

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Audit and Control

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

#### Uniform Rules and Procedures to be Followed for the Scheduling and Conduct of Hearings Held to Review an Application

**I.D. No.** AAC-47-08-00001-EP

**Filing No.** 1087

**Filing Date:** 2008-10-31

**Effective Date:** 2008-10-31

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

**Proposed Action:** Repeal of Part 317 and addition of new Part 317 to Title 2 NYCRR.

**Statutory authority:** Retirement and Social Security Law, sections 74 and 374

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

**Specific reasons underlying the finding of necessity:** The significant increase in the demand for hearings to review and redetermine an application for retirement allowance or other benefit provided by the RSSL necessitate an updated uniform procedure to be followed for all such hearings.

**Subject:** Uniform rules and procedures to be followed for the scheduling and conduct of hearings held to review an application.

**Purpose:** To provide consistency and expediency in the conduct of hearings held to review applications for retirement allowances.

#### **Text of emergency/proposed rule:** § 317.1 Background

*Whereas, Sections 74 and 374 of the Retirement and Social Security Law direct that the Comptroller, upon timely receipt of a written demand, shall hold a hearing to review and redetermine an application for retirement allowance or other benefit provided by the Retirement and Social Security Law; and*

*Whereas, All such hearings should be conducted in such manner as to protect equally the interests of the applicant and of the retirement system, it being the primary purpose of any such hearing to establish a fair and adequate record for the proper disposition of the application; and*

*Whereas, In recent years there has been a significant increase in the number of demands for such hearings, and as a result many hearings are held each week throughout the State; and*

*Whereas, The volume of hearings requires that in the interest of justice reasonable regulations should be promulgated to establish the rules and procedures under which such hearings will be held; it is, therefore, hereby*

*Determined That the following rules shall be promulgated to determine the procedures which shall be observed and rules which shall be followed for the scheduling of and conduct of such hearings.*

#### § 317.2 Notice of hearings

(a) *After receipt of a timely written demand for a hearing and redetermination of an application, the retirement system shall notify the applicant, other parties and all counsel, if any, when a hearing on the application will be held.*

(b) *All notices of hearings shall specifically and plainly state the following:*

(1) *the purpose of the hearing;*

(2) *the time, place and date of the hearing;*

(3) *the right of the applicant to be represented by counsel;*

(4) *the procedure for obtaining an adjournment; and*

(5) *the consequences of the applicant's failure to appear at a scheduled hearing.*

(c) *Notices shall be mailed to the applicant, other parties and all counsel not less than three weeks before the date of the scheduled hearing.*

(d) *The statement of issue in the notice of hearing is intended for informational purposes. Issues may be raised or withdrawn during the course of the proceeding.*

#### § 317.3 Conduct of hearings

(a) *All hearings shall be conducted in an orderly manner. A hearing officer duly designated by the Comptroller shall preside. A party may represent himself or herself, or be represented by an attorney licensed to practice law in the state of New York.*

(b) *All parties may present witnesses on their behalf. All witnesses shall testify under oath or by affirmation, and shall be subject to cross-examination by the other parties. The hearing officer has the discretion to question witnesses.*

(c) *A record of the proceedings shall be made and kept, and a copy shall be furnished to all parties and the hearing officer at the expense of the retirement system.*

(d) *All costs incurred in retaining counsel and presenting expert witnesses shall be the sole responsibility of the applicant or party.*

(e) *Motions may be made to the hearing officer at any time during the proceeding.*

#### § 317.4 Initial hearings--presentation of applicant's case

(a) *The term "initial hearing" shall be defined as the first scheduled hearing at which the official record of the case is opened by the hearing officer.*

(b) *At the initial hearing the applicant must be prepared to present all evidence and witnesses in support of his/her claim.*

(c) *Rebuttal evidence shall not be permitted.*

#### § 317.5 Adjournment before a scheduled hearing

(a) *The retirement system may adjourn or cancel a hearing at its discretion when it is not possible for the hearing to proceed as scheduled.*

(b) *A request for an adjournment by an applicant or a party other than the retirement system before a scheduled hearing must be:*

(1) in writing and  
 (2) received by the retirement system at least three business days before a scheduled hearing.

(c) An adjournment before any hearing shall be granted only by the retirement system.

(d) The applicant or a party other than the retirement system shall be granted only one adjournment as of right or without the necessity of providing an explanation.

(e) A second adjournment may be granted for cause.

(1) Cause is defined as unusual, unexpected, or unavoidable circumstances beyond the control of the applicant or the other party, such as: a death in the immediate family, serious illness, unavoidable temporary inability to obtain counsel, or inclement weather that prevents all reasonable travel. It does not include any event that can be prevented or mitigated by the timely taking of reasonable action.

§ 317.6 Scheduled Hearings and Adjournment Requests at a Hearing.

(a) The applicant and party other than the retirement system shall present its case at the initial hearing.

(1) In the event that a witness or evidence is not available at the time a hearing is scheduled, the applicant shall request an adjournment before the hearing as provided in § 317.5.

(2) The hearing officer may in his or her discretion, and upon motion by the applicant or party, grant a continuance for additional witnesses to testify.

i) The applicant or party granted the continuance must advise the retirement system within 45 days of the availability of the additional expert witness or the applicant or party's case will be deemed closed.

ii) In the event that the retirement system is unable to schedule a hearing based on the availability dates provided by the applicant or other party, the retirement system will provide a written request for additional dates of availability.

iii) The hearing officer has the discretion during a hearing to grant an adjournment of a hearing for cause, as defined by § 317.5(e) (1).

(b) The applicant or party other than the retirement system may waive appearance at the hearing.

(1) Written requests to waive appearance must be received by the retirement system at least three business days prior to the scheduled hearing.

§ 317.7 Failure of applicant to appear

(a) The failure of the applicant or his or her attorney to appear at an initial hearing without a timely and proper adjournment pursuant to section 317.5 of this Part will result in a dismissal of the application for failure to prosecute.

(b) After an initial hearing is held, failure to appear without an adjournment or waiver of appearance will result in the applicant's case being closed. The retirement system reserves the right to present its case.

§ 317.8 Presentation of retirement system's case

(a) If the retirement system determines at the conclusion of the applicant's case that it should be necessary to conduct a subsequent hearing or hearings for the retirement system's witnesses, a hearing will be scheduled by the retirement system as soon as practicable at a time and place convenient to the retirement system's witness.

(b) At the conclusion of the retirement system's case, the hearing proceeding will be closed.

(c) After all parties have rested, and received a copy of the record; the parties may submit a memorandum of law, at the discretion of the hearing officer.

§ 317.9 Discovery of medical records

(a) Upon the request of the applicant, the retirement system shall provide the report(s) of the physician(s) who examined the applicant at the request of the retirement system. The retirement system will also provide, at the applicant's request and expense, the records which were considered by the retirement system at the time of the initial determination of the disability application.

(b) The applicant shall provide the retirement system with a copy of all additional reports and documents to be offered into evidence, the reports and records (if different) of any medical witnesses testifying on the applicant, and the names of all witnesses, within the time frame specified by the retirement system.

**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 January 28, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Jamie Elacqua, Legislative Counsel, OSC, 110 State St., Albany, NY 12236, (518) 473-4146, email: JElacqua@osc.state.ny.us

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

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

#### Regulatory Impact Statement

1. Statutory Authority: Sections 74 and 374 of the Retirement and Social Security Law, as added by Chapter 510 of the Laws of 1974, require that

the Comptroller adopt rules and regulations, which shall have the force and effect of law, for the administration of hearings to redetermine an application for retirement allowance or other benefit provided by the Retirement and Social Security Law.

2. Legislative Objectives: All such hearings should be conducted in a manner to protect equally the interests of the applicant and of the retirement system, it being the primary purpose of any such hearing to establish a fair and adequate record for the proper disposition of the application.

The increasing volume of hearings requires that in the interest of justice regulations should be promulgated to establish reasonable rules and procedures under which such hearings will be promptly held and conducted as efficiently as possible. Therefore, the following rules should be promulgated to determine the procedures to be observed and rules to be followed for the scheduling of and conduct of such hearings.

3. Needs and Benefits: The proposed regulation is a revision to the existing regulation. It provides speedier and more efficient processing of hearings without sacrificing fairness to applicants. Indeed, applicants are currently disadvantaged by delays attributable to excessive adjournments, lack of clarity and other deficiencies in the current regulatory scheme. The revision limits the number of adjournments an applicant may be granted to one as of right without the necessity of an explanation and a second adjournment available for cause.

4. Costs: There should be no additional costs associated with a more efficient and transparent hearing process. Furthermore, there exists a potential for cost savings.

5. Local Government Mandates: The proposed rule imposes no local government mandates.

6. Paperwork: The consequent reduction in adjournments may produce some reduction in paperwork.

7. Duplication: This action does not conflict with or duplicate any state or federal requirements.

8. Alternatives: No significant alternatives were considered.

9. Federal Standards: Not applicable.

10. Compliance Schedule: Not applicable.

#### Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the proposal will not impose any adverse economic impact or significant reporting, record keeping or compliance requirements on small businesses or local governments.

#### Rural Area Flexibility Analysis

This action will not impose any adverse economic impact, reporting, record keeping or other compliance requirements on public or private entities in rural areas.

