRR.

Purpose: Make a technical change to renumber Subpart 86-8 to Subpart 86-9 of Part 86 of Title 10 NYCRR.

Text or summary was published in the September 10, 2008 issue of the Register, I.D. No. HLT-37-08-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

DRGs, SIWs, Trimpoints and the Mean LOS

I.D. No. HLT-42-08-00011-A

Filing No. 1312

Filing Date: 2008-12-16

Effective Date: 2008-12-31

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

Action taken: Amendment of sections 86-1.55, 86-1.62 and 86-1.63 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803(2), 2807(3), 2807-c(3) and (4)

Subject: DRGs, SIWs, Trimpoints and the Mean LOS.

Purpose: Updates the calculation of outlier payments based on HHS audit findings and recommendations.

Text or summary was published in the October 15, 2008 issue of the Register, I.D. No. HLT-42-08-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Intensity Weights (SIW) and Average Lengths of Stay

I.D. No. HLT-53-08-00007-P

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

Proposed Action: Amendment of section 86-1.62 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(3)

Subject: Service Intensity Weights (SIW) and Average Lengths of Stay.

Purpose: Modifies the Service Intensity Weights (SIW) for DRGs.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): 86-1.62 - Service Intensity Weights and Group Average Arithmetic Inlier Lengths of Stay

The proposed amendments of section 86-1.62 of Title 10 (Health) NYCRR are intended to change the service intensity weights (SIWs) for the diagnosis related group (DRG) classification system for inpatient hospital services.

Effective January 1, 2008, the DRG classification system used in the hospital case payment system was updated to incorporate those changes made by Medicare for use in the prospective payment system, and additional changes to identify medically appropriate patterns of health resource use for services that are efficiently and economically provided. The SIWs were revised accordingly to reflect the costs of the redistributed cases.

In addition, the SIWs were updated to reflect 2004 costs and statistics reported to the Department for a representative sample of hospitals. This update ensures a reflection of more current clinical practices, advances in technology, changes in patient resource consumption, and changes in hospital length of stay patterns. The revised service intensity weights based on 2004 data are being phased-in over a three year period. The weights effective for the period January 1, 2008 through December 31, 2008, were based on 75% of the service intensity weights in effect as of December 31, 2007 based on 1992 data, and 25% of the service intensity weights based on 2004 data. The service intensity weights effective for the period January 1, 2009 through December 31, 2009, will be based on 33% of the service intensity weights in effect as of December 31, 2007 that are based on 1992 data, and 67% of the service intensity weights based on 2004 data. Effective January 1, 2010 and thereafter, the service intensity weights will be based on 2004 data. Effective January 1, 2009, the service intensity weights are being revised to reflect the phase-in described above.

General Summary for 86-1.62

The changes in the service intensity weights for the DRG classification system described above (Section 86-1.62 of Title 10 (Health) NYCRR) will enable providers to place patients in the most appropriate DRG and, therefore, they will receive adequate reimbursement for services provided. In the aggregate, these changes will have a budget-neutral impact on the reimbursement system.

The Department is statutorily required to update the grouper to be consistent with changes made to the DRG classification system used by the Medicare prospective payment system (PPS) and to modify existing and add new DRGs to more accurately reflect patterns of health resource use.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the subject regulations is contained in sections 2803(2), and 2807(3) and 2807(4) of the Public Health Law (PHL), which require the State Hospital Review and Planning Council (SHRPC), subject to the approval of the Commissioner, to adopt and amend rules and regulations for hospital reimbursement rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities. PHL section 2807-c(3) authorizes the SHRPC to adopt rules subject to the Commissioner's approval, to adjust the service intensity weights (SIWs) for the diagnosis related groups (DRGs). Sections 34, 34-a and 34-b, of Part C of Chapter 58 of the Laws of 2007 authorizes the SHRPC and the Commissioner to update the cost and statistical base used to determine the SIWs to calendar year 2004 data and to provide for a phase-in of the new weights. PHL section 2807-c (4) authorizes the SHRPC to adopt rules, subject to the Commissioner's approval, for exceptions to case based payments for cost outliers.

Legislative Objectives:

The Legislature sought to have the DRGs used in the hospital reimbursement methodology be consistent with those used in Medicare reimbursement and reflect medically appropriate, efficient and economic patterns of health resource use and services.

Needs and Benefits:

The proposed amendments to sections 86-1.62 of Title 10 (Health) NYCRR are intended to make current regulations consistent with changes made to the service intensity weights (SIWs) for the diagnosis related group (DRG) classification system used by the Medicare prospective payment system (PPS). The SIWs are an integral part of the hospital Medicaid

and like payor inpatient rates. The Department makes changes to the grouper used to assign inpatient cases to the appropriate DRG. As part of this process, the Department may make modifications, revisions and create new DRGs that reflect the current resources consumed by inpatients. After the grouper is modified, the SIWs must be recalculated to be consistent with the newly created and updated list of DRGs, and to incorporate the 2004 cost and statistical basis, thus creating new values for the SIWs in sections 86-1.62. Lastly, the amendment provides payors of inpatient hospital services with the new values used to determine the correct case base payment for each DRG so hospital claims can be submitted and paid in a timely manner. This amendment incorporates the second year of the phase-in of the new service intensity weights.

COSTS:

Costs to State Government:

The amendment to 86-1.62 revising the SIWs has been legislated as budget neutral; therefore there is no additional cost to the State as a result of these regulation changes.

Costs of Local Government:

No increase or decrease in costs to local governments is anticipated as a result of these amendments.

Costs to Private Regulated Parties:

In the aggregate, there will be no increases or decreases in hospital revenues as a result of these amendments. Changes to the DRG classification system will cause a realignment of cases among the DRGs. Those cases that require more intensive provision of care will realize an increase in the SIW (and reimbursement) for that DRG. The removal of such cases from the DRG to which they were previously assigned will decrease the SIW (and reimbursement) for that DRG. Therefore, revenues will shift among individual hospitals depending upon the diagnosis of and procedures performed on the patients they treat. The extent of the shift in revenues cannot be determined because it will depend upon future patient services.

Costs to the Department of Health:

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

Local Government Mandates:

This regulation affects the costs to counties and New York City for services provided to Medicaid beneficiaries as described above. It imposes no program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

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

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

Based upon suggestions/recommendations received from hospital industry representatives, the Department has included adjustments that provide more appropriate recognition of the costs related to current clinical practices, new medical technologies, changes in patient resource consumption, and changes in hospital length of stay patterns. Two alternatives were considered for the means of adjusting the revised SIWs to ensure budget neutrality. The first alternative was to apply a neutrality adjustment in the calculation of the SIWs. However, since the SIWs are formulated on non-Medicare costs and the budget neutrality provision in statute applies to Medicaid expenditures, this approach was rejected. Instead, budget neutrality for Medicaid expenditures will be achieved by applying an adjustment to the Medicaid hospital inpatient rates.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed rule establishes rates of payment as of January 1, 2009; there is no period of time necessary for regulated parties to achieve compliance.

Contact Person: Katherine Ceroalo

New York State Department of Health
 Bureau of House Counsel, Regulatory Affairs Unit
 Corning Tower Building, Rm. 2438
 Empire State Plaza
 Albany, New York 12237
 (518) 473-7488
 (518) 473-2019 (FAX)

REGSQNA@health.state.ny.us

Comments submitted to Department personnel other than this contact person may not be included in any assessment of public comment issued for this regulation.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Compliance Requirements:

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

Professional Services:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to make current regulations consistent with changes made to the service intensity weight for the DRG classification system used by the Medicare prospective payment system (PPS). The current SIWs are updated to be consistent with the proposed DRG modifications, and the cost and statistical base.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of the amendment to 86-1.62 there will be no anticipated increases or decreases in hospitals' Medicaid revenues. However, revenues will shift among individual hospitals depending upon the diagnoses of and procedures performed on the patients they treat and the extent to which they would be classified into the modified diagnosis related groups.

Minimizing Adverse Impact:

The proposed amendments will be applied to all general hospitals. The Department of Health considered approaches specified in section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2008 meeting. That agenda is mailed to general hospitals qualifying as small businesses, providers, members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations that represent the interests and concerns of hospitals across New York State, including small businesses and local governments. This outreach resulted in the Department of Health receiving comments and suggestions related to additional changes that industry representatives recommended be implemented. Based on this feedback, the Department did make additional changes to the service intensity weights to incorporate several of these comments and suggestions.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster

Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of the amendment to 86-1.62 there will be no increases or decreases in hospitals' revenues. Revenues will shift among individual hospitals depending upon the diagnoses of and approved procedures performed on the patients they treat.

Minimizing Adverse Impact:

The proposed amendments will be applied to all general hospitals. The Department of Health considered the approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Opportunity for Rural Area Participation:

Rural areas were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2008 meeting. That agenda is mailed to members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations, which represent the needs and concerns of providers across New York State, including rural areas. The amendment was described at meetings of the Fiscal Policy Committee prior to the filing of the notice of proposed rulemaking.

This outreach resulted in the Department of Health receiving comments and suggestions related to additional changes that industry representatives recommended be implemented. Based on this feedback, the Department did make additional changes to the service intensity weights to incorporate several of these comments and suggestions.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations revise the service intensity weights for the diagnosis related group (DRG) classification system for inpatient hospital services. The DRG classification system, which also has been in effect since 1988, is utilized to reimburse hospitals for inpatient services rendered to Medicaid beneficiaries. The proposed regulations have no implications for job opportunities.

Insurance Department

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Insurance Department publishes a new notice of proposed rule making in the NYS Register.

Mandatory Underwriting Inspection Requirements for Private Passenger Automobiles

I.D. No.	Proposed	Expiration Date
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State Commission on Judicial Conduct

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

Use of Prior Cautionary Letters in Subsequent Matter Involving Same Judge; Designation of Records Access Officer; Address Change

I.D. No. JDC-53-08-00002-P

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

Proposed Action: Amendment of sections 7000.4, 7001.3 and 7001.4 of Title 22 NYCRR.

Statutory authority: Judiciary Law, section 42(5)

Subject: Use of prior cautionary letters in subsequent matter involving same judge; designation of records access officer; address change.

Purpose: To clarify when prior cautionary letter may be used, authorize designation of records access officer and note address change.

Text of proposed rule: § 7000.4. Use in subsequent proceedings of letter of dismissal and caution or letter of caution

(a) A letter of dismissal and caution issued in lieu of a formal written complaint may be used in subsequent proceedings [only] as follows:

(1) The fact that a judge had received a letter of dismissal and caution may not be used to establish the misconduct alleged in a subsequent proceeding. However, the underlying conduct described in the letter of dismissal and caution may be charged in a subsequent formal written complaint, and evidence in support thereof may be presented at the hearing.

(2) Where the underlying conduct described in the letter of dismissal and caution is charged in a subsequent formal written complaint, a judge may be questioned with respect to receipt of the prior letter of dismissal and caution, and upon a finding by the commission of a judge's misconduct with respect to the facts underlying the letter of dismissal and caution, such letter of dismissal and caution may be considered by the commission in determining the sanction to be imposed.

