

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.

Department of Correctional Services

NOTICE OF ADOPTION

Gowanda Correctional Facility

I.D. No. COR-27-08-00003-A

Filing No. 831

Filing Date: 2008-08-26

Effective Date: 2008-09-10

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

Action taken: Amendment of section 100.128(c) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 70 and 112

Subject: Gowanda Correctional Facility.

Purpose: To remove the reference of a programming designation for a program that has been discontinued.

Text or summary was published in the July 2, 2008 issue of the Register, I.D. No. COR-27-08-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Executive Deputy Commissioner, Department of Correctional Services, 1220 Washington Avenue, Building 2 - State Campus, Albany, NY 12206-2050, (518) 457-4951, email: AJAnnucci@DOCS.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Crime Victims Board

EMERGENCY RULE MAKING

Loss of Earnings

I.D. No. CVB-37-08-00007-E

Filing No. 843

Filing Date: 2008-08-26

Effective Date: 2008-09-01

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

Action taken: Addition of sections 525.1(n), 525.2(e) and 525.12(i) to Title 9 NYCRR.

Statutory authority: Executive Law, section 631

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

Specific reasons underlying the finding of necessity: The proposed regulations are necessary for the proper implementation of chapter 162 of the Laws of 2008, which takes effect on September 1, 2008.

Subject: Loss of earnings.

Purpose: To establish the process through which claimants may be reimbursed by the board for loss of earnings.

Text of emergency rule: A new subdivision (n) is added to section 525.1 to read as follows:

(n) "Hospitalization" shall mean the period during which a person is a patient in or resident of a licensed facility for (1) emergency care or ambulatory surgery, or (2) in-patient treatment at: a general hospital, a psychiatric center, a physical rehabilitation facility or a residential health care facility.

A new subdivision (e) is added to section 525.2 to read as follows:

(e) If a person is eligible to file a claim for loss of earnings as a parent or guardian during the period of hospitalization of a child victim under the age of eighteen for injuries sustained as a direct result of a crime, all other requests for the reimbursement of related, out-of-pocket expenses must be submitted under and shall be limited to the first claim accepted by the Board from a party responsible for such expenses. All claims received for loss of earnings as a parent or guardian during the period of hospitalization of the same child victim under the age of eighteen for injuries sustained as a direct result of a crime shall be cross-referenced to ensure no duplicate awards are made.

A new subdivision (i) is added to section 525.12 to read as follows:

(i) The award for loss of earnings shall, (1) include time which an employee: (i) was absent from work and not paid for the day or time off, (ii) was absent from work and utilized accumulated, paid leave available to them by their employer, or (iii) had taken leave of employment without pay, and (2) for the earnings lost by a parent or guardian as a result of the hospitalization of a child victim under the age of eighteen for injuries sustained as a direct result of a crime, be limited to the following: (i) one claimant, in addition to the victim, per hospitalization period or portion of such period is permitted, (ii) pursuant to subdivision 2 of section 631 of the Executive Law, the total, weekly award for the claimant or claimants shall not exceed six hundred dollars per week, and (iii) pursuant to subdivision 2 of section 631 of the Executive Law, the total loss of earnings for the claimant or claimants shall not exceed thirty thousand dollars.

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

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 23, 2008.

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Crime Victims Board, 1 Columbia Circle, Suite 200, Albany, NY 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The New York State Executive Law, section 623 creates the Crime Victims Board (the Board) and grants the Board the authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law. New York State Executive Law, section 631 provides that the Board may make awards for out-of-pocket losses which include loss of earnings. Chapter 162 of the Laws of 2008 added an award for loss of earnings to include earnings lost by a parent or guardian as a result of the hospitalization of a child victim under age eighteen for injuries sustained as a direct result of a crime.

2. Legislative objectives: By enacting the New York State Executive Law, section 631 and the subsequent amendment in Chapter 162 of the Laws of 2008, the Legislature sought to ensure that the Board could reimburse out-of-pocket losses for loss of earnings, including earnings lost by a parent or guardian as a result of the hospitalization of a child victim under age eighteen for injuries sustained as a direct result of a crime.

3. Needs and benefits: Currently, in New York State Executive Law, article 22, and 9 NYCRR 525, hospitalization is not explicitly defined, nor are the circumstances enumerated under which the Board would consider loss of earnings generally, or specifically those of a parent or guardian during the period of hospitalization of a child victim under the age of eighteen for injuries sustained as a direct result of a crime. From recent history to date, the Board has consistently interpreted the statute to mean it should base determinations for loss of earnings on time which an employee was not paid due to absence from work or in instances where they utilized accumulated, paid leave, as such leave is something which an employee earns. With the amendments contained in Chapter 162 of the Laws of 2007, it was deemed necessary to codify this current practice and make additional clarifications related specifically to how the Board would define hospitalization, and make determinations for earnings lost by a parent or guardian as a result of the hospitalization of a child victim under age eighteen for injuries sustained as a direct result of a crime, all in order for claimants or potential claimants to be aware of what the Board would consider eligible for an award under its statutory authority.

4. Costs: a. Costs to regulated parties. These proposed regulations would be codifying the Board's current interpretation of its statutory authority, and establishing a procedure for determining a newly created, statutory award, therefore it is not expected that the proposed regulations would impose any additional costs to the agency or State which would not be created by the adoption of this new law. The proposed regulatory changes may, in fact, result in saving the agency and State money when the volume of otherwise ineligible claims filed with the Board decreases because claimants or potential claimants would be made aware of what the Board would consider eligible for an award under its statutory authority.

b. Costs to local governments. These proposed regulations do not apply to local governments and would not impose any additional costs on local governments.

c. Costs to private regulated parties. The proposed regulations do not apply to private regulated parties and would not impose any additional costs on private regulated parties.

5. Local government mandates: These proposed regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: These proposed regulations do not require any additional paperwork requirements.

7. Duplication: These proposed regulations do not duplicate any other existing state or federal requirements.

8. Alternatives: Although the current Board has consistently applied its interpretation of Executive Law, section 631 as it relates to determining loss of earnings, not implementing these proposed regulatory changes could result in inconsistent claimant award decisions in the future. Alternatives to the computation of loss of earnings based on whether or not a claimant utilized their accumulated leave were examined, but the Board determined it should continue its current methodology, as enumerated in the proposed 525.12(i)(1). Another alternative to these proposed regulatory changes would be for the Board to apply the more comprehensive definition of hospitalization as provided in current New York State Public Health Law, section 2961(11). Such an application is, however, impractical as this definition is excessively broad in scope and the Board is not limited to in-state medical providers, it also provides awards to claimants in other states and countries, which necessitates a more concise and easily applicable definition.

9. Federal standards: Permissible under 42 USC 10602(b)(1)(B).

10. Compliance schedule: The regulations will be effective on the effective date of Chapter 162 of the Laws of 2008 (September 1, 2008).

Regulatory Flexibility Analysis

The New York State Crime Victims Board (the Board) projects there will be no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in the State of New York as a result of this proposed rule change. This proposed rule change simply defines hospitalization and enumerates the circumstances under which the Board would consider loss of earnings generally, and specifically those of a parent or guardian during the period of hospitalization of a child victim under the age of eighteen for injuries sustained as a direct result of a crime. Since nothing in this proposed rule change will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in the State of New York as a result of this proposed rule change. This proposed rule change simply defines hospitalization and enumerates the circumstances under which the Board would consider loss of earnings generally, and specifically those of a parent or guardian during the period of hospitalization of a child victim under the age of eighteen for injuries sustained as a direct result of a crime. Since nothing in this proposed rule change will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change simply defines hospitalization and enumerates the circumstances under which the Board would consider loss of earnings generally, and specifically those of a parent or guardian during the period of hospitalization of a child victim under the age of eighteen for injuries sustained as a direct result of a crime. Since nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.