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## Education Department

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

#### Administration of Immunization Agents by Certified Pharmacists

I.D. No. EDU-47-08-00007-P

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

**Proposed Action:** Addition of section 63.9 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(7), 6801(1),(2), (3), 6802(22), 6828(1), (2), and 6909(7); and L. 2008, ch. 563

**Subject:** Administration of immunization agents by certified pharmacists.

**Purpose:** Establish criteria for the certification of licensed pharmacists and requirements for the administration of immunization agents.

**Substance of proposed rule (Full text is posted at the following State website: [www.op.nysed.gov](http://www.op.nysed.gov)):** The Board of Regents proposes to amend the Regulations of the Commissioner of Education by adding a new section 63.9, effective December 3, 2008. Section 63.9 of the Regulations of the Commissioner of Education is added to establish requirements relating to the administration of immunizations for the prevention of influenza and pneumococcal disease and medications for the emergency treatment of anaphylaxis by certified pharmacists.

Section 63.9(a) defines the applicability of the provision, authorizing certified pharmacists to administer certain immunization agents and medi-

cations for the emergency treatment of anaphylaxis only to the extent that the applicable provisions in Education Law sections 6527, 6801, 6802, 6828 and 6909 have not expired or been repealed.

Sections 63.9(b)(1) and (b)(2) provide that a pharmacist with a certificate of administration issued by the Department is authorized to administer immunization agents to prevent influenza or pneumococcal disease to patients over the age of 18, pursuant to either a patient specific order or non-patient specific order and protocol ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered. If the immunization is administered in a county with a population of 75,000 or less, the immunization shall be prescribed or ordered by a licensed physician or certified nurse practitioner with a practice site in the county in which the immunization is administered or in an adjoining county.

Section 63.9(b)(3) establishes the requirements that a licensed pharmacist must meet in order to obtain a certificate to administer immunizations from the Department. The licensed pharmacist shall submit an application with the required fee and present satisfactory evidence of completion of one of the following: (1) a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health; (2) a training course associated with a Doctor of Pharmacy degree; or (3) possession of a current certificate of administration issued by another jurisdiction and continuous practice in the administration of immunizing agents since the pharmacist received such training or completion of a retraining program in the administration of immunization agents.

Section 63.9(b)(4) establishes the standards, procedures and reporting requirements for the administration of immunizing agents.

Section 63.9(b)(5)(i) provides that certified pharmacists shall maintain or ensure the maintenance of a copy of the patient specific order or the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner which authorizes the certified pharmacist to administer immunization agents. This section prescribes the information required to be included in patient specific orders and non-patient specific orders and protocol. Such orders and protocol shall be considered a record of the patient. The pharmacist shall maintain a record of the patient in either: (a) a patient medication profile, or (b) in instances where a patient medication profile is not required, on a separate form that is retained by the pharmacist who administered the immunization.

Section 63.9(b)(5)(ii) establishes the contents of patient specific orders and non-patient specific orders.

Section 63.9(b)(5)(iii) specifies additional provisions required to be included in non-patient specific orders, including the incorporation of a protocol.

Section 63.9(b)(5)(iv) requires the protocol, incorporated into the non-patient specific order, to include the standards, procedures and reporting requirements set forth in section 63.9(b)(4).

Section 63.9(c)(1) authorizes certified pharmacists to administer medications for the emergency treatment of anaphylaxis.

Section 63.9(c)(2) establishes the standards, procedures and reporting requirements for the administration of anaphylaxis treatment agents by certified pharmacists.

Section 63.9(c)(3)(i) requires a certified pharmacist to maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner that authorizes such pharmacist to administer medications for the emergency treatment of anaphylaxis. This section requires a record of each patient to be maintained in either a patient medication profile, or in instances where a patient medication profile does not exist, on a separate form that is retained by the pharmacist who has administered the immunization.

Section 63.9(c)(3)(ii) provides that the non-patient specific order shall authorize one or more named pharmacists, or certified pharmacists who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with pharmacists to provide pharmaceutical services, to administer specified anaphylaxis treatment agents in specified circumstances for a prescribed period of time. This subparagraph also prescribes the content for such non-patient specific orders.

Section 63.9(c)(3)(iii) requires that the protocol to be incorporated into the non-patient specific order include the requirements set forth in section 63.9(c)(2).

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

**Data, views or arguments may be submitted to:** Frank Munoz, Office of the Professions, New York State Education Department, 2nd Floor, West Wing, Education Bldg., Albany, New York 12257, (518) 486-1965, email: opopr@mail.nysed.gov

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

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subparagraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner to promulgate regulations in administering the admission to the practice of the professions.

Subdivision (1) of section 6508 of the Education Law provides that state boards for the professions shall assist the Board of Regents and Department on matters of professional licensing.

Subdivision 7 of section 6527 of the Education Law authorizes physicians to order non-patient specific regimens for the administration of immunizing agents by pharmacists.

Section 6801 of the Education Law authorizes certified pharmacists to administer immunizing agents and authorizes the Commissioner of Education to promulgate regulations regarding training and reporting requirements.

Subdivision 7 of section 6909 of the Education Law authorizes nurse practitioners to order non-patient specific regimens for the administration of immunizing agents by pharmacists.

Section 6828 of the Education Law authorizes the Commissioner to promulgate regulations relating to the issuance of a certificate of administration to a qualifying pharmacist.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed amendment carries out the intent of the aforementioned statutes by expanding access to immunizations to residents of the State of New York. The proposed amendment establishes procedures for the Department to certify licensed pharmacists to administer immunizing agents and anaphylactic treatments; prescribes standards, procedures, reporting and record keeping requirements for the administration of immunizations and anaphylactic treatments and sets forth the requirements for orders and protocols for the administration of immunizations and anaphylactic treatments.

##### **3. NEEDS AND BENEFITS:**

Chapter 563 of the Laws of 2008, effective December 3, 2008, authorizes licensed pharmacists that are certified by the State Education Department to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. Section 6801(2) of the Education Law, as added by Chapter 563 of the Laws of 2008, directs the Commissioner of Education to promulgate regulations concerning a licensed pharmacist's execution of non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner. Section 6801(3) prohibits a pharmacist from administering immunizing agents without receiving training satisfactory to the Commissioner and the Commissioner of Health.

In order to timely implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes procedures for the certification of licensed pharmacists to administer immunizations. Specifically, the proposed amendment requires a licensed pharmacist to submit an application, with the required fee, to the Department and present satisfactory evidence of one of the following: (1) completion of a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health, within the three years immediately preceding application for a certificate of administration; (2) a Doctor in Pharmacy Degree and completion of training in the administration of immunization agents received as part of his/her pharmacy degree that is satisfactory to the Department; or (3) possession of a current certificate of administration issued by another jurisdiction and continuous practice in the administration of immunizing agents since the pharmacist received such training or completion of a retraining program in the administration of immunization agents.

The proposed amendment also establishes uniform requirements

for certified pharmacists to meet when executing orders to administer immunizations and medications for the emergency treatment of anaphylaxis. For instance, the proposed amendment defines what information should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a certified pharmacist to follow when administering immunizations through a non-patient specific order. The proposed amendment also establishes uniform reporting requirements. Specifically, the proposed amendment requires a certified pharmacist (1) to inform the recipient, in writing, of potential side effects and adverse reactions prior to the administration of an immunization; (2) to provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions; and (3) to provide a signed certificate of immunization to the recipient containing certain prescribed information.

With the enactment of Chapter 563 of the Laws of 2008, New York State joins 48 other states and the District of Columbia in authorizing pharmacists to administer immunizations. The proposed amendment is needed to expand access to immunizations, which is expected to reduce morbidity and mortality caused by influenza and pneumococcal disease and any related complications. At the present time, there are approximately 20,000 pharmacists licensed to practice in New York State. Consequently, a significant number of individuals will be affected by the proposed amendment.

The proposed amendment is not expected to cause regulated parties to have to hire additional professional services in order to comply.

#### 4. COSTS:

(a) There are no additional costs to state government beyond those imposed by statute.

(b) There are no additional costs to local government beyond those imposed by statute.

(c) Cost to private regulated parties: The amendment is likely to result in only nominal costs to entities that employ certified pharmacists to execute the non-patient specific orders to administer immunizations. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of immunization to each recipient who requests such a certificate. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.75 per recipient. The other paperwork requirements relate to maintenance of patient records, which are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

(d) Cost to the regulatory agency. As stated above in "Costs to State Government", the proposed amendment does not impose additional costs on the State Education Department.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

#### 6. PAPERWORK:

The proposed amendment defines what information should be included in the orders and the requirements that must be set forth in the protocol, for a certified pharmacist to follow when administering immunizations through a non-patient specific order. The proposed amendment also establishes uniform reporting requirements. Specifically, the proposed amendment requires a certified pharmacist (1) to inform the recipient, in writing, of potential side effects and adverse reactions to prior to administration of the immunization; (2) to provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions; and (3) to provide a signed certificate of immunization to the recipient containing certain prescribed information.

#### 7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements.

#### 8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment and none were considered because of the nature of the amendment, which implements statutory requirements.

#### 9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements that certified professional nurses must meet to administer immunizations, pursuant to non-patient specific orders and protocol.

#### 10. COMPLIANCE SCHEDULE:

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

#### *Regulatory Flexibility Analysis*

In order to implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes requirements for the certification of pharmacists to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. The proposed amendment also establishes requirements relating to the execution of patient specific and non-patient specific orders prescribed by licensed physicians or certified nurse practitioners for the administration of such immunizations. The proposed amendment does not regulate small businesses or local governments. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At the present time, there are approximately 20,303 licensed pharmacists that will be subject to the requirements of the proposed amendment. Of these licensed pharmacists, approximately 2,613 licensed pharmacists report their permanent address of record in a rural county of New York State.