(b) As to any prior letter of dismissal and caution or letter of caution to the respondent judge that is not already in the record of a proceeding commenced by the filing of a formal written complaint, the administrator and respondent may address such letter in their briefs to the commission and at oral argument before the commission, for purposes of sanction only. Any prior letter used in such a manner would become part of the record of the present proceeding. *If the respondent and the administrator do not address such letter in their briefs to the commission or at oral argument, the commission may consider such letter only with regard to sanction and only if the respondent and the administrator had been given an opportunity to address it. Any prior letter used in such fashion would become part of the record of the present proceeding if the commission relied on it in determining sanction.*

§ 7001.3. Designation of records access officer

(a) The State Commission on Judicial Conduct is responsible for insuring compliance with the regulations herein and [designates] authorizes its administrator [as] to designate a records access officer. The administrator will delegate to a staff employee in each office the functions of receiving requests for records and providing assistance to the public.

§ 7001.4. Location

Records shall be available for public inspection at:

- (a) 61 Broadway, New York, N.Y. 10006;
- (b) 400 Andrews Street, Rochester, N.Y. 14604; and
- (c) [38-40 State Street,] *Corning Tower (Suite 2300), Empire State Plaza, Albany, N.Y. 12223* [12207].

Text of proposed rule and any required statements and analyses may be obtained from: Robert H. Tembeckjian, Commission on Judicial Conduct, 61 Broadway, Suite 1200, New York, N.Y. 10006, (646) 386-4884, email: rulemaking@scjc.state.ny.us

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

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

Regulatory Impact Statement

- 1. Statutory authority: Judiciary Law, Section 42(5)
- 2. Legislative objectives: The proposal articulates an additional

circumstance in which the Commission may use a prior cautionary letter to a judge in a subsequent matter involving that same judge, authorizes the Commission's Administrator to designate a Records Access Officer and updates the Commission's Albany office address.

3. Needs and benefits: The proposal gives notice to respondent-judges that cautionary letters issued to them in prior Commission proceedings may be considered for purposes of imposing sanctions in subsequent matters. The proposal also addresses two ministerial matters: permitting the Administrator to designate a Records Access Officer and updating the agency's Albany address.

- 4. Costs: None.
- 5. Local government mandates: None.
- 6. Paperwork: None.
- 7. Duplication: None.
- 8. Alternatives: None.
- 9. Federal standards: None.
- 10. Compliance schedule: None.

Regulatory Flexibility Analysis

1. Effect of rule: These are internal agency operating rules concerning disciplinary proceedings against judges. No small businesses or local governments are affected.

- 2. Compliance requirements: None.
- 3. Professional services: None.
- 4. Compliance costs: None.
- 5. Economic and technological feasibility: Not applicable.
- 6. Minimizing adverse impact: There is no economic impact on small businesses or local governments.

7. Small business and local government participation: These internal agency operating rules concerning disciplinary proceedings against judges do not involve small businesses or local governments.

Rural Area Flexibility Analysis

This proposal will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. The agency analyzed the plain language of the proposed rules and concluded that the subject matter – i.e. using prior cautionary letters in subsequent proceedings, authorizing the Administrator to designate a Records Access Officer, and updating the address of the agency's Albany office – are not addressed to rural areas and, in any event, contain no reporting or recordkeeping requirements.

Job Impact Statement

This proposal will not impose any adverse impact on jobs and employment opportunities. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. It does not add or eliminate any jobs, nor does it impose or modify any responsibilities associated with existing jobs. The agency analyzed the plain language of the proposed rules and concluded that the subject matter – i.e. using prior cautionary letters in subsequent proceedings, authorizing the Administrator to designate a Records Access Officer, and updating the address of the agency's Albany office – does not address, create or impact upon any jobs.

Long Island Power Authority

NOTICE OF ADOPTION

Southampton Visual Benefits Assessment (VBA) Charge

I.D. No. LPA-28-08-00008-A
Filing Date: 2008-12-16
Effective Date: 2008-12-16

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

Action taken: The Authority amended and added to its tariff for electric services.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z)

Subject: Southampton visual benefits assessment (VBA) charge.

Purpose: To add to and amend LIPA's tariff for electric services with regard to a visual benefits assessment.

Text or summary was published in the July 9, 2008 issue of the Register, I.D. No. LPA-28-08-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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.

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Operation of Video Lottery Gaming

I.D. No. LTR-53-08-00015-P

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

Proposed Action: Repeal of Part 2836 and addition of new Part 2836 to Title 21 NYCRR.

Statutory authority: Tax Law, sections 1604, 1612 and 1617-a

Subject: The operation of Video Lottery Gaming.

Purpose: To update 21 NYCRR Part 2836 relating to the operation of Video Lottery Gaming.

Substance of proposed rule (Full text is posted at the following State website: www.nylottery.org): Chapter 383 of the Laws of 2001, as most recently amended by Chapters 18, 140 and 286 of the Laws of 2008, codified as Sections 1612 and 1617-a of the New York State Tax Law, authorized the Division of the Lottery (the "Lottery") to license the operation of Video Lottery Gaming ("VLG") at eligible racetracks in New York State. That legislation directed the Lottery to promulgate rules and regulations for the licensing and operation of VLG.

The Lottery recognizes that certain requirements must be clarified to reflect the knowledge and experience gained since the establishment of VLG. The proposed amendments update the Lottery's regulations for the operation of VLG and reflect changes in the Tax Law, as well as, better assist the public in understanding the operation of VLG. The Lottery shared these proposed amendments with licensed VLG agents and sought their comments. The Lottery incorporated some of those comments received into the proposed amendments.

The VLG regulations begin by setting forth the general provisions, construction and application of the rules, including definitions for terms that are used throughout the VLG regulations. Definitions in Section 2836-1 were revised, added and certain definitions were removed to more clearly describe terms and define terms that were previously undefined. Definitions were also updated to reflect changes in terminology since the initial adoption of the VLG regulations. For example, redundant definitions were removed that were already defined under 21 NYCRR 2800.3 and applicable to VLG. Additionally, terms were removed to reflect the proposed deletion of certain related provisions.

Section 2836-6 relating to VLG Key Employee and Employee licensing is reorganized for clarity and revised to simplify the licensing process for video lottery gaming non-key employees. This section is further revised to

more clearly and succinctly describe certain criteria that may cause the denial of a VLG license application or suspension or revocation of a VLG license.

Under the proposed amendments, the renewal process provided under Section 2836-7 will no longer be required. The removal of this section relating to the VLG license renewal process eliminates the substantial administrative burden imposed on the Lottery by license renewals and reflects traditional lottery retailer licensing practices. The Lottery retains its discretionary authority to review any licensee's background or ask for additional documentation should any questions arise as to his or her suitability to retain a VLG license.

The proposed amendments remove Section 2836-12 relating to non-gaming vendor licensing, because non-gaming vendors will no longer be required to obtain a non-gaming vendor license. This section is now entitled "Requirements for Doing Business with Construction Contractors", and requires registration of certain construction contractors.

Section 2836-18 regulating the marketing allowance has been significantly revised to reflect changes adopted by Chapter 18 of the Laws of 2008 and to reflect recent changes in the Lottery's management of such allowance.

Section 2836-19 restricting underage gaming, responsible gaming and undesirable persons has been revised to reflect changes in the self-exclusion program. An individual may now exclude himself or herself from a VLG facility for periods of one, three or five years. Excluded persons will no longer be able to petition for reinstatement prior to the expiration of the exclusionary periods.

Section 2836-20 describing the persons prohibited from playing VLG has been revised to more precisely reflect generally accepted gaming industry standards.

Section 2836-24 has been added to regulate the capital award program that was established by Chapter 18 of the Laws of 2008 and amended by Chapter 140 of the Laws of 2008. This section describes the process required to obtain a capital award, including the submission of a capital improvement plan to the Lottery for approval and describing the payment process for such an award.

Technical amendments are also made throughout the VLG regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Associate Attorney, New York Lottery, One Broadway Center, PO Box 7500 Schenectady, NY 12301-7500, (518) 388-3408, email: nylrules@lottery.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority: Chapter 383 of the Laws of 2001, codified as §§ 1612 and 1617-a of the New York State Tax Law authorizes the Lottery to license the operation of VLG at racetrack locations around the State. Chapter 383 of the Laws of 2001 has been amended by Chapter 85 of the laws of 2002, as amended further by Chapters 62 and 63 of the Laws of 2003, and amended further by Chapter 61 of the Laws of 2005, and as further amended by Chapters 18, 140 and 286 of the Laws of 2008. Chapter 383 of the Laws of 2001, as amended, directed the Lottery to promulgate regulations allowing for the licensed operation of VLG. Furthermore, pursuant to the authority conferred in New York State Tax Law Sections 1604, 1612 and 1617-a and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2836, the proposed rule updates the existing regulations relating to the operation of VLG.

2. Legislative objectives: The purpose of operating Lottery games is to generate earnings for the support of education in the State. The regulations satisfy the legislative mandate directing the Lottery to promulgate regulations for the design, licensing and implementation of video lottery gaming. Amendment of these regulations advances the mission of generating earnings for education. These proposed amendments update the Lottery's regulations relating to the operation of VLG and incorporate changes in the Tax Law made by Chapter 18 of the Laws of 2008, as well as, better assist the public in understanding the operation of VLG.

3. Needs and benefits: The Lottery is constantly evaluating its programs and methods to advance its mission to support education. The Lottery recognizes that certain requirements must be clarified or addressed to reflect the knowledge and experience gained since the establishment of VLG. These revisions will better assist the public in understanding the operation of VLG, as well as, update the Lottery's regulations and reflect changes in the Tax Law made by recent legislative activity.

The VLG regulations begin by setting forth the general provisions, construction and application of the rules, including definitions for terms that are used throughout the VLG regulations. Definitions in Section 2836-1 were revised, added and certain definitions were removed to more clearly describe terms and define terms that were previously undefined.

Definitions were also updated to reflect changes in terminology since the initial adoption of the VLG regulations.

Section 2836-6 relating to VLG Key Employee and Employee licensing is reorganized for clarity and revised to simplify the licensing process for VLG non-key employees. These sections are further revised to more clearly and succinctly describe certain criteria that may cause the denial of a VLG license application or suspension or revocation of a VLG license.

Under the proposed amendments, the renewal process provided under Section 2836-7 will no longer be required. The removal of this section relating to the VLG license renewal process eliminates the substantial administrative burden imposed upon the Lottery by license renewals and reflects traditional lottery retailer licensing practices. The Lottery retains its discretionary authority to review any licensee's background or ask for additional documentation should any questions arise as to his or her suitability to retain a VLG license.

The proposed amendments remove Section 2836-12 relating to non-gaming vendor licensing, because non-gaming vendors will no longer be required to obtain a non-gaming vendor license. This section is now entitled "Requirements for Doing Business with Construction Contractors", and requires registration of certain construction contractors.

Section 2836-18 regulating the marketing allowance has been significantly revised to reflect changes adopted by Chapter 18 of the Laws of 2008 and to reflect recent changes in the Lottery's management of such allowance.

Section 2836-19 restricting underage gaming, responsible gaming and undesirable persons has been revised to reflect changes in the self-exclusion program. An individual may now exclude himself or herself from a VLG facility for periods of one, three or five years. Excluded persons will no longer be able to petition for reinstatement prior to the expiration of the exclusionary periods.

Section 2836-20 describing the persons prohibited from playing VLG has been revised to more precisely reflect generally accepted gaming industry standards.

Section 2836-24 has been added to regulate the capital award program that was established by Chapter 18 of the Laws of 2008. This section describes the process required to obtain a capital award, including the submission of a capital improvement plan to the Lottery for approval and describing the payment process for such an award.