Delaware River Basin Commission

INFORMATION NOTICE

NOTICE OF FINAL RULEMAKING

Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters and Clarify Aspects of the Special Protection Waters Regulations

I.D. No.: Not applicable.

Filing Date: September 15, 2008

Effective Date: Upon filing with each of the signatory parties in accordance with Section 14.2 of the Delaware River Basin Compact and publication in the *Federal Register*.

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states B Delaware, New Jersey, New York and Pennsylvania B and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the State Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the

Commission have been filed with the State of New York in accordance with Section 14.2 of the Delaware River Basin Compact.

Action Taken: On July 16, 2008, the Delaware River Basin Commission adopted amendments to its Water Quality Regulations § 3.10.3 A.2. and Water Code § 3.10.3 A.2. B 21 NYCRR 860.3(a)(2).

Statutory Authority: Delaware River Basin Compact, New York Laws of 1961, Chapter 148, Approved March 17, 1961.

Subject: Special protection waters

Purpose: To establish numeric values for existing water quality for the reach of the main stem Delaware River known as the “Lower Delaware”, to permanently designate the Lower Delaware as Special Protection Waters (SPW) and to clarify aspects of the existing regulations, especially with respect to facilities in place prior to SPW designation.

Substance of final rule: By Resolution No. 2008 9, the Commission approved amendments to its Water Quality Regulations, Water Code and Comprehensive Plan to establish numeric values for existing water quality for the reach of the main stem Delaware River known as the “Lower Delaware” and to assign the Special Protection Waters (SPW) classification “Significant Resource Waters” (SRW) on a permanent basis to this reach. The Commission also approved language to clarify aspects of the SPW regulations that have been a source of confusion for some DRBC docket holders and applicants since the program was originally adopted in 1992 for point sources and in 1994 for non point sources, especially with respect to facilities in place prior to SPW designation. Among other things, definitions were added for the terms “substantial alterations and additions”, “load” and “incremental load”; the requirements for analysis of alternatives to a discharge were clarified; and language was inserted to clarify that the rules do not preclude the use of a limited mixing zone within the main stem for a tributary discharge under certain circumstances.

Text of rule may be obtained from: The text of DRBC Resolution No. 2008 9, incorporating the rule text as an attachment, is available on the DRBC website, DRBC.net. The text is shown as proposed in October of 2007 and as finally approved by the Commission on July 16, 2008. Printed copies may be obtained from the Commission by contacting Information Resources Coordinator Kim Wobick at 609 883 9500, ext. 263 or at kim.wobick@drbc.state.nj.us. A charge for printing and mailing will apply.

Assessment of public comment: A detailed comment and response document addressing comments offered at the public hearing and written comments received through the close of the comment period is available on the Commission’s website, DRBC.net. Printed copies of this document may be obtained by contacting the Information Resources Coordinator, Kim Wobick, who can be reached at 609 883 9500, ext. 263 or at kim.wobick@drbc.state.nj.us. A charge for printing and mailing will apply.

Pamela M. Bush

Commission Secretary and Asst. General Counsel

Department of Environmental Conservation

ERRATUM

A Notice of Adoption, I.D. No. ENV-14-08-00002-A, pertaining to Recreational and Commercial Harvest of American Shad (Hudson and Marine Waters), Hudson R. Recreational Harvest of Hickory Shad, published in the August 27, 2008 issue of the State Register did not indicate a notice of revise rule making was previously published.

A Notice of Emergency Adoption and Revised Rule Making pertaining to the above adoption was published in the June 25, 2008 issue of the State Register.

NOTICE OF ADOPTION

Sportfishing Regulations

I.D. No. ENV-08-08-00001-A

Filing No. 832

Filing Date: 2008-08-25

Effective Date: 2008-10-01

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

Action taken: Amendment to Parts 10, 18, 19, 35 and 180 of Title 6 of NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316 and 11-1319

Subject: Sportfishing regulations.

Purpose: To revise sport fishing regulations and associated activities including use of bait fish, and sale of trout and salmon eggs.

Substance of final rule: The purpose of this rule making is to amend the Department of Environmental Conservation’s (Department) general regulations governing sportfishing (6 NYCRR Part 10), taking bait (6 NYCRR Part 18), use of bait (6 NYCRR Part 19), licenses (6 NYCRR Part 35), and miscellaneous regulations (6 NYCRR Part 180). Following biennial review of the Department’s fishing regulations, Department staff have determined that the proposed amendments are necessary to maintain or improve the quality of the State’s fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments contained in this rule making:

- Prohibit the act of chumming with fish eggs.
- Define “tip-ups,” a device used in ice fishing.
- Prohibit the sale of trout and Atlantic salmon eggs.
- Establish a bait fish “Green List,” establishing what bait fish are acceptable for use, and secondly, identify additional waters where additional species can be used as bait.
- Establish that, in addition to the bait fish “Green List,” any fish legally taken on a water body may continue be used as bait on that same body of water except on designated waters where the use of bait fish is not allowed or as prohibited by another provision of law or regulation.
- Establish that dead fish, preserved and packaged in conformance with other provisions of law or regulation, may be used as bait.
- Remove American eels from the list of fish that can be spearfished.
- Clarify that “whitefish” in the Statewide Angling Regulations does not include round whitefish.
- Restrict the use of weight on the line, leader, swivels or artificial flies used in Salmon River Fly Fishing, providing consistency with the Great Lakes regulations.
- Refine the allowable fishing tackle that may be used in the special regulations fly fishing catch and release areas on the Salmon River in Oswego County, clarifying what can be used in this fly fishing only area.
- Extend the winter “catch and release only” black bass season in Suffolk and Nassau Counties.
- Remove the special regulation for trout in Greenwood Lake in Orange County.
- Remove the special regulation for black bass in Greenwood Lake in Orange County.
- Establish a special regulation for kokanee salmon in Glass Lake in Rensselaer County with a creel limit of three fish and 12 inch minimum size limit.
- Establish a three fish creel limit with a minimum size limit of 12 inches for trout in Beardsley Lake in Montgomery and Herkimer Counties, Kyser Lake in Fulton and Herkimer Counties, and Stillwater Reservoir in Herkimer County.
- Reduce the creel limit on walleye and sauger in Lake Champlain to “3 fish in combination.”
- Provide clarity to the description of the Boquet River portion of the “Additional Lake Champlain Tributary Regulations.”
- Prohibit the use of bait fish in waters such as the Henderson Lake in the Town of Newcomb in Essex County, and in the Giant Mountain Wilderness Area.
- Prohibit the use of bait fish in Wheeler and Clear Ponds in the Town of Webb in Herkimer County.
- Add the ponds and streams in the Raquette-Boreal Wilderness Area to the list of waters that restrict the use of bait fish.
- Remove the special regulations that prohibit fishing in Lake George tributaries (in Essex, Warren and Washington Counties) from October 1 to March 15 at any time and from April 1 to May 15th from 10 p.m. to 5 a.m.
- Create a three fish creel limit with a minimum size limit of 12 inches for trout in the ponds contained with the Massawepie Conservation Easement Area in St. Lawrence County (Pine, Boottree, Town Line, Deer and Horseshoe) as well as within Tamarack Pond in St. Lawrence County.
- Eliminate the ice fishing permitted regulation on the Mohawk River (Barge Canal) in Herkimer County.
- Create a catch and release, use of artificial lures only, regulation in Wheeler and Clear Ponds in the Town of Webb in Herkimer County.
- Eliminate the special regulation for walleye on Lake Bonaparte in Lewis County and on Trout Lake in Lewis County.
- Create a special trout regulation, with a creel limit of five fish, with no

more than two fish longer than 12 inches, on the Lansing Kill in Oneida County.