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

Chapter 563 of the Laws of 2008, effective December 3, 2008, authorizes licensed pharmacists that are certified by the State Education Department to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. Section 6801(2) of the Education Law, as added by Chapter 563 of the Laws of 2008, directs the Commissioner of Education to promulgate regulations concerning a licensed pharmacist's execution of non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner. Section 6801(3) prohibits a pharmacist from administering immunizing agents without receiving training satisfactory to the Commissioner and the Commissioner of Health.

In order to timely implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes procedures for the certification of licensed pharmacists to administer immunizations. Specifically, the proposed amendment requires a licensed pharmacist to submit an application, with the required fee, to the Department and present satisfactory evidence of one of the following: (1) completion of a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health, within the three years immediately preceding application for a certificate of administration; (2) a Doctor in Pharmacy Degree and completion of training in the administration of immunization agents received as part of his/her pharmacy degree that is satisfactory to the Department; or (3) possession of a current certificate of administration issued by another jurisdiction and continuous practice in the administration of immunizing agents since the pharmacist received such training or completion of a retraining program in the administration of immunizing agents.

The proposed amendment also establishes uniform requirements for certified pharmacists to meet when executing orders to administer immunizations and medications for the emergency treatment of anaphylaxis. For instance, the proposed amendment defines what in-

formation should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a certified pharmacist to follow when administering immunizations through a non-patient specific order. The proposed amendment also establishes uniform reporting requirements. Specifically, the proposed amendment requires a certified pharmacist: (1) to inform the recipient, in writing, of potential side effects and adverse reactions prior to the administration of an immunization; (2) to provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions; and (3) to provide a signed certificate of immunization to the recipient containing certain prescribed information.

With the enactment of Chapter 563 of the Laws of 2008, New York State joins 48 other states and the District of Columbia in authorizing pharmacists to administer immunizations. The proposed amendment is needed to expand access to immunizations, which is expected to reduce morbidity and mortality caused by influenza and pneumococcal disease and any related complications. At the present time, there are approximately 20,000 pharmacists licensed to practice in New York State. Consequently, a significant number of individuals will be affected by the proposed amendment.

The proposed amendment is not expected to cause regulated parties to have to hire additional professional services in order to comply.

#### 3. COSTS:

The proposed amendment is likely to result in only nominal costs to entities that employ certified pharmacists to execute orders to administer immunizations, including those that are located in rural areas of the State. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of immunization to each recipient. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.75 per recipient. The other paperwork requirements relate to maintenance of patient records, that are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements statutory directives to establish requirements for certified pharmacists to execute orders prescribed by licensed physicians or certified nurse practitioners for the administration of immunizations and makes no exception for licensed registered professional nurses who live or work in rural areas. In any event, consistent practice requirements should apply no matter the geographic origin of the licensee to ensure a uniform high standard of competency across the State and that the administration of immunizations is performed safely in all areas of the State. Because of the nature of the proposed amendment, establishing different standards for licensed registered professional nurses in rural areas of New York State is inappropriate.

#### 5. RURAL AREAS PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in promoting expanded access to important immunizations. Included in this group were members of the State Board of Pharmacy; educational institutions which currently offer professional pharmacy programs; professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York, the New York State Council of Health System Pharmacists and the New York State Chain Drug Association; the State Board for Nursing; the New York State Department of Health; the New York City Department of Health and Mental Hygiene; and many other interested parties. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and an opportunity to comment on the proposed amendment.

#### **Job Impact Statement**

In order to implement the requirements of Chapter 563 of the Laws of 2008, the proposed amendment establishes requirements for the certification of pharmacists to administer immunizations to prevent influenza or pneumococcal disease and medications required for emergency treatment of anaphylaxis. The proposed amendment also establishes requirements

relating to the execution of patient specific and non-patient specific orders prescribed by licensed physicians or certified nurse practitioners for the administration of such immunizations. The amendment will not have a substantial adverse impact on jobs and employment opportunities, beyond those imposed by statute. Accordingly, a job impact statement is not required, and one has not been prepared.

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## State Board of Elections

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### NOTICE OF ADOPTION

#### Operation and Maintenance of Voting Machines and Systems

**I.D. No.** SBE-49-07-00002-A

**Filing No.** 1085

**Filing Date:** 2008-10-31

**Effective Date:** 2008-11-19

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

**Action taken:** Repeal of Part 6210 and addition of new Part 6210 to Title 9 NYCRR.

**Statutory authority:** Election Law, sections 3-100, 7-202 and 7-206

**Subject:** Operation and maintenance of voting machines and systems.

**Purpose:** To ensure uniform maintenance on voting equipment statewide; provide for reliability of systems used in elections in NY State.

**Substance of final rule:** These regulations prescribe procedures for ongoing testing and maintenance of voting systems and equipment, to assure continued functionality.

They also provide the definition of what constitutes a vote on both paper-based and DRE systems.

**Final rule as compared with last published rule:** Nonsubstantial changes were made in section 6210.18.

**Text of rule and any required statements and analyses may be obtained from:** Kimberly A. Galvin, New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-6367, email: kgalvin@elections.state.ny.us

#### **Summary of Revised Regulatory Impact Statement**

Statutory Authority: New York State Election Law § 3-100 and § 3-102 creates the State Board of Elections and grants commissioners "the power and duty to issue instructions and promulgate rules and regulations relating to the administration of the election process". Also, Election Law § 7-201 sets forth the guidelines for the examination of voting machines and systems, which requires the State Board of Elections to "cause machines to be examined and a report of the examination to be made" such report shall state an opinion as to whether the kind of machine or system to be examined can safely and properly be used by voters and local boards of elections, under conditions prescribed [above] and the requirements of the federal Help America Vote Act". In addition, under § 7-206(1) "the State Board of Elections shall test every voting machine of a type approved. . . to ensure that each such machine functions properly before such machines may be used in any election in this state".

In accordance with New York State Election Laws and Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Subtitle V, the State Board of Elections is seeking to repeal § 6210, Absentee Voting Counting Equipment and to adopt § 6210(1)-(18), which updates outdated provisions of § 6210, in order to establish routine maintenance and testing of voting systems and operational procedures.

**Legislative Objectives:** In 2000, the federal government enacted the Help America Vote Act (HAVA). As per HAVA requirements, New York State is mandated to replace current mechanical lever machines with either Direct Recording Electronic Voting Systems (DRE's) or Precinct Based Optical Scan Voting Systems (Op Scans), when such machines are certified. The legislative objective in adopting § 6210 is to comply with HAVA mandates.

As a result of HAVA implementation, many NYS Election Laws

were revised in 2005. In doing so, the State Board was required to update a series of regulations in accordance with the new Election Laws.

The State Board is seeking to replace regulations, parts of which have become outdated and obsolete under the new laws. The regulations included § 6210, which governed Absentee Voting Counting Equipment.

By replacing the above referenced regulations and enacting § 6210(1)-(18) the State Board will establish the routine maintenance and testing of voting systems and operational procedures in accordance with Election Laws § 3-100 § 7-201 and § 7-206.

The regulation begins by describing Pre-Qualification Testing, which is “a test prescribed by the State Board, conducted immediately prior to the voting systems’ use in an election in which a predetermined set of votes are cast which will ensure that all voting positions for each ballot style are tested”. It then describes the Routine Maintenance and Testing of Voting Systems, which directs that “complete testing of all voting systems shall be conducted before the use of the system in any election and at such other times of the year as prescribed by these regulations”.

The regulation states “County Boards which adopt procedures pursuant to section 9-126(3) of the Election Law shall file such procedures with the State Board of Elections”. This rule also governs Demonstration Models and Voting System Operations.

The next section of the regulation directs county boards to provide sufficient and appropriate staff for the successful use of voting systems. It continues by discussing the production and use of machine ballots and directing county boards to prepare a test deck to be used to verify voting system will accurately cast and count votes within each individual ballot style.

The regulation further describes Vote Tabulation, governs Ballot Accounting, and describes Voting System Security.

The regulation goes on to describe Procedures, which direct county boards to adopt written procedures to further implement provisions of the Election Law for use in New York elections. These procedures include ballot security, ballot distribution and counting, as well as the challenge process and systems evaluation.

Next, the rule provides for uniform, non-discriminatory standards for establishing what constitutes a vote and what shall be counted as a vote for all categories of voting systems and voting procedures in New York. It concludes with establishing Standards for Determining Valid Votes on Direct Recording Electronic (DRE) Equipment and Standards for Determining Valid Votes on Optical Scan Voting Systems and/or Paper Ballots, providing Ballot Examples for Counting Paper Ballots and establishing Standards for Determining Valid Votes on Lever Type Voting Machines.

Needs and Benefits: As a result of HAVA implementation, New York State is required to replace old mechanical lever machines with new electronic machines. When the mechanical machines are replaced by new technologically advanced machines § 6209, which governed Electronic Voting Systems and Auxiliary Equipment; § 6210, which governed Absentee Voting Counting Equipment. A new regulation must be created in order to sustain the new technology presented by the new forms of machines.

The new voting machines will require maintenance that is not contemplated in the current regulations. Accordingly, the new regulation will define the necessary maintenance requirements for the new voting machines to assure that they will function properly. By enacting § 6210.1 through 18, the State Board will establish routine maintenance and testing of new voting systems and create operational procedures that will also ensure that uniform standards prevail for all elections.