Also, technical amendments are made throughout the VLG regulations.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating VLG are expected to be sufficient to support these proposed revisions.

There will be no reduction of revenue to the State as a result of eliminating the VLG license renewal process or eliminating the non-gaming vendor licensing process because there is no application fee charged by the Lottery for such licenses, only a fingerprint fee that is paid to the Division of Criminal Justice Services. The majority of VLG licenses have not been subject to a renewal yet because the period of the initial licenses has not expired. By eliminating the substantial administrative burden imposed by license renewals and non-gaming vendor licensing, the Lottery will be able to devote its staff resources to other licensing matters, including the licensing and commencement of VLG operations at Aqueduct racetrack.

Section 2836-18 regulates the marketing allowance authorized in Section 1612 of the Tax Law. The proposed revisions to this section will not have an effect on the amount of the marketing allowance to be used by VLG facilities. Pursuant to Tax Law Section 1612 (b)(1)(iii), a VLG agent shall receive a specific percentage of the total revenue wagered at the vendor track after the payout of prizes to be used for the marketing and promotion of its facility. The proposed revisions eliminate certain restrictions on the use of such marketing allowance in compliance with recent amendments to the Tax Law. Additionally, the Lottery's proposed amendments provide for a more efficient and less administratively burdensome procedure for the approval of marketing allowance expenditures. Such proposed amendments will allow Lottery employees to focus on other areas of VLG, including the commencement of VLG operations at Aqueduct racetrack.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Lottery's experience in operating traditional Lottery games for more than 40 years and the establishment of VLG in 2001.

5. Local government mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: The alternative to updating the VLG regulations is to allow the current regulations to remain effective without necessary amendments. The Lottery shared these proposed amendments with

licensed VLG agents and sought their comments. In its effort to continue a policy dialogue, the Lottery hosted a meeting with licensed agents' VLG managers on August 21, 2008. The proposed VLG regulations were discussed at the meeting. Responses and comments received from the VLG agents were incorporated into the proposed amendments.

For example, a VLG agent suggested a provision of the regulation requiring that serial numbers and VLT identification numbers be printed on certain VLG equipment be revised. The VLG agent explained that due to changes in standard industry procedure, serial numbers and VLT identification numbers are no longer printed on such VLG equipment. As a result, Section 2836-21.2 (b) is revised to remove references to serial numbers and identification numbers.

Another agent suggested that the VLG regulations be revised to permit access by agent personnel to areas restricted only to Lottery employees for emergency purposes. However, this suggestion was not incorporated into the proposed amendments because of the highly sensitive nature of the Lottery's records maintained in its restricted areas including internal audit and regulatory documents.

VLG agents requested clarification or exceptions to the competitive bid requirements related to the marketing allowance under Section 2836-18 and the capital awards program added to the VLG regulations in Section 2836-24. One agent provided examples of situations in which competitive bidding may not be feasible before Lottery approval of the capital project concept. Additionally, an agent explained that it may not be practical to require relatively small marketing or promotional expenses to be subject to a competitive bid process. After review and consideration of the agents' comments, the Lottery determined that the best course of action was to provide a threshold amount for competitive bidding. Additionally, the Lottery revised the proposed amendments to allow capital award project concepts to be submitted to the Lottery for approval with a cost estimate. A cost justification will be required after the project has been competitively bid and awarded.

9. Federal standards: None.

10. Compliance schedule: None.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

The rulemaking does not require a Regulatory Flexibility Analysis or a Rural Area Flexibility Analysis. There will be no adverse impact on rural areas, small business or local governments.

The proposed amendments to the Lottery's VLG regulations will not impose any adverse economic or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Small businesses or local governments are not regulated by the Lottery's VLG regulations nor are any economic burdens or recordkeeping requirements imposed on small businesses or local governments as a result of the proposed amendments to the VLG regulations.

The proposed amendments will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirement on public or private entities in rural areas. The Lottery expects that the proposed amendments will positively impact VLG facilities located in rural areas by updating the regulations to provide a process for the approval of capital awards which will provide VLG facilities across the State with economic development opportunities. Furthermore, the proposed VLG regulations will simplify the licensing process for VLG employees and vendors that work for or with VLG facilities. The Lottery shared these proposed amendments with licensed VLG agents and sought their comments, including VLG facilities located in rural areas of the State. The Lottery has reviewed and incorporated the comments received, where appropriate.

Job Impact Statement

The proposed repeal and replacement of 21 NYCRR Parts 2836 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York State. The repeal and replacement of the regulations is sought merely to update the Lottery's VLG regulations to make them more comprehensible, consistent and efficient.

The Lottery recognizes that certain requirements must be clarified or addressed to reflect the knowledge and experience gained since the establishment of VLG. Provisions relating to VLG employee licensing have been reorganized for clarity and revised to simplify the licensing process for certain VLG employees.

Under the proposed amendments, a non-gaming vendor is no longer required to seek a VLG license. Certain vendors will be required to register with the Lottery.

The proposed revision to the VLG regulations will not have any adverse effect on jobs or employment opportunities and are intended to have a positive impact on current VLG license holders and encourage employment opportunities at the VLG facilities across New York State.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Reimbursement of Property and Capital Equipment Costs in Day Habilitation and Prevocational Services

I.D. No. MRD-43-08-00010-A

Filing No. 1316

Filing Date: 2008-12-16

Effective Date: 2009-01-01

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

Action taken: Amendment of section 635-10.5(c)(4) and (e)(5) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), and 43.02

Subject: Reimbursement of property and capital equipment costs in day habilitation and prevocational services.

Purpose: To establish a methodology for reimbursement of property/capital costs in day habilitation/prevocational services.

Text or summary was published in the October 22, 2008 issue of the Register, I.D. No. MRD-43-08-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OMRDD, 44 Holland Avenue, Albany, New York, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has filed a Negative Declaration with respect to this Action. OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

Comments:

OMRDD received comments on the proposed regulations from one consultant in the field of developmental disabilities, two voluntary providers and two associations representing voluntary providers. The consultant stated his concern that the change from a monthly pass through for property reimbursement to reimbursement incorporated within the rate structure lessens providers' assurance of steady revenues. He noted that it raises issues about sufficiency of resources associated with the avoidance of property defaults and about the potential to jeopardize relationships that providers maintain with banks and bondholders. Given the current economic insecurities, in his view, this measure exacerbates rather than mitigates providers' fiscal stress.

Much like the consultant, one of the voluntary providers and the associations asserted the appropriateness of fixed reimbursement for fixed costs. They made the point that a provider cannot control program participation and, therefore, its ability to meet obligations for fixed capital costs is endangered when there is less than 100 percent participation. They echoed each other in citing the effects of unanticipated absences and the provider's need for a reliable base of funding. One provider inquired about the time lag in adjusting rate units of service levels and how this could affect capital reimbursement even creating over-funding and possible funding recoupment situations.

Response:

There are cogent reasons for changing the mechanics of property reimbursement. First, the change actually restores a methodology that was used from the inception of the day habilitation and prevocational programs through December 31, 2005. In so doing, it makes property reimbursement for day habilitation and prevocational services consistent with the manner in which property is reimbursed in other programs. Secondly, it simplifies the process for the providers so that the operational and the property rate components are not reimbursed through two separate processes from two different sources using non-concurrent timetables. It improves OMRDD efficiency by relieving OMRDD from acting as a first instance payer. Routing Medicaid dollars directly to the provider increases fiscal integrity by lending transparency to the transaction. Most importantly, OMRDD achieves optimal Medicaid compliance by adjudicating

property payments through EMedNY. Thus, the change preserves consistency, gives administrative relief to the provider and NYS alike, and improves Medicaid accountability.

The consultant, a provider and the associations contend that providers will be harmed if property reimbursement hinges on program participation. This would occur only if a provider's authorized annual units of service significantly exceed the units actually delivered over the course of a year. Authorized units of service are not intended to represent maximum potentially deliverable units of service but rather should reflect realistic projections. Providers should look to adjust their authorized units of service levels, if warranted. Additionally, OMRDD will expedite requests for changes to authorized units of service levels that would have a significant impact on provider revenues. For example, prices will be revised when there are major program changes such as certifications, site additions and site closings. Minor fluctuations in participation have negligible impact on revenues and may account for the lags referenced in the provider's comment.

Two additional points are pertinent. First, the anticipated decrease in provider revenue distributed across providers averages less than \$500 per provider. Secondly, providers which suffer a shortfall may have recourse to recovery through an appeals process.

In essence, the regulatory change emphasizes fairness, consistency, simplicity, administrative ease, accountability and provider responsibility. Moreover, there are potential remedies in place for any provider which does suffer a loss.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-41-08-00013-A

Filing Date: 2008-12-12

Effective Date: 2009-01-01

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

Action taken: Increase in rates for sale of firm power and related tariff changes applicable to governmental customers in Westchester County.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To recover the Authority's cost of providing firm power and energy services.

Substance of final rule: At the public forum on November 17, 2008, oral statements were made by Jonathan Ross from the Blind Brook-Rye Union Free School District and Michael Dalton, Executive Director of the Yonkers Parking Authority. Based on Power Authority staff's analysis, the final increase in production rates for Westchester County Governmental Customers for Rate Year 2009 is 14.43%.

For this rate action, the new production rates will be effective on January 1, 2009 and will be applicable to the January 2009 billing period.

Final rule as compared with last published rule: Substantial revisions were made in Summary, 2nd paragraph.

Text of rule and any required statements and analyses may be obtained from: Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 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.

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-41-08-00014-A

Filing Date: 2008-12-12

Effective Date: 2009-01-01

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

Action taken: Revision of Service Tariffs 41, 42, and 43, which are applicable to the Power Authority's investor-owned utility customers.

Statutory authority: Public Authorities Law, section 1005(13) and chapter 32 of the Laws of 1987

Subject: Rates for the sale of power and energy.

Purpose: Streamline investor-owned utility Service Tariffs and update them to include additional required information.

Substance of final rule: Pursuant to the New York Public Authorities Law, Section 1005(13) and Chapter 32 of the Laws of New York of 1987, the Power Authority of the State of New York (the "Authority") has adopted amendments to the Authority's current production service tariffs applicable to its investor-owned utility customers.

The Authority reformatted the service tariffs to include necessary new provisions and updated terminology and improved the organization and formatting.

Non-substantive changes made to the proposed tariffs include the completion of the Table of Contents, grammatical and clarifying corrections in Sections I, II, III and IV of each tariff, a change in the footer to show the date of issue and effective date of the service tariffs on each page and deletion of the last blank page from each service tariff.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections I, II, III and IV.

Text of rule and any required statements and analyses may be obtained from: Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 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

To Increase Annual Water Revenues

I.D. No. PSC-08-08-00025-A

Filing Date: 2008-12-16

Effective Date: 2008-12-16

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

Action taken: On December 10, 2008 the Commission adopted an order approving the request of Top O' The World Water Co., to increase its annual water revenues by \$38,165 or 162%, effective January 1, 2009.

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

Subject: To increase annual water revenues.

Purpose: To approve an increase in annual water revenues.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the request of Top O' The World to increase its annual water revenues by \$38,165 or 162%, effective January 1, 2009, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-W-0081SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-15-08-00013-A

Filing Date: 2008-12-10

Effective Date: 2008-12-10

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

Action taken: On December 10, 2008 the PSC adopted an order approving the petition of Fishers Island Water Works Corp. to establish an interest-bearing escrow account to with a balance of \$220,000 for capital improvements to be funded through a customer surcharge.

