

# RULE MAKING ACTIVITIES

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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; or 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.

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## Department of Correctional Services

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

#### Procedure for Stay of Good Behavior Allowance

**I.D. No.** COR-24-08-00001-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 amend section 263.2(a)(3) of Title 7 NYCRR.

**Statutory authority:** Correction Law, sections 112, 137 and 803

**Subject:** Procedure for stay of good behavior allowance.

**Purpose:** To discontinue an unnecessary automatic review by the commissioner or his designee for a class of inmates who are not affected.

**Text of proposed rule:** Section 263.2(a)(3) of 7 NYCRR is hereby amended as follows:

§ 263.2 Procedure for stay of good behavior allowance.

(3) Where the disposition does involve loss of good behavior allowance, and the inmate has an approved conditional release date earlier than his or her maximum expiration date, the disposition shall automatically be reviewed by the commissioner or his designee.

**Text of proposed rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and

Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

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

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

#### **Consensus Rule Making Determination**

The Department of Correctional Services has determined that no person is likely to object to the proposed rule change as it merely discontinues an unnecessary automatic review by the commissioner or his designee for a class of inmates who are not affected by this review. Any inmate who has already been denied all of their good time through the time allowance process, and will only be released upon their maximum expiration date, cannot be affected by any additional loss of good time as a disciplinary disposition pursuant to section 263.2(a)(3). An automatic review by the commissioner or his designee would be moot and unnecessary.

#### **Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities.

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## Education Department

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### EMERGENCY RULE MAKING

#### Standing Committees of the Board of Regents

**I.D. No.** EDU-09-08-00009-E

**Filing No.** 463

**Filing date:** May 23, 2008

**Effective date:** May 26, 2008

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

**Action taken:** Amendment of sections 3.2 and 4-1.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 207 (not subdivided)

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to reorganize the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The Committee on Higher Education and Professional Practice will be separated into two committees, the Committee on Higher Education and the Committee on Professional Practice. The Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities will be separated into two committees, the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities. The proposed amendment will establish the specific functions each newly formed committee will perform so that each committee may efficiently and effectively review items and priority issues, which will, in turn, assist the Board of Regents to efficiently carry out its statutory responsibilities.

The proposed amendment was adopted at the February 11-12, 2008 Regents meeting as an emergency measure, effective February 26, 2008, in order to immediately conform the Rules of the Board of Regents to the recent reorganization of the committee structure of the Board of Regents. A Notice of Emergency Adoption was published in the *State Register* on March 12, 2008. A Notice of Proposed Rule Making was published in the *State Register* on February 27, 2008.

Since the February 2008 Regents meeting, the Committee on Higher Education and Committee on Professional Practice determined that certain provisions of the amendment that set forth particular responsibilities of the Committee on Higher Education and the Committee on Professional Practice did not completely conform to the performance of both Committees under the recent reorganization of the committee structure of the Board of Regents. Specifically, the Committee on Higher Education and Committee on Professional Practice have determined that the provisions relating to the review of amendments to the Rules of the Board of Regents and the Commissioner's Regulations, the development of legislative and budgetary proposals, and recommendations regarding the incorporation and chartering of certain institutions and/or organizations needed to be revised to conform to the actual practice of each Committee under the new organization of the standing committees.

Representatives of the Committee on Higher Education and Committee on Professional Practice collaborated with each other to determine the responsibilities of each Committee under the recent reorganization. Accordingly, the proposed amendment has been revised to further define and distinguish the responsibilities of the Committee on Higher Education and the Committee on Professional Practice in conformity with the performance of both Committees under the recent reorganization of the committee structure of the Board of Regents. These revisions include defining the current duties of the Committee on Higher Education and Committee on Professional Practice in respect to their current performance under the recent reorganization, which duties primarily related to the review of amendments to the Rules of the Board of Regents and the Commissioner's Regulations, the development of legislative and budgetary proposals, and recommendations regarding the incorporation and chartering of certain institutions and/or organizations. The revisions further include other technical corrections therewith. The proposed amendment, as revised, enables the Board of Regents to efficiently and effectively carry out its functions and responsibilities.

Pursuant to the State Administrative Procedure Act section 202(4-a), the revised rule cannot be adopted by regular (non-emergency) action until at least 30 days after the May 14, 2008 publication of the revised rule in the *State Register*. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be adopted by regular action, after expiration of the 30-day public comment period for a revised rule making, is the June 23-24, 2008 Regents meeting. However, the February emergency adoption will expire on May 25, 2008, 90 days after its filing with the Department of State on February 26, 2008. A lapse in the rule's effectiveness would disrupt implementation of the new organization of the standing committees of the Board of Regents.

A second emergency adoption is therefore necessary for the preservation of the general welfare in order to immediately conform the responsibilities of the Committee on Higher Education and the Committee on Professional Practice to each Committee's performance under the recent reorganization, and to continue the effectiveness of the first emergency rule, subject to the revisions, adopted at the February 2008 Regents meeting which separated the Committee on Higher Education and Professional Practice and the Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services with Individuals with Disabilities, so that the new Committees may efficiently assume their respective duties beginning with the next succeeding Regents meetings.

**Subject:** Standing committees of the Board of Regents.

**Purpose:** To conform the rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents, which separated the Committee on Higher Education and Professional Practice into the Committee on Higher Education and the Committee on Professional Practice, and which separated the Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities into the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

**Text of emergency rule:** Pursuant to section 207 of the Education Law.

1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective May 26, 2008, as follows:

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

- (1) Policy Integration and Innovation.
- (2) Higher Education [and Professional Practice].
- (3) Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities].
- (4) Cultural Education.
- (5) Ethics.
- (6) *Professional Practice*.
- (7) *Vocational and Educational Services for Individuals with Disabilities*.

2. Subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective May 26, 2008, as follows:

(d) The functions of the standing committees shall include:

- (1) . . .
- (2) Committee on Higher Education [and Professional Practice]:

(i) develops policy recommendations regarding postsecondary education and retraining programs, [and develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional assistance programs, and the disciplinary process,] and monitors implementation of such functions by the department;

(ii) oversees preparation of the statewide plan for [the development of postsecondary] *higher* education and reviews and approves amendments to institutional or sectorial master plans for new programs and facilities [and amendments relating to professional practice and professional conduct];

(iii) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to postsecondary education issues, including academic [and professional] program approval, *and* student and institutional financial aid [, professional licensure requirements, and the administration of continuing professional competence requirements and amendments relating to professional practice and professional conduct;

(iv) oversees administration of continuing competence requirements for professional licensure and registration;

(v) develops policy recommendations concerning professional manpower, examination and licensure issues and requirements, including minority access to professional education and licensure;

(vi) reviews and approves appointments to the State boards for regular service (advising on licensure, examinations, practice and discipline) for the professions;

(vii) reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements];

[(viii)] (iv) monitors the financial conditions of the postsecondary institutions;

[(ix)] (v) develops legislative and budgetary proposals for higher [and professional] education [, professional practice and professional discipline,] and monitors advocacy of such proposals;

[(x)] (vi) recommends appointments to advisory councils and boards; [and]

[(xi)] (vii) seeks input from the public and the field concerning postsecondary education policies and practices; and

[(xii)] (viii) reviews and makes recommendations to the full board on incorporation and chartering of higher education institutions and organizations, [professional organizations,] and institutions offering professional education programs];

(xiii) reviews and approves appointments to the State Boards for the Professions for service on licensure/disciplinary panels;

(xiv) reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;

(xv) reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license; and

(xvi) seeks input from the public and the professions concerning professional practice and professional discipline policies and practices].

(3) Committee on Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities]:

(i) develops policy recommendations regarding elementary, middle and secondary education, workforce preparation and continuing education, [vocational rehabilitation and special education, overall coordination of vocational and educational services for individuals with disabilities,] and coordination of interagency agreements and activities;

- (ii) . . .
- (iii) . . .
- (iv) . . .

(v) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to elementary, middle and secondary education and workforce preparation and continuing education[, and amendments relating to vocational rehabilitation, special education and related educational services for individuals with disabilities];

- (vi) . . .

(vii) develops legislative and budgetary proposals for elementary, middle and secondary education and workforce preparation and continuing education[, vocational rehabilitation, special education and related educational services for individuals with disabilities,] and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;

(viii) initiates studies and activities leading to the improvement of educational conditions and outcomes for children from birth through high school graduation and adults in workforce preparation and continuing education programs; and

(ix) reviews and makes recommendations to the full board on incorporation and chartering of institutions and organizations proposing to offer prekindergarten, kindergarten, elementary, middle or secondary education programs[.];

[x) monitors the implementation of vocational rehabilitation and special education programs and services and of interagency agreements;

(xi) reviews the development and implementation of the Regents Comprehensive Plan for the Office of Vocational and Educational Services for Individuals with Disabilities; and

(xii) seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.]

- (4) . . .

- (5) . . .

(6) *Committee on Professional Practice:*

(i) develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional manpower issues, professional licensure requirements including licensing examination requirements, which shall include issues concerning minority access to professional education, licensing examinations and licensure, professional assistance programs, and the professional disciplinary process, and monitors implementation of such functions by the department;

(ii) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to professional education, licensure, continuing competence, practice, and discipline;

(iii) develops legislative and budgetary proposals relating to professional practice and professional discipline policies and practices;

(iv) oversees administration of continuing competence requirements for professional licensure and registration;

(v) reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;

(vi) reviews Regents Review Committee recommendations in proceedings relating to the unauthorized practice of the professions or the unauthorized use of a professional title;

(vii) reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license;

(viii) reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements;

(ix) seeks input from the public and professions concerning professional practice and professional discipline policies and practices; and

(x) reviews and approves appointments to the State board for the professions;

(xi) reviews and makes recommendations to the full board on incorporation and chartering of professional organizations and non-degree granting institutions or organizations related to the professions.

(7) *Committee on Vocational and Educational Services for Individuals with Disabilities:*

(i) develops policy recommendations regarding vocational rehabilitation and special education, overall coordination of vocational and educational services to individuals with disabilities, and coordination of interagency agreements and activities;

(ii) monitors the implementation of vocational rehabilitation and special education programs and services and interagency agreements;

(iii) develops legislative and budgetary proposals for vocational rehabilitation, special education and related educational services for individuals with disabilities, and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;

(iv) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to vocational rehabilitation, special education and related educational services for individuals with disabilities; and

(v) seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.

3. Subparagraph (iv) of paragraph (11) of subdivision (a) of section 4-1.5 of the Rules of the Board of Regents is amended, effective May 26, 2008, as follows:

(iv) The commissioner shall transmit the appeal papers to a standing subcommittee on accreditation appeals of the committee on higher education [and professional practice] of the Board of Regents.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-09-08-00009-P, Issue of February 27, 2008. The emergency rule will expire July 21, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Regulatory Impact Statement**

1. STATUTORY AUTHORITY:

Education Law section 207 gives the Board of Regents broad authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment reorganizes the committee structure of the Board of Regents to assist the Board in meeting its statutory responsibility to determine the educational policies of the State and to carry out the laws and policies of the State relating to education.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The Committee on Higher Education and Professional Practice has been separated into the Committee on Higher Education and the Committee on Professional Practice. The Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities has been separated into the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

The Board of Regents has determined that the reorganization of the committee structure of the Board of Regents is necessary to assist the Board of Regents to effectively meet its statutory responsibility to determine the educational policies of the State and carry out the laws and policies of the State relating to education. In accordance with the recent changes made to the committee structure of the Board, the proposed amendment will establish the specific functions of each newly formed committee so that each committee may efficiently and effectively review items and priority issues, which will, in turn, assist the Board of Regents to efficiently carry out its statutory responsibilities.

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to the regulating agency for implementation and continuing administration of the rule: None.

The proposed amendment relates to the internal organization of the Board of Regents and merely reorganizes the committee structure of the Board of Regents, and will not impose any costs on State and local government, private regulated parties or the State Education Department.

## 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

## 6. PAPERWORK:

The proposed amendment does not impose any reporting, record keeping or other paperwork requirements.

## 7. DUPLICATION:

The proposed amendment does not duplicate any existing State or federal requirements.

## 8. ALTERNATIVES:

There are no significant alternatives and none were considered.

## 9. FEDERAL STANDARDS:

The amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of New York State and there are no federal standards governing such.

## 10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

**Regulatory Flexibility Analysis**

The proposed amendment relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on 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 has not been prepared.

**Rural Area Flexibility Analysis**

The proposed amendment relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

**Job Impact Statement**

The proposed amendment relates to the internal organization of the Board of Regents and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further 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.

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION****Education of Homeless Children and Youth**

**I.D. No.** EDU-09-08-00010-A

**Filing No.** 464

**Filing date:** May 23, 2008

**Effective date:** June 12, 2008

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

**Action taken:** Amendment of section 100.2(x) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 3202(1) and (8), 3209(1)(a) and (7) and 3713(1) and (2)

**Subject:** Education of homeless children and youth.

**Purpose:** To clarify the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended; and clarify disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-09-08-00010-P, Issue of February 27, 2008.

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

**Text of rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Assessment of Public Comment**

The agency received no public comment.

**REVISED RULE MAKING  
NO HEARING(S) SCHEDULED****School Bus and Vehicle Engine Idling**

**I.D. No.** EDU-14-08-00012-RP

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

**Revised action:** Addition of section 156.3(h) to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 3624 (not subdivided) and 3627(1), (2) and (3) and L. 2007, ch. 670

**Subject:** School bus and vehicle engine idling.

**Purpose:** To implement Education Law section 3627, as added by chapter 670 of the Laws of 2007, by prescribing requirements for minimizing the idling of school buses and other vehicles.