As a result, the State Board will be in statutory compliance with HAVA mandates and will have updated regulations in accordance with the 2005 Election Laws. In addition to being statutorily in compliance, the new regulation will promote accuracy in election outcomes and benefit all voters in elections throughout New York State.

Costs: Since no machine has yet been certified it is currently impossible to provide exact costs of this proposed regulation. It is, however,

safe to conclude that costs may vary based on the voting equipment chosen by the county.

On going maintenance of equipment owned by the county boards of elections is a standard business procedure accomplished by county board employees with such maintenance as part of their job description. Costs to counties will depend upon the salaries of the employees responsible for such maintenance, as well as additional overtime hours that accrue because of the maintenance testing. For example: one type of machine requires a battery pack in order to operate effectively. This would undoubtedly be an additional cost to counties and may continue per election throughout the life of the machine. In addition, because the system that is ultimately certified will be a form of electronic versus the old mechanical lever machines, the frequency of maintenance will probably be greater than the maintenance that is required for lever machines. Lastly, it may require a custodian with greater technological knowledge. This may require additional training or persons with an advanced technological skill level. As a result, machine costs overall will be escalated.

Local Government Mandates: This regulation focuses on local government and does mandate several specific obligations on local county boards of elections that were mentioned in the Legislative Objectives section.

Paperwork: Local county boards are required to maintain all election equipment and must keep maintenance logs for each machine.

Duplication: The subject regulation does not duplicate other existing Federal or State voting requirements.

Alternatives: As a result of the 2005 changes to the NYS Election Law, many regulations became obsolete. In updating their regulations, the State Board originally sought to combine three regulations into one: § 6209, Electronic Voting Systems and Auxiliary Equipment; § 6210, Absentee Voting Counting Equipment and § 6211, Operation of Absentee Counting Systems Utilizing Electronically Tabulated Punch Card Ballots thus creating one regulation, § 6209. At the time, the effort to combine such regulations received numerous public comments during the adoption period for § 6209. Many Government advocacy agencies and concerned citizens voiced their opinions regarding the changes.

Some examples include:

New Yorkers for Verified Voting

6209.2A(4) “Provide a battery power source. . .”[There is no] period of time over which the system must continue to run on a battery.

6209.2B (3) “Provision needs to be more general, requiring support for dual switch input devices, such as sip and puff switches, foot pedal switches and jelly switches”.

6209.3J “paragraph is too vague and does not specify which entity will perform the functional tests nor does it state who determines whether the special purpose data processing equipment has successfully performed in elections use”.

6209.8A “This will allow counties to continue to use their systems after certification has been withdrawn. The voting system should not be allowed to be used until it has been recertified”.

Testimony of Dan Jacoby

Disagrees with section 6209.2(A)(5), which states “The system shall contain software required to perform a diagnostic test of system status, and the means of simulating the random selection of candidates and casting of ballots in quantities sufficient to demonstrate that the system is fully operational and that all positions are operable”.

He state that “a simulated test will not uncover flaws in a voting system, whether it be a DRE or and Opscan”.

“With Opscan, a simulated test will not detect real world situations like if a voter fills in an oval incompletely or if they extend outside of the ovals”.

“With a DRE, a simulated test will not detect if there are faulty touch-pad buttons or desensitized portions of a touch-screen”.

Testimony of Margaret Yonco-Haines

“Rules and regulations don’t protect the integrity of the votes cast”.

“Draft rules don’t address major security concerns that were raised in GAO report: these flaws include system controls, access controls,

physical hardware controls, and weak security management practices employed by voting machine vendors”.

“source code and certification process must be open to the public”.

Testimony of Vicky Perry, Dutchess County Board of Elections

“Standards for the verification of intent by the voter are absent”

“These regulations will further privatization of voting. They will give vendors inordinate power over the voter”.

After the initial comment period, there was only agreement to adopt the § 6209 version if the Board removed everything after § 6209.10. As a result, the second half of the regulations became the starting point for the proposed § 6210 regulations with two new incorporated areas. These areas include the Definition of a Vote (6210.13 through 6210.17) and the new Audit provision (6210.18), as required by Election Law § 9-211. The newly formulated version of § 6210, Routine Maintenance and Testing of Voting Systems and Operational Procedures, was the best alternative because it reflects many comments suggested under the 6209 comment period and it provides for the new requirements of voting systems other than lever voting machines or punch card absentee ballot counters.

Federal Standards: There are no Federal standards for maintenance of voting machines.

Compliance Schedule: The Regulation will be effective on the date it is adopted.

**Revised Regulatory Flexibility Analysis**

Per HAVA mandates, New York State is required to replace current mechanical lever machines with new voting machines. The changes made to these regulations more accurately define the necessary maintenance requirements for the new voting machines to ensure that they will function properly. There are no substantive changes made which would necessitate revision to the previously published RFA.

**Revised Rural Area Flexibility Analysis**

Per HAVA mandates, New York State is required to replace current mechanical lever machines with new voting machines. The changes made to these regulations more accurately define the necessary maintenance requirements for the new voting machines to ensure that they will function properly. There are no substantive changes made which would necessitate revision to the previously published RAFA.

**Revised Job Impact Statement**

Per HAVA mandates, New York State is required to replace current mechanical lever machines with new voting machines. The changes made to these regulations more accurately define the necessary maintenance requirements for the new voting machines to ensure that they will function properly. There are no substantive changes made which would necessitate revision to the previously published JIS.

**Assessment of Public Comment**

Testimony of Teresa Hommel:

In addition to the comments received by Teresa Hommel, 46 additional comments were received by individuals which included similar comments, a summary follows: section 6210.16, should include visual illustrations; section 6210.11, indicated that security procedures should be prepared by experts contracted by NYSBOE and that the use of law enforcement should be required to investigate security breaches; section 6210.4, relating to demonstration models, should be required to show the Voter Verified Paper Audit Trail (VVPAT) of DRE systems and the override selection on OpScan systems; and overall transparency in the process through system logs and cameras for keyboard, mouse, etc. displays.

New York City Board of Elections:

Comments were received from George Gonzalez, Deputy Executive Director of the Board of Elections in New York City, on behalf of the City Board. A summary of the NYCBOE comments include: section 6210.2, concerning the time intervals between required routine voting system testing; modifications were proposed to several sections throughout the proposed regulations concerning written notice to individuals pursuant to NYS Election Law Section 7-128 and Section 7-207, providing notice on the time and place where such machine testing may be inspected; section 6210.4, regarding modifications to the requirement for demonstration models to permit “video or other electronic instruction; section 6210.7 regarding ballots, comments were provided concerning paper ballots and numbered stubs; section

6210.9, regarding vote tabulation, comments were submitted concerning efforts to preserve the secrecy of the ballot; section 6210.11, regarding voting system security, concerning the frequency to change passwords at established intervals, to require that no unapproved software may run at any time on a voting system, and security requirements for the storage of ballot materials and documents; and, section 6210.13(9), regarding standards for determining valid votes, was updated regarding unintended machine marks on a ballot and concerning abandoned ballots.

Testimony of Howard Stanislevic:

Mr. Stanislevic submitted comments to Section 6210.18 concerning methods to statistically calculate appropriate initial sample sizes to audit to potentially detect a discrepancy that may alter the results of an elections and trigger mechanisms to expand audits, if necessary.

Testimony of Andrew Paprocki:

Mr. Paprocki submitted comments concerning Section 6210.11(H) to require that the voting system voting system software’s system log record the model number and serial number of all memory devices connected to the system.

Rockland County Board of Elections:

Election Commissioners Ann Marie Kelly and Joan Silvestri submitted comments to Section 6210.18, to only audit ballots from 3 percent of the voting systems and remove the requirement to also audit records from each race for public office.

## Insurance Department

### NOTICE OF ADOPTION

**Standards for the Management of the State Employees’ Retirement System and the Common Retirement Fund**

**I.D. No.** INS-30-08-00004-A

**Filing No.** 1083

**Filing Date:** 2008-10-29

**Effective Date:** 2008-11-19

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

**Action taken:** Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 314, 7401(a) and 7402(n)

**Subject:** Standards for the management of the State Employees’ Retirement System and the Common Retirement Fund.

**Purpose:** To establish high ethical standards, strengthen governance, and enhance transparency of the State Employees’ Retirement Systems.

**Substance of final rule:** Part 136 is retitled: “Public Retirement Systems”

The present Part 136 is renumbered to be Subpart 136-1 and titled: “Standards For Certain Actuarially Funded Public Retirement Systems”. The use or the reference of “Part” has been changed to “Subpart” throughout Subpart 136-1. The New York State Employees’ Retirement System and the New York State Policemen’s and Firemen’s Retirement System have been removed from Subpart 136-1 and included in the new Subpart 136-2.

A new Subpart 136-2, entitled “Standards for the New York State and Local Employees’ Retirement System, the New York State and Local Police and Fire Retirement System and the New York State Common Retirement Fund” has been added.

Section 136-2.1 sets forth the main purposes of Subpart 136-2, including establishing standards to assure the conduct of the business of the state employees’ retirement systems, the New York State Common Retirement Fund (“the Fund”, which holds the assets of the retirement system), and of the State Comptroller (as administrative head of the retirement system and as sole trustee of the Fund) are consistent with the principles stipulated therein.