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

Subject: Water rates and charges.

Purpose: To approve a customer surcharge for capital improvements.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the Petition of Fishers Island Water Works Corp. to establish an interest-bearing escrow account to with a balance of \$220,000 for capital improvements to be funded through a monthly customer surcharge of \$34.03 for Seasonal Customers and \$17.89 for year-round customers for a one-year period commencing January 1, 2009, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-W-0178SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-35-08-00019-A

Filing Date: 2008-12-16

Effective Date: 2008-12-16

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

Action taken: On December 10, 2008 the Commission adopted an order approving the joint petition by Rainbow Water Company, Inc. and Sunrise Ridge Water Company to surcharge its customers \$30.00 per quarter for six years beginning January 1, 2009.

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

Subject: Water rates and charges.

Purpose: To approve a \$30.00 per quarter surcharge for six years, beginning January 1, 2009.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the joint petition by Rainbow Water Company, Inc. and Sunrise Ridge Water Company to surcharge its customers \$30.00 per quarter for six years beginning January 1, 2009, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-W-0874SA1)

NOTICE OF ADOPTION

To Increase Annual Water Revenues

I.D. No. PSC-37-08-00008-A

Filing Date: 2008-12-16

Effective Date: 2008-12-16

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

Action taken: On December 10, 2008 the Commission adopted an order approving in part and denying in part the petition of Rolling Meadows Water Corporation to increase its annual water revenues by \$62,783 or 13.4%, effective January 1, 2009.

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

Subject: To increase annual water revenues.

Purpose: To approve in part and deny in part the petition of Rolling Meadows Water Corporation.

Substance of final rule: The Commission, on December 10, 2008, adopted an order, approving in part and denying in part, the petition of Rolling Meadows Water Corporation to increase its annual water revenues by \$62,783 or 13.4%, effective January 1, 2009 and permit the company to surcharge its customers \$7.00 quarterly to initially fund a \$30,000 replenishable interest-bearing escrow account to cover the cost of extraordinary repairs and/or capital improvements. The Commission denied the company's request to recover an approximate \$30,000 shortfall in actual revenues for 2007, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-W-0993SA1)

NOTICE OF ADOPTION**Disposition of Tax Refund**

I.D. No. PSC-40-08-00009-A
Filing Date: 2008-12-10
Effective Date: 2008-12-10

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

Action taken: On 12/10/08, the PSC adopted an order approving the petition of Verizon New York Inc. to retain \$5.7 million, the intrastate portion of a \$9.4 million property tax refund associated with the 2000-2007 tax years, received from the Town of Oyster Bay, NY.

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

Subject: Disposition of tax refund.

Purpose: To approve the allocation and disposition of a tax refund from the Town of Oyster Bay, New York.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the petition of Verizon New York Inc. to retain \$5.7 million, the intrastate portion of a \$9.4 million property tax refund associated with the 2000-2007 tax years, received from the Town of Oyster Bay, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-C-0999SA1)

NOTICE OF ADOPTION**Transfer of Ownership Interests in Two Generation Facilities**

I.D. No. PSC-40-08-00011-A
Filing Date: 2008-12-11
Effective Date: 2008-12-11

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

Action taken: On December 10, 2008, the PSC adopted an order approving the petition of Equus Power I, L.P. and Pinelawn Power LLC for the transfer of ownership interests in two generation facilities located in Long Island New York to J-POWER USA Generation, L.P.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests in two generation facilities.

Purpose: To approve the transfer of ownership interests in two generation facilities.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the petition of Equus Power I, L.P. and Pinelawn Power LLC for the transfer of ownership interests in an approximately 47 MW gas-fired generation facility owned by Equus and located in Freeport, NY and an approximately 79.9 MW dual-fueled generation facility owned by Pinelawn and located in the Town of Babylon, NY to J-POWER USA Generation, L.P., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-E-1069SA1)

NOTICE OF ADOPTION**Individual Service Agreements**

I.D. No. PSC-40-08-00013-A
Filing Date: 2008-12-15
Effective Date: 2008-12-15

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

Action taken: On December 10, 2008, the PSC adopted an order approving the tariff filing of Frankfort Power & Light to establish a new Service Classification No. 7 to allow the creation of Individual Service Agreements for non-residential customers.

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

Subject: Individual Service Agreements.

Purpose: To approve a new service classification for individual service agreements.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the tariff filing of Frankfort Power & Light to establish a new Service Classification No. 7 to allow the creation of Individual Service Agreements for non-residential customers.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-E-1074SA1)

NOTICE OF ADOPTION**To Increase Annual Water Revenues**

I.D. No. PSC-40-08-00018-A
Filing Date: 2008-12-16
Effective Date: 2008-12-16

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

Action taken: On 12/10/08, the PSC adopted an order approving the request of Dwight Arthur and Betty Lemonik to increase its annual water revenues by \$852.38 or 106% and collect a customer surcharge of \$1,315.05 for the failing infrastructure, eff. 1/1/09.

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

Subject: To increase annual water revenues.

Purpose: To approve an increase in annual water revenues.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the request of Dwight Arthur and Betty Lemonik to increase its annual water revenues by \$852.38 or 106% and to collect a Capital Improvement Surcharge in the amount of \$1,315.05 per customer for the replacement of the failing critical infrastructure, effective January 1, 2009, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-W-1077SA1)

NOTICE OF ADOPTION**Proposed Modifications to the Inter-Carrier Service Quality Guidelines (C2C Guidelines)****I.D. No.** PSC-40-08-00019-A**Filing Date:** 2008-12-16**Effective Date:** 2008-12-16

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

Action taken: On 12/10/08, the PSC adopted an order approving the proposed modifications to the Inter-Carrier Service Quality Guidelines (C2C Guidelines), consisting of administrative changes and revisions to B1-9 and OD-1.

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

Subject: Proposed modifications to the Inter-Carrier Service Quality Guidelines (C2C Guidelines).

Purpose: To approve the proposed modifications to the Inter-Carrier Service Quality Guidelines (C2C Guidelines).

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the proposed modifications to the Inter-Carrier Service Quality Guidelines (C2C Guidelines), consisting of administrative changes and revisions to B1-9 and OD-1, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(97-C-0139SA30)

NOTICE OF ADOPTION**Financing and Transfer of Ownership Interests in Generation****I.D. No.** PSC-41-08-00010-A**Filing Date:** 2008-12-15**Effective Date:** 2008-12-15

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

Action taken: On December 10, 2008, the PSC adopted an order approving the petition of Astoria Energy II LLC and Astoria Energy LLC for the transfer of ownership interests in generation and the proposed financing.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Financing and transfer of ownership interests in generation.

Purpose: To approve financing and transfer of ownership interests in generation.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the petition of Astoria Energy II LLC and Astoria Energy LLC for the transfer of ownership interests in the second 500 MW block of generation to be built at the Astoria Energy site and the financing to support the construction and operation of that generation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-E-1111SA1)

NOTICE OF ADOPTION**Area Development Rate and Business Incentive Rate Programs****I.D. No.** PSC-43-08-00013-A**Filing Date:** 2008-12-11**Effective Date:** 2008-12-11

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

Action taken: On 12/10/08, the PSC adopted an order approving the tariff filing by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY to open a new window for the submission of applications for the Area Development Rate & Business Incentive Rate programs.

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

Subject: Area Development Rate and Business Incentive Rate programs.

Purpose: To approve the Area Development Rate and Business Incentive Rate programs for another three years.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the tariff filing by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY to open a new window for the submission of applications for the Area Development Rate and Business Incentive Rate programs for another three years.

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

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

Assessment of Public Comment

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

(08-G-1154SA1)

NOTICE OF ADOPTION**Business Incentive Rate Program****I.D. No.** PSC-43-08-00016-A**Filing Date:** 2008-12-11**Effective Date:** 2008-12-11

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

Action taken: On 12/10/08, the PSC adopted an order approving the tariff filing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI to open a new window for the submission of applications for its Business Incentive Rate program for another three years.

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

Subject: Business Incentive Rate program.

Purpose: To approve the Business Incentive Rate program for another three years.

Substance of final rule: The Commission, on December 10, 2008, adopted an order approving the tariff filing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI to open a new window for the submission of applications for its Business Incentive Rate program for another three years.

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

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

Assessment of Public Comment

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

(08-G-1155SA1)

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

Developing Workforce to Implement Energy Efficiency Programs

I.D. No. PSC-53-08-00009-P

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

Proposed Action: Within Case 07-M-0548, the Commission is considering a proposal of the New York State Energy Research and Development Authority (NYSERDA) to develop the capacity of the state's workforce to implement energy efficiency programs.

Statutory authority: Public Service Law, sections 5(2) and 66(20)

Subject: Developing workforce to implement energy efficiency programs.

Purpose: To consider a proposal for funding by the NYSERDA and a working group report to the Public Service Commission.

Substance of proposed rule: On September 22, 2008, New York State Energy Research and Development Authority (NYSERDA) submitted a suite of proposals for energy efficiency program funding. Included in that filing was a proposal to spend approximately \$5.4 million per year to support workforce development strategies. According to the proposal, a shortage of trained and certified workers in the energy efficiency field will impair the achievement of the goals of this proceeding. NYSERDA's proposal would address the shortage and would be leveraged by an additional \$11 million in funding provided through the State Department of Labor. On October 17, 2008, a working group operating under the auspices of this proceeding issued a report supporting the NYSERDA proposal and proposing an additional \$2 million per year to support initiatives targeted at economically and environmentally disadvantaged communities. The Commission is considering both the \$5.4 million per year proposal filed September 22, 2008 and the additional \$2 million per year proposed within the working group report.

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

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

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

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

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

(07-M-0548SA14)

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

Developing Goals for Natural Gas Efficiency

I.D. No. PSC-53-08-00010-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 recommendations of Working Group V to further develop the state's natural gas energy efficiency programs.

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

Subject: Developing Goals for Natural Gas Efficiency.

Purpose: To consider recommendations for establishing objectives and methods to enhance natural gas efficiency programs in New York State.

Substance of proposed rule: The Public Service Commission instituted an Energy Efficiency Portfolio standard to reduce New York State's energy (natural gas and electricity) consumption. In June 2008 the Commission adopted a plan to develop the means by which the State's electric energy consumption can be decreased by 15% from expected levels by the year

2015. Working Group V filed its Report on Natural Gas Efficiency Goals on October 17, 2008, and presented its findings at a conference held November 3, 2008. In the Report, Working Group V, among other things, analyzed the state's natural gas system, discussed the relevant policy issues, developed a forecast of annual natural gas end-user demand through the year 2020, inventoried existing natural gas efficiency programs and analyzed their impact on customers, benefits and costs. Working Group V did not recommend a specific option or group of options for establishing a target, plan, or goal for natural gas savings over time, based upon the unique nature of the state's gas efficiency potential and policies. The Working Group V Report can be found on the Commission's website at: www.dps.state.ny.us/07m0548_working_groups_phase2.htm

The Commission will consider several alternative means by which the State's end-user natural gas consumption will also be reduced below projected levels. Based upon the data developed in the Working Group V Report, as well as additional analysis and information, the Commission will examine several options to synthesize the Working Group's data into a comprehensive portfolio. These options will include, among other things, requiring the State's gas and combined utilities to file proposals for natural gas usage reduction programs, consistent with minimum allocated reductions per utility; and inviting the New York State Energy Research and Development Authority to propose statewide and other natural gas usage reduction programs.