**Text of revised rule:** Subdivision (h) of section 156.3 of the Regulations of the Commissioner of Education is added, effective August 21, 2008, as follows:

(h) *Idling school buses on school grounds.*

(1) *General provisions.*

(i) *Except as provided in paragraph (2) of this subdivision, each school district shall ensure that each driver of a school bus, as defined in Vehicle and Traffic Law section 142, or other vehicle owned, leased or contracted for by such school district, shall turn off the engine of such school bus or vehicle while waiting for passengers to load or off load on school grounds, or while such vehicle is parked or standing on school grounds or in front of or adjacent to any school.*

(ii) *School districts shall consider adopting policies which provide for the prompt loading and unloading of individual school buses rather than a policy of waiting for all buses to arrive before loading or unloading.*

(2) *Exceptions. Notwithstanding the provisions of paragraph (1) of this subdivision and unless otherwise required by State or local law, the idling of a school bus or vehicle engine may be permitted to the extent necessary to achieve the following purposes: (i) for mechanical work; or (ii) to maintain an appropriate temperature for passenger comfort; or (iii) in emergency evacuations where necessary to operate wheelchair lifts.*

(3) *Driver requirements. Each school district shall ensure that each driver of a school bus shall:*

(i) *instruct pupils on the necessity to board the school bus promptly in the afternoon in order to reduce loading time;*

(ii) *whenever possible, park the school bus diagonally in school loading areas to minimize the exhaust from adjacent buses that may enter the school bus and school buildings; and*

(iii) *turn off the bus engine during sporting or other events.*

(4) *Notice. Each school district shall annually provide their school personnel, no later than five school days after the start of school, with notice of the provisions of Education Law section 3637 and of this section, in a format prescribed and provided by the Commissioner to such school districts for dissemination.*

(5) *Monitoring and reports. Each school district shall periodically but at least semi-annually monitor compliance with the provisions of this subdivision by school bus drivers and drivers of vehicles owned, leased or contracted for by such school district. Each school district shall prepare a written report of such review, which shall describe the actions taken to review compliance and the degree of adherence found with the provisions of this subdivision. Copies of the report shall be retained in the school district's files for a period of six years and made available upon request. The Commissioner may also require specific school districts to provide additional information as necessary to address health concerns related to their compliance with the provisions of this subdivision.*

(6) *Private vendor transportation contracts. All contracts for pupil transportation services between a school district and a private vendor that are entered into on or after August 21, 2008, shall include a provision requiring such vendor's compliance with the provisions of this subdivision.*

**Revised rule compared with proposed rule:** Substantial revisions were made in section 156.3(h)(1), (3) and (5).

**Text of revised proposed rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

**Public comment will be received until:** 30 days after publication of this notice.

#### **Revised Regulatory Impact Statement**

Since publication of a Notice of Revised Rule Making in the *State Register* on April 2, 2008, the proposed rule was substantially revised as follows:

Paragraph (1) of proposed section 156.3(h) was revised in response to public comment to provide that school districts shall consider adopting policies which provide for the prompt loading and unloading of individual school buses rather than a policy of waiting for all buses to arrive before loading or unloading.

Paragraph (3) of section 156.3(h) was revised in response to public comment to clarify that school buses should be diagonally parked in school loading areas to minimize exhaust that may enter school buildings as well as school buses.

Paragraph (5) of section 156.3 was revised in response to comment to provide more flexibility to school districts to monitor and report compliance with the rule's provisions. The requirement that districts perform two monitoring reviews, one in November or December, and the other in April or May, has been deleted and replaced with a requirement that districts periodically but at least semi-annually monitor compliance. The requirement that the monitoring report include the name of each driver checked, the date, and the degree of adherence found, has been deleted and replaced with a requirement that the report describe the actions taken to review compliance and the degree of adherence found. The rule was also amended to provide that copies of the report shall be made available upon request, and that the Commissioner may also require specific school districts to provide additional information as necessary to address health concerns related to their compliance with the rule.

The above revisions require the following sections of the Regulatory Impact Statement be revised as follows:

#### **LOCAL GOVERNMENT MANDATES:**

The proposed rule is necessary to implement the requirements of Chapter 670 of the Laws of 2007 and does not impose any additional program, service, duty or responsibility on school districts beyond those intrinsic to the statute. The proposed rule generally requires that all school districts work to minimize idling of school buses and vehicles on school grounds or adjacent to the school. It requires school districts to annually provide school bus drivers and employees with information concerning the dangers of idling of vehicles. The materials may be supplied as paper copy, or the information may be covered in an employee staff meeting. In addition, to insure compliance, school districts must monitor driver adherence to the policy semi-annually and record the results, but are not required to submit written reports to the Commissioner. Such reports shall be retained in the school district's files for a period of six years and shall be made available upon request. The Commissioner may also require specific school districts to provide additional information as necessary to address health concerns related to their compliance with the rule.

#### **PAPERWORK:**

The proposed rule requires school districts to complete a semi-annual monitoring check of driver compliance and record the results. It does not specify any particular forms or require the filing of paperwork with the Department. School districts are responsible for annually providing employees with copies of materials on minimizing idling. However, the content of the materials will be supplied by the Commissioner and is currently estimated to be four pages in length.

In addition, all contracts for pupil transportation services between a school district and a private vendor that are entered into on or after the effective date of the proposed rule shall include a provision requiring such vendor's compliance with the provisions of the rule.

#### **COMPLIANCE SCHEDULE:**

The proposed rule requires the Commissioner to provide school districts with a copy of Education Law section 3637, information concerning minimizing idling and a copy of this regulation. School districts are annually required to provide those materials to all school bus drivers and other drivers of school vehicles. Districts are then required to monitor compli-

ance with the anti-idling provisions on a semi-annual basis to be determined by each district. We do not anticipate any difficulty for school districts to comply with the proposed rule by its effective date.

#### **Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Revised Rule Making in the *State Register* on April 2, 2008, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require that the following sections of the previously published Regulatory Flexibility Analysis be revised as follows.

#### **COMPLIANCE REQUIREMENTS:**

The proposed rule is necessary to implement the requirements of Chapter 670 of the Laws of 2007, and generally requires that all school districts work to minimize idling of school buses and vehicles on school grounds or adjacent to the school. It requires school districts to annually provide school bus drivers and employees with information concerning the dangers of idling vehicles. The materials for the annual notice to school bus drivers and other drivers for implementation of the program are to be developed and provided by the Department. School districts may provide paper copies of the materials to all drivers and school employees or they may provide annual notice of the requirements through staff meetings. They may provide notice of the anti-idling program requirements via staff meetings, school handbooks, calendar and web-sites. Districts are responsible for monitoring compliance semi-annually but are not required to submit written reports to the Commissioner. Such reports shall be retained in the school district's files for a period of six years and shall be made available upon request.

#### **MINIMIZING ADVERSE IMPACT:**

The proposed rule is necessary to implement Education Law section 3637, as added by Chapter 670 of the Laws of 2007. The materials for the annual notice to school bus drivers and other drivers for implementation of the program are to be developed and provided by the Department to school districts. The proposed rule lessens adverse impact upon school districts by permitting school districts to either provide paper copy of the materials to all drivers, or provide annual notice of the requirements through staff meetings, employee handbook or district website. The proposed rule, while requiring compliance monitoring, does not require submission of written compliance reports to the Department, but requires that they be made available upon request. The cost of monitoring compliance by drivers semi-annually should be minimal as it can be made part of routine school bus driver performance checks and monitoring of contract provider compliance.

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

Since publication of a Notice of Revised Rule Making in the *State Register* on April 2, 2008, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require that the following sections of the previously published Rural Area Flexibility Analysis be revised as follows.

#### **REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:**

The proposed rule is necessary to implement the requirements of Chapter 670 of the Laws of 2007, and generally requires that all school districts work to minimize idling of school buses and vehicles on school grounds or adjacent to the school. It requires school districts to annually provide school bus drivers and employees with information concerning the dangers of idling vehicles. The materials for the annual notice to school bus drivers and other drivers for implementation of the program are to be developed and provided by the Department. School districts may provide paper copies of the materials to all drivers or they may provide annual notice of the requirements through staff meetings. They may provide notice of the anti-idling program requirements to student, parent and business delivery agent drivers via student assemblies, school handbook, calendar and web-site. Districts are responsible for monitoring compliance semi-annually but are not required to submit written reports to the Commissioner. Such reports shall be retained in the school district's files for a period of six years and shall be made available upon request.

The proposed rule does not impose any additional professional services requirements on school districts.

#### **MINIMIZING ADVERSE IMPACT:**

The proposed rule is necessary to implement Education Law section 3637, as added by Chapter 670 of the Laws of 2007. The materials for the annual notice to school bus drivers and other drivers for implementation of

the program are to be developed and provided by the Department to school districts. The proposed rule lessens adverse impact upon school districts by permitting school districts to either provide paper copy of the materials to all drivers, or provide annual notice of the requirements through staff meetings, employee handbook or district website. The proposed rule, while requiring compliance monitoring, does not require submission of written compliance reports to the Department, but requires that they be made available upon request. The cost of monitoring compliance by drivers semi-annually should be minimal as it can be made part of routine school bus driver performance checks and monitoring of contract provider compliance.

#### **Revised Job Impact Statement**

Since publication of a Notice of Revised Rule Making in the *State Register* on April 2, 2008, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, is necessary to implement Chapter 670 of the Laws of 2007 by prescribing requirements for minimizing the idling of school buses and other vehicles. The proposed revised rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, 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.

#### **Assessment of Public Comment**

Since publication of a Notice of Proposed Rule Making in the *State Register* on April 2, 2008, the State Education Department (SED) received the following comments:

##### 1. COMMENT:

Apply rule to private schools to ensure all children protected from school bus/vehicle emissions.

##### DEPARTMENT RESPONSE:

The rule implements Education Law section 3637, as amended by Chapter 670 of the Laws of 2007, which is applicable to public school districts only. Therefore, the comment's suggestions are beyond the scope of the proposed rule making and would require a revision to the authorizing statute to extend applicability to private schools.

##### 2. COMMENT:

Limit idling in bus depots where school bus drivers begin and end their school days.

##### DEPARTMENT RESPONSE:

No change necessary. Consistent with the statute, the rule applies to school district buses that are "parked or standing on school grounds", which would include buses idling in bus depots located on school grounds. Any extension to bus depots in other locations requires a revision to the statute.

##### 3. COMMENT:

Apply rule to all vehicles on school grounds.

##### DEPARTMENT RESPONSE:

The rule implements Education Law section 3637, as amended by Chapter 670 of the Laws of 2007, which is applicable only to school district buses and vehicles. Therefore the comment's suggestions are beyond the scope of the proposed rule making and would require a revision to the statute to extend its applicability to other vehicles.

##### 4. COMMENT:

(a) Rule exceeds authority provided by the statute. It was not clear that SED consulted with the NYS Department of Health (DOH) to identify areas of high asthma rates. Such consultation would either support the proposed statewide application or result in a more targeted approach.

(b) Apply rule to every school district in the State.

##### DEPARTMENT RESPONSE:

The rule does not exceed the authority provided by the statute. The authorizing statute requires consultation with DOH and authorizes the Commissioner to determine which school districts shall comply with its requirements. SED consulted with DOH on the rule and discussed the incidence of asthma in NYS schools. DOH indicated it had no objection to the rule. The statute did not specify a standard for what was to be considered a "significant number of children with asthma" and appropriate and current data was not available to determine which school districts were most affected by school bus diesel emissions. Based upon health, safety and other considerations discussed in the Needs and Benefits section of the previously published Regulatory Impact Statement, and consistent with the statute's directive to minimize the idling of school buses and other vehicles, the rule has been drafted to apply to all public school districts in the State.

##### 5. COMMENT:

Questioned the logic of requiring school bus drivers to "instruct students on the necessity to board the school bus promptly in the afternoon to reduce loading time."

##### DEPARTMENT RESPONSE:

During cold or inclement weather, prompt loading of the school bus by students will result in less heat loss in the bus, more comfortable temperatures for students, and less expenditure of additional fuel to reheat the bus upon leaving school grounds. Prompt loading also helps insure pupils are not milling around school buses talking or engaging in other activities while in or near the "danger zone" of the school bus, and thus minimizes the risk of pupil injuries resulting from inattentive behavior.

##### 6. COMMENT:

Requested information on who would develop the training program to teach drivers how to instruct pupils to promptly load the school bus. Objected to perception that driver must get off of the bus to move children along in the loading process, and provide daily instruction to pupils.

##### DEPARTMENT RESPONSE:

No formal training of school bus drivers is necessary to impart skills in how to communicate to children that they should load promptly. They should already be doing this for safety reasons. There is no requirement to remind pupils daily nor is there a requirement for school bus drivers to get out of the bus to usher children on.

##### 7. COMMENT:

School districts should be required to work with their contractors and transportation office to make the loading and unloading process as safe and efficient as possible. Some districts do not permit one bus to unload until all the buses have arrived, resulting in unnecessary idling and time delays.

##### DEPARTMENT RESPONSE:

The comment presents an interesting scenario which SED was not aware of. Section 156.3(h)(1) has been amended to address this suggestion.

##### 8. COMMENT:

Requiring monitoring of driver compliance exceeds statutory requirements. Requiring preparation of written report is an unfunded mandate.

##### DEPARTMENT RESPONSE:

Requiring districts to monitor compliance is consistent with the authorizing statute's purpose and intent and inherent in the Commissioner's authority and responsibility to adopt regulations to implement the statute. Not all school buses are owned, leased or operated by the school district. Private contractors may be supplying pupil transportation services. The rule does not require the filing of any formal report with SED. It simply requires the district maintain documentation that it has monitored driver compliance. This can be accomplished with a simple checklist. It was not the intention to require the preparation of a lengthy, formal, and onerous report.

##### 9. COMMENT:

Concern was expressed that the driver-specific data in the reports might be used for employee evaluation and discipline.

##### DEPARTMENT RESPONSE:

The rule does not require the submission of written reports to SED. School districts should monitor the compliance of their employees and contractors, who agree to adhere to all statute and regulations as part of the contract agreement. Superintendents certify to the Commissioner that school districts are in compliance with all pupil transportation requirements.

##### 10. COMMENT:

Require school districts to "prepare a written report of such review which shall describe the actions taken to review compliance and the degree of adherence found with the provisions of this subdivision."

##### DEPARTMENT RESPONSE:

This is a very reasonable suggestion that recognizes school district responsibility to monitor compliance and provides school districts with greater flexibility to report on their compliance with the regulation. Paragraph 5 of proposed subdivision (h) has been amended to reflect this suggestion.

##### 11. COMMENT:

Due to recent fuel price increases, as well as health considerations, both the statute and rule attempt to codify what should be common sense.

##### DEPARTMENT RESPONSE:

School districts should save money in fuel usage and maintenance of school buses by adhering to an anti-idling policy. DOH agrees that a statewide school bus anti-idling policy will help improve the air quality for everyone.

##### 12. COMMENT:

Exceptions provided for mechanical work or to maintain an appropriate temperature for passenger comfort but do not include an exception for emergency situations.

**DEPARTMENT RESPONSE:**

The rule does include an exception “in emergency evacuations where necessary to operate wheelchair lifts.”

**13. COMMENT:**

Drivers should not be required to park diagonally in school loading areas. This was felt to be a space concern and the responsibility of the school board or administration, not an appropriate driver responsibility.

**DEPARTMENT RESPONSE:**

The rule applies to school districts. It is ultimately districts’ responsibility to insure compliance with the rule. Practically speaking, it is the school bus driver who parks the bus and who should comply. Parking school buses diagonally to reduce inhalation of emissions has been SED guidance for several years and was taught to drivers during a required school bus driver refresher training on anti-idling procedures.

**14. COMMENT:**

Change language on diagonal parking to “districts should consider parking buses in loading zones such as to minimize the exchange of exhaust between buses. Passenger safety should never be compromised.” Diagonal parking be followed whenever possible or permitted by the physical location of the loading area.