- Eliminate the special regulation prohibiting smelt fishing in Portaferry Lake in St. Lawrence County.
- Extend the catch and release section for trout of West Canada Creek in Herkimer and Oneida Counties.
- Extend the current year round catch and release season for trout on the West Branch St. Regis in St. Lawrence County to all year.
- Eliminate the special regulation requiring catch and release fishing for trout on the South Branch of the Grass River in St. Lawrence County and replace with the statewide regulation.
- Modify the wording for the area in Jefferson County that is exempt from the 50 fish limit on yellow perch and sunfish.
- Modify the wording for the area in Jefferson County, that is exempt from the statewide black bass catch and release season.
- Modify the creel limit and size limit for muskellunge and tiger muskellunge in the border waters of the Delaware River and West Branch Delaware River.
- Eliminate the special regulation requiring catch and release fishing for trout on Allen Pond in St. Lawrence County and replace it with a three fish creel limit and 12 inch minimum size limit.
- Remove the special regulation for lake trout on Woodhull Lake in Herkimer County.
- Establish a special regulation for Ellicott Creek in Erie County.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 10.2, 10.3, 19.1 and 19.2.

Text of rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, email: sxkeeler@gw.dec.state.ny.us

Additional matter required by statute: A programmatic impact statement is on file with the Department of Environmental Conservation.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement. Because only non-substantive changes were made in the final rule, the originally published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement does not need to be revised.

Assessment of Public Comment

The following is a summary of the comments received and the Department's response to those comments. Comments are collectively organized according to the specific regulation change that they address.

PROPOSAL: Establish a list of bait fish (i.e. "Green List") that can be used statewide.

Comment: Cut bait (including dead cut herring) should be added to the "Green List".

Response: The rule making has been adjusted to provide for the use of dead fish as bait under certain conditions provided it is preserved other than solely by freezing (to safeguard against the spread of fish pathogens).

Comment: The regulations should indicate that the use of frozen/dead baits that are brined/salted are not restricted by this rule making.

Response: The rule making has been adjusted to provide for the use of dead fish that are brined and salted.

Comment: The list of species of bait is too limiting and should be expanded to include several other species historically used and not in danger in New York State (i.e. regionally abundant). Adding additional species will provide anglers with ready access to site specific bait. A second option is to leave the bait fish list as currently defined in the ECL with the stipulation that it does not include threatened or endangered fish.

Response: Many of the species suggested as additions are not easily identified and could be confused with species that are listed in New York as "endangered, threatened, or of special concern". In addition, the sculpins suggested for inclusion may be mistaken for round goby, an undesirable invader. The intent of the "Green List" is to allow for the most commonly used baitfish, while keeping the list relatively small and simple and not impacting an angler's opportunity to fish with live bait. The list was designed to protect New York's many rare species that could be confused with baitfish and to prevent the accidental introduction of unwanted or invasive species in additional waters. In addition, any fish legally taken from a water body of the State may be possessed and used as bait on that same water body, except in designated waters where the use of bait fish is not allowed or where use is prohibited by another provision of law or regulation.

PROPOSAL: Extend the catch and release section for trout on West Canada Creek in Herkimer and Oneida Counties.

Comment: Two and a half miles is already in place, and this proposal just complicates where anyone fishes.

Response: The catch and release regulation will apply to a small portion of West Canada Creek. West Canada Creek has approximately 30 miles of stocked fishable water of which the 4 mile catch and release section represents only 13.3 percent of the fishable trout water.

Comment: The proposed section should be kept, as is, as it is important to people that have disabilities and cannot walk long distances to fish; there are three places where one can fish with children.

Response: Twelve state-owned fishing areas are located on stream sections where this special regulation will not apply, thereby facilitating access to people of all abilities.

Comment: Since DEC is not enforcing the regulations in the current no-kill section of West Canada Creek, and violations are occurring, it makes no sense to extend the catch and release only section.

Response: Law Enforcement has increased its patrols on West Canada Creek in the last two years. Many of the anglers that Law Enforcement would encounter illegally fishing the present catch and release section would claim that they did not know where the mouth of Cincinnati Creek was located. The rule making's designation of the Comstock Bridge should resolve this problem.

Comment: Fly fishermen and spinner bait fishermen can fish anywhere and bait fishermen are eliminated from fishing this area.

Response: Department creel surveys show anglers support for the establishment of restricted harvest areas on this water. There is an abundance of additional stream fishing that allows for harvest and the use of natural baits.

PROPOSAL: Refining allowable fishing tackle in the special regulations fly fishing catch and release areas on the Salmon River in Oswego County.

Comment: If DEC wants to enforce current law against foul hooking and snagging fish in the fly only sections they can do it under current law.

Response: The purpose of the regulation is solely to narrow the definition of what traditional fly-fishing is. Whether fish are foul hooked or not was not germane to the proposed rule making. Both fly fisherman and spin fishermen requested clarity on defining fly fishing in the special areas. Anglers pursuing a traditional fly fishing experience wondered about the allowance of the use of weight to cast the line which is essentially a spin fishing technique.

Comment: Legitimate angling techniques should not be outlawed for the purposes of appeasing a vocal minority or special interest group.

Response: The special regulation fly fishing areas on the Salmon River were originally intended to provide a special fly fishing experience. There is just under a mile of flyfishing area that the regulation would apply to. Anglers have an additional 16 miles of the Salmon River that this would not apply to, and where any legal angling techniques can be used.

Comment: While some limit in weight makes sense, some weight should be permitted, including on a fly such as a copper john (i.e. a popular fly used in fly fishing). Adding a few split shots to a leader within 4 feet of the fly allows the fly to get at face level with the fish and it gives the fish a better chance of eating/hitting the fly if it is in their vision plane.

Response: Flies may have up to 1/8 ounce of added weight and supplemental weight (i.e. split shot) may be added to the leader within 4 feet of the fly (except for May 1st through August 15th when no supplemental weight may be added to the leader). The weight, however, must not be the primary means of propelling the cast. The flyline must propel the cast; and the purpose of the weight must be to sink the fly.

Comment: Doing away with the use of running line is acceptable; a regulation indicating that the weight of the line must be what you are casting should be implemented. Using a weighted fly or putting on a little split shot to fish under a strike indicator or to assist in getting an angler's fly down in front of the fish should be allowed for.

Response: This is the intent of the proposal and all of the above noted in the comment is allowable.

Comment: Another regulation regarding the use of running line without the floating/sinking heads is again outlawing a standard practice in this fishery. While this practice has been pioneered, and in cold climates, during much of the steelhead season, too much ice will build up on regular large diameter fly lines and will be counter productive to fishing.

Response: Conditions in the Salmon River, since baseflows were initiated in 1996, have dramatically reduced high flow events under which the running line technique provided a means of getting the fly down to the fish. While high flow events still occur, although less frequently, the recent technological advances in fly lines has decreased the need to utilize the running line technique. Fifteen miles of accessible river are available to those wishing to use the running line technique. The intent of the proposal is to provide opportunity for a traditional fly fishing experience.