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

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

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

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

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

(07-M-0548SA15)

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

Use of Deferred Rural Telephone Bank Funds

I.D. No. PSC-53-08-00011-P

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

Proposed Action: The PSC is considering a petition filed by Hancock Telephone Company for the approval to expend deferred Rural Telephone Bank monies on the purchase of a new central office softswitch.

Statutory authority: Public Service Law, section 94

Subject: Use of deferred Rural Telephone Bank funds.

Purpose: To determine if the purchase of a softswitch by Hancock is an appropriate use of deferred Rural Telephone Bank funds.

Substance of proposed rule: By petition dated October 21, 2008, Hancock Telephone Company sought approval of the use of deferred Rural Telephone Bank monies for the purchase of a new central office softswitch. The Commission is considering whether to grant or deny, in whole or in part, approval of the use of those funds for that purchase.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-C-1270SA1)

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

Transfer of Permanent and Temporary Easements at 549-555 North Little Tor Road, New City, NY

I.D. No. PSC-53-08-00012-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. for the transfer of certain easements to the Rockland County Sewer District No. 1.

Statutory authority: Public Service Law, section 70

Subject: Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY.

Purpose: Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY.

Substance of proposed rule: The Commission is considering a petition by Consolidated Edison Company of New York, Inc. (Con Edison) for authority under Section 70 of the Public Service Law to transfer permanent and temporary easements in, under or through a portion of 549-555 North Little Tor Road, New City, New York for the construction, installation, operation and maintenance of a sanitary sewer for use by Rockland County. The Commission may approve, reject or modify, in whole or in part, Con Edison'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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-M-1363SA1)

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

To Transfer Common Stock and Ownership

I.D. No. PSC-53-08-00013-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 petition filed by Reserve Gas Company requesting approval for any transactions related to a proposed redemption of stock and transfer of ownership.

Statutory authority: Public Service Law, sections 69 and 70

Subject: To transfer common stock and ownership.

Purpose: To consider transfer of common stock and ownership.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Reserve Gas Company for redemption of outstanding common stock from present shareholders, the sale of remaining shares of outstanding common stock to new shareholders, and any other transactions related to the redemption and sale.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-G-0149SA1)

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

The Issuance of Long-term Debt of Up to \$2.0 Billion Through March 31, 2012

I.D. No. PSC-53-08-00014-P

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

Proposed Action: The Commission is considering whether to approve, modify, or reject, a petition by Niagara Mohawk Power Corporation requesting authority pursuant to Public Service Law, Section 69 to issue long-term debt through March 31, 2012, not to exceed \$2 billion.

Statutory authority: Public Service Law, section 69

Subject: The issuance of long-term debt of up to \$2.0 billion through March 31, 2012.

Purpose: Consideration of approval of long-term debt.

Substance of proposed rule: In a petition dated November 12, 2008, Niagara Mohawk Power Corporation (Niagara Mohawk) requests authority pursuant to Public Service Law, Section 69 to issue long-term debt, through March 31, 2012, not to exceed \$2 billion. The Commission may adopt, reject or modify, in whole or in part, the authority requested.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-M-1352SA1)

Commission on Quality of Care and Advocacy for Persons with Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedures of the Surrogate Decision-Making Committee Program

I.D. No. QMD-53-08-00003-EP

Filing No. 1306

Filing Date: 2008-12-15

Effective Date: 2009-01-03

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

Proposed Action: Amendment of Part 710 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 45.07(j); section 4, chapter 354 of the Laws of 1985; and sections 1 and 3, chapter 262 of the Laws of 2008

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

Specific reasons underlying the finding of necessity: Chapter 262 of the Laws of 2008 requires the Commission to have regulations in effect on January 3, 2009 to implement its provisions authorizing the Surrogate Decision-Making Committee Program to make certain decisions pursuant to SCPA 1750-b.

Subject: Procedures of the Surrogate Decision-Making Committee Program.

Purpose: To conform provisions with recent legislation and to make administrative updates.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.cqcapd.state.ny.us): • The regulations amend existing Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) regulations regarding the Surrogate Decision-Making Committee Program (SDMC).

- Procedures and standards to implement Chapter 262 of the Laws of 2008 which amended the "Health Care Decisions Act" (HCDA), Surrogate's Court Procedure Act (SCPA) section 1750-b are added to provide for decisions to withhold or withdraw life-sustaining treatment for persons with mental retardation and developmental disabilities in accordance with SCPA section 1750-b.

- Non-substantive administrative changes including name and address changes of the CQCAPD are included.

- The regulations clarify eligibility for the SDMC program including any person who was previously eligible for SDMC as provided for by Chapter 198 of the Laws of 2008.

- The conflict of interest definition is amended to authorize a panel member who is a member of a board of visitor to serve on a panel concerning an individual served by the psychiatric center or developmental disabilities services office to which the panel member is assigned if the panel member has no close affiliation or affinity to the patient. A panel member may serve on a panel regarding a person served by another provider within a health care network or parent organization as long as the panel member has no close affiliation or affinity.

- The major medical treatment definition is amended to clarify that any professional diagnosis or treatment which requires informed consent is within the definition absent specific exclusions that are set forth. Hospice and HIV testing are specifically included within the definition of major medical treatment.

- The major medical treatment definition is amended to include the discontinuance of medical treatment which is sustaining life functions in accordance with SCPA section 1750-b for persons with mental retardation or developmental disabilities.

- The regulations provide for submission of information regarding a patient's lack of capacity for SCPA section 1750-b declarations by the attending physician.

- The regulations provide for submission of information regarding the risks and benefits of withholding or withdrawing life-sustaining treatment by two physicians including the attending physician for persons with mental retardation or developmental disabilities.

- The regulations authorize a podiatrist to submit a statement on behalf of a major medical treatment.

- They authorize notice of an SDMC hearing to interested parties by special mail service, or by first class mail when a record of deposit is maintained.

- The regulations conform its provisions with Chapter 312 of the Laws of 2007 to include persons receiving service coordination under the auspices of the Office of Mental Retardation and Developmental Disabilities (OMRDD) within the SDMC jurisdiction and to recognize surrogates authorized by the Office of Mental Health, Office of Alcohol and Substance Abuse Services or OMRDD regulations.

- The regulations incorporate administrative provisions regarding amendments and resubmissions of declarations.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 14, 2009.

Text of rule and any required statements and analyses may be obtained from: Patricia W. Johnson, NYS Commission on Quality of Care and Advocacy for Persons, 401 State Street, Schenectady, NY 12305-2397, (518) 388-1270, email: pat.johnson@cqcapd.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority: Section four of Chapter 354 of the Laws of 1985 authorized the NYS Commission on Quality of Care for the Mentally Disabled (CQC) to promulgate regulations to effectuate the purposes of Article 80 of the Mental Hygiene Law relating to surrogate decision-making for medical care and treatment. Part H Section 12 of Chapter 58 of the Laws of 2005 provided that the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) shall succeed CQC. Mental Hygiene Law (MHL) section 45.07(j) authorizes CQCAPD to adopt, rescind or amend such rules and regulations as may be necessary or convenient to the performance of the functions, powers, and duties of the Commission. Sections one and three of Chapter 262 of the Laws of 2008 require and authorize the CQCAPD to promulgate regulations to comply with Surrogate's Court Procedure Act (SCPA) Article 17-A section 1750-b.

2. Legislative objectives: Recent statutory amendments have expanded the Surrogate Decision-Making Committee Program (SDMC) jurisdiction. First, MHL Article 80, enacting the SDMC, was amended by Chapter 312 of the Laws of 2007 to include a person receiving case management or service coordination from a program operated, funded, or approved by OMRDD within the definition of a person in need of surrogate decision-making and to recognize other surrogates authorized by regulations of the Office of Alcohol and Substance Abuse Services (OASAS), the Office of Mental Health (OMH), or the Office of Mental Retardation and Developmental Disabilities (OMRDD). As more people are served by OMRDD in the community, the law now assures that persons receiving only case management or service coordination by, certified, or funded by OMRDD can qualify for decision-making on their behalf through the SDMC if they have no available and authorized family member or surrogate. Many of these individuals were previously eligible for SDMC when such services were provided pursuant to a federal waiver program.

Second, MHL Article 80 was amended this year by Chapter 198 of the Laws of 2008, effective January 1, 2009, to eliminate the requirement that a person discharged from an SDMC eligible facility or program must have been the subject of a previous SDMC determination before his or her case may be reviewed by SDMC. Accordingly, as more people are served in the community, the law now recognizes the need to assure that persons who have been discharged from mental hygiene facilities into nursing homes or the community can continue to qualify for decision-making on their behalf through the SDMC.

Third, MHL Article was again amended this year by Chapter 262 of the Laws of 2008, effective January 3, 2009, to authorize SDMC to make a decision to withhold or withdraw life-sustaining treatment for a person with mental retardation or developmental disability if no guardian or authorized family member is available. The Health Care Decision Act of the SCPA § 1750-b, which now authorizes SDMC to make these decisions, recognizes that the person's inability to refuse life-sustaining treatment only serves to prolong the agony of death in some cases. The Court of Appeals has recognized that the HCDA has provided standards and protections to authorize such decisions in carefully prescribed circumstances. Matter of MB 813 NYS2d 349 (2006). This amendment assures that the regulations governing the SDMC reflect these legislative amendments and incorporate standards and procedures to provide for such decision-making when applicable.

Finally, the regulations include administrative clarification and updates to provide for quality decision-making by the SDMC panels. For example,

a hospice admission decision is recognized by including the decision specifically within the definition of major medical treatment. In addition, the definition is updated to recognize that the SDMC is available for HIV testing decisions concerning the best interests of the patient in accord with Article 27-F of the Public Health Law and the previous SDMC regulatory amendments of 1990 and other decisions that require informed consent in conformity with regulations promulgated by the OMRDD.

3. Needs and benefits: While many individuals receiving OMRDD service coordination or discharged from mental hygiene facilities licensed, funded or operated by OASAS, OMH or OMRDD have health care agents or guardians available to act on their behalf and will not be in need of the SDMC program for medical decision-making, these regulations fill a decision-making vacuum by providing medical decision-making support for person who have been discharged back into the community but lack capacity to provide informed consent for major medical treatment or available surrogates to act on their behalf. The extension of SDMC jurisdiction provides a significant benefit to these individuals who are now eligible for SDMC. Chapter 262 of the Laws of 2008, effective January 3, 2009, includes the SDMC panels as a surrogate to make life-sustaining treatment decisions in compliance with SCPA Article 17-A section 1750-b for persons with mental retardation or developmental disabilities and without available family members to act on their behalf. These amendments incorporate within the SDMC regulations the legislatively prescribed standards and procedures to provide surrogate decision-making in these instances. Without such surrogate decision-making for a health care crisis, the individual with mental retardation or developmental disabilities and no authorized surrogate has no one to advocate to preserve and protect their health or, if necessary, to avoid needless pain and suffering.

Other amendments are included to provide administrative guidance and clarification to interested parties. For example, the regulations do not provide for a delay in a HCDA, life-sustaining treatment decision, by the SDMC panel because the HCDA provides an automatic suspension if any party or health care provider objects to the life-sustaining treatment. Provision is also made to rehear a case for proposed major medical treatment if the request to end life sustaining treatment is denied. Administrative procedures are included to authorize individual consents if more than one procedure is requested by the health care provider's.