**DEPARTMENT RESPONSE:**

Rule has been revised to require diagonal parking whenever possible to minimize exhaust from adjacent buses that may enter a bus and school buildings.

**15. COMMENT:**

SED and the Board of Regents should understand that school districts have already made many efforts to reduce school bus idling.

**DEPARTMENT RESPONSE:**

SED recognizes and appreciates the efforts of the school bus community to protect the health of our pupils and the cleanliness of the environment. It also appreciates the assistance of pupil transportation staff who have participated in department programs to develop past anti-idling training programs for school bus drivers. We are aware that some districts have implemented many measures to reduce unnecessary idling. Now is the time to go forward and make sure that all school districts and contractors help to reduce school bus idling.

**16. COMMENT:**

Rule does not mention statutory requirement that school districts advise their employees about their steps to eliminate idling of school buses.

**DEPARTMENT RESPONSE:**

The statute requires districts to annually provide their school personnel with notice of the provisions of the statute and the applicable regulations. Consistent with the statute, the rule requires “each school district to annually provide their school personnel, no later than five days after the start of school, with notice of the provisions of Education Law section 3637 and of this [regulation] in a format prescribed and provided by the Commissioner to such school districts for dissemination.”

**17. COMMENT:**

(a) Revise rule to specify the appropriate school bus in-cabin temperature for passenger comfort or ambient temperatures which require idling of the engine for any heating or cooling purposes. The Department of Environmental Conservation (DEC) regulation in 6 NYCRR Subpart 217-3 prohibits idling of heavy duty vehicles for more than five consecutive minutes subject to certain exceptions as noted in the regulation.

(b) The rule is consistent with U.S. Environmental Protection Agency (EPA) goals to protect health and environment, but suggest that rule be made consistent with 6 NYCRR Subpart 217-3.

**DEPARTMENT RESPONSE:**

The statute does not provide for a specific temperature threshold, whether in-cabin or ambient, beyond which idling is to be permitted. 6 NYCRR Subpart 217-3 does not establish a minimum temperature to be maintained. There is no commonly accepted temperature threshold in use in the industry for school buses. The special needs of students with disabilities requires local flexibility to be able to adjust the in-cabin temperature of a school bus to meet their specific and varying needs. For example, children with spinal cord injuries cannot regulate their own body temperature, therefore a specific, universal temperature threshold would be detrimental to their health and well being. The proposed rule is consistent with 6 NYCRR 217-3 to the extent permitted by Education Law section 3637.

**18. COMMENT:**

Specify maximum time a school bus can idle. NYC Administrative Code 24-163 restricts idling to three minutes.

**DEPARTMENT RESPONSE:**

Establishing a maximum idling time is contrary to Education Law section 3637, which is more restrictive than the three minute suggestion.

**19. COMMENT:**

If a private contractor or school district has a stricter policy than that provided for in Education Law section 3637, is it permissible to follow that policy?

**DEPARTMENT RESPONSE:**

A public school district or private company may follow a stricter anti-idling policy than that established by Education Law section 3637.

**20. COMMENT:**

The rule should be directly enforceable against both the school bus driver and the school district.

**DEPARTMENT RESPONSE:**

The rule implements Education Law section 3637, as amended by Chapter 670 of the Laws of 2007, which is applicable to public school districts. The comment’s suggestions are beyond the scope of the proposed rule making.

**21. COMMENT:**

Review EPA’s model language for state idling laws prior to finalizing rule to avoid potentially overlooking effective approaches used elsewhere to implement idling restrictions.

**DEPARTMENT RESPONSE:**

SED reviewed the EPA model idling laws and the rule is consistent with the model to extent permitted by Education Law section 3637.

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## Department of Health

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### EMERGENCY RULE MAKING

**Non-Prescription Emergency Contraceptive Drugs**

**I.D. No.** HLT-04-08-00003-E

**Filing No.** 465

**Filing date:** May 27, 2008

**Effective date:** May 27, 2008

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

**Action taken:** Amendment of section 505.3(b)(1) of Title 18 NYCRR.

**Statutory authority:** Public Health Law, sections 201(1)(v) and 206; and Social Services Law, section 363-a(2)

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

**Specific reasons underlying the finding of necessity:** We are proposing that this regulatory amendment be adopted on an emergency basis because emergency contraceptive drugs have been approved by the Federal Food and Drug Administration as a non-prescription drug for women 18 years of age and older. Medicaid law requires a written order for non-prescription drugs. A written order requires that a qualified medical practitioner provide the pharmacy with a written, telephone or fax order for a specific drug for a specific patient. This requirement can delay the use of non-prescription emergency contraceptive drugs. Such drugs are effective if taken within 72 hours of unprotected intercourse but are most effective if taken sooner, ideally within 12 hours. The requirement for a written order impedes earliest access to the drug and reduces the effectiveness of the drug.

The FDA approval of emergency contraceptive drugs as non-prescription drugs is limited to women 18 years of age and older. New York State Medicaid will limit dispensing of this drug to 6 courses of treatment in any 12 month period without a prescription or written order for women 18 years of age and older.

**Subject:** Non-prescription emergency contraceptive drugs.

**Purpose:** FDA approved non-prescription contraceptive drugs dispensed by a pharmacy without a fiscal order to women 18 years of age and older.

**Text of emergency rule:** Paragraph (1) of subdivision (b) of Section 505.3 is amended to read as follows:

(b) Written order required. (1) Drugs may be obtained only upon the written order of a practitioner, except for *non-prescription emergency contraceptive drugs as described in subparagraph (i) of this paragraph*,

and for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910.

(i) *Non-prescription emergency contraceptive drugs for recipients 18 years of age or older may be obtained without a written order subject to a utilization frequency limit of 6 courses of treatment in any 12 month period.*

[(i)] (ii) The ordering/prescribing of drugs is limited to the practitioner's scope of practice.

[(ii)] (iii) The ordering/prescribing of drugs is limited to practitioners not excluded from participating in the medical assistance program.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-04-08-00003-P, Issue of January 23, 2008. The emergency rule will expire July 25, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqa@health.state.ny.us

#### **Regulatory Impact Statement**

##### Statutory Authority:

The authority for the proposed rule is contained in Sections 363, 363-a and 365-a of the Social Services Law (SSL). Section 363 of the SSL states that the goal of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department of Health (Department) as the single state agency for the administration of the Medicaid program and provides that the Department shall make such regulations, not inconsistent with law, as may be necessary to implement the provisions of the program. Section 365-a(2)(g) of the SSL defines "medical assistance" as including prescription and non prescription drugs.

##### Legislative Objective:

The proposed rule meets the legislative objective of providing timely access to medically necessary care for indigent Medicaid recipients 18 years of age and older who require emergency contraception. The proposed rule will exempt Federal Food and Drug Administration (FDA) approved over-the-counter drugs for emergency contraception from the Department's regulations which require that a pharmacy have a written order from a practitioner prior to dispensing drugs to Medicaid recipients.

##### Needs and Benefits:

Emergency contraceptive drugs have been available for some time by prescription only. In August of 2006, the FDA approved emergency contraceptive drugs as non-prescription drugs ("over the counter") when used by women 18 years of age and older. According to current State Medicaid regulations, 18 NYCRR Section 505.3(b)(1), pharmacies must have a written order (also known as a fiscal order) from a practitioner prior to dispensing an over-the-counter drug to a Medicaid recipient. The regulations do provide an exception, however, for telephone orders from a practitioner which comply with the provisions of the Education Law with respect to such orders. The requirement for a written order necessitates that the recipient visit or call a licensed practitioner prior to going to the pharmacy and then either bring the written order to the pharmacy, have the pharmacist and the practitioner talk on the phone, or have the practitioner send the order by fax. The Department wants to avoid any time barriers to accessing emergency contraceptive drugs since the drugs are most effective in preventing pregnancy if taken within 72 hours after an act of unprotected sex. The Department is eliminating the written order requirement specifically for FDA approved over-the-counter emergency contraceptive drugs dispensed for use by women 18 years of age and older. Women under 18 years of age must still obtain and present a prescription which meets the requirements of section 6810 of the Education Law in order to obtain these drugs.

##### COSTS:

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

There would be no increased costs to the pharmacies for implementation of and continuing compliance with this rule.

##### Costs to State Government:

Because the Department is eliminating the requirement that there be a written order of a practitioner prior to dispensing this over-the-counter drug, payment for emergency contraceptive drugs under New York's Medicaid program will no longer comply with the federal requirement for such an order. The Department, therefore, proposes using 100% State funds for payment for these drugs. The agency will absorb costs associated

with system changes to remove these claims from the federal payment program. These costs are considered minimal. It is estimated that the additional annual cost of payment for emergency contraceptive drugs to the State will be \$1.5 million. These costs to the State will be offset, however, by estimated cost avoidance from reduced births and deliveries attributed to increased access to emergency contraceptive drugs.

The Department examined two years of Medicaid claim data for emergency contraceptive drugs (date of payment from December 1, 2004 to November 30, 2006). The data was extracted from the eMedNY Data warehouse. The Department made the assumption that costs for these drugs would roughly double after this regulation became effective with 100% of rebate adjusted costs being assumed by the State.

Gross annual savings estimates of approximately \$3.2 million were calculated using birth and delivery costs determined in a recent New York State Department of Health, Office of Medicaid Management study. This study analyzed New York State Department of Health vital statistics and New York State Department of Health Medicaid claim data pertaining to prenatal care, delivery and other associated health care costs. Assuming that eliminating the fiscal order mandate would double prescriptions for contraceptive drugs, the Department used claim data for the one year period December 1, 2005 to November 30, 2006 and assumed that approximately 2 in 100 of these claims would have resulted in a birth and delivery cost. The Department used a two year period to determine the expected ongoing increase in the cost of these drugs. The Department only used the one year period (December 1, 2005 to November 30, 2006) to calculate savings, which had the effect of creating a more conservative savings estimate. The gross annual savings in the cost of prenatal care, delivery and other health care costs associated with delivery using this methodology would be \$3.2 million, with approximately \$1.5 million each representing the federal and state share of savings. There is no local share in savings because of the local share cap which is set at calendar year 2005 (trended) levels.

##### Costs to Local Government:

There will be no cost to local government.

##### Local Government Mandates:

The proposed regulatory amendment will not impose any program service, duty, or responsibility upon any county, city, town, village, school district, fire district or other special district.

##### Paperwork:

This regulatory amendment will decrease paperwork for medical providers and pharmacies since a fiscal order is not needed for this drug for women 18 years of age or older.

##### Duplication:

This regulatory amendment does not duplicate, overlap or conflict with any other State or federal law or regulations.

##### Alternatives:

Currently, a written order of a practitioner is required by federal regulations (42 CFR 440.120(a)(3)) and State Medicaid regulations for the dispensing of emergency contraceptive drugs. The Department considered another proposal to eliminate the need for each recipient to obtain an individual written order from a practitioner for emergency contraceptive drugs. That alternative was to replace the requirement for a fiscal order with a "non-patient specific order" as provided for in section 6909(5) of the Education Law. The non-patient specific order would be written by a qualified medical practitioner in agreement with a specific pharmacy to dispense emergency contraception as an over the counter drug to any eligible woman 18 years of age and older who requests it. The order is not patient specific so it would eliminate the delay in treatment inherent in requiring the recipient to obtain a written order. The Department determined this alternative would not likely be available without a statutory amendment because the Education Law and regulations limit its use to situations involving immunizations, emergency treatment of anaphylaxis, purified protein derivative tests and HIV testing.

##### Federal Standards:

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

##### Compliance Schedule:

The proposed regulatory amendment will become effective upon filing with the Department of State.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

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

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

#### **Job Impact Statement**

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

### **EMERGENCY RULE MAKING**

#### **Physical Therapist Assistants and Occupational Therapy Assistants**

**I.D. No.** HLT-24-08-00003-E

**Filing No.** 466

**Filing date:** May 27, 2008

**Effective date:** May 27, 2008

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

**Action taken:** Amendment of section 505.11 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, section 365-a

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

**Specific reasons underlying the finding of necessity:** We are proposing that this regulatory amendment be adopted on an emergency basis for the preservation of the public health as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Secretary of State.

This amendment is adopted as an emergency measure because time is of the essence and compliance with the proposal process would be contrary to the public interest. Title 18 NYCRR, Section 505.11 does not include physical therapist assistants or occupational therapy assistants in the list of qualified professionals that can provide physical therapy or occupational therapy services, as a billable service, to Medicaid recipients. However, provider organizations have demonstrated to the Department that without the continued employment of occupational therapy assistants and physical therapist assistants the Medicaid enrollee's access to rehabilitative care will be hampered. Therefore, the Department has decided to amend its regulations to specifically allow reimbursement for occupational and physical therapy services provided by occupational therapy assistants and physical therapist assistants. Also, the State Education Department has certified physical therapist assistants and occupational therapy assistants since 1981 and 1977, respectively. The current standard of practice is to allow these professionals to provide services to patients under the supervision of physical and occupational therapists. Making revisions to the regulations will allow Medicaid recipients continued access to physical and occupational therapy services utilizing occupational therapy assistants and physical therapist assistants as qualified professionals.

**Subject:** Physical therapist assistants and occupational therapy assistants.

**Purpose:** To provide physical and occupational therapy as a Medicaid billable service.

**Text of emergency rule:** Paragraph (2) of subdivision (c) of Section 505.11 of Title 18 NYCRR is amended to read as follows:

(2) A qualified private practicing therapist, *therapist assistant* or speech pathologist.

Paragraph (1) of subdivision (d) of Section 505.11 is amended to read as follows:

(d) Definitions. (1) Qualified professional shall mean:

(i) occupational therapist, *occupational therapy assistant*, physical therapist, *physical therapist assistant* or speech pathologist who is licensed and currently registered with the New York State Education Department;

(ii) occupational therapist, *occupational therapy assistant*, [or] physical therapist, *physical therapist assistant* who possesses a limited permit and practice(s) under the supervision of the appropriate professional in accordance with requirements of the State Education Law;

(iii) speech pathologist who is in the process of obtaining a license and has on file a "Notification of approval of the Supervisory Plan" in accordance with requirements of the State Education Law; or

(iv) out-of-state occupational therapist, *occupational therapy assistant*, physical therapist, *physical therapist assistant* or speech pathologist meeting the certification requirements of the appropriate agency of the state in which they practice.

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

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 24, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsna@health.state.ny.us

#### **Regulatory Impact Statement**

Statutory Authority:

The authority for the amendment of this regulation is contained in section 201 of the Public Health Law and sections 363-a and 365-a (2) of the Social Services Law (SSL). Section 365-a (2) of the SSL states that "the department shall be responsible for furnishing medical assistance to eligible individuals" and that "medical assistance includes payment for all medically necessary medical, dental, and remedial care, services and supplies" authorized under Title 11 of Article 5 of the SSL and the Department regulations. Section 365-a (2) (h) of the SSL specifically includes within these definitions the provision of physical and occupational therapy services.