Comment: Adding weight to fishing line in the Lower Fly fishing zone should continue to be allowed. It should be eliminated for the Upper Fly fishing zone.

Response: Added weight is allowed in both special regulations fly fishing during their open seasons except for the time period from May 1st through August 15th. There is legitimate use for weight during the fall season in both the Upper and Lower fly fishing zones so the Department is not proposing that it be eliminated. In the summer, some salmonids are aggressive enough to come up and take the fly but one generally has to get it down to the fish's level in the Fall (when there are more salmon).

Comment: Fish will always be subjected to foul hooking, under various conditions, no matter the method of fishing, if it is the intention of the angler, including under the allowable setup proposed. New ways of snagging fish with heave sink tips (and similar) will be used to circumvent the law, if intended.

Response: The proposed regulation is intended to more stringently define allowable fly fishing techniques in the special regulations areas, not to address the illegal foul hooking of fish, which is an enforcement matter in any event.

Comment: If the issue behind this proposed regulation is to reduce or minimize the potential to foul hook or snag fish, other methods should be employed without catering to a preferred method of fly fishing.

Response: The purpose of this proposal is not to reduce or minimize the potential to foul hook or snag fish.

Comment: The proposal is an attempt to legislate behavior and intention which cannot really be regulated effectively. Adding additional weight to fly fishing gear is a proven technique for fishing nymphs and egg imitations.

Response: The proposal defines what fly fishing techniques are allowed within the special regulations fly fishing areas; it is not an attempt to legislate behavior. The use of weight is still allowed, to sink the fly but it may not be used as the primary means of propelling the cast. The fly line must be the primary means of propelling the cast.

PROPOSAL: Prohibit the sale of trout eggs and Atlantic salmon eggs in all freshwaters of New York State.

Comment: Sale of eggs taken from fish by anglers, and then sold to local tackle shops should be prevented but shops should be allowed to sell tied sacs. Anglers should be allowed to acquire trout eggs for fishing. There is no harm with the sale of trout eggs taken from a freshly caught fish.

Response: This proposal will clarify the original intent of the existing section 11-1319(2)(a) of the Environmental Conservation Law which states that: "trout, including rainbow trout, Atlantic salmon, black bass, walleye and muskellunge shall not be bought and sold." It was always presumed that eggs from the above listed species were also illegal for sale. In fact, no bait shops in New York are known to be selling trout eggs at this time (only salmon eggs, which will still be legal for sale). If trout eggs were allowed for sale, it would encourage additional harvest primarily of lake run brown and rainbow trout from the tributaries of Lake Erie, Lake Champlain, and the Finger Lakes, where angler catch rates are currently at a very high (desirable) level.

PROPOSAL: Define tip ups for use in ice fishing in all freshwaters of New York State.

Comment: The definition of a tip up could include indicating that a tip up may have a reel for storing line only and not for bringing in fish.

Response: The definition of a tip up does not preclude the inclusion of a reel.

PROPOSAL: Create a 12 inch and three fish daily limit for brook trout in Pine, Boottree, Town Line, Deer and Horseshoe Ponds within the Masawepie Conservation Easement.

Comment: Do not set a size limit (12 inches) as the mortality rate of released smaller trout will be very high.

Response: These waters have been known to be susceptible to excessive harvest under the current regulation (any size with a creel limit of five fish). The current regulation, with the more liberal creel limit and no size limit, creates the opportunity for higher exploitation of brook trout in these waters, and limits the opportunity for trout to reach larger sizes, including for reproduction. This regulation is also necessary to protect a water that serves as a brood source for Little Tupper strain brook trout.

Department of Health

EMERGENCY RULE MAKING

Physical Therapist Assistants and Occupational Therapy Assistants

I.D. No. HLT-37-08-00003-E

Filing No. 830

Filing Date: 2008-08-25

Effective Date: 2008-08-25

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

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

Statutory authority: Social Services Law, section 365-a

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

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

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

Subject: Physical Therapist Assistants and Occupational Therapy Assistants.

Purpose: Physical therapist assistants and occupational therapy assistants to provide physical and occupational therapy as a Medicaid billable service.

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

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

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

- (d) Definitions. (1) Qualified professional shall mean:
- (i) occupational therapist, *occupational therapy assistant*, physical therapist, physical therapist assistant or speech pathologist who is licensed and currently registered with the New York State Education Department;
 - (ii) occupational therapist, *occupational therapy assistant*, [or] physical therapist, *physical therapist assistant* who possesses a limited permit and practice(s) under the supervision of the appropriate professional in accordance with requirements of the State Education Law;
 - (iii) speech pathologist who is in the process of obtaining a license and has on file a "Notification of approval of the Supervisory Plan" in accordance with requirements of the State Education Law; or
 - (iv) out-of-state occupational therapist, *occupational therapy assistant*, physical therapist, *physical therapist assistant* or speech pathologist meeting the certification requirements of the appropriate agency of the state in which they practice.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 22, 2008.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

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

COSTS:

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

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

Costs to State Government:

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

Costs to Local Government:

There will be no cost to the local government.

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

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

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

Proposed Action: This is a consensus rule making to renumber Subpart 86-8 to Subpart 86-9 of Title 10 NYCRR.

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

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

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

Text of proposed rule: Subpart 86-[8]9

Limited Home Care Services Agencies

Section [86-8.1] 86-9.1 Services.

(a) Reimbursement is available under this Subpart only for the following services provided directly by limited home care services agencies, licensed by the department pursuant to section thirty-six hundred five of the Public Health Law, to eligible individuals who are residents of adult homes or enriched housing programs certified in accordance with article seven of the Social Services Law: (1) Level II personal care services, as defined in 18 NYCRR section 505.14(a)(6)(ii), including related nursing supervision, authorized and provided in accordance with rules and regulations of the department, but not including Level I personal care services as defined in 18 NYCRR section 505.14(a)(6)(i); and (2) the administration of subcutaneous and/or intramuscular injections and application of sterile dressings by a registered professional nurse, including associated nursing tasks. Reimbursement is available under this Subpart only for services provided by limited home care services agencies which are not services that must be provided to residents of adult homes or enriched housing programs pursuant to article seven of the Social Services Law and rules and regulations of the department.

Section [86-8.2] 86-9.2 Computation of the Rates of Payment

(a) For purposes of this Subpart, rates of payment for Level II personal care services shall be calculated for two regions: a downstate region to consist of Bronx, Kings, New York, Queens and Richmond counties and an upstate region to consist of all other counties in New York State. For purposes of this Subpart, rates of payment for registered professional nurse services shall be calculated for two regions: a downstate region to consist of Rockland, Westchester, Nassau, Suffolk, Bronx, Kings, New York, Queens and Richmond counties and an upstate region to consist of all other counties in New York State.

(b) For each region, the unit of measure for which a limited home care services agency may bill for services rendered is a quarter hour.

(c) For purposes of this Subpart, the rate of payment for Level II personal care services for the downstate region shall be the weighted average January 1, 1997 Level II personal care rate for the downstate region. For purposes of this Subpart, the rate of payment for Level II personal care services for the upstate region shall be the weighted average January 1, 1997 Level II personal care rate for the upstate region for direct care

and training, capital, and criminal checks, plus no more than fifteen percent of such rate for administrative expenses.