4. Costs:

a. Implementation of these regulations should not result in any additional costs to the State, as the CQCAPD anticipates administering the additional caseload within existing resources. Because the SDMC process can be expected to promote efficiencies in the prompt provision of medical care, it will likely generate savings to programs and individuals who use the SDMC as an alternative to judicial intervention for securing informed consent and decision-making. SDMC is a quasi-judicial procedure that is optional. Experience proves that the costs to mental hygiene facilities will often be less than those now incurred in obtaining judicial authorization. Further, the regulations are not expected to impose significant costs beyond those required by SCPA section 1750-b. Application to SDMC is free of charge while just the attorney fees for a judicial proceeding for authorization of a simple medical procedure in one instance cost the residential provider \$1800, even though the judicial hearing was waived. While applications for court appointed SCPA 17-A guardians can be completed without an attorney and with minimal fees, sometimes there is no one readily available to serve as guardian and/or there are fees for a guardian ad litem to represent the individual.

b. Support for the SDMC program is included in the Commission's budget. The Commission will use existing resources to support the operation of the SDMC as needed. State and county operated mental hygiene facilities can anticipate savings by using the program as an alternative to costly and time-consuming judicial proceedings.

c. The SDMC Final Evaluation Report prepared by the Brookdale Center on Aging of Hunter College on January 29, 1988 concluded that the SDMC is less costly to administer than courts that convene hearings to review major medical treatment decisions.

d. CQCAPD is unable to quantify the additional costs that will be incurred to comply with SCPA section 1750-b but will use existing resources to respond to the jurisdictional expansion provided by SCPA section 1750-b. SCPA section 1750-b requires new standards and procedures for decisions regarding life-sustaining treatment for persons with mental retardation or developmental disabilities. This is expected to require an increase in expedited hearings. Additional training of panel members regarding the SCPA standards and new forms to implement the process are required.

5. Local government mandates: There is no program, service, duty or responsibility imposed by the rules and regulations upon local government.

6. Paperwork: Mental hygiene facilities, hospitals, and members of the public that choose to use the SDMC to obtain decision-making are required to complete a declaration requesting SDMC to act. The declaration is accompanied with forms to certify the inability of the person to provide his or her own decision and the need for the decision.

7. Duplication: The regulatory amendment does not duplicate existing state or federal requirements.

8. Alternatives: The law provides for major medical treatment decisions and life-sustaining treatment decisions to be made by certain court appointed guardians and actively involved family members in some cases. The standards are prescribed by law and no alternatives are available for consideration regarding the standards for the life-sustaining treatment decisions. An alternative to the immediate effective date of the life-sustaining decision was considered to provide a two day delay upon request of a party to allow for judicial review but was not implemented at this time since the law provides for notice by or on behalf of the attending physician and suspension of the decision upon objection of the person, the Mental Hygiene Legal Service, or a health care provider.

9. Federal standards: The amendment will not exceed any federal standards.

10. Compliance schedule: Mental hygiene facilities, health care providers, and members of the public may voluntarily comply with the rule.

Regulatory Flexibility Analysis

1. Effect of rule: This proposed amendment to the regulations will include former residents of mental hygiene facilities and persons receiving or who have received service coordination under the auspices of the Office of Mental Retardation (OMRDD) to be served by the Surrogate Decision-Making Committee Program (SDMC) as provided for and in conformance with Chapter 312 of the Laws of 2007. It will also conform the regulations with Chapter 262 of the Laws of 2008 that authorized the SDMC to review requests for decision-making for the withholding or withdrawal of life-sustaining treatment for persons with mental retardation or developmental disabilities.

The proposed rule does not impose an adverse economic impact on small businesses or local governments nor does it impose additional record-keeping, reporting or other compliance requirements on these entities as the program is optional. However, the SDMC paperwork and procedures will need to be complied with as an alternative to judicial documents and proceedings when the declarant elects to use the SDMC.

2. Compliance requirements: The proposed amendment would require mental hygiene providers that may qualify as small businesses to abide by the regulations for the SDMC Part 710 of 14 NYCRR, if an individual or the facilities choose to participate in this program. The regulations require the completion of forms and procedures as necessary to provide information regarding the health condition, capacity and need for the proposed major medical treatment decision of the individual.

3. Professional services: Small businesses that elect to use the SDMC procedures need the services of physicians and/or licensed psychologists. However, provision has been made to authorize the psychiatrist or psychologist to co-sign the form with another mental hygiene or medical professional if that is more convenient.

4. Compliance costs: The estimated cost to small businesses that elect to use the SDMC procedures is expected to be less than incurred in a judicial procedure.

5. Economic and technological feasibility: SDMC forms are easy to use, fill-in-the-blanks style unlike the formalities of the judicial proceeding. They are signed by the individuals submitting the forms and are intended to elicit the information necessary to the decision-making process of the SDMC. SDMC Program Staff is available to consult regarding the process of completing the forms.

6. Minimizing adverse impact: There is no expected adverse economic effect from this regulation. In fact, a beneficial economic effect is expected from decreased costs to the mental hygiene facility in obtaining legally authorized decision-making for individuals.

7. Small business and local government participation: CQCAPD has provided direct notification of the proposed regulation to by first class mail to providers. In addition the amendments reflect the ongoing communication of the SDMC Program staff with providers of services. Furthermore, the CQCAPD will publish the notice of proposed rule-making and the proposed regulations at its website: cqcapd.state.ny.us.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted because this rule will not impose an adverse impact on rural areas and will not impose additional mandatory reporting, record-keeping or other compliance requirements on public or private entities in rural areas since it is a voluntary program that operates as an alternative to judicial proceedings. The SDMC will require compliance with certain rules and record keeping instead of judicial proceedings when the SDMC alternative is elected. The SDMC Program staff has made accommodations for current facilities in rural regions by attendance in person, or, in the alternative, by telephone conference call to assist the panel chairperson in conducting the hearing. The amendments can be expected to have a beneficial impact by offering the providers an additional means to obtain timely and quality decision-making for eligible individuals.

Job Impact Statement

As the amendments are an optional means for decision-making for persons served by mental hygiene facilities, a job impact statement is not submitted because this rule will not have a substantial adverse impact on jobs and employment opportunities. Facility staff participate in the SDMC process but this is comparable to their work in providing care and treatment and, if necessary, participation in judicial proceedings for the persons they serve. Staff from county dispute resolution centers may be employed to provide local administration of the SDMC and may have a beneficial impact on employment opportunities.

Racing and Wagering Board

NOTICE OF ADOPTION**The Use of Anabolic Steroids in Racehorses****I.D. No.** RWB-44-08-00008-A**Filing No.** 1309**Filing Date:** 2008-12-16**Effective Date:** 2009-01-01

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

Action taken: Amendment of sections 4043.2(e)(9) and 4120.2(e)(9) and addition of sections 4043.15 and 4120.12 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 301(2)(a) and 902(1)

Subject: The use of anabolic steroids in racehorses.

Purpose: To restrict the administration of certain anabolic steroids to racehorses.

Text or summary was published in the October 29, 2008 issue of the Register, I.D. No. RWB-44-08-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Susquehanna River Basin Commission

INFORMATION NOTICE**18 CFR Part 806****Review and Approval of Projects**

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains amendments to the project review regulations of the Susquehanna River Basin Commission (Commission) requiring review and approval of any natural gas well development project targeting the Marcellus or Utica shale formations and involving the withdrawal, diversion, or consumptive use of waters of the Susquehanna River Basin, adding a provision providing for a specific approval by rule process for consumptive water use associated with such projects, and modifying the definitions of "construction" and "project." In addition, editorial changes are made to the existing approval by rule provision related to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

DATES: These rules are effective on January 15, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, 717-238-0423; fax: 717-238-2436; e-mail: rcario@srbc.net. Also, for further information on the final rulemaking, visit the Commission's Web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:**Background and Purpose of Amendments**

As a result of advances in hydraulic fracturing and higher natural gas prices, natural gas well development activity in the Susquehanna River Basin has increased dramatically in the past year, resulting in a large number of project applications being filed with the Commission seeking approval for the withdrawal and consumptive use of water for that activity. The Commission is hereby adopting a final rulemaking action to handle the large and immediate influx of project applications, and to avoid adverse, cumulative adverse or interstate effects to the water resources of the basin.

The final rule modifies the definitions of "construction" and "project" for purposes of natural gas well development; requires review and approval of any natural gas well development project involving the withdrawal, diversion, or consumptive use of water; and adds a specific approval by rule process associated with the consumptive use of water by such projects. The Commission's current approval by rule process is available for use only if the sole source of water is a public water supply system. Under this rule change, the new approval by rule process will allow for the consumptive use of wastewater, acid mine water, and other sources of water for natural gas well development projects. The final rule will not change the current process used to review groundwater or surface water withdrawals.

In addition, editorial changes are made to the existing approval by rule provision relating to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

The Commission convened public hearings on October 21, 2008, in Williamsport, Pa. and on October 22, 2008, in Binghamton, N.Y. A written comment period was held open until October 31, 2008. Comments were received at both the hearings and during the comment period, one set coming mainly from the environmental community or those concerned about environmental issues, and another set coming from industry representatives.

Comments from the environmental community expressed concern that an approval by rule process applying to gas well drilling projects would not provide sufficient protection to environmental resources such as aquifers and streams. There was a concern that the approval by rule process would somehow supersede or short cut all other forms of review conducted by the Commission. However, full review and approval will continue to be required for all withdrawals by well drilling projects. To make this point clear, the Commission is adding language to § 806.22(f)(9) of the final rule stating that the issuance of an approval by rule for a consumptive use shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a).

Several citizens were also concerned that chemicals added to water used for hydro-fracturing will not be treated properly and could somehow cause pollution of aquifers and streams. The Commission does not presently regulate water quality; however, the Commission's member jurisdictions regulate the treatment and disposal of flowback fluids or produced brines from well drilling operations. The Commission is therefore including a provision in § 806.22(f)(8) that requires gas well applicants to certify to the Commission that all such flowback fluids will be treated and disposed of in accordance with applicable state and federal law. In addition, project sponsors are required under § 806.22(f)(7) to obtain all necessary permits and approvals that are required for the project from other federal, state, or local government agencies having jurisdiction.

Industry comments pointed to various sections of the proposed regulations felt to be either unnecessary or burdensome. While not agreeing with all such comments, the Commission has made the following changes to the final rulemaking, which it believes responds adequately to industry concerns:

1. The requirement for approval by rule of natural gas drilling projects in § 806.4(a)(8) is limited to those projects targeting the Marcellus or Utica Shale Formations, unless additional shale formations are identified by the executive director of the Commission in a formal determination pursuant to § 806.5. The reference to "other shale formations" in the proposed rulemaking has been deleted.

2. The requirement to submit a Notice of Intent (NOI) "at least 60 days" prior to undertaking a project or increasing a previously approved quantity under § 806.22(f)(2) is removed. Applicants will only be required to submit the NOI prior to such undertaking.

3. In § 806.22(f)(8), project sponsors are required to "certify" that all flowback fluids have been treated and disposed of in accordance with applicable law, instead of having to "demonstrate to the satisfaction of the Commission" that this has been done. Concern was raised that the term "demonstrate" was overly vague. Certification would be subject to laws relating to unsworn falsification to authorities.