Legislative Objective:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State and authorizes the Department to promulgate regulations which are consistent with federal and state law. The objective of the proposed regulatory amendment is to allow physical therapist assistants and occupational therapy assistants to provide services to Medicaid recipients under the supervision of physical and occupational therapists respectively.

Needs and Benefits:

Section 505.11 of Title 18 NYCRR does not include physical therapist assistants or occupational therapy assistants in the list of qualified professionals who are allowed to provide rehabilitative services to Medicaid recipients. The regulations must be revised to ensure that Medicaid recipients will have adequate access to medically needed occupational and physical therapy services. These services can then be provided by occupational therapy assistants and physical therapist assistants under the supervision of occupational and physical therapists, respectively.

COSTS:

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

There would be no increased costs to the clinics or private practices that employ physical therapist assistants or occupational therapy assistants.

Costs to State Government:

There would be no increased costs to State government as a result of the proposed rule which will bring Medicaid regulations into conformity with current clinical standards of care. The State Education Department has certified physical therapist assistants and occupational therapy assistants since 1981 and 1977, respectively. It is accepted standard of care to have these professionals provide services to patients.

Costs to Local Government:

There will be no cost to the local government.

Local Government Mandates:

The proposed regulatory amendment will not impose any program service, duty, or responsibility upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This regulatory amendment will have no effect on paperwork for medical providers.

Duplication:

This regulatory amendment does not duplicate, overlap or conflict with any other State or federal law or regulations.

Alternatives:

No other alternatives were considered. Conforming 18NYCRR, Section 505.11 to current practice standards was necessary to insure that Medicaid enrollees continue to have access to quality care from qualified professionals.

Federal Standards:

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

Compliance Schedule:

The proposed regulatory amendment will become effective upon filing with the Department of State.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

**Job Impact Statement**

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

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## Hudson River Black River Regulatory Commission

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

**Great Sacandaga Lake Access Permit System**

**I.D. No.** HBR-24-08-00008-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 606 and addition of new Part 606 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 15-2103, 15-2105 and 15-2109(1)

**Subject:** Great Sacandaga Lake access permit system.

**Purpose:** To improve the administration of the access permit system.

**Substance of proposed rule (Full text is posted at the following State website: [www.hrbrdd.com](http://www.hrbrdd.com)):** The following is a summary only, and has been prepared solely for purposes of compliance with the New York State Administrative Procedure Act (SAPA) for rule making. The summary is a generalization of the draft rules and as such may not be construed as complete, definitive, or binding on the District or permit holder.

**606.1 DEFINITIONS**

This section enumerates the many terms and phrases used in the rules and their meanings for interpretation of the rules.

**606.2 PURPOSE AND SCOPE**

This section establishes that the permit system and the supporting rules are designed to allow eligible persons to voluntarily apply for and receive provisional, temporary and revocable written permission, via a permit, to access the Great Sacandaga Lake (Reservoir). The rules will be effective upon approval by the Department of Environmental Conservation. When the proposed rules take effect, they are to supercede prior official rules governing the permit system. If any part of these rules is found to be unlawful, the unlawful provision will be removed.

**606.3 POWERS OF THE BOARD**

The Board's powers include the following: 1) to maintain and operate the reservoir, 2) to grant temporary access to State lands around the Lake, 3) to administer a permit system for such temporary access,

**606.4 GENERAL - APPLIES TO ALL USERS**

The proposed rules apply to all persons who enter and use the Reservoir and surrounding public lands. Violations of these rules will be enforced. Use of the Reservoir and surrounding public lands are at the user's own risk. Neither New York State nor the District is liable for damages or losses, including losses from other users and their guests. Nothing in these rules is to be interpreted as an entitlement to access the Reservoir. If access to the Reservoir is granted through rights contained in a deed, the eligible property owner is bound to follow these rules.

Access Permits are provisional, temporary and revocable. Access Permits do not authorize access to private land or exclusive use of the access area or the Reservoir. Use of permit areas is limited to uses described on the permit, and included in the Rules. Only signs authorized by the Regulating District and state or federal agencies are allowed. No signs, posted permits, and boundary markers may be moved or destroyed.

Camping is prohibited on access areas. No garbage, debris, or sewage may be disposed on access areas or into the Reservoir without a NYSDEC permit. No vehicle may be abandoned or stored on access areas. No unregistered vehicles are allowed on access areas. Boats may be moored only to docks or moorings. Permit holders may prohibit the parking of vehicles on their permit areas. Number of watercraft and boats depend on the width and type of the permit area. Permit holders are also prohibited

from construction of permanent structures, altering the flow of water, causing erosion, mining, and other activities within the permit area. Permit areas are accessible to the permit holder and guests. Each permit holder is responsible for maintaining clean and sanitary conditions.

**606.5 ACCESS PERMIT SYSTEM**

Permits may be issued for applications completed by eligible applicants. Seven types of permits are available: 1) Recreational - Front Lot, 2) Recreational - Back Lot, 3) Commercial (Non-Marina), 4) Commercial (Marina), 5) Association, 6) Municipal, and 7) Non-Use.

The cost of the permit system is to be sustained by permit holder fees. Fees for permits depend upon the permit requested. Rules establish when and how fees will be adjusted.

The Board is authorized to set and modify widths of permit areas. Widths of permit areas by permit type are provided in the rules. Permit area widths will be measured at an elevation of 771 feet above sea level. All docks, floats, moorings, and boats must be confined to within Permit areas.

The permit is not a right or interest in property. The permit is subordinate to the District's Authority. The permit may only be used for activities and uses authorized in the permit and the rules. The District may access the permit areas at all times for any lawful purpose. Permits are issued to the applicant only. The applicant must be an owner of real property within specified areas around the Reservoir. New owners of eligible properties may apply for a permit.

All activities in permit areas are subject to federal, state, and local laws. Work permits must also comply with the requirements of the Great Sacandaga Lake Historic Properties Management plan. The issuance of a permit may not interfere with the District's right to regulate the Reservoir, its water levels and management.

The District has the right to compel compliance and take enforcement actions against violations of the rules. Violations consist of failure to comply with the rules or any conditions of the permit, an encroachment, or actions that are detrimental to the Reservoir or public health. Actions that harm the public health are subject to a suspension of the permit without notice. Permit holders will be notified of other violations, which permit holders must address. Permit holders may apply to the District's appeals process. If deemed necessary by the Board, permits may be revoked for violations. The Board may lawfully compel compliance to enforce violations.

**606.6 ACCESS PERMIT APPLICATION**

Only owners of eligible properties may apply for a permit. The applicant must demonstrate proof of eligibility. Eligibility depends on the permit applied for.

The District reserves the right to assign and modify permit areas by type of permit. The District will maintain a waiting list for Back Lot permit requests. Property owners will be registered on the list in the order their request was made and received. It is the registrant's responsibility to ensure their information is correct. No guarantees can or will be made about the availability of a Back Lot permit. Notice of availability will be sent to the first registrant on the waiting list. A registrant may be removed from the list for the following reasons: 1) has been issued a permit, 2) was notified and did not reply, 3) the application was rejected, 4) the eligible property was sold. Exceptions exist whereby a registrant may not be removed from the waiting list.

Applicants must sign and certify that their applications are accurate, is a lawful owner of eligible property, and that they understand the rules. No action will be taken on incomplete applications. Commercial permits will require liability insurance, which must include the District as an insured party. No variances will be given for any insurance requirements. Commercial permit renewals will require proof of compliance from all applicable agencies and a detailed layout of improvements to be made on access areas. The District may amend plans for access permit areas.

The District and its staff will determine if the application is complete and compliant with the rules. Access permits expire at 11:59 on March 14 of each year. No guarantees will be made by the District that an access area is suitable for a particular use. Access permits will indicate with other information the location of the access area. The District has the right to set and adjust access area widths in a reasonable manner. Submerged lands are not part of the access area.

Renewal applications will be mailed by the District on or before February 1st. Additional information may be required by the District for permit renewal. Permit holders who fail to respond by the expiration date will be notified a second time, after which they will have 30 days to respond. If permit holder fails to respond to a third notice, the permit will be relinquished and the permit holder must remove all of his possessions from the

Permit Area. If the permit holder fails to do so, at the permit holder's expense, the District will remove all materials from the access area.

Permit holders who sell eligible properties will have their permits terminated. New owners of such property may apply for an access permit. Renewal of commercial permits will require additional information and proof of insurance. Permit holders may apply for relocation to new access areas, or request to have their access area re-designated in certain circumstances. Permit holders may request to have their Front Lot access area reduced.

Permit holders aggrieved by a District decision may file an appeal within 45 days of such decision. The District will review and if necessary investigate the issues. Based on the rules and the evidence, the Executive Director may grant relief in writing. If the relief is not satisfactory, the permit holder may appeal to the Board. Upon hearing evidence and public comments, the Board will render a decision within 75 days. The permit holder, upon the Board's decision, may seek judicial review under Article 78.

#### 606.7 PERMIT FEES

The full cost of the permit system will be covered by permit fees. Fee revenues and permit system costs will be reconciled for each three-year budget cycle. Depending on the permit type, certain fees apply.

A completed application consists of a signed and filed application, supporting documentation, and full payment of applicable fees. No refunds will be given for incomplete work permits. Permit fees will be fixed annually and adjusted every 3 years. The Board reserves the right to adjust fees and fee structures to cover administrative costs. Consideration of such adjustment will be publicly noticed. The next adjustment is scheduled for consideration in 2009 for implementation in 2010.

#### 606.8 SITE ALTERATIONS PERMIT APPLICATION

Projects requiring a work permit may not commence until District approval is provided. All structures must be temporary and removable. All other necessary federal, state, or local permits must be secured by the permit holder. Work permit applications will include a detailed plan and payment of a fee. An APA co-application fee will be paid for any work requiring Adirondack Park Agency Section 814 approval. Permit holders seeking a work permit that requires compliance with SEQRA are responsible for SEQRA compliance and related expenses. Ground disturbances require a work permit and may require a Phase 1B field reconnaissance study. All work activities are subject to field inspections by the District. Activities requiring or not subject to a work permit are enumerated in the Appendices. Standards for construction of stairs and landings are also listed in the Appendices.

The placement of docks requires a work permit. Docks must be, among other standards, floatable, removable, and non-hazardous to aquatic life. Commercial docks are subject to additional standards. Allowable dock configurations are specified in the rules and appendices. Boat canopies are permissible only on certain dock configurations and must meet certain standards. Moorings, swim floats, and ice fishing shacks may be placed only on certain access areas and during certain times of the year. All non-conforming temporary structures before the effective date of the rules may remain non-conforming until replaced. The placement of certain signs will require a work permit. A special activity permit must be approved for placement of canopies and portable toilets.

The proposed rules include the following 6 Appendices:

- Access Permit Fees: This appendix covers miscellaneous; usage and work permit fees and the methodology for determining fees (Note that all permit fees have been frozen through December 31, 2009).

- Authorized Work Activities and Work Permit Fees: This appendix covers the types of activities that do and do not require work permits and the applicable fees.

- Allowable Floatable Dock Configurations: Graphics on acceptable configurations for floating docks.

- Allowable Stairway and Stairway Landing Configurations: A graphic on acceptable configurations for stairways and stairway landings.

- Guidelines For Permit System Appeals To The Board: Guidelines that set forth the procedure for making appeals to the Board of the Hudson River -Black River Regulating District.

**Text of proposed rule and any required statements and analyses may be obtained from:** Glenn A. LaFave, Executive Director, Hudson River-Black River Regulating District, 737 Bunker Hill Rd., Mayfield, NY 12117, (518) 661-5535, e-mail: SACFO@hrbrd.com

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

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

#### Regulatory Impact Statement

#### 1. Statutory Authority

The Hudson River - Black River Regulating District ("the District") is a public corporation created pursuant to Environmental Conservation Law (ECL) Article 15, Title 21. ECL Section 15-2103 declares, ". . . river regulating districts may be created. . ." pursuant to ECL Title 21 of Article 15 ". . .to construct, maintain and operate reservoirs within such districts. . ." ECL section 15-2105 sets forth direction and criteria for the organization of the boards of river regulating districts and pursuant to ECL section 15-2109(1), "The board shall have the power to make all necessary rules and regulations which shall be effective when approved by the department."

#### 2. Legislative Objective

The District was created to regulate the flow of the Hudson River and Black River, primarily for the purposes of flood control and augmentation of low flows. One of the reservoirs operated by the District is the Great Sacandaga Lake, formerly the Sacandaga Reservoir. After the creation of the reservoir, nearby property owners requested access to the reservoir over these lands of the State of New York. Under an Access Permit System, the District makes segments of the shoreline owned by New York State available for private use. The District issues annual commercial and non-commercial permits to neighboring landowners that permit the landowners to use designated sections of the Reservoir area.

The current Rules and Regulations governing the use, operation and maintenance of the Great Sacandaga Lake, 6 NYCRR Part 606, were approved on July 13, 1992 by the New York State Department of Environmental Conservation (NYSDEC), adopted October 19, 1992 by Resolution of the Board of the Hudson River-Black River Regulating District, and became effective January 27, 1993.

The proposed rule revisions are consistent with the current rules and regulations previously approved by the NYSDEC to administer the Access Permit System.

#### 3. Needs and Benefits

##### Needs:

The Proposed Rules are required to allow for the efficient administration of the Access Permit System given the complexity of the process and the requirements to effectively and fairly implement and enforce the rules. Saratoga Associates, Landscape Architects, Architects, Engineers and Planners, P.C. were retained by the District to revise the Access Permit System Rules. As part of that process, all available historical documentation produced at the District pertaining to the establishment and administration of the Permit System was analyzed, including, but not limited to, resolutions, internal policy letters, memorandums and directives. The purpose of this analysis was to identify any practices of the District related to the Permit System that were not specifically detailed in the existing rules and therefore should be included to improve the efficiency, predictability, understanding and fairness of the administration of the Permit System. An example of a clarification includes the application process for both obtaining an Access Permit as well as a Work Permit. The existing rules do not discuss the application process or what is specifically required to apply for an Access or Work Permit.

In addition, the current rule revision process is serving to update the fees associated with administering the Permit System. The current Permit System fees have been challenged in recent litigation brought against the District. The District is in the process of determining the full cost associated with administration of the Access Permit System and enforcement of the rules, including, but not limited to, costs associated with determining the eligibility of applicants, reviewing property deeds, surveying and staking the Permit Area, creating and maintaining a drawing of each Permit Area, creating and maintaining maps of the permit areas and eligibility area, furnishing and erecting signs on the Permit Area, Permit Area maintenance, management of encroachment issues, and management of work order requests and work permits.