Section 136-2.2 contains the definitions for the Subpart.

Section 136-2.3 sets forth the fiduciary responsibilities for the Comptroller.

Section 136-2.4 provides guidance on governance responsibilities and

ethics provisions for persons or entities having a fiduciary responsibility to the Fund.

Section 136-2.5 provides guidance on the disclosure, recordkeeping and reporting requirements.

Section 136-2.6 requires the Comptroller to establish an actuarial committee.

Section 136-2.7 indicates what is considered a breach of fiduciary responsibility, and the actions to be taken in the event of such a breach.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 136-2.2(f), (g), 136-2.6(b)(3), 136-2.7(c), (f).

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

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

Changes made to the proposed rule do not require changes to the last published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Government, Rural Area Flexibility Analysis, or Job Impact Statement.

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Minimum Standards for the Form, Content, and Sale of Health Insurance, Including Standards for Full and Fair Disclosure

**I.D. No.** INS-36-08-00009-A

**Filing No.** 1084

**Filing Date:** 2008-11-03

**Effective Date:** 2008-11-19

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

**Action taken:** Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1109, 3217, 4308, 4321, 4322, 4326; Correction Law, section 168-b; and L. 2005, ch. 645

**Subject:** Minimum standards for the form, content, and sale of health insurance, including standards for full and fair disclosure.

**Purpose:** Prohibit coverage of certain benefits for persons registered as sex offenders pursuant to Article 6-C of the Correction Law.

**Text or summary was published** in the September 3, 2008 issue of the Register, I.D. No. INS-36-08-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5265, email: amais@ins.state.ny.us

#### Assessment of Public Comment

The regulation amends Sections 52.16 and 52.90 to prohibit coverage of drugs, procedures or supplies for the treatment of erectile dysfunction when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article 6-C of the Correction Law.

The Department received comments from an interested party representing health plans. These comments are addressed below.

#### Comment:

The interested party objected to the requirement in the proposed Section 52.16(m)(2) that the health plan affirmatively advise the enrollee that the basis for the denial of coverage is his appearance on the sex offender registry as well as providing contact information for the Division of Criminal Justice Services. The interested party does not believe Chapter 645 of the Laws of 2005 requires health plans to provide this level of detailed information and is concerned that it might result in risk of liability of the health plan.

#### Response:

The language that is the subject of the comment is required by statute. Chapter 645 of the Laws of 2005 expressly provides that any denial of coverage for such drugs, procedures or supplies shall provide the patient with the means of obtaining additional information concerning both the denial and the means of challenging such denial. The Division of Criminal Justice Services maintains and supervises the State Sex Offender Registry. Chapter 645 of the Laws of 2005 amended section 168-b of the Correction Law to permit the Insurance Department only to disclose the names, dates

of birth, and social security numbers of persons appearing on the registry to health plans. The Department was not granted the authority to add or delete individuals from the registry. That authority remains solely with the Division of Criminal Justice Services. Accordingly, a challenge to a denial of coverage made pursuant to the proposed regulation and based on the ground that the person is incorrectly listed in the registry must necessarily be brought before the Division of Criminal Justice Services. The proposed regulation merely requires the plan to provide the contact information of the proper agency where such a challenge should be directed, as required by the statute.

Chapter 645 of the Laws of 2005 also expressly provides that no official, agency, authorized person or entity shall be subject to civil or criminal liability for any decision or action made pursuant to the statute and in the ordinary course of business, provided that such official, agency, authorized person or entity acted reasonably and in good faith. Therefore the interested party's concern regarding potential liability is misplaced.

#### Comment:

Section 52.16(m)(5) of the proposed regulation requires the health plan to provide the names of the persons in the employ of the plan that will be authorized to receive information about the sex offender status of an enrollee. The interested party requests the proposed regulation be revised to broadly define an employee as including an employee of a contracted or affiliated pharmacy benefits manager (PBM), subject to all appropriate safeguards. The interested party is concerned that if the PBM is not able to receive the necessary information to timely approve the prescription, individuals entitled to coverage will be denied their drugs until the health plan is contacted and makes the proper inquiry.

#### Response:

Chapter 645 of the Laws of 2005 expressly provides that plans identify to the Department each person in its employ who is authorized to receive the registry information. The language of the statute does not refer to pharmacy benefits managers as being eligible to receive registry information. The interested party concedes in its comments that such PBMs are "contracted" or "affiliated" and not in the employ of the plan. While the Department agrees that permitting PBMs to receive registry information may make the inquiry process more efficient, it does not have the authority to vary the language of the statute to accommodate the interested party's concerns.

## Office of Mental Health

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

#### Operation of Outpatient Programs

**I.D. No.** OMH-47-08-00002-P

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

**Proposed Action:** This is a consensus rule making to amend Part 587 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 7.15 and 31.04

**Subject:** Operation of Outpatient Programs.

**Purpose:** To increase the age of individuals receiving services in day treatment programs for children.

**Text of proposed rule:** Subdivision (a) of section 587.11 of Title 14 NYCRR is amended to read as follows:

(a) A day treatment program serving children shall provide treatment designed to stabilize children's adjustment to educational settings, to prepare children for return to educational settings, and to transition children to educational settings. *Upon approval of the Commissioner, a day treatment program may continue to serve individuals over the age of 18, but under the age of 22, who continue to meet the admission criteria for a day treatment program, in order to ensure that the individual has received the necessary educational services required to move to independent living.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, 8th Floor, Albany, NY 12229, (518) 474-1331, email: cobjdd@omh.state.ny.us

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

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

#### Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to make technical corrections and is non-controversial. No

person is likely to object to this rulemaking since it merely allows a day treatment program providing services to children to serve individuals ages 18 and older, but under the age of 22, when necessary to prevent a disruption in the provision of educational services to the individual when the individual still requires the services of a day treatment program in order to complete the educational plan. This change is necessary to ensure that these older adolescents/young adults receive the necessary educational and rehabilitative services required to achieve independent living. The amendment is non-controversial as it is permissive in nature and should not be considered a mandate or requirement. Older adolescents/young adults may benefit from receiving day treatment services for a longer period of time as it may allow for a smoother transition to independent living.

Section 4401(1) of the Education Law defines a "child with a disability" or a "student with a disability" as an individual who has not attained the age of 21 prior to September 1st, who is entitled to attend public schools pursuant to section 3202 of the Education Law, and who, because of mental, physical, or emotional reasons, has been identified as having a disability and who requires special services and programs approved by the State Education Department. Further, Section 200.14 of Title 8 of the New York Codes Rules and Regulations defines day treatment programs as non-residential programs, certified by the Office of Mental Health, designed for the purpose of providing a comprehensive array of services for mentally ill students with disabilities through integrated mental health and special education programs.

Chapter 667 of the Laws of 2006 charged the Commissioner of the Office of Mental Health with the responsibility of developing and monitoring the implementation of a Children's Mental Health Plan in a manner that is consistent with the requirements of subdivision (b) of section 5.07 of the Mental Hygiene Law. The Children's Mental Health Plan, adopted by nine state agencies in October 2008, recommended that the agencies "...proactively address the developmental needs of youth by effectively supporting life transitions - through school, across various living situations, in multiple service providers and into adulthood and independence." This consensus rulemaking will support that goal.

Statutory Authority: Sections 7.09(b), 7.15 and 31.04(a) of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the power and responsibility to plan, establish and evaluate programs and services for the benefit of persons with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

**Job Impact Statement**

A Job Impact Statement is not submitted with this notice because it merely increases the age in which an individual may participate in a day treatment program serving children. There will be no adverse impact on jobs and employment opportunities.

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## Office of Mental Retardation and Developmental Disabilities

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

**At Home Residential Habilitation (AHRH)**

**I.D. No.** MRD-47-08-00008-P

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

**Proposed Action:** Amendment of sections 635-10.5 and 635-99.1 of Title 14 NYCRR.

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

**Subject:** At Home Residential Habilitation (AHRH).

**Purpose:** To change the unit of service, establish requirements, and establish standards for self and family direction for AHRH.

**Substance of proposed rule (Full text is posted at the following State website: [www.omr.state.ny.us](http://www.omr.state.ny.us)):** General:

- Establishes a regulatory framework for the delivery of At Home Residential Habilitation (AHRH) services. Home and Community Based Waiver AHRH services allow individuals to receive needed residential habilitation services in a private home.

- Changes the unit of service. Currently, the unit of service is a day, with the length of the day varying for each person. The regulations change the unit of service to an hour, billed in 15 minute increments.

- Requires that services be delivered in accordance with the person's Individualized Service Plan (ISP) and At Home Residential Habilitation Plan.

- Requires that services must start at the home, stop at the home, or be delivered entirely at the person's home.

- Requires that the time counted toward billing requires face-to-face, staff-to-individual service delivery.

- Specifies the limited circumstances when AHRH services can be billed at the same time that other types of services are provided (hospice, Medicaid Service Coordination, personal care/home health aide, nursing, physician and other clinical services).

- Effective February 1, 2009.

Self-directed or family-directed AHRH:

- Establishes self-direction or family direction to permit greater flexibility and freedom of choice in obtaining AHRH services.

- Requires a co-management agreement between the individual receiving services, the provider, and, if one exists, an identified adult (e.g. family member), which would specify the management responsibilities of the parties to the agreement.

- Requires that the individual receiving services (or the identified adult) be willing and able to co-manage the services.