4. In § 806.22(f)(10), it is made clear that an approval by rule does not rescind, but merely supersedes any previous consumptive use approval.

5. The provision contained in the proposed rulemaking prohibiting the transfer of § 806.22(f) approvals is deleted, allowing such approvals to be transferred in accordance with the rules applying to any project approval under § 806.6.

In response to a comment from the Commission's member jurisdictions, the term "Executive Director" replaces the term "Commission" in § 806.22(f)(7), (9) and (10) as the entity responsible for issuing an approval by rule and exercising oversight on that approval. Similar changes have been made in § 806.22(e)(1), (6) and (7) to be consistent with this change and to clarify current Commission practice. In response to another comment from member jurisdictions, the notice requirements in § 806.22(f)(3) have been modified to reference the notice requirements contained in § 806.15 that apply to all projects generally, and to require applicants to copy the appropriate agencies of the member state with any NOI submitted under the rule. A final change made in response to the Commission's member jurisdictions was to clarify the language in § 806.22(f)(11) related to the process for obtaining authorization to utilize additional sources of water subsequent to the issuance of an approval by rule.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, 18 CFR part 806 is amended as follows:

PART 806 – REVIEW AND APPROVAL OF PROJECTS

Subpart A – General Provisions

1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.3, revise the definitions of "construction" and "project" to read as follows:

§ 806.3 Definitions.

Construction. To physically initiate assemblage, installation, erection or fabrication of any facility, involving or intended for the withdrawal, conveyance, storage or consumptive use of the waters of the basin. For purposes of natural gas well development projects subject to review and approval pursuant to § 806.4(a)(8), initiation of construction shall be deemed to commence upon the drilling (spudding) of a gas well, or the initiation of construction of any water impoundment or other water-related facility to serve the project, whichever comes first.

Project. Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation. For purposes of natural gas well development activity, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

3. In § 806.4, amend paragraph (a) by adding paragraph (a)(8) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) ***

(8) Any natural gas well development project in the basin targeting the Marcellus or Utica shale formations, or any other formation identified in a determination issued by the Executive Director pursuant to § 806.5, for exploration or production of natural gas involving a withdrawal, diversion or consumptive use, regardless of the quantity.

4. In § 806.22, revise paragraph (e)(1) introductory text, (e)(1)(ii), (e)(6), (e)(7) and add a new paragraph (f) to read as follows:

§ 806.22 Standards for consumptive uses of water.

(e) ***

(1) Except with respect to projects involving natural gas well development subject to the provision of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule:

(i) ***

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of its intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(6) The Executive Director will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(7) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) Approval by rule for consumptive use related to natural gas well development.

(1) Any project involving the development of natural gas wells subject to review and approval under §§ 806.4, 806.5, (or 806.6 of this part shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(2) Notification of Intent: Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 10 days after submittal of an NOI under (2) above, the project sponsor shall satisfy the notice requirements set forth in § 806.15 and send a copy of the NOI to the appropriate agencies of the member state.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water and fluids, including additives, flowback and brines, utilized by the project.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback fluids or produced brines utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state, or local government agencies having jurisdiction over the project. The Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and produced fluids, including brines, have been treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant or deny or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any such approval shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4 (a).

(10) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire five years from the date of such notification, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) Subsequent to the issuance of an approval by rule pursuant to paragraph (f)(9) above, authorization to utilize additional sources of water for the project other than those identified in the approval by rule may be obtained as follows:

(i) Water withdrawals or diversions requiring and receiving approval by the Commission pursuant to § 806.4(a), provided such withdrawal source is approved for such use and is registered with the Commission at least 10 days prior to use on a form and in a manner as prescribed by the Commission.

(ii) Sources of water other than those subject to paragraph (f)(11)(i) of this section, including, but not limited to, public water supply,

wastewater discharge or other reclaimed waters, provided such sources are approved prior to use as a modification to the approval by rule. Any request to modify an approval by rule to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, and shall be subject to review pursuant to the standards set forth in subpart C.

Department of Taxation and Finance

NOTICE OF ADOPTION

Taxable Sales by Certain Exempt Organizations

I.D. No. TAF-44-08-00016-A

Filing No. 1313

Filing Date: 2008-12-16

Effective Date: 2009-01-01

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

Action taken: Amendment of sections 526.10, 529.7, 529.8 and 529.9 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 1116(b)(1), 1142(1), (8) and 1250 (not subdivided); and L. 2008, ch. 57, part KK-1

Subject: Taxable sales by certain exempt organizations.

Purpose: To provide rules regarding sales tax on sales, including auction sales, by certain exempt organizations.

Text or summary was published in the October 29, 2008 issue of the Register, I.D. No. TAF-44-08-00016-P.

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

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

Assessment of Public Comment

Written comments were received regarding proposal TAF-44-08-00016-P from the Interagency Council of Mental Retardation and Developmental Disabilities Agencies, Inc. ("IAC"). IAC is a membership organization of some 120 voluntary not-for-profit providers of services to individuals with mental retardation or other developmental disabilities, and their families, in the New York City metropolitan region, along with associate members in other parts of New York State. The membership operates residences, schools, clinics, vocational rehabilitation programs, day treatment centers, preschools, early intervention services, and family support programs.

IAC expressed concern regarding the provision in the rule that requires certain exempt organizations to collect sales tax when operating certain services, such as building maintenance services:

Many exempt organizations operate these services not as fund-raising operations but as part of an organized, state-funded and state-regulated program teaching job skills to individuals with disabilities. Often, the tax benefit to the user is a decisive factor in their selection of such a program; it is an important marketing tool for the exempt organization. Additionally, there is a very strong fiscal incentive and benefit to the State in the transition of these individuals from service users to taxpayers. We strongly recommend that the regulations exempt programs which are funded and certified or authorized by the State as job training programs for individuals with disabilities.

Section 529.7(i)(2)(iii) of the regulations, as added by Section 5 of the rule, and the corresponding provisions incorporated into Sections 529.8(k) and 529.9(d) reflect nondiscretionary provisions of Section 1116(b)(1)(ii) of the Tax Law, added by Part KK-1 of Chapter 57 of the Laws of 2008. As such, there is no authority to provide the recommended exemption. The rule merely reflects the new statutory provisions in this regard.

Accordingly, no changes were made to the rule as a result of these comments.

NOTICE OF ADOPTION

Fees Charged for Business Corporation Franchise Tax Searches, Bulk Orders of Forms, and Publication 352

I.D. No. TAF-44-08-00017-A

Filing No. 1315

Filing Date: 2008-12-16

Effective Date: 2008-12-31

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

Action taken: Repeal of Part 11 and amendment of Part 200 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 697(a), and 1096(a)

Subject: Fees charged for business corporation franchise tax searches, bulk orders of forms, and Publication 352.

Purpose: To eliminate unnecessary provisions of the regulations.

Text or summary was published in the October 29, 2008 issue of the Register, I.D. No. TAF-44-08-00017-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sales Tax on Hotel Occupancy

I.D. No. TAF-53-08-00006-P

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

Proposed Action: This is a consensus rule making to amend section 527.9 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided)

Subject: Sales tax on hotel occupancy.

Purpose: To update the sales and compensating use tax regulations concerning the tax on rent received for hotel occupancy.

Substance of proposed rule (Full text is posted at the following State website: www.nystax.gov): This rule updates section 527.9 of the sales and compensating use tax regulations concerning the tax imposed on rent received for hotel occupancy in New York State. Recently, with input from representatives of the hotel industry, the Department of Taxation and Finance updated Publication 848, *A Guide to Sales Tax for Hotel and Motel Operators* (3/08), to reflect current statutory provisions and departmental policies related to the sales tax on hotel occupancy. To culminate that effort, this rule updates the department's regulations by making editorial, clarifying, and other technical changes for the betterment of section 527.9. (Publication 848 is available on the department's Web site at www.tax.state.ny.us/pdf/publications/sales/pub848_308.pdf.)

Section 1 of the rule amends subdivision (a) of section 527.9 of the regulations concerning the imposition of the hotel occupancy tax.

Section 2 of the rule amends paragraph (1) of subdivision (b) of section 527.9 of the regulations concerning the definition of "hotel."

Section 3 of the rule amends paragraph (7) of subdivision (b) of section 527.9 of the regulations concerning the definition of "rent."

Section 4 of the rule repeals examples 2 and 3 in subdivision (b) of section 527.9 of the regulations and further amends paragraph (8) of that subdivision concerning the definition of "permanent resident."

Section 5 of the rule repeals examples 1 through 5 in subdivision (c) of section 527.9 of the regulations and further amends subdivision (c) concerning the computation of tax.

Section 6 of the rule repeals examples 1 through 3 and the cross-reference in subdivision (d) of section 527.9 of the regulations and further amends subdivision (d) concerning the exemptions from tax.

Section 7 of the rule repeals examples 1 and 2 in subdivision (e) of sec-

tion 527.9 of the regulations and further amends subdivision (e) concerning nontaxable facilities.

Section 8 of the rule repeals examples 1 and 2 in subdivision (f) of section 527.9 of the regulations and further amends subdivision (f) concerning complimentary accommodations.

Section 9 of the rule amends paragraph (2) of subdivision (g) of section 527.9 of the regulations concerning the lodging of employees.

Section 10 of the rule repeals example 1 in subdivision (h) of section 527.9 of the regulations and further amends subdivision (h) concerning food services offered by hotels.

Section 11 of the rule amends subdivision (i) of section 527.9 of the regulations concerning common miscellaneous transactions encountered by hotel operators.

Section 12 of the rule repeals examples 14 and 15 in subdivision (i) of section 529.7 of the regulations.

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

Data, views or arguments may be submitted to: William Ryan, Director, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-1153, email: tax_regulations@tax.state.ny.us

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

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because it merely repeals regulatory provisions that are no longer applicable, conforms to nondiscretionary statutory changes, and makes technical changes that are not controversial in nature. The rule updates section 527.9, "Hotel occupancy," of the department's regulations. Publication 848, *A Guide to Sales Tax for Hotel and Motel Operators* (3/08), was recently revised by the department, with participation from representatives of the hotel industry, to reflect current statutory provisions and policies of the department related to the sales tax on hotel occupancy. The development of the publication provided an opportunity to review and update information contained in the regulations. The rule makes editorial, clarifying, and technical changes throughout this section of the regulations. The rule clarifies the language and deletes dated and unnecessary information, such as references to expired section 1107 of the Tax Law, unneeded examples, gender references, outdated terminology for individuals with disabilities, specific form names, and former state agency names.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs or employment opportunities beyond that required by statute. The purpose of the rule is simply to update section 527.9 of the sales and compensating use tax regulations concerning the tax imposed on rent received for hotel occupancy. Editorial, clarifying, and technical changes have been made throughout this section of the regulations.

Urban Development Corporation

EMERGENCY RULE MAKING

Economic Development and Job Creation Throughout New York State and Preservation of Public Health and Public Safety

I.D. No. UDC-53-08-00004-E

Filing No. 1308

Filing Date: 2008-12-16

Effective Date: 2008-12-16

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

Action taken: Addition of Part 4245 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); ch. 174 L. 1968 and ch. 109 L. 2006

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires the creation of the Rule to address dangers posed by vacant, abandoned, surplus or condemned buildings.

Subject: Economic development and job creation throughout New York State and preservation of public health and public safety.

Purpose: The Rule provides the framework for administration of the Restore New York's Communities Initiative.