##### Benefits:

These Proposed Rules will improve the efficiency, predictability, understanding and fairness of the administration of the Permit System for the benefit of current and future access permit holders as well as the District itself.

#### 4. Costs

##### Cost to Regulated Parties

As stated above, one reason for the Proposed Rules was to develop a cost methodology to ensure the Permit System will pay for itself. The regulated parties do not pay the costs of reservoir operations such as erosion control, shoreline stabilization or dam operations, maintenance and repairs. Therefore, as part of the analysis of the existing rules, the cost of the administration of the Permit System and enforcing the rules was conducted and will continue until 2009. This cost analysis is critical to

determine the “true” costs of administering the Permit System and enforcement so that current and future access permit holders will be charged fees that will cover the costs of administering the Permit System and enforcement. The analysis of the Permit System costs will not be fully completed until 2009.

#### Cost to Agency

The development of the Proposed Rules has cost the District approximately \$160,000. This amount includes contract costs paid to consultants to evaluate the current access Permit System. The Proposed Rules are not expected to result in additional costs for implementation beyond what the District currently incurs for administration, outreach, education, monitoring Permit Holder’s compliance with rules and enforcing the rules. The rules are actually expected to increase the efficiency of administration and enforcement. If rules are clear and better understood, compliance is more cost effective than enforcement.

#### Cost to Local Governments

There will be no costs to local governments for the implementation and continuation of the Proposed Rules due to the fact that local governments will continue to be exempt from the need to pay fees for the utilization of access areas. In addition, the District will be solely responsible for administering and enforcing the rules, with the municipalities having no responsibility for administration. It is important to note that the District pays approximately \$2.3 million in property taxes annually to the municipalities and other taxing jurisdictions around Great Sacandaga Lake.

#### 5. Local Government Mandates

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts.

#### 6. Paperwork

As currently required, under the Proposed Rules, eligible landowners shall have the ability to voluntarily apply for an Access Permit of any type, a work permit, or to be placed on the Waiting List for any designated Access Permit Area as required by Sections 606.6 and 606.8 of the Proposed Rules.

Applications for Access Permits and Renewals: Shall include, but not be limited to, the following information: all names of the Owners of Record, identification of the Eligible Property, and two mailing addresses to which the District may send official notices. For new access permits and access permit renewals, each Owner of Record shall sign and certify the application under penalty of perjury whereby it is certified, ii) that all information supplied therein is true and accurate, and iii) that each Owner of Record understands and agrees to adhere to the rules of the Access Permit System.

Applications for Work Permits: As is the current process, the applicant shall be required to submit a detailed plan that describes dimensions, materials to be used, construction methods, proposed timetables, location of modifications and other relevant information. The District may request additional information from the applicant as deemed necessary to determine an action on the application.

#### 7. Duplication

No rules or other legal requirements of either the State or federal government exist at the present time which duplicate, overlay or conflict with the Proposed Rules. Many of the Proposed Rules actually comply with those of existing agencies. Due to the fact that other regulatory agencies such as the Adirondack Park Agency, New York State Department of Environmental Conservation, and the New York State Department of Health have jurisdiction over the region, permits from each agency may be required for a specific action occurring on State lands subject to an Access Permit.

#### 8. Alternatives

The first alternative is the “null alternative” or the “do nothing” alternative. It was quickly determined that the Permit System Rules require revisions and the District could not continue to effectively manage the Access Permit System without the Proposed Rules in place.

The process for updating the rules resulted in multiple drafts. The first Draft was prepared and subject to analysis by the general public. Multiple public meetings were held on the revised drafts to obtain optimum public feedback. The District has met with several stakeholders including the Great Sacandaga Lake Association, the Supervisors of the towns bordering the Lake and other local and regional officials to discuss this issue. An Advisory Committee was established to conduct additional reviews and provide recommendations. The current Proposed Rules reflect significant input by the general public and Advisory Committee. To date, the rules are currently in their fourth version, all of which have been subject to public review.

#### 9. Federal Standards

The federal government has set no standards for the same or similar subject areas addressed by the Proposed Rules. It is important to mention that the Federal Energy Regulatory Commission (FERC) license requires the District to notify FERC during a rule making process. FERC has issued a letter to the District stating that the Proposed Rules will not affect or represent a change in reservoir operations and does not affect the existing FERC license.

#### 10. Compliance Schedule

Upon the effective date of the Proposed Rules, all regulated parties shall be required to comply with the Proposed Rules. This rule making process is unique, as NYSDEC is required to provide the final approval of any rule revision made by the District.

Permit holders will not be required to comply with the revised Permit System fees until 2010, the current estimated date for compliance as the Permit System fees have been frozen until 2010.

#### **Regulatory Flexibility Analysis**

Pursuant to SAPA § 202-b(3)(a)(ii), the Hudson River Black River Regulating District (the “District”) is seeking an exemption from the preparation of a Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASB/LG)) due to the fact that the Proposed Rules will not impose adverse economic impacts or recordkeeping compliance requirements on small businesses or local governments. Pursuant to the requirements of SAPA, the following represents the statement of findings and the reasons upon which the finding was made that the Rules would impose no adverse economic impacts.

#### Small Businesses

The affected parties will include both commercial and non-commercial parties. The majority of the affected parties will include non-commercial parties. The commercial parties will primarily include marinas and restaurants located on and benefiting from the Great Sacandaga Lake. These commercial parties obtain Access Permits to allow for legal access to the Great Sacandaga Lake by their customers and for the operation of marinas and other water-dependent commercial operations.

No additional paperwork beyond what is already generally required will be necessary for compliance with the Proposed Rules. The Proposed Rules are not expected to result in an increased need for small businesses to hire professional consultants for compliance.

As stated in the RIS, one reason for the Proposed Rules was to develop a cost methodology to ensure the Permit System will pay for itself. The regulated parties do not pay the costs of reservoir operations such as erosion control, shoreline stabilization, and dam operations, maintenance, and repairs. Therefore, as part of the analysis of the existing Rules, the cost of administering the Permit System and enforcing the Rules is being recorded and will continue until 2009. This cost analysis is critical to determine the “true” costs of the Permit System so that current and future access permit holders will be charged fees that will cover the costs of administering the Permit System and enforcing the Rules. The analysis of the Permit System costs will not be fully completed until 2009.

The Proposed Rules will not require small businesses to purchase or lease new computer equipment, hardware or software. The Proposed Rules will not require small business to prepare any additional reports or keep additional records. The Proposed Rules will set new and renewal Access Permit fees which will be based upon the type of permit and the width of the access permit area in question.

#### Local Government Mandates

There will be no costs to local governments for the implementation and continuation of the Proposed Rules due to the fact that local governments will continue to be exempt from the need to pay fees for the utilization of access permit areas. In addition, the District will be solely responsible for administering and enforcing the Rules, with the municipalities having no responsibility for administration or enforcement. It is important to note that the District pays approximately \$2.3 million in property taxes to the municipalities and other taxing jurisdictions around Great Sacandaga Lake.

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts.

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

Pursuant to SAPA § 202-bb(2), in developing a rule, agencies must consider utilizing approaches to accomplish the objectives of a statute while minimizing any adverse impact on public and private sector interests in rural areas. For the purposes of this SAPA evaluation, a rural area is defined as a county having a population less than 200,000. The three counties with corporate boundaries within 1 mile from the reservoir

boundary line of the Great Sacandaga Lake include Hamilton, Fulton and Saratoga Counties. Of these counties, Hamilton and Fulton each have a population of less than 200,000 persons, and therefore, the potential impacts on these counties must be considered.

Pursuant to SAPA § 202-bb(4)(a)(ii), the Hudson River Black River Regulating District (the "District") is seeking an exemption from the preparation of the Rural Area Flexibility Analysis (RAFA) due to the fact that the Proposed Rules will not impose adverse impacts or recordkeeping compliance requirements on public or private entities in rural areas. Pursuant to the requirements of SAPA, the following represents the statement of findings and the reasons upon which the finding was made that the rule would impose no adverse impacts or recordkeeping compliance requirements.

#### Small Businesses

The affected parties will include both commercial and non-commercial parties. The majority of the affected parties will include non-commercial parties. The commercial parties will primarily include marinas and restaurants located on and benefiting from the Great Sacandaga Lake. These commercial parties obtain Access Permits to allow for legal access to the Great Sacandaga Lake by their customers and for the operation of marinas and other water-dependent commercial operations.

No additional paperwork beyond what is already generally required will be necessary for compliance with the Proposed Rules. The Proposed Rules are not expected to result in an increased need for small businesses to hire professional consultants for compliance.

As stated in the RIS, one reason for the Proposed Rules was to develop a cost methodology to ensure the Permit System will pay for itself. The regulated parties do not pay the costs of reservoir operations such as erosion control, shoreline stabilization; and dam operations, maintenance, and repairs. Therefore, as part of the analysis of the existing Rules, the cost of administering the Permit System and enforcing the Rules is being recorded and will continue until 2009. This cost analysis is critical to determine the "true" costs of the Permit System so that current and future access permit holders will be charged fees that will cover the costs of administering the Permit System and enforcing the Rules. The analysis of the Permit System costs will not be fully completed until 2009.

The Proposed Rules will not require small businesses to purchase or lease new computer equipment, hardware or software. The Proposed Rules will not require small business to prepare any additional reports or keep additional records. The Proposed Rules will set new and renewal Access Permit fees which will be based upon the type of permit and the width of the access permit area in question.

#### Local Government Mandates

There will be no costs to local governments for the implementation and continuation of the Proposed Rules due to the fact that local governments will continue to be exempt from the need to pay fees for the utilization of access permit areas. In addition, the District will be solely responsible for administering and enforcing the rules, with the municipalities having no responsibility for administration or enforcement. It is important to note that the District pays approximately \$2.3 million in property taxes to the municipalities and other taxing jurisdictions around Great Sacandaga Lake.

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts.

#### Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the Proposed Rules that they will not have an adverse impact on jobs and employment opportunities. This is because the Proposed Rules are a codification of many of the existing procedures of the Hudson River Black River Regulating District (the "District"), the fact that participation in the Permit System is voluntary and the Proposed Rules will continue to allow eligible applicants to apply for and obtain Access Permits.

## Public Service Commission

### NOTICE OF ADOPTION

#### Initial Tariff Schedule by The Meadows at Hyde Park Water-Works Corp.

**I.D. No.** PSC-35-07-00011-A

**Filing date:** May 27, 2008

**Effective date:** May 27, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the filing of The Meadows at Hyde Park Water-Works Corp. for its initial tariff schedule with modifications, P.S.C. No. 1—Water.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and 89-e(2)

**Subject:** Initial tariff schedule, electronic filing.

**Purpose:** To approve the initial tariff schedule with modifications for The Meadows at Hyde Park Water-Works Corp., P.S.C. No. 1—Water.

**Substance of final rule:** The Commission adopted an order approving The Meadows at Hyde Park Water-Works Corp. for its initial tariff schedule P.S.C. No. 1, with modifications for the rates, charges, rules and regulations under which the company will operate, effective June 1, 2008, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-W-0915SA1)

### NOTICE OF ADOPTION

#### Elimination of the Annual Limit on Non-Rate Incentives by Rochester Gas and Electric Corporation

**I.D. No.** PSC-01-08-00030-A

**Filing date:** May 23, 2008

**Effective date:** May 23, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order increasing the ceiling on Rochester Gas and Electric Corporation's spending for non-rate economic development and in the future it will review requests to modify economic development program criteria.

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

**Subject:** Annual limit on non-rate incentives under Rochester Gas and Electric Corporation's Economic Development Program.

**Purpose:** To approve an increase in the ceiling on non-rate economic development spending.

**Substance of final rule:** The Commission, on May 21, 2008, adopted an order approving the request by Rochester Gas and Electric Corporation (RG&E) to increase the ceiling on spending for non-rate economic development from \$5.5 million to \$6.5 million and in the future the Commission will review the requests to modify economic development program criteria, and RG&E is required to file an Economic Development Plan by September 1, 2008, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(02-E-0198SA12)

**NOTICE OF ADOPTION**

**Eligibility Requirements and Grant Ceiling Limits by Niagara Mohawk Power Corporation d/b/a National Grid**

**I.D. No.** PSC-01-08-00034-A  
**Filing date:** May 27, 2008  
**Effective date:** May 27, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the economic development plan of Niagara Mohawk Power Corporation d/b/a National Grid with the exception that the utility continue the Dairy Industry Productivity Program.

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

**Subject:** Eligibility requirements and grant ceiling limits for various National Grid economic development programs.

**Purpose:** To approve the economic development plan of Niagara Mohawk Power Corporation d/b/a National Grid.

**Substance of final rule:** The Commission, On May 21, 2008, adopted an order approving the 2008 economic development plan, filed by Niagara Mohawk Power Corporation d/b/a National Grid with the exception that the utility continue the Dairy Industry Productivity Program, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(01-M-0075SA39)

**NOTICE OF ADOPTION**

**Commission Requirements for Verizon New York Inc.**

**I.D. No.** PSC-08-08-00014-A  
**Filing date:** May 22, 2008  
**Effective date:** May 22, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the petition of Verizon New York Inc. to eliminate intralLATA equal access scripting requirements.

**Statutory authority:** Public Service Law, sections 91(1), (3) and 94(2)

**Subject:** Commission requirements for Verizon New York Inc.

**Purpose:** To eliminate the intralLATA equal access scripting requirements.

**Substance of final rule:** The Commission, On May 21, 2008, adopted an order approving the petition of Verizon New York Inc., to eliminate the intralLATA equal access scripting requirements imposed on Verizon in 1995.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-C-0063SA1)

**NOTICE OF ADOPTION**

**Transmission and Distribution of Gas by Empire State Pipeline**

**I.D. No.** PSC-09-08-00005-A  
**Filing date:** May 22, 2008  
**Effective date:** May 22, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the petition of Empire State Pipeline for a waiver of the requirements of 16 NYCRR section 255.611(b) to permit proposed alternative inspection and testing methods in the affected areas in lieu of pipe replacement.

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

**Subject:** Transmission and distribution of gas by Empire State Pipeline.

**Purpose:** To approve Empire State Pipeline's petition for a waiver of the requirements of 16 NYCRR section 255.611(b).

**Substance of final rule:** The Commission, On May 21, 2008, adopted an order approving the petition of Empire State Pipeline for a waiver of the requirements of 16 NYCRR § 255.611(b) to permit proposed alternative inspection and testing methods in the affected areas in lieu of pipe replacement, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-G-1536SA1)

**NOTICE OF ADOPTION**

**Water Rates and Charges by Windemere Highlands, Inc.**

**I.D. No.** PSC-10-08-00013-A  
**Filing date:** May 23, 2008  
**Effective date:** May 23, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the request by Windemere Highlands, Inc. to increase its tariff rates and convert to an electronic tariff schedule P.S.C. No. 1—Water.