- Establishes a mechanism for the individual or identified adult to assume key responsibilities, including recruiting staff, making recommendations for staff selection and discharge, and managing the staff schedule.

- Establishes core provider responsibilities, including service monitoring, documentation monitoring and collection, billing, payroll, regulatory compliance, and staff training.

- Requires periodic review of AHRH, and service providers' participation in ISP reviews.

- Establishes that all providers can provide self-direction and family direction as an option.

Fee setting:

- Bases the hourly fees on three regions in the State.

- Bases the hourly fees on the number of individuals being served simultaneously - Individual(1) or Group serving (2), (3), or (4) or more.

- Establishes transitional hourly fees for 2009 and 2010 for some providers based on their historical costs, and a mechanism for transitional fees to be reduced where they were based on incorrect information.

- Allows the fee to be trended and states that the fees are not appealable.

**Text of proposed rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, OMRDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: [barbara.brundage@omr.state.ny.us](mailto:barbara.brundage@omr.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.

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

**Regulatory Impact Statement**

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates and fees for services in facilities licensed or operated by OMRDD.

2. Legislative Objectives:

These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law by making revisions to the regulations governing Home and Community-Based (HCBS) Waiver Residential Habilitation services. The proposed amendments will establish standards for funding, under the HCBS Waiver, to providers of At Home Residential Habilitation (AHRH) services and will allow for a self-directed and family-directed option in AHRH.

3. Needs and Benefits:

HCBS Waiver AHRH services allow individuals to receive needed residential habilitation services in a private home. (Individuals who live in residences certified or operated by OMRDD may receive other types of residential habilitation.) The proposed regulations make significant changes in the billing standards for AHRH services.

The proposed regulations change the unit of service from a per diem to an hourly fee that is billed in quarter hour increments, and they revise the reimbursement methodology accordingly. Currently AHRH services are reimbursed by multiple prices per provider agency. The proposal will greatly simplify billing and reimbursement by substituting three regional fees for the current complex price structure. The revised reimbursement mechanisms will provide more accountability and will be more reflective of the actual costs of service delivery. The new methodology will also help to streamline provider billing procedures and to minimize billing errors.

The proposed regulations also specify the limited circumstances when it is appropriate for AHRH to be billed at the same time that other types of services are also being provided. This addition provides guidance that has been requested by providers and is expected to substantially reduce confusion among providers and auditors about appropriate billing practices.

In addition, the proposal puts into regulations longstanding AHRH requirements that have previously been in OMRDD policy documents. These include the requirement that the delivery of services be in accordance with the Residential Habilitation Plan and the Individualized Service Plan, and that delivery of services be documented.

Finally, to promote individual choice and greater flexibility, these regulations create a self-directed and family-directed option within AHRH for those individuals who want to choose and manage AHRH staff (either personally or through a parent, guardian, family member or other adult).

#### 4. Costs:

a. Costs to the Agency and to the State and its local governments: Since these AHRH services are not being increased or reduced by this proposal, the amendments will have no fiscal effect on the overall costs of service provision, either for the State or for the Medicaid program. There will also be no new costs to local governments as a result of the proposed amendments.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the amendments. The change is not expected to have significant fiscal impacts for providers of services because the revisions are designed to achieve overall revenue neutrality. Although individual providers may experience changes in their reimbursement for such AHRH services, OMRDD believes that the establishment of three regional fees will result in a more equitable reimbursement methodology that more accurately reflects the actual costs of service delivery. The changes also have the potential for achieving savings associated with the simplification and streamlining of provider billing procedures and the reduction of billing errors.

Finally, the costs of providing AHRH services under the self-directed and family-directed option should be the same as for all AHRH services. Individuals and families will share some administrative functions associated with the co-management of these services, although providers will need to monitor aspects of the co-management process. Reimbursements to providers of AHRH services would be unchanged. There will be no additional costs to individuals and families as a result of this rule.

#### 5. Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

#### 6. Paperwork:

Regulations that established HCBS Waiver Residential Habilitation services were developed almost fifteen years ago at the inception of the program. The original regulations focused on the most essential regulatory standards and included only minimal documentation requirements. Based on extensive experience over the past decade, OMRDD has recognized the need to enhance accountability and ensure compliance with standards applicable to the Medicaid program in general. Thus, OMRDD has moved to progressively clarify service documentation requirements, and changes like those instituted in the proposed amendments have already been made to regulations that govern HCBS Waiver Residential Habilitation services provided in certified settings and for HCBS Waiver Day Habilitation services.

It should further be noted that elements of the proposed regulations incorporate documentation requirements that are not new and which are already specified in policy documents. For example, OMRDD policies already require documentation that an AHRH service be delivered in accordance with the consumer's Residential Habilitation Plan and Individualized Service Plan. Thus, the proposed regulations will not impose any additional documentation beyond that required by current policy documents.

As stated, the regulations create new billing units of service, and establish standards related to service duration. Documentation associated with these changes has been kept to a minimum, consistent with the need to maintain accountability and the requirements of the Medicaid program.

Finally, the self-directed and family-directed option under AHRH provides for a co-management agreement between the parties which will

require documentation and periodic evaluation by the provider agency. This oversight responsibility for providers will be offset by the increased responsibilities accepted by the participating individual or family, and the increased responsibilities for the individual or family will be offset by the choice and flexibility this option will give them.

#### 7. Duplication:

The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited services for persons with developmental disabilities.

#### 8. Alternatives:

The proposed rule making contains what OMRDD believes to be necessary amendments to enhance accountability and to streamline and simplify the reimbursement methodologies for HCBS Waiver At Home Residential Habilitation services. The proposed amendments have been developed with the participation and input of the service provider community and represent the most viable resolution of the issues and concerns of affected parties. The only alternative would be to not revise the current regulations and to maintain the current complex price structure with its multiplicity of prices per provider agency. Without the billing and documentation requirements and the price simplification included in this rule, the enhanced accountability would not be achieved.

The self-directed and family-directed option in AHRH services represents OMRDD's response to a need expressed by individuals, families, and advocates. The proposed regulations establish a framework within which the desired service flexibility can be achieved.

#### 9. Federal Standards:

Current Federal requirements for Medicaid and HCBS Waiver programs, which contain general documentation requirements, apply to HCBS Waiver Residential Habilitation services. The proposed regulations include documentation requirements that are more detailed than the applicable Federal standards.

#### 10. Compliance Schedule:

OMRDD expects to adopt the proposed amendments as soon as possible within the time frames mandated by the State Administrative Procedure Act. OMRDD will provide all necessary information, training, and guidance to providers regarding the new requirements before they become effective.

#### *Regulatory Flexibility Analysis*

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide HCBS Waiver At Home Residential Habilitation (AHRH) services to persons with developmental disabilities. While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites (e.g. small residences) employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. OMRDD estimates that approximately 233 AHRH provider agencies would be affected by the proposed amendments.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not have any negative effects on these small business providers of HCBS Waiver AHRH services, and that they will continue to provide appropriate funding for the delivery of such services.

HCBS Waiver AHRH services allow individuals to receive needed residential habilitation services in a private home. (Individuals who live in residences certified or operated by OMRDD may receive other types of residential habilitation.) The proposed regulations make significant changes in the billing standards for AHRH services.

The proposed regulations change the unit of service from a per diem to an hourly fee that is billed in quarter hour increments, and they revise the reimbursement methodology accordingly. Currently AHRH services are reimbursed by multiple prices per provider agency. The proposal will greatly simplify billing and reimbursement by substituting three regional fees for the current complex price structure. The revised reimbursement mechanisms will provide more accountability and will be more reflective of the actual costs of service delivery. The new methodology will also help to streamline provider billing procedures and to minimize billing errors.

The proposed regulations also specify the limited circumstances when it is appropriate for AHRH to be billed at the same time that other types of services are also being provided. This addition provides guidance that has been requested by providers and is expected to substantially reduce confusion among providers and auditors about appropriate billing practices.

In addition, the proposal puts into regulations longstanding AHRH requirements that have previously been in OMRDD policy documents. These include the requirement that the delivery of services be in accordance with the Residential Habilitation Plan and the Individualized Service Plan, that delivery of services be documented.

Finally, to promote individual choice and greater flexibility, these regulations create a self-directed option within AHRH for those individuals who want to choose and manage AHRH staff (either personally or through a parent, guardian, family member or other adult).

The proposed changes to the reimbursement methodology for providers of HCBS Waiver AHRH services are not expected to have significant fiscal impacts for providers of services because the revisions are designed to achieve overall revenue neutrality. Although individual providers may experience changes in their reimbursement for such AHRH services, OMRDD believes that the establishment of three regional fees will result in a more equitable reimbursement methodology that more accurately reflects the actual overall costs of service delivery. The changes also have the potential for achieving savings associated with the simplification and streamlining of provider billing procedures and the reduction of billing errors.

Since services are not being increased or reduced by this proposal, the amendments will have no fiscal effect on these overall costs of service provision. The amendments will, therefore, have no effect on local governments.

2. Compliance requirements: As discussed in the Regulatory Impact Statement, there will be some minimal compliance activities associated with providers' adjustment to the new unit of service and billing and documentation standards. However, the requirements will be more than offset by the increased accountability.

OMRDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with these regulations, as provided for by section 102-a of the State Administrative Procedure Act. However, OMRDD has already developed and maintains guidance documents addressing the provision of various HCBS Waiver services. OMRDD will issue new guidance documents to reflect the proposed regulatory changes regarding AHRH services and the requirements contained in the proposed regulations.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these proposed amendments. As discussed in the Regulatory Impact Statement, OMRDD believes that there will be no new increase in service documentation attributable to the proposed amendments. All documentation requirements associated with this rule making reflect current Medicaid and HCBS Waiver requirements and although elements of the proposed regulations incorporate documentation requirements, these are not new and are already specified in policy documents. For example, OMRDD policies already require documentation that an AHRH service be delivered in accordance with the individual's Residential Habilitation Plan and Individualized Service Plan. Also, current OMRDD policy documents require that providers document time that staff are delivering services. Thus, the proposed regulations will not impose any additional documentation beyond that required by current policy documents.

Finally, the implementation of the new unit of service for AHRH services also has the potential for achieving savings associated with the simplification and streamlining of provider billing procedures and the reduction of billing errors.

5. Economic and technological feasibility: The proposed amendments are concerned with fiscal and administrative issues, and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse impact: The amendments should not result in any significant adverse economic impacts. Although individual providers may experience changes in their reimbursement for AHRH services, OMRDD believes that the establishment of three regional fees will result in a more equitable reimbursement methodology that more accurately reflects the actual overall costs of service delivery. The changes also have the potential for achieving savings associated with the simplification and streamlining of provider billing procedures and the reduction of billing errors.

For those providers which are affected by a decrease in reimbursements as a result of the new regional fees, the amendments proposed by OMRDD include provisions for a two-year transitional fee to mitigate against a sudden decline.

7. Small Business and Local Government Participation: The provider community, with representatives from providers and provider associations, collaborated for several years on OMRDD's Unit of Service Task Force to address each party's concerns, which has culminated in these proposed amendments. In addition, provider, parent and self-advocate representatives worked on a committee with OMRDD to develop the

proposed regulatory language related to the self-directed and family-directed option for AHRH services. OMRDD has also discussed the proposed changes with provider associations and the Provider Council. Small business providers have therefore been extensively consulted, and have had ample opportunity for input in the development of the proposed rule making.

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

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. This is based on the fact that the amendments are concerned with revising the unit of service and the reimbursement methodology for At Home Residential Habilitation (AHRH) services provided to persons with developmental disabilities. OMRDD expects that adoption of the amendments will not have any adverse economic impact on regulated parties in rural areas because the reimbursement methodologies are primarily based on reported costs of individual providers of AHRH services. Further, the reimbursement methodologies contain three regional fees that have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

#### **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 amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with revising the unit of service and the reimbursement methodology for At Home Residential Habilitation (AHRH) services provided to persons with developmental disabilities. The subject of the amendments does not concern matters related to employment, and the amendments are not expected to have a significant economic impact on providers of services. Therefore, it is reasonable to expect that the amendments will not have any adverse impacts on jobs or employment opportunities in New York State.

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## Office of Parks, Recreation and Historic Preservation

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### NOTICE OF ADOPTION

#### **Repeal of an Outdated and Duplicative Rule That Addresses the Ticket and Simplified Information for Violations**

**I.D. No.** PKR-34-08-00001-A

**Filing No.** 1088

**Filing Date:** 2008-11-04

**Effective Date:** 2008-11-19

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

**Action taken:** Repeal of sections 446.0 through 446.17 of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, sections 3.09(8), 27.03(1); Navigation Law, section 19(1)

**Subject:** Repeal of an outdated and duplicative rule that addresses the ticket and simplified information for violations.

**Purpose:** To allow the uniform ticket/simplified information issued by NYS DMV to be used for Parks and Rec and Navigation Law violations.

**Text or summary was published** in the August 20, 2008 issue of the Register, I.D. No. PKR-34-08-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Agency Building 1, 19th Floor, Empire State Plaza, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

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

The agency received no public comment.

## NOTICE OF ADOPTION

**Repeal of Outdated Environmental Assessment and Review Procedures****I.D. No.** PKR-34-08-00002-A**Filing No.** 1089**Filing Date:** 2008-11-04**Effective Date:** 2008-11-19

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

**Action taken:** Repeal of Part 464 and Appendices G-1 and I-3 through I-8 of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(8); and Environmental Conservation Law, section 8-0113(3)

**Subject:** Repeal of outdated environmental assessment and review procedures.

**Purpose:** To streamline and update the Agency's environmental assessment and review procedures.

**Text or summary was published** in the August 20, 2008 issue of the Register, I.D. No. PKR-34-08-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Agency Building 1, 19th Floor, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Public Service Commission

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## ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-40-08-00012-P, pertaining to Petition for the Submetering of Electricity (08-E-1073SA1), published in the October 1, 2008 issue of the State Register contained the incorrect Substance of Proposed Rule. Following is the correct substance:

The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by East Coast 5 LLC, to submeter electricity at 46-30 Center Boulevard, in Long Island City, New York, located in the territory of Consolidated Edison Company of New York Inc.

## NOTICE OF ADOPTION

**Approving with Modifications Verizon New York Inc's FiOS Remediation Plan****I.D. No.** PSC-32-08-00012-A**Filing Date:** 2008-11-03**Effective Date:** 2008-11-03

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

**Action taken:** On October 15, 2008, the PSC adopted an order approving with modifications Verizon New York Inc's FiOS Remediation Plan.

**Statutory authority:** Public Service Law, sections 215(1) and 216(1)

**Subject:** Approving with modifications Verizon New York Inc's FiOS Remediation Plan.

**Purpose:** To approve with modifications, Verizon New York Inc's FiOS Remediation Plan.

**Substance of final rule:** The Commission, on October 15, 2008, adopted an order approving with modifications, Verizon New York Inc.'s FiOS Remediation Plan, subject to the terms and conditions set forth in the order.

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

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

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

**Assessment of Public Comment**

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

(08-V-0835SA1)

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

**Proposed Amendments to the NYS Standardized Interconnection Requirements (SIR) for Distributed Generators 2 MW****I.D. No.** PSC-47-08-00003-P

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

**Proposed Action:** The Commission is considering whether to approve, modify, or reject, in whole or in part, proposed amendments to the New York State Standardized Interconnection Requirements (SIR) for Distributed Generators 2 MW or Less.

**Statutory authority:** Public Service Law, section 66

**Subject:** Proposed amendments to the NYS Standardized Interconnection Requirements (SIR) for Distributed Generators 2 MW.

**Purpose:** Improve current procedures and approval process along with the incorporation of changes to reflect new net metering laws.

**Substance of proposed rule:** The Commission is considering whether to approve, modify, or reject, in whole or in part, the proposed amendments to the New York State Standardized Interconnection Requirements (SIR) for New Distributed Generators 2 MW or Less Connected in Parallel with Utility Distribution Systems. The proposed amendments are set forth in a document on file with the Commission entitled Proposed Amendments to the New York State Standardized Interconnection Requirements (SIR) for New Distributed Generators 2 MW or Less Connected in Parallel with Utility Distribution Systems dated November 2008, and posted on the Commission's website at [www.dps.state.ny.us/distgen.html](http://www.dps.state.ny.us/distgen.html). These changes are Staff's efforts to improve and simplify the procedures for interconnection within the State while still maintaining proper safety and reliability goals. Additionally, these changes incorporate the new net metering laws passed by the legislature back in August of this year expanding net metering options for both residential and non-residential customers.

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

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

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

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

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

(08-E-1018SA1)

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

**Water Rates and Charges****I.D. No.** PSC-47-08-00004-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 modify the rates of Four Corners Water Works Corporation which went into effect on a temporary basis on November 1, 2005.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10), 89-j, 113 and 114.

**Subject:** Water rates and charges.

**Purpose:** To examine the reasonableness of the temporary rates and charges of Four Corners Water Works Corporation.

**Substance of proposed rule:** By Order issued and effective October 31, 2005 in Case 05-W-0615, the Commission approved the initial electronic tariff schedule of Four Corners Water Works Corporation (Four Corners) and directed Four Corners to file Leaf No. 12, Revision 1 containing Staff's recommended rates to be put into effect on a temporary basis on November 1, 2005, subject to refund under Sections 89-c(1), 89-j, 113 and 114 of the Public Service Law. Staff is performing an investigation and will make a recommendation to the Commission as to the proper level of permanent rates. Four Corners is currently serving approximately 108 metered customers in the Moore Property Development (aka Four Corners Subdivision), in the Town of East Fishkill, Dutchess County.

The company's tariff is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us)) located under Access to Commission Documents – Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillinger, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [jaclyn\\_brillinger@dps.state.ny.us](mailto:jaclyn_brillinger@dps.state.ny.us)

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-W-0615SA3)

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

**Petition in Compliance with the September 9, 2008 Abbreviated Order in Case 07-M-0906 to Establish a Bankruptcy Preferred Share**

**I.D. No.** PSC-47-08-00005-P

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

**Proposed Action:** The Commission is considering a petition filed by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation requesting permission to issue stock.

**Statutory authority:** Public Service Law, section 69

**Subject:** Petition in compliance with the September 9, 2008 Abbreviated Order in Case 07-M-0906 to establish a Bankruptcy Preferred Share.

**Purpose:** To authorize the issuance of Preferred Bankruptcy Share for NYSEG and RG&E in compliance with the Abbreviated Order.