Text of emergency rule: Section 4245.1 Purpose

These regulations set forth the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in section 16-n of the Urban Development Corporation Act (the "Act"). The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing financial assistance to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

Section 4245.2 Definitions

For purposes of these regulations, the terms below will have the following meanings:

(a) "deconstruction" shall mean the careful disassembly of buildings of architectural or historic significance with the intent to rehabilitate, reconstruct the building or salvage the material disassembled from the building;

(b) "economically distressed community" shall mean communities determined by the Commissioner of Economic Development based on criteria that are indicative of economic distress including numbers of persons receiving public assistance, poverty rates, unemployment rates, rate of employment decline, population loss, per capita income change, decline in economic activity and private investment to the extent that they are measurable at the municipal level and such other criteria indicators as the Commissioner deems appropriate to be in need of economic assistance;

(c) "municipality" shall mean a municipal subdivision that is a city, town, or village;

(d) "property assessment list" shall mean a list (in such form as the Corporation may require) compiled by a municipality containing description (location, size and residential or commercial nature of each building, and whether the building is proposed to be demolished, deconstructed, rehabilitated or reconstructed) and an assessment of whether each building is vacant, abandoned, surplus or condemned within its jurisdiction;

(e) "reconstruction" shall mean the construction of a new building which is similar in architecture, size and purpose to a previously existing building at such location, provided, however, to the extent possible, all such reconstruction program real property shall be architecturally consistent with nearby and adjacent properties or in a manner consistent with a local revitalization or urban development plan;

(f) "rehabilitation" shall mean structural repairs, mechanical systems repair or replacement, repairs related to deferred maintenance, emergency repairs, energy efficiency upgrades, accessibility improvements, mitigation of lead based paint hazards, and other repairs which result in a significant improvement to the property, provided, however, to the extent possible, all such rehabilitation program real property shall be architecturally consistent with nearby and adjacent properties or in a manner consistent with a local revitalization or urban development plan;

Section 4245.3 Request for Proposals

The Corporation may, within available appropriations, issue requests for proposals to municipalities at least once per fiscal year to provide grants to municipalities, for demolition, deconstruction, reconstruction, and rehabilitation projects set forth in a property assessment list submitted by the municipality.

Section 4245.4 Eligibility

(a) *To be eligible for the demolition and deconstruction program or rehabilitation and reconstruction program assistance, as described in sections 4245.5 and 4245.6 of this Part, municipalities must conduct an assessment of vacant, abandoned, surplus or condemned buildings in communities within their jurisdiction. Such real property may include both residential and commercial real properties. Such properties shall be selected for the purpose of revitalizing urban centers, encouraging commercial investment and adding value to the municipal housing stock. Such information shall be set forth in the property assessment list. Such properties and the other information on the property assessment list shall be published in a local daily newspaper for no less than three consecutive*

days. Additionally, the municipality shall conduct a public hearing in the municipality where the buildings identified on the property assessment list are located. Such public hearing shall be held before the Corporation accepts an application.

(b) No full-time employee of the State or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the State shall be eligible to receive assistance under this initiative, nor shall any business, the majority ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

Section 4245.5 Demolition and Deconstruction Projects

Demolition and deconstruction projects for real property in need of demolition or deconstruction on the property assessment list may receive grants of up to twenty thousand dollars per residential real property. The Corporation shall determine the cost of demolition and deconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly, and such costs and maximum grant award amounts shall be made available to eligible municipalities. The Corporation shall also consider geographic differences in the cost of demolition and deconstruction in the establishment of maximum grant awards.

Section 4245.6 Rehabilitation and Reconstruction Projects

Rehabilitation and reconstruction projects for real property in need of rehabilitation or reconstruction on the property assessment list may receive grants of up to one hundred thousand dollars per residential real property. The Corporation shall determine the cost of rehabilitation and reconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly, and such costs and maximum grant award amounts shall be made available to eligible municipalities. The Corporation shall also consider geographic differences in the cost of rehabilitation and reconstruction in the establishment of maximum grant awards. Provided, however, to the extent possible, all such rehabilitation and reconstruction projects real property shall be rehabilitated or reconstructed in a manner that is architecturally consistent with nearby and adjacent properties or consistent with a local revitalization or urban development plan. Provided, further, such grants may be used for site development needs including but not limited to water, sewer and parking as specified in the grant agreement entered into between the Corporation and the municipality.

Section 4245.7 Required Considerations and Priorities

In considering the awarding of initiative grant assistance, the Corporation:

(a) shall review all qualified applications to determine the awards to be made pursuant to sections 4245.5 and 4245.6 of this Part and shall, to the fullest extent possible, provide such assistance in a geographically proportionate manner throughout the State based on the qualified applications received pursuant to this section.

(b) shall give priority in granting such assistance to eligible properties that have approved applications or are receiving grants pursuant to other state or federal redevelopment, remediation or planning programs including, but not limited to, the brownfield opportunity areas program adopted pursuant to section 970-r of the General Municipal Law or empire zone development plans pursuant to article 18-B of the General Municipal Law.

(c) shall give priority to properties in economically distressed communities.

Section 4245.8 Required Matching Contribution

A municipality that is granted an award or awards under this section shall provide a matching contribution of no less than ten percent of the aggregated award or awards amount. Such matching contribution may be in the form of a financial and/or in kind contribution by the municipality, a government entity, or a private entity. In establishing the matching contribution, a municipality's financial contribution may include grants from federal, state and local entities. In kind contributions may include but shall not be limited to the efforts of municipalities to conduct an inventory and assessment of vacant, abandoned, surplus, condemned, and deteriorated properties and to manage and administer grants pursuant to sections 4245.5 and 4245.6 of this Part.

Section 4245.9 Application and Approval Process

(a) Promptly after receipt of the application, including the property assessment list, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Part. Applications shall be processed in full compliance with the applicable provisions of section 16-n of the Act as it may be in effect from time to time.

(b) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the demolition or deconstruction or rehabilitation or reconstruction of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such

further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4245.10 Confidentiality

To the extent permitted by law and regulations, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting initiative assistance from the Corporation, which is submitted by or on behalf of such person or entity to the Corporation in connection with an application for initiative assistance, shall be confidential and exempt from public disclosures.

Section 4245.11 Affirmative action and non-discrimination

Program applications shall be reviewed by the Corporation's Affirmative Action Department, which shall, in consultation with the applicant and/or proposed recipient of the Program assistance and any other relevant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the Public Authorities Law, article 15-A of the Executive Law, and section 6254(11) of the Unconsolidated Laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 15, 2009.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Chapter 109, Laws of 2006 (Unconsolidated Laws, section 6266-n. Another Unconsolidated Laws section 6266-n was added by another act) authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities. Section 5(4) of the New York State Urban Development Corporation (UDC) Act (Unconsolidated Laws, section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to revitalize urban areas and stabilize neighborhoods to attract industry and people to urban areas thereby improving municipal finances, giving municipal governments the wherewithal to grow their tax and resource base and attract individuals, families, industry and commercial enterprises, and lessen distressed municipalities' reliance on state aid, achieving stable and diverse economies and vibrant communities.

3. Needs and Benefits:

The Program's legislation assists the revitalization of urban areas and stabilization of neighborhoods throughout the State by providing the following types of assistance:

a) Demolition and Deconstruction Grants of up to twenty thousand dollars per residential real property in need of demolition or deconstruction on the property assessment list.

b) Rehabilitation and Reconstruction Grants of up to one hundred thousand dollars per residential real property in need of rehabilitation or reconstruction on the property assessment list.

c) Demolition and Deconstruction Grants and Rehabilitation and Reconstruction Grants for commercial properties. The Corporation shall determine the cost of demolition/deconstruction and rehabilitation/reconstruction of commercial properties on a per-square foot basis and establish maximum grant awards accordingly. The Corporation shall also consider geographic differences in the establishment of maximum grant awards.

The proposed new Rule sets forth the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in section 16-n of the UDC Act. The initiative promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

1. Evaluation Criteria - The Corporation will review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure - Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the revitalization of urban areas and the stabilization of neighborhoods within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State.

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The funding source is appropriation funds (2006-07 Supplemental Bill (S8470/A12044) page 227, lines 8-14). \$150,000,000 is available for 2008. Discussions regarding funds were conducted by Ray Richardson on behalf of the Corporation and Andrew Kennedy on behalf of the Division of Budget.

5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

6. Paperwork:

As instructed by the legislation, a Request for Proposal was developed for this program.

7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

8. Federal Standards:

There are no applicable federal government standards which apply.

9. Alternatives:

The Corporation considered the alternative of not promulgating this rule. However, this rulemaking was necessary in order to complete aspects of the Program that were not addressed by the enacting legislation.

10. Compliance Schedule:

No significant time will be needed for compliance.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed Rule will provide the framework for administration of the Restore New York's Communities Initiative (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers municipalities assistance for the demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities.

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

The proposed new Rule sets forth the types of available assistance, eligibility, evaluation criteria, process and related matters, including implementation and administration of the Restore New York's Communities Initiative set forth in Section 16-n of the Urban Development Corporation Act. The Program promotes demolition, deconstruction, reconstruction and rehabilitation of vacant, abandoned, surplus or condemned buildings in municipalities by providing the financial assistance mentioned above to municipalities for the demolition, deconstruction, reconstruction and rehabilitation of such buildings.

The Program emphasizes the effective provision of economic development throughout New York State. Program funds are available only to municipalities. Small business will benefit from the aid to municipalities provided for this economic development. Therefore, the effect of the Rule on small business and local government will be beneficial.

2. Compliance Requirement:

No affirmative acts will be needed to comply.

3. Professional Services:

No professional services will be needed to comply.

4. Compliance Costs:

No initial costs will be needed to comply with the proposed Rule.

5. Economical and Technological Feasibility:

The Rule makes the Program assistance feasible for local governments, by expressly stating that municipalities are eligible for certain types of Program assistance while permitting local governments access to all other types of Program assistance for which they may be eligible. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts.

6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

7. Small Business and Local Participation:

Program funds are available only to municipalities. Comments were received from applicants under the Program including Albany, Syracuse, Yonkers, Buffalo, Utica, Watervliet, Rochester, Binghamton, Elmira, Wappingers Falls and Amherst. The response was overwhelmingly positive. There were some requests to reduce the requirements of the application process. However, given that the Rule's application requirements are prescribed by the enabling legislation, the corporation has determined that this is not possible.

There were also requests to expand the types of property covered and the types of entities eligible for assistance. However these are legislative matters beyond the scope of the corporation's powers.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.

Worker's Compensation Board

NOTICE OF ADOPTION

To Increase the Arbitration Filing Fees Associated with the WCB's Health Insurers Matching Program (HIMP)

I.D. No. WCB-43-08-00001-A

Filing No. 1307

Filing Date: 2008-12-15

Effective Date: 2009-01-01

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

Action taken: Amendment of section 325-6.15 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13(d), (h) and 117

Subject: To increase the arbitration filing fees associated with the WCB's Health Insurers Matching Program (HIMP).

Purpose: The rule increases the arbitration filing fees from \$75 (\$15 to the arbitrator) to \$150 (\$40 to the arbitrator).

Text or summary was published in the October 22, 2008 issue of the Register, I.D. No. WCB-43-08-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Workers' Compensation Board, 20 Park Street, Room 400, Albany, New York 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

Assessment of Public Comment

The agency received no public comment.