(d) For purposes of this Subpart, the rate of payment for registered professional nurse services for the downstate region for the administration of subcutaneous and/or intramuscular injections and application of sterile dressings shall be the average January 1, 1997 fee established for nursing services rendered by a registered professional nurse on a private practitioner basis for the downstate region. For purposes of this Subpart, the rate of payment for registered professional nurse services for the upstate region for the administration of subcutaneous and/or intramuscular injections and application of sterile dressings shall be the average January 1, 1997 fee established for nursing services rendered by a registered professional nurse on a private practitioner basis for the upstate region.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, NYS Department of Health, ESP, Corning Tower Bldg, Rm. 2438, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

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

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

Consensus Rule Making Determination

Statutory Authority:

The statutory authority for these regulations is contained in sections 2803, 2807 and 2808 of the Public Health Law, which authorize the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the commissioner. The proposed regulations make a technical change to re-designate the current Subpart 86-8 of NYCRR Title 10, as Subpart 86-9 of NYCRR Title 10.

Basis:

Subpart 86-8 has been designated for use for regulations relating to outpatient reimbursement utilizing Ambulatory Patient Groups, as authorized by Public Health Law § 2807(2-a)(e). Accordingly it is proposed that the current Subpart 86-8, pertaining to reimbursement for limited home care services agencies, be re-designated as Subpart 86-9. No other amendments to such regulations are being proposed.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedures Act since it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation only serves to re-designate the current Subpart 86-8 of 10 NYCRR as Subpart 86-9.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enactment of a Serialized Official New York State Prescription Form

I.D. No. HLT-37-08-00004-P

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

Proposed Action: Amendment of Part 80, sections 85.21 and 85.22; repeal of sections 85.23 and 85.25 and addition of Part 910 to Title 10 NYCRR; and addition of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 21 and 3308

Subject: Enactment of a Serialized Official New York State Prescription Form.

Purpose: Implement Section 21 of the Public Health Law.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): Part 910 (10 NYCRR)

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

The regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that, until April 19, 2007, hospitals and comprehensive voluntary non-profit community diagnostic and treatment

centers designated by the Department are exempted from the requirement for their staff practitioners to prescribe non-controlled substances on an official prescription form. The exemption will continue beyond April 19, 2007 if the hospital and the comprehensive voluntary non-profit community diagnostic and treatment center implements and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. The exemption also will continue beyond April 19, 2007 for those facilities approved by the Department that have implemented a computerized provider order entry system that generates paper prescriptions. This exemption will allow staff practitioners to issue printed prescriptions-which minimize medication errors due to misinterpretations of handwritten prescriptions-for non-controlled substances on the prescription form of the facility until the Department approves and provides an alternative form of serialized official New York State prescription. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department. Section 910.6 also authorizes pharmacies to fill prescriptions for non-controlled substances until October 19, 2006 that are not written on an official prescription provided that the pharmacy notify the Department of the prescribing practitioner so that the practitioner may be contacted and issued official prescriptions for subsequent prescribing.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes have been proposed: Section 505.3 (18 NYCRR)

- Language included to reflect use of facsimile prescriptions.
 - Language included to allow electronically transmitted prescriptions.
 - Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.
 - Delete language prohibiting telephone orders for OTCs.
 - Language amended-telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).
 - Delete Estimated Acquisition Cost-defined in Social Services Law 367 a(9)(b)(ii).
 - Delete language referencing "triplicate" prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.
 - Delete language referencing other Sections that have been deleted (i.e. 10 NYCRR 85.25).
 - Delete language referencing dispensing fees-in Social Services Law 367-a(9)(d).
 - Language is added to reference prescription drugs filled in compliance with 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.
- Part 528 (18 NYCRR)
- Section 528.1 is deleted-obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.
 - Section 528.2 is deleted-language regarding "dispensing fees include routine delivery charges" is moved to 18 NYCRR 505.3(f)(6). Compound fee language in 18 NYCRR 505.3 [6] (3).
- Part 85 (10 NYCRR)
- Section 85.21 amended-OTC List-quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.
 - Section 85.22 amended-establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (i.e., 18 NYCRR 528.2 and 10 NYCRR 85.25)
 - Section 85.23 deleted-Revisions to list of OTCs and Maximum Reimbursable Prices-in Social Services Law 365-a(4)(a).
 - Section 85.25 deleted-Prescription drug list covered under MA-obsolete. Drug list available on line at NYS eMedNY website.
- Part 80 (10 NYCRR)
- Part 80 table of contents has been revised to reflect amendments in titles of sections of regulations.
- Sections have been amended throughout Part 80 to revise the previous

title of 'Bureau of Narcotic Control' and 'Bureau of Controlled Substances' to the current title of 'Bureau of Narcotic Enforcement'.

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

- Section 80.1-language added to define 'automated dispensing system'.

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

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

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

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

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

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

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

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

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

- Section 80.67(con't)-language deleted regarding Department's issuance of official New York State prescriptions, due to added language in section 80.72. Language deleted for face and back of prescription to facilitate timely pharmacist dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.

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

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

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

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

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

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

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

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

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

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

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

- Section 80.84-deleted language requiring group practice providing treatment of opiate dependence with buprenorphine to be limited to 30 patients at any one time, making New York State regulations consistent with the federal Drug Addiction Treatment Act. Deleted language requiring practitioners and pharmacies to register with Department to prescribe and dispense buprenorphine. Deleted language requiring pharmacy to file prescription data and report loss of controlled substances because redundant. Deleted reference to PHL 3335 and 3336 because deleted by PHL 21 and added reference to PHL 3332 and 3333 because now relevant sections.

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

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

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law, Chapter 58 of the Laws of 2004, permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administer-

ing and distribution of controlled substances within New York. New Section 21 of the Public Health law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

Needs and Benefits:

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

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

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

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

These regulations are found in amendments to 10 NYCRR Part 80 and in the newly promulgated regulations in 10 NYCRR Part 910. Included in the Part 910 regulations is an exemption allowing hospital practitioners or practitioners in a comprehensive voluntary non-profit diagnostic and treatment center designated by the Department to prescribe non-controlled substances on a non-official hospital prescription until April 19, 2007. The exemption will continue beyond April 19, 2007 for hospitals and designated comprehensive voluntary non-profit diagnostic and treatment centers that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them. The exemption also will continue beyond April 19, 2007 for those facilities approved by the Department that have implemented a computerized provider order entry system that generates printed paper prescriptions. This exemption will address concerns expressed by the facilities regarding the expense of safeguarding of official prescription paper and purchasing and installing additional dedicated computer printers in order to comply with the regulations. The exemption will allow staff practitioners to issue printed prescriptions-for non-controlled substances on the prescription form of the facility until the Department approves and provides an alternative form of serialized official New York State prescription. Printed prescriptions enhance patient care by minimizing medication error due to misinterpretations of handwritten prescriptions.

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

Title 18, Section 505.3 has also been amended to clarify for pharmacy providers that serial numbers reporting by billing pharmacy providers is required in all instances where a prescriber or orderer of services used a serialized prescription, whether or not the prescription is for prescription drugs. This change is requested in recognition of the opportunity serialized prescriptions offer to reduce the incidence of prescription theft. The reporting of prescription serial numbers on claims allows the MMIS claims system to provide feedback and alerts to pharmacy providers, at the point of service, about stolen prescriptions. Lack of serial numbers on a claim hampers this capability.

COSTS:

Costs to Regulated Parties:

This program is being funded by an annual assessment on the State In-

surance Department of \$16.9 million. The assessment funds the costs of providing 180 million official prescriptions annually as well as administrative and enforcement staffing to operate and enforce the program. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize, respectively, an estimated \$75 million and \$25 million in annual savings due to the reduction of fraudulent prescription claims.