**Substance of proposed rule:** On October 27, 2008, in compliance with the Commission's September 9, 2008 Abbreviated Order in Case 07-M-0906, New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG & E) submitted a petition seeking authority to create and issue for NYSEG and RG & E respectively, a discrete class of Limited Voting Junior Preferred Stock consisting of one share; and respectively issue a single share of the Limited Voting Junior Preferred Stock to a party that will be designated by NYSEG and RG & E and approved by the Commission or to an entity designated by the Commission with the right to object to and oppose a voluntary bankruptcy filing by NYSEG and/or RG & E, as applicable. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillinger, Secre-

tary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [jaclyn\\_brillinger@dps.state.ny.us](mailto:jaclyn_brillinger@dps.state.ny.us)

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

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

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

(07-M-0906SA2)

**Susquehanna River Basin  
Commission**

**INFORMATION NOTICE**

**Notice of Public Hearing and Commission Meeting**

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Public Hearing and Commission Meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on December 4, 2008, in Bel Air, Maryland. At the public hearing, the Commission will consider: 1) approval of certain water resources projects; 2) a request for extension of an emergency certificate issued on October 30, 2008; and 3) adjustments to the SRBC Project Fee Schedule. 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: December 4, 2008.

ADDRESS: Harford Community College – Chesapeake Center, 401 Thomas Run Road, Bel Air, Maryland 21015.

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

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: 1) "Water for Maryland's Future: What We Must Do Today" by SRBC Maryland Member Dr. Robert Summers, 2) present hydrologic conditions of the basin, 3) a revised Comprehensive Plan for the Water Resources of the Susquehanna River Basin, 4) a final rulemaking action regarding consumptive use by gas well development projects, 5) certain grant applications and contracts; 6) the FY 2008 Audit Report; 7) an additional expenditure of up to \$500,000 for the Whitney Point Lake Section 1135 Project Modification, and 8) an expenditure of up to \$65,000 to replace three main computer servers. The Commission will also hear a Legal Counsel's report.

Public Hearing – Projects Scheduled for Action:

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (for operations in Broome, Chenango, Cortland, Delaware, Steuben, and Tomkins Counties, N.Y., and Blair, Cambria, Cameron, Centre, Clearfield, Clinton, Columbia, Elk, Lackawanna, Luzerne, Lycoming, Sullivan, Tioga, and Wayne, Counties, Pa.) (previously approved for operations in Chemung and Tioga Counties, N.Y., and Bradford, Susquehanna, and Wyoming Counties, Pa.). Modification to increase consumptive water use from 2.075 mgd (peak day) up to 20,000 mgd from various surface water sources and the following previously approved public water suppliers: Towanda Municipal Authority, Aqua Pennsylvania, Inc. – Susquehanna Division, Canton Borough Authority, and Borough of Troy.

2. Project Sponsor and Facility: Chief Oil & Gas LLC (for operations in Clearfield County, Pa.). Application for consumptive water use of up to 5,000 mgd from various surface water sources and the following public water suppliers: BCI Municipal Authority and Jersey Shore Joint Water Authority.

3. Project Sponsor and Facility: Chief Oil & Gas LLC (Clearfield Creek), Boggs Township, Clearfield County, Pa. Application for surface water withdrawal of up to 2,000 mgd.

4. Project Sponsor and Facility: Chief Oil & Gas, LLC (Pine Creek), Cummings Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

5. Project Sponsor and Facility: Citrus Energy (for operations in Wyoming County, Pa.). Application for consumptive water use of up to 5,000 mgd from various surface water sources.

6. Project Sponsor and Facility: Citrus Energy (North Branch Susquehanna River), Washington Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

7. Project Sponsor and Facility: Dillsburg Area Authority, Franklin Township, York County, Pennsylvania. Application for groundwater withdrawal of 0.022 mgd from Well 1.

8. Project Sponsor and Facility: Dillsburg Area Authority, Franklin Township, York County, Pennsylvania. Application for groundwater withdrawal of 0.101 mgd from Well 3.

9. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (for operations in Centre County, Pa.). Application for consumptive water use of up to 5,000 mgd from various water sources.

10. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (unnamed tributary to Sandy Run), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 0.300 mgd.

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

12. Project Sponsor and Facility: J-W Operating Company (for operations in Cameron, Clearfield, and Elk Counties, Pa.). Application for consumptive water use of up to 4,500 mgd from various surface water sources and the following public water supplier: Emporium Water Company.

13. Project Sponsor and Facility: J-W Operating Company (Abandoned Mine Pool), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

14. Project Sponsor: J-W Operating Company (Driftwood Branch – Sinnemahoning Creek), Lumber Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.245 mgd.

15. Project Sponsor and Facility: J-W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.026 mgd.

16. Project Sponsor: KBK-HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Application for consumptive water use of up to 0.382 mgd.

17. Project Sponsor: KBK-HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Application for surface water withdrawal of up to 0.382 mgd from Honey Run.

18. Project Sponsor: KBK-HR Associates LLC. Project Facility: Honey Run Golf Club, Dover Township, York County, Pa. Application for surface water withdrawal of up to 1.440 mgd from Little Conewago Creek.

19. Project Sponsor and Facility: New Oxford Foods, LLC, New Oxford Borough, Adams County, Pa. Applications for consumptive water use of up to 0.380 mgd and groundwater withdrawal of 0.035 mgd from Well 1.

20. Project Sponsor: PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Applications for amendment to existing FERC license (FERC Project No. 1881) and for redevelopment of the project with modification of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.

21. Project Sponsor and Facility: Rex Energy Corporation (Upper Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

22. Project Sponsor and Facility: Rex Energy Corporation (Lower Little Surveyor Run), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

23. Project Sponsor: Sunbury Generation LP. Project Facility: Sunbury Generation Facility, Monroe Township and Shamokin Dam Borough, Snyder County, Pa. Applications for consumptive water use of up to 6,025 mgd and surface water withdrawal of up to 354,000 mgd.

24. Project Sponsor and Facility: Turm Oil, Inc. (for operations in Susquehanna County, Pa.). Application for consumptive water use of up to 5,000 mgd from various surface water sources and the following public water suppliers: Dushore Water Authority and Towanda Municipal Authority.

25. Project Sponsor and Facility: Turm Oil, Inc. (Deer Lick Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

26. Project Sponsor and Facility: Turm Oil, Inc. (East Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

27. Project Sponsor and Facility: Turm Oil, Inc. (Elk Lake Stream), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

28. Project Sponsor and Facility: Turm Oil, Inc. (Main Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

29. Project Sponsor and Facility: Ultra Resources (for operations in Tioga and Potter Counties, Pa.). Application for consumptive water use of up to 4,990 mgd from various surface water sources and the following public water supplier: Galetton Borough Authority.

30. Project Sponsor and Facility: Ultra Resources (Cowanesque River), Deerfield Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.217 mgd.

31. Project Sponsor and Facility: Ultra Resources (Elk Run), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.020 mgd.

32. Project Sponsor and Facility: Ultra Resources (Pine Creek), Pike Township, Potter County, Pa. Application for surface water withdrawal of up to 0.430 mgd.

Public Hearing – Request to Extend Emergency Certificate:

1. CAN DO, Inc., Hazle Township, Luzerne County, Pa. – Request to again extend the emergency use of Site 14 Test Well to serve Humbolt Industrial Park, last extended at the September 11, 2008, meeting.

Public Hearing – Project Fee Schedule:

1. The Commission will consider CPI and other adjustments to its Project Fee Schedule as directed by Resolution 2005-03.

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: rcario@srbc.net or Stephanie L. Richardson, Secretary to the Commission, e-mail: srichardson@srbc.net. Comments mailed or electronically submitted must be received prior to December 4, 2008, to be considered.

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

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## Department of Taxation and Finance

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### NOTICE OF ADOPTION

#### Sales Tax Re-Registration of Show and Entertainment Vendors and Other Persons

**I.D. No.** TAF-37-08-00005-A

**Filing No.** 1090

**Filing Date:** 2008-11-04

**Effective Date:** 2008-11-19

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

**Action taken:** Amendment of Parts 533, 539, and 540 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 1134(a)(2) and (5); 1142(1) and (8); 1250 (not subdivided); and part LL-1 of chapter 57 of the Laws of 2008

**Subject:** Sales tax re-registration of show and entertainment vendors and other persons.

**Purpose:** To streamline the sales tax re-registration process for show and entertainment vendors and other persons.

**Text or summary was published** in the September 10, 2008 issue of the Register, I.D. No. TAF-37-08-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harri-

man Campus, Albany, NY 12227, (518) 457-2254, email: tax\_regulations@tax.state.ny.us  
**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-37-08-00006-A  
**Filing No.** 1091  
**Filing Date:** 2008-11-04  
**Effective Date:** 2008-11-04

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 October 1, 2008 through December 31, 2008.

**Final rule as compared with last published rule:** Substantial revisions were made in 492.1(b)(1).

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

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(li) July-September 2008					
14.0	22.0	38.4	14.0	22.0	36.65
(lii) October - December 2008					
14.7	22.7	39.1	14.7	22.7	37.35

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

**Revised Regulatory Impact Statement**

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Regulatory Flexibility Analysis**

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Rural Area Flexibility Analysis**

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Job Impact Statement**

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Assessment of Public Comment**

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

**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-47-08-00006-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 January 1, 2009 through March 31, 2009.

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

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lii) October-December 2008					
14.7	22.7	39.1	14.7	22.7	37.35
(liii) January - March 2008					
16.0	24.0	41.1	16.0	24.0	39.35

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

**Data, views or arguments may be submitted to:** William Ryan, Director, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-1153, email: tax\_regulations@tax.state.ny.us

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

**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.