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

**Subject:** Water rates and charges.

**Purpose:** To convert Windemere Highlands, Inc.'s paper tariff to an electronic tariff and increase its annual revenues by \$13,632 or 33.5 percent.

**Substance of final rule:** The Commission, On May 21, 2008, adopted an order allowing Windemere Highlands, Inc. to increase its annual revenues by \$13,632 or 33.5%, effective May 31, 2008, and convert its paper tariff to an electronic tariff, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-W-0139SA1)

### NOTICE OF ADOPTION

#### Water Rates and Charges by Hudson Valley Water Companies, Inc.

**I.D. No.** PSC-10-08-00014-A  
**Filing date:** May 23, 2008  
**Effective date:** May 23, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the request of Hudson Valley Water Companies, Inc. to increase its annual revenues in tariff schedule P.S.C. No. 2—Water.

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

**Subject:** Water rates and charges.

**Purpose:** To increase Hudson Valley Water Companies, Inc.'s annual revenues by \$31,648 or 23.9 percent.

**Substance of final rule:** The Commission, On May 21, 2008, adopted an order allowing Hudson Valley Water Companies, Inc. to increase its annual revenues by \$31,648 or 23.9%, effective May 31, 2008, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(08-W-0168SA1)

### NOTICE OF ADOPTION

#### Customer Service Incentive Program by Orange and Rockland Utilities, Inc.

**I.D. No.** PSC-11-08-00012-A  
**Filing date:** May 22, 2008  
**Effective date:** May 22, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the proposal by Orange and Rockland Utilities, Inc. for a tiered incentive for the survey portion of its Customer Incentive Program and higher negative incentive levels, in compliance with the order of October 18, 2007.

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

**Subject:** Customer Service Incentive Program by Orange and Rockland Utilities, Inc.

**Purpose:** To approve the proposal for a tiered incentive for the survey portion of the Customer Service Incentive Program.

**Substance of final rule:** The Commission, On May 21, 2008, adopted an order approving a proposal by Orange & Rockland Utilities, Inc. for a tiered incentive for the survey portion of its Customer Service Incentive Program, and higher negative incentive levels in compliance with the Commission's order issued in this case on October 18, 2007.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(06-E-1433SA6)

### NOTICE OF ADOPTION

#### Installed Reserve Margin of 15.0 Percent for the New York Control Area

**I.D. No.** PSC-12-08-00016-A  
**Filing date:** May 23, 2008  
**Effective date:** May 23, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order, on a permanent basis, the installed reserve margin for the New York Control Area of 15.0 percent for the upcoming capability year from May 2008 through April 2009.

**Statutory authority:** Public Service Law, sections 4, 5, 65 and 66

**Subject:** Installed reserve margin for the New York Control Area of 15.0 percent for the upcoming capability year May 1, 2008 to April 30, 2009.

**Purpose:** To ensure continued safety, adequacy and reliability of New York's electric system.

**Substance of final rule:** The Commission, on May 21, 2008, adopted an order, on a permanent basis, the Installed Reserve Margin for the New York Control Area of 15.0% for the upcoming Capability Year from May 1, 2008 through April 30, 2009.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-E-0088SA2)

### NOTICE OF ADOPTION

#### Alternate Fuel Market Price by Central Hudson Gas & Electric Corporation

**I.D. No.** PSC-12-08-00028-A  
**Filing date:** May 21, 2008  
**Effective date:** May 21, 2008

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

**Action taken:** On May 21, 2008, the Public Service Commission adopted an order approving the tariff filing of Central Hudson Gas & Electric Corporation to update reference to the publications which contain the alternate fuel market price paid by interruptible customers who fail to meet the requirements.

**Statutory authority:** Public Service Law, sections 2(11), 5, 64 and 66(12)

**Subject:** Alternate fuel market price.

**Purpose:** To update references to the alternate fuel market price paid by interruptible customers.

**Substance of final rule:** The Commission, on May 21, 2008, adopted an order approving Central Hudson Gas & Electric Corporation's (the company) tariff revisions contained in its Schedule for Gas Service, PSC No. 12, effective June 1, 2008 to update references to the alternate fuel market price paid by S.C. No. 8 (Interruptible Rate), S.C. No. 9 (Interruptible Transportation/Standby Sales Service) and S.C. No. 14 (Interruptible Transportation Service to Electric Generation Facilities) customers who fail to meet the alternate fuel reserve requirement.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-0211SA1)

**NOTICE OF ADOPTION**

**Winter Bundled Sale Service Election Date by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-12-08-00029-A

**Filing date:** May 21, 2008

**Effective date:** May 21, 2008

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

**Action taken:** On May 21, 2008, the commission adopted an order approving the tariff filing of Central Hudson Gas & Electric Corporation to revise the date by which retail suppliers are required to elect either winter bundled sales service or balancing service.

**Statutory authority:** Public Service Law, sections 2(11), 5, 64 and 66(12)

**Subject:** Winter bundled sales service election date.

**Purpose:** To revise the date by which retail suppliers are required to elect winter bundled sales or balancing service.

**Substance of final rule:** The Commission, on May 21, 2008, adopted an order approving Central Hudson Gas & Electric Corporation's (the Company) tariff revisions contained in its Schedule for Gas Service, PSC No. 12, effective June 1, 2008 to revise the date by which Retail Suppliers are required to elect Winter Bundled Sales Service or Balancing Service in order to provide Retail Suppliers with their correct delivery requirements by the date indicated on the Company's Calendar of Gas Transportation Scheduling.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-0214SA1)

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

**Approval of New Types of Electricity Meters, Transformers and Auxiliary Devices**

**I.D. No.** PSC-24-08-00007-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by Kuhlman Electric Corporation for the approval of the Kuhlman Electric Corporation combination current and voltage instrument transformers types KA-72 through KA-245, and types KXM-350 through KXM-1050, for 69kV through 230kV electric service.

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

**Subject:** Approval of new types of electricity meters, transformers and auxiliary devices—Case 279.

**Purpose:** To permit electric utilities in New York State to use the Kuhlman instrument transformers types KA-72 through KA-245, and types KXM-350 through KXM-1050.

**Substance of proposed rule:** The Commission will consider a request from Kuhlman Electric Corporation for the approval and use of the Kuhlman Electric corporation combination current and voltage transformers types KA-72 through KA-245, and types KXM-350 through KXM-1050, for 69kV through 230kV electric service.

National Grid has intent to use the Kuhlman KA-72 through KA-245, and KXM-350 through KXM-1050 transformers for revenue metering purposes in substation applications. According to Kuhlman these transformers are capable of providing American National Standards Institute ANSI C12.11 and the Institute of Electrical and Electronics Engineers IEEE57.13 revenue accuracy test specifications. The cost of these transformers will range from \$7,000 - \$30,000.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(08-E-0594SA1)

**Department of State**

**EMERGENCY  
RULE MAKING**

**Cease and Desist Zone for the County of Kings**

**I.D. No.** DOS-24-08-00002-E

**Filing No.** 462

**Filing date:** May 23, 2008

**Effective date:** May 23, 2008

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

**Action taken:** Amendment of section 175.17(c)(2) of Title 19 NYCRR.

**Statutory authority:** Real Property Law, section 442-h

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

**Specific reasons underlying the finding of necessity:** The Department of State held a public hearing on September 6, 2007 to determine whether this rulemaking should be proposed. At the public hearing, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeated solicitation to list their homes for sale. The Department of State held the record open after the public hearing to afford others the opportunity to submit written testimony and proof. The testimony and evidence submitted to the Department of State amply demonstrates that some residents within the proposed geographic area are the subject of intense and repeated solicitation to list their homes for sale. This rule making will benefit residents of the defined area by providing a mechanism for them to notify the Department of State that they do not wish to be solicited. An existing cease and desist zone protecting a portion of the defined geographic area is due to expire on May 24, 2008. The Department of State has determined that these, and other residents, are in need of continued protection.

**Subject:** Cease and desist zone for the County of Kings.

**Purpose:** To extend and expand an existing cease and desist zone for the County of Kings.

**Text of emergency rule:** An Amendment to 19 NYCRR Part 175.17(c)(2) is adopted to read as follows:

(c)(2) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	August 1, 2009

Within the County of Bronx as follows:

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 9, 10, 11 and 12, and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly and northwesterly along East River to Bronx River; thence northwesterly and northerly along Bronx River to Sheridan Expressway; thence northeasterly along Sheridan Expressway to Cross Bronx Expressway; thence southeasterly and easterly along Cross Bronx Expressway to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone	Expiration Date
County of Queens	August 1, 2009

Cease and Desist Zone  
(Mill Basin/Brooklyn)

Zone	Expiration Date
County of Kings (Brooklyn)	November 30, [2007] 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, [and] Marine Park and *Madison Marine*, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to [Gerritsen Avenue] *Kings Highway*; thence [southeasterly along Gerritsen Avenue and the southern prolongation of Gerritsen Avenue] *southwesterly along Kings Highway to Ocean Avenue*; thence southerly along *Ocean Avenue* to Shore Parkway; thence northeasterly, *southeasterly*, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; thence *northwesterly along Paerdegat Basin and northern prolongation of Paerdegat Basin* to Flatlands Avenue and the point of beginning.

Cease and Desist Zone  
(Canarsie)

Zone	Expiration Date
County of Kings (Brooklyn)	May 31, 2008

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection of Stanley Street and East 108th Street; thence southeasterly along East 108th Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Shore (Belt) Parkway; thence southwesterly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 20, 2008.

**Text of emergency rule and any required statements and analyses may be obtained from:** Whitney A. Clark, Division of Licensing Services, P.O. Box 22001, Albany, NY 12231-0001, (518) 473-2728, e-mail: whitney.clark@dos.state.ny.us

**Regulatory Impact Statement**

1. Statutory authority:

Real Property Law section 442-h(3) permits the Department of State to adopt a rule establishing a cease and desist zone for a defined geographic area if it is determined that some owners of residential real property within the defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale with such

real estate broker or salesperson. Based on testimony received at a public hearing on September 6, 2007, the Secretary of State has determined that some homeowners within the proposed cease-and desist zone are subject to such solicitation. Accordingly, the Department of State has express authority to adopt this rule.

2. Legislative objectives:

In enacting Real Property Law section 442-h, the legislature highlighted the problems faced by some residents from intense and repeated solicitation to list their homes for sale. Recognizing that not all homeowners who are the subject of this solicitation are desirous of being solicited, the Legislature established a procedure to determine if a cease and desist zone should be established. Upon the establishment of such a zone, a homeowner may file with the Secretary a statement of desire not to be solicited. Thereafter, the Secretary will publish a list of the names and addresses of the persons who have filed the statement, and brokers and salespersons are then prohibited from soliciting persons on that list. That list is commonly referred to as a "cease and desist list."

Thus, Real Property Law section 442-h was designed to protect the public. This rule re-enforces the objectives of the Legislature when it enacted Real Property Law section 442-h by establishing a cease and desist zone for an area that has demonstrated that some residents are the subject of intense and repeated solicitation to list their homes for sale.

3. Needs and benefits:

The Department of State held a public hearing on September 6, 2007 at Junior High School 78, Brooklyn, NY to determine whether this rule making should be proposed. At the public hearing, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeat solicitation to list their homes for sale. The speakers included elected officials, local representatives and home-owners within the existing and proposed cease and desist zone. The speakers spoke primarily in support of the proposed cease and desist zone citing the need to curb the aggressive solicitation practices of real estate agents in the affected communities. The speakers cited frequent mailings, unwanted flyers, as well as door-to-door solicitation, as intrusive and unwanted solicitation practices by real estate brokers and salespersons. The Department of State held the record open after the public hearing to afford others the opportunity to submit written testimony and proof. Additional material was provided consistent with that obtained during the public hearing.

As of July 2007, the Department of State had received 1,314 homeowners statements from the Mill Basin area. The wide resident support established by the number of homeowner statement filings and the testimony and evidence submitted to the Department of State amply demonstrate that some residents within the proposed geographic area are the subject of intense and repeat solicitation to list their homes for sale. This rule making will benefit residents of the defined area by providing a mechanism for them to notify the Department of State that they do not wish to be solicited.

4. Costs:

a. Costs to regulated parties:

The costs to real estate brokers and salespersons are minimal. The Department of State licenses approximately 560,000 real estate licensees, 11,926 of whom have offices in Brooklyn. The Department of State maintains copies of the cease and desist lists on its website. This list is available for all to view, at no cost. Additionally, the Department of State will mail a copy of the list to any person desiring a copy for the minimal cost of \$10.00.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation will be minimal, and administration of this rule will be accomplished using existing resources. The estimated costs are as follows:

Printing owners statements	\$2,200
Mailing owners statements	\$640
Processing statements:	
Staff: SG-13: \$37,072	
SG-23: \$58,406	
10 weeks: \$7,129-\$11,231	
Data entry:	
Staff: SG-6: \$25,146	
SG-9: \$29,595	
SG-13: \$37,072	
10 days: \$688-\$1,015	

The costs for printing and mailing are unknown. The Department anticipates that most licensees will access the list, at no cost, on the Department's website. For those few who want to purchase a paper copy, the Department will likely print a copy, on an order-by order basis, on

existing equipment. The mailing costs will be dependent on the number of copies that are ordered. However, the Department expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

The Department of State expects that revenues from the sale of the list will be incidental to the costs of preparing, printing and mailing.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

Homeowners who do not want to be solicited will have to file an "owner's statement" with the Department of State. The owner's statement will indicate the owner's desire not to be solicited and will set forth the owner's name and address of the property within the cease and desist zone. The Department of State will provide homeowners with a standard form although use of the form is not mandatory. Owner's statements will be provided to community leaders for distribution to their constituents. In addition, owner's statements will be available from the Department of State on request, as well as available on the Department's web-site. The Department of State will prepare a cease and desist list containing the names and addresses of all of the homeowners who filed an owner's statement. The list will be available, at no cost, on the Department's website. The publication will also be sold to the public, including real estate brokers and salespersons. The price will be \$10 per copy. Except for orders submitted by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

This rule extends an existing cease and desist zone that expired on November 30, 2007. It does not otherwise duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to section 4420-h(2) of the Real Property Law. However, the Department concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order.

The Department of State also considered allowing the prior cease and desist order to expire in November 2007 and/or to not expand the prior cease and desist zone. It was determined, however, that allowing the order to expire and/or failing to expand the prior zone, would have resulted in homeowners in the affected areas continuing to be subject to continuing unwanted intense and repeated solicitation to sell their homes.

The Department of State did not consider any other alternatives.

9. Federal standards:

There are no federal standards addressing the subject of this rule making.

10. Compliance schedule:

Licensees are currently required to comply with 19 NYCRR 175.17. The original rule expired on November 30, 2007 and was in place for a period of five years. Therefore, regulated parties were on notice of, and had adequate time to comply with the requirements imposed by the proposed rule making. The Department of State readopted the rule, on an emergency basis, and, as such, this rule has already taken effect.