The \$25 million estimated savings for the Medicaid program represents the 25% New York State share. \$50 million in estimated savings would accrue to the 50% federal government share of Medicaid, while \$25 million in estimated savings would accrue to the 25% local government share of Medicaid.

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

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

Costs to State and Local Government:

There will be no costs to state or local government. Savings to State government are estimated at \$25 million to the 25% New York State share of Medicaid. Savings to local government, from reduction in subsidizing of prescription costs for patients in their Medicaid population, will result in an estimated \$25 million to the 25% local government share of Medicaid.

Costs to the Department of Health:

There will be no additional costs to the Department. The decrease in prescription fraud as a result of use of the official prescription will result in savings for the Department for the Medicaid, EPIC, and Empire programs. An increase in the efficiency of investigations made possible by the official prescription program will result in additional savings for the Department.

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

As a result of consultations with the hospital community, hospitals were granted a one-year exemption, until April 19, 2007, from the requirement for their staff practitioners to prescribe non-controlled substance medications on the official prescription. The purpose of the exemption is to serve as an incentive for hospitals to develop electronic prescription systems. The exemption will be extended if the hospital implements and utilizes an electronic prescription system to transmit such prescriptions directly to a pharmacy in lieu of an official prescription. The exemption also will be extended beyond April 19, 2007 for a hospital approved by the Department that has implemented a computerized provider order entry system that generates printed paper prescriptions. This exemption will address concerns expressed by the facilities regarding the expense of safeguarding official prescription paper and purchasing and installing additional dedicated computer printers. The exemption will allow staff practitioners to issue printed prescriptions-which minimize medication errors due to misinterpretation of handwritten prescriptions-for non-controlled substances on a hospital prescription form until the Department approves and provides an alternative form of official New York State prescription.

Federal Standards:

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

Compliance Schedule:

These regulations will become effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule on Small Business and Local Government:

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

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

Compliance Requirements:

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

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

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

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

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

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

Professional Services:

No additional professional services are necessary.

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimize Adverse Impact:

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

Compliance Requirements:

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

Professional Services:

None necessary.

Compliance Costs:

The new law requires all pharmacies in New York State to electronically transmit information from controlled substance prescriptions to the Department on a monthly basis, for monitoring and analysis purposes in combating prescription fraud. Pharmacies may require minor adjustments in computer software programming due to this additional prescription data submission requirement.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a

paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

Rural Area Participation:

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

Job Impact Statement

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

Office of Mental Health

NOTICE OF ADOPTION

Placement or Transfer of Patients

I.D. No. OMH-27-08-00002-A

Filing No. 829

Filing Date: 2008-08-21

Effective Date: 2008-09-10

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

Action taken: Amendment of Part 540 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 7.09; Criminal Procedure Law, section 730.40

Subject: Placement or Transfer of Patients.

Purpose: To amend regulations pertaining to transfer or placement of patients.

Text or summary was published in the July 2, 2008 issue of the Register, I.D. No. OMH-27-08-00002-P.

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

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

Revised Regulatory Impact Statement

1. Statutory Authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health (OMH) the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 730.40 of the Criminal Procedure Law provides that a court may issue a "final order of observation" for an individual found incompetent to stand trial, which means the charges against the individual are dropped and the individual is committed to the custody of the Commissioner of OMH for observation and possible care and treatment.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. In 1988, Section 730.40 of the Criminal Procedure Law (CPL) was found to violate equal protection by allowing commitments to a psychiatric hospital of persons found incompetent to stand trial who have had the charges dropped without proof of dangerousness by clear and convincing evidence (*Ritter v. Surlles*, 144 Misc. 2d 945). While the statute has never been amended to reflect the changes necessitated by the *Ritter* decision, the changes mandated by the ruling of the case have been implemented by OMH. Over the years, the manner in which OMH has implemented *Ritter* has been the source of a number of disputes with patients' attorneys.

3. Needs and Benefits: In February, 2005, a lawsuit was commenced as a class action in federal district court claiming that the CPL section 730.40

patients are frequently designated to go to a secure facility by OMH with no hearing or other due process available prior to the designation (*Bernstein v. Pataki*). Current OMH practices require that within 24 hours of receiving the information that an individual is a CPL section 730.40 patient, OMH will designate a facility. The district court dismissed the case and denied the plaintiffs motion for class certification in December 2005. In April 2007, the U.S. Court of Appeals for the 2d circuit vacated the decision of the district court and remanded the case for further proceedings.

While preparing for trial, the parties had settlement discussions and it was suggested by plaintiff's attorneys (plaintiffs are represented by Mental Hygiene Legal Services) that an amendment to OMH's regulations would be sufficient to settle this case. The regulation under consideration is the product of the negotiations between plaintiff's attorneys, the Attorney Generals' office and OMH.

The amendments still allow OMH to designate a secure facility for a CPL section 730.40 patient. However, only those patients who have open felony charges or warrants outstanding, those with pending parole revocation hearings, those with a history of arrests for violent crimes or threats to commit violent crimes against persons, or those with a history of escape or attempted escape from a psychiatric facility, if the Commissioner believes, based upon a review of available information that such individuals would meet secure retention standards, would be designated to a secure facility. The Commissioner will then have 72 hours to determine whether or not the individual meets the criteria for having a mental illness for which inpatient care and treatment are necessary. If committed, the Commissioner will also send out notices that the individual is now a civil patient and no further notices of his/her transfer or release will be given unless in compliance with Mental Hygiene Law section 33.13.

The amendments also give the patient the right to have his/her commitment to the secure facility reviewed by the hospital forensic committee (HFC) within 30 days of admission. The HFC is to review the patient's placement in the secure facility to determine whether or not he presents such a substantial risk of harm to others that he needs the close supervision provided by a secure facility. A patient placed in a secure facility due to a history of arrests for violent crimes against persons, or threats to commit such crimes, or escapes or attempted escapes from a psychiatric facility is also entitled to object to his/her placement in the secure facility after a 30-day review period has elapsed. Such an objection must be made within 10 days of the 30-day periodic review.

The amendments call for the director of the facility to send to the Commissioner or his designee, the patient and his/her representative any written arguments and supporting documentation concerning the decision to admit the patient to a secure facility. Once an objection is filed, the Commissioner must designate a qualified psychiatrist or licensed psychologist to evaluate the patient and make a recommendation to the Commissioner. If the decision is confirmed, it shall be communicated to the director, the patient and the patient's representative.

Patients placed in a secure facility will be retained there only as long as he/she meets the criteria of this section to be so retained. The director of the secure facility is also required to review the need for retention in a secure facility at intervals of not more than six months, explaining the need for continued retention.

It should be noted that patients initially designated to a non-secure facility are still subject to transfer to a secure facility using 14 NYCRR Part 57, should that individual meet the requirements of that transfer regulation.

4. Costs: No additional costs are anticipated as a result of the adoption of this regulation.

5. Local Government Mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of those affected.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The alternative to implementing this regulation would be to go forward with the litigation. Although OMH believes its position is defensible, losing the litigation could potentially result in an order which would severely constrict or eliminate the ability of the Commissioner of OMH to admit directly to secure facilities patients remanded to his custody under CPL section 730.40, as well as an award of substantial attorney fees. Since the agency believes it can implement this regulation with no additional costs to OMH, the continuation of the litigation was rejected as inadvisable.