**Regulatory Flexibility Analysis**

1. Effect of rule:

This rule would prohibit real estate brokers and salespersons from soliciting any resident within the geographic zone defined by the proposed rule who has notified the Department of State that he or she does not wish to be solicited. The defined zone within which solicitation would be prohibited would be the Mill Basin area of Brooklyn, New York which includes the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine. Currently 11,926 real estate brokers and salespeople have offices in Brooklyn. Most of those licensees are small business, or they work for a small business. This rule will apply to most of the licensees. Real estate brokers and salespersons will remain free, however, to solicit listings from other residents of the defined zone and to participate in regulated transactions within the zone. Insofar as the rule making seeks to extend and expand an existing cease and desist zone,

it is not anticipated that the solicitation limitations will place an undue financial burden, or impose a hardship on real estate brokers and salespersons.

The rule does not apply to local governments.

2. Compliance requirements:

The Department of State publishes and makes available a list of residents within cease and desist zones who have notified the Department of State that they do not wish to be solicited by real estate brokers and salespersons. These lists are made available to real estate brokers and salespersons. To comply with the rule, they need only refer to the list prior to soliciting listings from homeowners within the defined cease and desist zone.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Licensees will not incur any significant compliance costs associated with this rule. The Department of State publishes a free list of all cease and desist lists on its website at no cost. Licensees who desire a hard copy of the lists may notify the Department of State and receive a copy of the list by mail for a cost of \$10.00.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of implementation of this rule.

6. Minimizing adverse economic impact:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to section 442-h(2) of the Real Property Law. However, the Department concluded that a cease and desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, the Secretary of State decided to adopt the cease and desist order rather than a non-solicitation order.

7. Small business and local government participation:

On September 6, 2007, the Department of State held a public hearing at Junior High School 78, Brooklyn New York to consider proposing this rule making. The hearing was publicized in advance and open to all. Representatives of local community boards, State and local elected officials, and consumers attended and provided evidence of the need to extend and expand the then existing cease and desist zone. One real estate professional attended but did not offer any comment other than a general interest in the hearing. In addition, the Department of State kept the hearing record open in order to permit individuals and businesses to submit written testimony and evidence after the open public hearing.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

This rule does not apply to rural areas, but rather applies only to a defined geographic area within the County of Kings.

2. Reporting, recordkeeping and other compliance requirements:

This rule, which applies only to a portion of urban Kings County, does not impose any reporting and record-keeping requirements on licensees located within rural areas.

3. Costs:

The rule does not impose any costs on rural areas.

4. Minimizing adverse impact:

Insofar as the rule does not apply to rural areas and therefore does not impose any costs on rural areas, no alternatives to minimize adverse impacts were considered by the Department of State.

5. Rural area participation:

Insofar as the rule does not apply to rural areas, rural area participation was not solicited by the Department of State.

**Job Impact Statement**

This rule will not have any substantial adverse impact on jobs and employment opportunities. The rule merely prohibits real estate brokers and salespersons from soliciting real estate listings from residents of a defined geographic zone who have notified the Department of State that they do not wish to be solicited. Real estate brokers and salespersons will remain free to solicit other residents within the defined zone and to engage in real estate transactions within and outside of the defined geographic area.

## Susquehanna River Basin Commission

### Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Public Hearing and Commission Meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on June 12, 2008 in Elmira, New York. At the public hearing, the Commission will consider: 1) approval of certain water resources projects, including one enforcement action, 2) consideration of a request to reopen Docket No. 20020819, Mountainview Thoroughbred Racing Association, Inc., and 3) a request for a hearing on an administrative appeal regarding Docket No. 20080305, Mountainview Thoroughbred Racing Association, Inc. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: June 12, 2008.

ADDRESS: Holiday Inn Elmira-Riverview, 760 E. Water Street, Elmira, New York. See Supplementary Information section for mailing and electronic mailing addresses for submission of written comments.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423; ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238-0423, ext. 301; fax: (717) 238-2436; e-mail: ddickey@srbc.net.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes the following items on the agenda: 1) a special infrastructure presentation by Ms. Sandra Allen of the N.Y. Department of Environmental Conservation, 2) a report on the present hydrologic conditions of the basin, 3) approval of a proposal to increase the Commission's consumptive use mitigation fee, 4) a recommendation to rescind certain Commission policies, 5) approval of an FY-10 Budget, 6) approval of various grants and contracts, and 7) election of a new Chairman and Vice-Chairman to serve in the next fiscal year. The Commission will also hear a Legal Counsel's report and an update on recent activities in our regulatory program.

#### Public Hearing—Projects Scheduled for Action:

1. Project Sponsor and Facility: Fortuna Energy Inc. (Catatank Creek), Town of Spencer, Tioga County, N.Y. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

2. Project Sponsor and Facility: East Resources, Inc. (Chemung River), Town of Big Flats, Chemung County, N.Y. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

3. Project Sponsor and Facility: Fortuna Energy Inc. (Chemung River), Chemung Town, Chemung County, N.Y. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

4. Project Sponsor and Facility: East Resources, Inc. (Seeley Creek), Town of Southport, Chemung County, N.Y. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

5. Project Sponsor and Facility: East Resources, Inc. (Tioga River; at Tioga Junction), Lawrence Township, Tioga County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

6. Project Sponsor and Facility: East Resources, Inc. (Crooked Creek; near Middlebury Center), Middlebury Township, Tioga County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

7. Project Sponsor and Facility: Fortuna Energy Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

8. Project Sponsor and Facility: East Resources, Inc. (Tioga River; near Mansfield), Richmond Township, Tioga County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

9. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Applications for con-

sumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

10. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

11. Project Sponsor and Facility: Neptune Industries, Inc. (Lackawanna River), Borough of Archbald, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

12. Project Sponsor and Facility: Keystone Landfill, Inc., Dunmore Borough, Lackawanna County, Pa. Applications for consumptive water use of up to 0.100 mgd and groundwater withdrawal of 0.020 mgd from Well 1, 0.010 mgd from Well 2, and 0.020 mgd from Well 3, and settlement of an outstanding compliance matter.

13. Project Sponsor: United States Gypsum Company. Project Facility: Washingtonville Plant (Well W-A8), Derry Township, Montour County, Pa. Application for groundwater withdrawal of 0.350 mgd.

14. Project Sponsor: Kratzer Run Development, LLC. Project Facility: Eagles Ridge Golf Club (formerly Grandview Golf Course/Susquehanna Recreation Corporation), Ferguson Township, Clearfield County, Pa. Applications for consumptive water use of up to 0.099 mgd and surface water withdrawal of up to 0.099 mgd.

15. Project Sponsor and Facility: Commonwealth Environmental Systems, L.P., Foster, Frailey and Reily Townships, Schuylkill County, Pa. Modification of consumptive water use and groundwater approval (Docket No. 20070304).

16. Project Sponsor and Facility: Lykens Valley Golf Course (formerly Harrisburg North Golf Course), Upper Paxton Township, Dauphin County, Pa. Applications for consumptive water use of up to 0.200 mgd and surface water withdrawal of up to 0.200 mgd.

17. Project Sponsor and Facility: Spring Creek Golf Course (Spring Creek), Derry Township, Dauphin County, Pa. Applications for consumptive water use of up to 0.081 mgd and surface water withdrawal of up to 0.081 mgd.

18. Project Sponsor: Pennsy Supply, Inc. Project Facility: Hummelstown Quarry, South Hanover Township, Dauphin County, Pa. Application for surface water withdrawal of up to 29.925 mgd.

19. Project Sponsor: Titanium Hearth Technologies, Inc. Project Facility: TIMET North American Operations, Caernarvon Township, Berks County, Pa. Application for consumptive water use of up to 0.133 mgd, and settlement of an outstanding compliance matter.

20. Project Sponsor and Facility: Conestoga Country Club (Well 1), Manor and Lancaster Townships, Lancaster County, Pa. Application for groundwater withdrawal of 0.281 mgd.

21. Project Sponsor and Facility: Rock Springs Generation Facility, Rising Sun, Cecil County, Maryland. Modification of surface water withdrawal, groundwater withdrawal, and consumptive water use approval (Docket No. 20001203).

#### Public Hearing—Project Scheduled for Enforcement Action:

1. Project Sponsor and Facility: Standing Stone Golf Club (Docket No. 20020612), Oneida Township, Huntingdon County, Pa.

#### Public Hearing—Petition to Reopen Docket

1. Petition of East Hanover Township, *et al.*, Dauphin County, Pa., to reopen Docket No. 20020819, Mountainview Thoroughbred Racing Association, Inc.

#### Public Hearing—Request for Hearing on Administrative Appeal

1. Request of East Hanover Township, *et al.*, Dauphin Co., Pa., for hearing on administrative appeal of Docket No. 20080305, Mountainview Thoroughbred Racing Association, Inc.

#### Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: rcairo@srbc.net or Deborah J. Dickey, Secretary to the Commission, e-mail: ddickey@srbc.net. Comments mailed or electronically submitted must be received prior to June 12, 2008 to be considered.

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

Dated: May 19, 2008

Thomas W. Beauduy  
Deputy Director.

## Department of Taxation and Finance

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

#### Cigarette Tax

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

**Filing No.** 467

**Filing date:** May 27, 2008

**Effective date:** June 3, 2008

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

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

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

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

**Specific reasons underlying the finding of necessity:** Chapter 57 of the Laws of 2008 was enacted on April 23, 2008. Part RR-1 of Chapter 57, which increases the rate of excise tax on cigarettes, takes effect June 3, 2008, and applies to all cigarettes possessed in the state by any person for sale and all cigarettes used in the state by any person on or after June 3, 2008. Part RR-1 also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of tax. This rule relates to the implementation of these statutory provisions. This rule also sets the commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. Without the amendments, the regulation would not provide a rate of commission for affixing cigarette stamps at the new tax rate. In addition, the rule provides procedures relating to the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps required to be taken by all agents, wholesale dealers and retail dealers as of the close of business on June 2, 2008, and the tax due attributable to the increase. Due to the effective date, it is not possible to timely promulgate the necessary regulations other than by emergency measure.

**Subject:** Cigarette tax.

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

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.nystax.gov](http://www.nystax.gov)):** This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on April 23, 2008, by Part RR-1 of Chapter 57 of the Laws of 2008. This rule also makes technical updates to the Sales and Use Tax regulations, as published in Title 20 NYCRR.

Part RR-1 amended Article 20 of the Tax Law to increase the excise tax on cigarettes from \$1.50 for each 20 cigarettes, or fraction thereof, to \$2.75, effective June 3, 2008. It also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of excise tax. The purpose of the rule is to make necessary regulatory changes related to implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes and make other technical updates, including amendments to the sales and use tax regulations regarding receipts on which sales tax is computed to eliminate reference to a former rate of

cigarette tax and to update the provision regarding inclusion of the New York City cigarette tax.

Sections 1, 2, 3 and 5 of the rule make technical and conforming amendments to sections 70.1, 74.1, 74.2 and 74.5, respectively, of the Cigarette Tax regulations to reflect the statutory increase in the excise tax on cigarettes.

Section 4 of the rule amends section 74.3 of the regulations, which provides the schedule by which commissions (pursuant to section 472 of the Tax Law) are allowed to licensed cigarette agents as compensation for affixing stamps to packages of cigarettes. The rule amends current language to reflect the change in the amount of tax payment represented by the tax stamps, which is the basis upon which the commissions are computed. The current percentage rates and related threshold used to compute commissions are not amended by this rule, resulting in an increase in the commissions on a per stamp basis.

Section 6 of the rule renumbers section 79.3 of the regulations to be section 79.4 and adds a new section 79.3 to reflect the additional amount of tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of excise tax. For purposes of taking the required June 2, 2008, close of business inventories, the rule allows dealers that operate vending machines to estimate the contents of such machines at one-half of their normal fill capacities. This provision results from the fact that it may not be possible to take an actual physical inventory of every machine a dealer operates in the State on a given day. The rule also outlines the procedures by which a tax on existing inventories will be reported and paid. Pursuant to the statutory provisions, the additional amount of tax on existing inventories is allowed to be paid in two installments and the rule provides that a taxpayer's first installment must be at least 25% of the additional amount of tax due, but cannot be less than \$500. The first installment is due no later than August 20, 2008, and the remaining balance of tax is due no later than December 22, 2008.

Section 7 of the rule amends section 80.2 of the regulations to reflect the new rate of tax in the computation of the basic cost of cigarettes for purposes of the Cigarette Marketing Standards Act.

Sections 8, 9, 11, and 13 of the rule make technical amendments to sections 82.2, 82.3, 82.4 and 82.5 of the Cigarette Marketing Standards regulations to reflect the change to the basic cost of cigarettes made by section 7 of the rule. These changes are carried through the illustrations outlining the minimum prices that cigarettes may be sold at various points in the distribution chain.

Sections 10 and 12 provide for technical updates.

Sections 14 through 17 amend section 526.5 of the Sales and Use Tax Regulations to eliminate a reference to a former rate of cigarette tax and provide for technical updates regarding the inclusion/exclusion of certain excise taxes in receipts on which sales tax is computed.

Finally, section 18 of the rule provides that the rule shall take effect on June 3, 2008; however, section 6 of the rule concerning the tax due on inventory shall take effect on the date the Notice of Emergency Adoption and Proposal is filed with the Department of State.

**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 August 24, 2008.

**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, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: [tax\\_regulations@tax.state.ny.us](mailto:tax_regulations@tax.state.ny.us)

**Data, views or arguments may be submitted to:** William Ryan, Director, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: [tax\\_regulations@tax.state.ny.us](mailto:tax_regulations@tax.state.ny.us)

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

#### Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First; section 475 (not subdivided); section 1142(1); section 1250 (not subdivided); and Part RR-1 of Chapter 57 of the Laws of 2008. Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 475 (not subdivided) of the Tax Law provides such authority to the Commissioner specifically with respect to the cigarette tax imposed by Article 20 of the Tax Law. Subdivision (1) of section 1142 of Article 28 and section 1250 of Article 29 of the Tax Law also provide for the adoption of rules and regulations that are appropriate to carry out and jointly admin-

ister the New York State and local sales and compensating use taxes imposed by and pursuant to the authority of such Articles. Part RR-1 of Chapter 57 of the Laws of 2008 amended sections 471(1) and 471-a of the Tax Law to increase the tax on cigarettes from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof. In addition, Part RR-1 imposes a tax on inventories of cigarettes possessed for sale in New York State based on the increased cigarette tax, subject to the terms and conditions as the Commissioner of Taxation and Finance may prescribe.

2. Legislative objectives: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part RR-1 of Chapter 57 of the Laws of 2008 to increase the rate of the cigarette tax imposed by Article 20 of the Tax Law.