9. Federal Standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The regulatory amendments could be implemented immediately upon adoption.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Accounting and Ratemaking Treatment for the Sale of Four Properties

I.D. No. PSC-41-05-00025-A

Filing Date: 2008-08-22

Effective Date: 2008-08-22

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

Action taken: On August 20, 2008, the PSC adopted an order, with modifications, approving the joint petition of Consolidated Edison Company of New York, Inc. & FSM East River Associated LLC to transfer certain real property located at 616, 685, 700 & 708 First Ave. NY.

Statutory authority: Public Service Law, sections 5(b), 5(c), 65, 66, 70, 79, 80 and 83

Subject: Accounting and ratemaking treatment for the sale of four properties.

Purpose: To approve the accounting and ratemaking treatment for the sale of four properties.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving, with modifications, the joint petition of Consolidated Edison Company of New York, Inc. and FSM East River Associated LLC for accounting and ratemaking treatment for the sale of 616 First Avenue, a portion of 685 First Avenue, 700 First Avenue and 708 First Avenue, New York, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(01-E-0377SA2)

NOTICE OF ADOPTION

Uniform System of Accounts - Request for Accounting Authorization

I.D. No. PSC-46-06-00022-A

Filing Date: 2008-08-22

Effective Date: 2008-08-22

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

Action taken: On August 20, 2008 the Commission approved the petition of Corning Natural Gas Corporation to defer accounting treatment of incremental uncollectible account expenses incurred in the fiscal year ending September 30, 2006.

Statutory authority: Public Service Law, section 66-9

Subject: Uniform System of Accounts - Request for Accounting Authorization.

Purpose: To approve the deferred accounting treatment of uncollectible account expenses incurred in the fiscal year end 9/30/06.

Substance of final rule: The Commission on August 20, 2008, approved the petition of Corning Natural Gas Corporation to defer accounting treatment for \$271,090 of incremental uncollectible account expenses incurred in the fiscal year ending September 30, 2006, 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 Commis-

sion, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-1266SA1)

NOTICE OF ADOPTION

Uniform System of Accounts - Request for Accounting Authorization

I.D. No. PSC-07-07-00013-A

Filing Date: 2008-08-22

Effective Date: 2008-08-22

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

Action taken: On August 20, 2008 the Commission denied the petition of Corning Natural Gas Corporation (Corning) to defer accounting treatment of the incremental interest expense on short-term debt incurred in the fiscal year ending September 30, 2006.

Statutory authority: Public Service Law, sections 65(1), 66(4) and (9)

Subject: Uniform System of Accounts - Request for Accounting Authorization.

Purpose: To deny the accounting treatment of the incremental interest expense on short-term debt incurred in the fiscal year end 9/30/06.

Substance of final rule: The Commission, on August 20, 2008, denied the petition of Corning Natural Gas Corporation to defer accounting treatment of \$573,183 for short-term interest expense, as well as the \$2,500 cost associated with the filing of the petition for debt incurred in the fiscal year ending September 30, 2006, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-G-0064SA1)

NOTICE OF ADOPTION

A Model of Incentives in Electric Utility Efficiency Programs

I.D. No. PSC-45-07-00006-A

Filing Date: 2008-08-22

Effective Date: 2008-08-22

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

Action taken: On August 20, 2008, the PSC adopted an order for a model of incentives in electric utility efficiency programs.

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

Subject: A model of incentives in electric utility efficiency programs.

Purpose: To adopt a model of incentives in electric utility efficiency programs.

Substance of final rule: The Commission, on August 20, 2008, adopted an order establishing a policy to govern the application of incentives in electric utility efficiency programs, establishing potential statewide incentive levels relative to a pre-determined estimate of overall program costs, apply a symmetrical positive or negative monetary adjustment based on achieved megawatt-hour reductions, apply to all electric utility-administered efficiency programs, and preserve flexibility in applications to ensure all objectives of the portfolio of efficiency programs are achieved, 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.

(07-M-0548SA10)

NOTICE OF ADOPTION

Denying the Use of the Millennium Fund for Gas Appliance Research

I.D. No. PSC-48-07-00011-A

Filing Date: 2008-08-21

Effective Date: 2008-08-21

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

Action taken: On August 20, 2008 the Commission denied the petition of Northeast Gas Association for a waiver of the Commission's restriction to use the Millennium Fund to fund gas appliance research.

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

Subject: Denying the use of the Millennium Fund for gas appliance research.

Purpose: To deny the use of the Millennium Fund for gas appliance research.

Substance of final rule: The Commission on August 20, 2008, denied the petition of Northeast Gas Association Research and Development arm, NYSEARCH, for a waiver of the Commission's restriction to use the voluntary state funding mechanism, the Millennium Fund to fund gas appliance research.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-G-1243SA1)

NOTICE OF ADOPTION

Transfer of Property

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

Filing Date: 2008-08-22

Effective Date: 2008-08-22

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

Action taken: On August 20, 2008 the Commission approved the petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for the sale of property located at 809-873 Neptune Avenue, Brooklyn, NY to Steel Arrow, LLC.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To approve the sale of property located at 909-973 Neptune Avenue, Brooklyn, NY.

Substance of final rule: The Commission on August 20, 2008, adopted an order approving the petition of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (the Company) for the sale of the Company's property located at 809-873 Neptune Avenue, Brooklyn, New York to Steel Arrow, LLC, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-G-0071SA1)

NOTICE OF ADOPTION

Petition for Rehearing and Clarification of Proposed Decoupling Mechanism & Energy Efficiency Programs

I.D. No. PSC-11-08-00013-A

Filing Date: 2008-08-21

Effective Date: 2008-08-21

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

Action taken: On 8/20/08, the PSC adopted an order granting, in part Orange and Rockland Utilities, Inc.'s petition for rehearing in light of the superseding decision in the Energy Efficiency Portfolio Standard proceeding (EEPS) and to dismiss the rest of the petition.

Statutory authority: Public Service Law, section 22

Subject: Petition for rehearing and clarification of Proposed Decoupling Mechanism & Energy Efficiency Programs.

Purpose: To approve in part the petition for rehearing pursuant to the superseding EEPS Order, the remaining is denied.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving, in part and denying in part, Orange & Rockland Utilities, Inc.'s petition for rehearing for the approval of certain New York State Energy Research and Development Authority (NYSERDA) energy efficiency programs, in light of the superseding Energy Efficiency Portfolio Standard proceeding, 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. (06-E-1433SA7)

NOTICE OF ADOPTION

New Tariff Schedule

I.D. No. PSC-12-08-00026-A

Filing Date: 2008-08-20

Effective Date: 2008-08-20

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

Action taken: On August 20, 2008, the PSC adopted an order approving, the Village of Bergen's request for a new tariff schedule for Electric Service PSC No. 1 – Electricity, eff. September 1, 2008.

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

Subject: New tariff schedule.

Purpose: To approve a new tariff schedule for the Village of Bergen.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving the request of the Village of Bergen for a new tariff schedule PSC No. 1, Electricity, effective September 1, 2008.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission,

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-E-0203SA1)

NOTICE OF ADOPTION

Mini Rate Filing

I.D. No. PSC-17-08-00029-A

Filing Date: 2008-08-20

Effective Date: 2008-08-20

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

Action taken: On August 20, 2008, the PSC adopted an order approving, with modifications, the Village of Richmondville's request to increase its annual electric revenues in Schedule for Electric Service PSC No. 1 – Electricity, eff. September 1, 2008.

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

Subject: Mini Rate Filing.