3. Needs and benefits: Part RR-1 of Chapter 57 of the Laws of 2008 amended Article 20 of the Tax Law to increase the tax on cigarettes from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof effective June 3, 2008. Additionally, Part RR-1 imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of tax.

The purpose of these amendments is to make necessary regulatory changes related to the implementation of these provisions, including providing procedures relating to the tax on the inventory, and sets the commissions allowable to cigarette agents for affixing cigarette stamps based on the new face value of such stamps as of June 3, 2008. In providing for commissions, the rule maintains the current percentage rates per stamp and related threshold amount to which different rates apply. The resulting effect will be an increase in the amount of commission allowable per stamp to take into consideration the amount of the June 3, 2008 tax increase. Finally, the rule updates the calculation of the basic cost of cigarettes and makes other technical updates.

#### 4. Costs:

(a) Costs to regulated persons: The regulated parties affected by this rule are 82 licensed cigarettes agents, approximately 180 licensed wholesale dealers (including the licensed cigarette agents), and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations). Part RR-1 of Chapter 57 of the Laws of 2008 increased the tax on cigarettes imposed by Article 20 from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on the regulated parties for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties will need to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 2, 2008. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part RR-1, which imposes a tax on such inventory and sets the payment dates. The rule does, however, provide that the first installment shall not be less than \$500 or the entire additional amount of cigarette tax due, if less than \$500. There are administrative/compliance benefits associated with the rule. Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$800,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

(b) Costs to the State and its local governments including this agency: This rule will not have a revenue impact on New York State or its local governments. It is estimated that the implementation and continued administration of this rule will have no fiscal impact on the Department of Taxation and Finance.

(c) Information and methodology: These conclusions are based upon the application of the current commission rate to stamps at the higher rate of tax and the anticipated volumes of cigarettes subject to tax, as well as an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Office of Counsel, Transaction and Transfer Tax Audit Bureau, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Regulated parties will need to file a return on or before August 20, 2008, showing the quantity of cigarettes possessed for sale in New York State and any unaffixed cigarette tax stamps as of the close of business on June 2, 2008. This is necessitated by Part RR-1 of Chapter 57 of the Laws of 2008, which imposes a tax on such inventory and sets the payment dates. Form CG-11, Cigarette Floor Tax Return, was mailed to affected parties on May 2, 2008 and is available on the Department's Web site.

The rule provides that the tax should be paid by check or money order. Allowing electronic payments associated with this limited time filing requirement would not be practical.

7. Duplication: These amendments do not duplicate any existing Federal or State requirements.

8. Alternatives: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis and has a positive impact on regulated parties.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject areas.

10. Compliance schedule: Part RR-1 of Chapter 57 of the Laws of 2008, requires all agents, wholesale dealers and retail dealers to pay an amount of tax on all cigarettes and unaffixed cigarette tax stamps in inventory as of the close of business on June 2, 2008, based on the increased rate of tax. Part RR-1 provides that the first installment is due no later than August 20, 2008. The remaining balance of tax is due no later than December 22, 2008. The rule provides that a return showing the quantity of such cigarettes and unaffixed stamps must be filed on or before August 20, 2008. A notice explaining the cigarette tax increase and the related tax on inventory as of the close of business on June 2, 2008, along with Form CG-11, Cigarette Floor Tax Return, were mailed to affected parties on May 2, 2008 and are available on the Department's Web site.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: There are 82 licensed cigarettes agents, approximately 180 licensed wholesale dealers (including the licensed cigarette agents), and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations), some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act, which will be affected by this rule.

2. Compliance requirements: Part RR-1 of Chapter 57 of the Laws of 2008, requires all agents, wholesale dealers and retail dealers, including small businesses, to pay an amount of tax on all cigarettes possessed for sale in New York State and unaffixed cigarette tax stamps in inventory as of the close of business on June 2, 2008, based on the increased rate of tax. Part RR-1 provides that the tax due on such inventory may be paid in two installments on August 20, 2008, and December 22, 2008, however at least 25% of the tax due on inventory based on the increased tax rate must be paid by August 20, 2008. The rule provides that returns must be filed by August 20, 2008, showing the quantity of all cigarettes and unaffixed stamps as of the June 2, 2008, close of business inventory. The rule provides procedures relating to the tax on the inventory, including rules for the physical inventory of cigarettes in vending machines that are located throughout the state. The rule also provides that the first installment cannot be less than \$500 or the entire tax due on inventory based if less than \$500.

3. Professional services: The rule itself imposes no requirements for professional services upon regulated parties that are small businesses. Depending on the nature or volume of a taxpayer's inventory of cigarettes and/or unaffixed tax stamps, such taxpayer may deem it necessary to employ additional professional services in order to comply with the provisions of the floor tax imposed by the statute.

4. Compliance costs: There will be no additional costs imposed on state or local governments, including the department. Part RR-1 of Chapter 57 of the Laws of 2008 increased the tax on cigarettes imposed by Article 20 from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on regulated parties that are small businesses, for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties that are small busi-

nesses, will need to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 2, 2008. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part RR-1, which imposes a tax on such inventory and sets the payment dates. The rule does, however, provide that the first installment shall not be less than \$500 or the entire additional amount of cigarette tax due, if less than \$500. There are administrative/compliance benefits associated with the rule.

Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$800,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

5. Economic and technological feasibility: The rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis and has a positive impact on regulated parties that are small businesses.

7. Small business and local government participation: The following organizations have been given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Empire State Development, Division of Small Business; the National Federation of Independent Businesses; the New York Association of Convenience Stores; the New York State Association Counties; the New York State Association of Service Stations & Repair Shops, Inc.; the New York State Association of Wholesale Marketers & Distributors; the New York Conference of Mayors and Municipal Officials; the New York State Department of State, Division of Local Government Services; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. No comments, suggestions, or recommendations were received.

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

1. Types and estimated numbers of rural areas: There are 82 licensed cigarettes agents, approximately 180 licensed wholesale dealers (including the licensed cigarette agents), and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations), some of which are located in rural areas as defined in section 102(10) of the State Administrative Procedure Act. There are 44 counties in the State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: Part RR-1 of Chapter 57 of the Laws of 2008, requires all agents, wholesale dealers and retail dealers in rural areas to pay an amount of tax on all cigarettes possessed for sale in New York State and unaffixed cigarette tax stamps in inventory as of the close of business on June 2, 2008, based on the increased rate of tax. Part RR-1 provides that the tax due on such inventory may be paid in two installments on August 20, 2008, and December 22, 2008, however at least 25% of the tax due on inventory based on the increased tax rate must be paid by August 20, 2008. The rule provides that returns must be filed by August 20, 2008, showing the quantity of all cigarettes and unaffixed stamps as of the June 2, 2008, close of business inventory. The rule provides procedures relating to the tax on the inventory, including rules for the physical inventory of cigarettes in vending machines that are located in rural areas. The rule also provides that the first installment cannot be less than \$500 or the entire tax due on inventory based if less than \$500.

The rule itself imposes no requirements for professional services upon regulated parties in rural areas. Depending on the nature or volume of a

taxpayer's inventory of cigarettes and/or unaffixed tax stamps, such taxpayer may deem it necessary to employ additional professional services in order to comply with the provisions of the floor tax imposed by the statute.

3. Costs: Part RR-1 of Chapter 57 of the Laws of 2008 increased the tax on cigarettes imposed by Article 20 from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on the regulated parties in rural areas for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties in rural areas will need to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 2, 2008. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part RR-1, which imposes a tax on such inventory and sets the payment dates. The rule does, however, provide that the first installment shall not be less than \$500 or the entire additional amount of cigarette tax due, if less than \$500. There are administrative/compliance benefits associated with the rule.

Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$800,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

4. Minimizing adverse impact: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis and has a positive impact on regulated parties in rural areas.

5. Rural area participation: The following organizations have been given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Empire State Development, Division of Small Business; the National Federation of Independent Businesses; the New York Association of Convenience Stores; the New York State Association Counties; the New York State Association of Service Stations & Repair Shops, Inc.; the New York State Association of Wholesale Marketers & Distributors; the New York Conference of Mayors and Municipal Officials; the New York State Department of State, Division of Local Government Services; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. No comments, suggestions, or recommendations were received.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no impact on jobs and employment opportunities. This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on April 23, 2008, by Part RR-1 of Chapter 57 of the Laws of 2008. This rule also makes technical updates to the Sales and Use Tax regulations, as published in Title 20 NYCRR. Part RR-1 increases the excise tax on cigarettes and imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of excise tax. The purpose of the rule is to make necessary regulatory changes related to the implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes and make other technical updates, including amendments to the sales and use tax regulations regarding receipts on which sales tax is computed to eliminate reference to a former rate of cigarette tax and to update the provision regarding inclusion of the New York City cigarette tax. However, these amendments will have no impact on jobs or employment opportunities.

## NOTICE OF ADOPTION

**Handicapped-Accessible Taxicabs and Livery Service Vehicles Credit****I.D. No.** TAF-48-07-00004-A**Filing No.** 468**Filing date:** May 27, 2008**Effective date:** June 11, 2008

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

**Action taken:** Addition of Subpart 5-5 and section 106.5 to Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First, 697(a), 1096(a); and L. 2006, ch. 522, section 4

**Subject:** Credit for taxicabs and livery service vehicles accessible by individuals with disabilities.

**Purpose:** To provide an eligibility rule for the credit for taxicabs and livery service vehicles accessible by individuals with disabilities.

**Text of final rule:** Section 1. A new Subpart 5-5 is added to such regulations to read as follows:

## SUBPART 5-5

## CREDIT FOR TAXICABS AND LIVERY SERVICE VEHICLES ACCESSIBLE BY INDIVIDUALS WITH DISABILITIES

(Statutory authority: Tax Law § 210(40))

## Section 5-5.1 General.

As provided in section 210.40 of the Tax Law and this Subpart, a taxpayer providing a taxicab or livery service that incurred an incremental cost associated with the purchase of a vehicle accessible by individuals with disabilities or the conversion of a motor vehicle to a vehicle accessible by individuals with disabilities that is used in providing such service is allowed to claim a credit for taxicabs and livery service vehicles accessible by individuals with disabilities against the tax imposed by article 9-A of the Tax Law. Part ZZ-1 of Chapter 57 of the Laws of 2008 provided that the credit would remain in effect until December 31, 2010, at which time it would be deemed to be repealed.

## Section 5-5.2 Meaning of terms.

In addition to the terms defined in section 210.40 of the Tax Law, the following terms, as used in this Subpart, have these meanings:

(a) The term "providing a taxicab or livery service" means the operation of a taxicab or livery in New York State in accordance with required licenses, permits or registrations issued by a local authority and the New York State Department of Motor Vehicles.

(b) The term "taxicab" shall have the same meaning as such term is defined in section 148-a of the New York State Vehicle and Traffic Law.

(c) The term "livery" shall have the same meaning as such term is defined in section 121-e of the New York State Vehicle and Traffic Law.

(d) The term "incremental cost" means the expenses specifically associated with the excess purchase price of a vehicle accessible by individuals with disabilities over the purchase price of a motor vehicle that is the same make and model except for the equipment necessary to convert it to a vehicle accessible by individuals with disabilities. In the case of a conversion of an existing motor vehicle, it includes the equipment and installation costs necessary to convert it to a vehicle accessible by individuals with disabilities.

Section 5-5.3 Computation of the Credit for Taxicabs and Livery Service Vehicles Accessible by Individuals with Disabilities.

The amount of the credit that a taxpayer is allowed is equal to the incremental cost incurred for each vehicle accessible by individuals with disabilities used in providing a taxicab or livery service.

## Section 5-5.4 Limitations and carryover.

(a) The credit may not exceed \$10,000 per vehicle and may only be claimed once per vehicle.

(b) The credit and carryover of such credit allowed for any taxable year, in the aggregate, may reduce the tax due to zero.

(c) If the taxpayer has an excess credit after reducing the tax due to zero, the excess may be carried over to the following year or years and may be deducted from the taxpayer's tax for that year or years.

Section 2. A new section 106.5 is added to such regulations to read as follows:

Section 106.5 Credit for Taxicabs and Livery Service Vehicles Accessible by Individuals with Disabilities. (Tax Law § 606(oo))

(a) General. As provided in section 606(oo) of the Tax Law, a taxpayer that provides a taxicab or livery service in New York State in accordance with required licenses or permits issued by a local authority and the New

York State Department of Motor Vehicles that incurred an incremental cost associated with the purchase of a vehicle accessible by individuals with disabilities or the conversion of a motor vehicle to a vehicle accessible by individuals with disabilities that is used in providing such service is allowed to claim a credit for taxicabs and livery service vehicles accessible by individuals with disabilities against the tax imposed by article 22 of the Tax Law. The provisions of Subpart 5-5 of this Title addressing the credit for taxicabs and livery service vehicles accessible by individuals with disabilities against the tax imposed by article 9-A are applicable to the credit for taxicabs and livery service vehicles accessible by individuals with disabilities allowed by section 606(oo) of the Tax Law.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Subpart 5-5 and section 106.5.

**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, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax\_regulations@tax.state.ny.us

**Revised Job Impact Statement**

A revised Statement in lieu of a Job Impact Statement is not required to be submitted because the nonsubstantive changes made to the proposed rule do not affect any of the statements made in this document. The changes merely reflect statutory amendments made by Part ZZ-1 of Chapter 57 of the Laws of 2008 that updated the terminology related to the credit by replacing references to "handicapped individuals" and "handicapped accessible" with references to "individuals with disabilities" and "accessible by individuals with disabilities" and extended the credit through 2010.

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith****I.D. No.** TAF-10-08-00005-A**Filing No.** 469**Filing date:** May 27, 2008**Effective date:** May 27, 2008

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

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

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

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

**Purpose:** To set the sales tax component and the composite rate per gallon for the period April 1, 2008 through June 30, 2008.

**Text or summary was published** in the notice of proposed rule making, I.D. No. TAF-10-08-00005-P, Issue of March 5, 2008.

**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, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax\_regulations@tax.state.ny.us

**Assessment of Public Comment:**

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

PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith****I.D. No.** TAF-24-08-00005-P

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

**Proposed action:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.

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

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

**Purpose:** To set the sales tax component and the composite rate per gallon for the period July 1, 2008 through September 30, 2008.

**Text of proposed rule:** Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xli) to read as follows:

Sales Tax Component	Motor Fuel		Sales Tax Component	Diesel Motor Fuel	
	Composite Rate	Aggregate Rate		Composite Rate	Aggregate Rate
14.0	(xli) April - June 2008 22.0	38.4	14.0	22.0	36.65
14.0	(xli) July - September 2008 22.0	38.4	14.0	22.0	36.65

**Text of proposed rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: 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, Bldg. 9, Harriman Campus, Albany, NY 12227, (518) 457-1153, e-mail: tax\_regulations@tax.state.ny.us

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

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

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