Purpose: To approve, with modifications, an increase in annual electric revenues of \$84,790 or 8.1%.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving, with modifications, the request of the Village of Richmondville to increase its annual electric revenues by \$84,790 or 8.1%, effective September 1, 2008, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (08-E-0359SA1)

NOTICE OF ADOPTION

Transfer of Ownership of Electric & Steam Plant Located at Ravenswood Generating Station

I.D. No. PSC-20-08-00029-A

Filing Date: 2008-08-21

Effective Date: 2008-08-21

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

Action taken: On August 20 2008, the PSC adopted an order approving the Joint Petition of KeySpan Ravenswood LLC & TransCanada Facility USA, Inc. for the transfer of ownership of the Ravenswood Generating Station in Queens, NY.

Statutory authority: Public Service Law, sections 70 and 83

Subject: Transfer of ownership of electric & steam plant located at Ravenswood Generating Station.

Purpose: To approve the transfer of ownership of electric & steam plant located at Ravenswood Generating Station.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving the joint petition KeySpan-Ravenswood LLC, KeySpan Ravenswood Services Corporation and TransCanada Facility USA, Inc. for the transfer of ownership interests in the electric and steam plant located at the Ravenswood Generating Station in Queens, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-M-0436SA1)

NOTICE OF ADOPTION

Rates and Charges

I.D. No. PSC-22-08-00007-A

Filing Date: 2008-08-22

Effective Date: 2008-08-22

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

Action taken: On August 20, 2008, the PSC adopted an order, approving the petition of United Water Westchester Inc., f/k/a Aquarion Water Company of New York, to increase current tariff surcharges to recover increased purchased water costs.

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

Subject: Rates and charges.

Purpose: To approve an increase in current tariff surcharges to recover increased purchased water costs.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving the petition of United Water Westchester Inc., f/k/a Aquarion Water Company of New York, to increase current tariff surcharges to recover increased purchased water costs of \$888,500 per year and deferrals of \$790,172 over one year, both effective on September 1, 2008, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-W-0464SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Gas Rate Filing

I.D. No. PSC-37-08-00009-P

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

Proposed Action: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service—P.S.C. No. 219.

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

Subject: Major gas rate filing.

Purpose: To consider a proposal to increase annual gas revenues by approximately \$95.3 million or 10.9% on a total bill basis.

Public hearing(s) will be held at: 12:00 p.m., Oct. 28, 2008* at Syracuse City Hall, Common Council Chambers, 3rd Fl., 333 E. Washington St., Syracuse, NY; 6:00 p.m., Oct. 28, 2008* at Onondaga County Public Library, 447 S. Salina St., Curtain Auditorium, Syracuse, NY; 12:00 p.m., Nov. 5, 2008* at Schenectady County Public Library, 99 Clinton St., McChesney Rm., Schenectady, NY; and 6:00 p.m., Nov. 10, 2008* at Schodack Town Hall, 265 Schuurman Rd., Castleton, NY.

* On occasion there are requests to reschedule or postpone public state-

ment hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Case 08-G-0609.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) to increase its annual gas revenues by approximately \$95.3 million (the amount includes \$11.11 million in System Benefit Charge revenues related to the company's proposed Energy Efficiency Programs) or 10.9% on a total bill basis for the rate year ending March 31, 2010. The proposed increase in delivery rates would be approximately 33.2%. Proposals for energy efficiency programs and the gas System Benefits Charge, which will recover all of the costs associated with the gas energy efficiency programs are included in Niagara Mohawk's proposed filing.

The statutory suspension period for the proposed filing runs through April 20, 2009. The Commission may adopt in whole or in part or reject terms set forth in Niagara Mohawk's proposal.

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

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

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

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

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

(08-G-0609SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges

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

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

Proposed Action: On August 20, 2008, Rolling Meadows Water Corporation (Rolling Meadows) filed a petition requesting authority to increase its annual revenues by approximately \$83,000 or 20% and to implement a quarterly surcharge to recoup a \$31,000 sales revenue deficit.

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

Subject: Water rates and charges.

Purpose: For approval to increase Rolling Meadows Water Corporation's annual revenues by about \$83,000 or 20%.

Substance of proposed rule: On August 20, 2008, Rolling Meadows Water Corporation (Rolling Meadows or the company) filed, to become effective on November 30, 2008, tariff amendments (Leaf No. 12, Revision 7) to its electronic tariff schedule P.S.C. No. 4 - Water containing new rates designed to produce additional annual revenues of about \$83,000 or 20%. In addition, the company is also requesting a quarterly surcharge of \$7.32 be assessed on each customer's bill for eight consecutive quarters to recoup a metered sales revenue deficit of approximately \$31,000, a 7% shortfall in the revenue target allowed by the Commission in the company's previous rate case (06-W-0302). Rolling Meadows provides general metered water service to 1,059 customers in the Elmendorf, Leewood Knolls, High Ridge, Rolling Meadows, Hillside Acres and Hurley systems located in the Towns of Hurley, Ulster and Marletown in Ulster County. Fire protection is not provided. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under File Room -

Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 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-W-0993SA1)

Office of Real Property Services

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Agricultural Assessment Program Definitions

I.D. No. RPS-37-08-00002-P

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

Proposed Action: Amendment of section 194.1 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 202(1)(1); Agriculture and Markets Law, section 307

Subject: Agricultural Assessment Program definitions.

Purpose: To conform the definitions set forth in section 194.1 with article 25-AA of the Agriculture and Markets Law.

Public hearing(s) will be held at: 11:00 AM, October 7, 2008 at 16 Sheridan Ave., Albany, NY 12210.

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

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

Substance of proposed rule (Full text is posted at the following State website: <http://www.orps.state.ny.us>): Section 194.1 of Title 9, NYCRR, which sets forth many definitions applicable to the agricultural assessment program, was last amended in 1995. The proposed regulatory amendment would revise § 194.1 to conform its provisions to the current provisions of Agriculture and Markets Law [AML], Article 25-AA, that now apply to the program.

The regulation's definition of "crops, livestock and livestock products" would be expanded to include ratites (AML, § 301(2)(e)), wool bearing animals (AML, § 301(2)(e)), and woody biomass (AML, § 301(2)(i)). The definition of "gross sales value" would be amended to apply to set-aside payments paid by the Federal Conservation Reserve Program (AML, § 301(4)(e); see also, 10 Op.Counsel SBRPS No. 57), and payments received by thoroughbred horse breeders pursuant to § 247 of the Racing, Pari-Mutuel Wagering and Breeding Law (AML, § 301(9)(f)). Regulatory § 194.1 would be further revised to include in its definition of "land used in agricultural production" qualified land situated under a structure within which crops, livestock or livestock products are produced for sale (AML, § 301(4)(g)).

Other provisions would be added to regulatory § 194.1 to define and interpret terms that apply to the agricultural assessment program. For example, a definition of a "newly established farm operation" would be added that would set forth the eligibility criteria provided in AML,

§ § 301(4)(h)), 301(4)(i), and 301(4)(j)). The proposed regulatory amendment would also state the State Board's statutory interpretation that a newly established farm operation does not include farms that are owned and/or controlled by the owners of a previous farm operation that used the same land for commercial farming. The definition of "conversion" set forth in § 194.1 would be amended to exclude situations when agricultural land is used for oil, gas or wind exploration, development or extraction activity, taken by eminent domain or other involuntary proceeding other than a tax sale, or conveyed or subjected to a conservation easement for the protection of the New York City Watershed Area (AML, § § 305(1)(d)(iv), 305(1)(d)(vii), 306(2)(c), and 306(2)(d)).

A provision would be added to regulatory § 194.1 to refer to the right of qualified land, located within an agricultural district, to continue receiving an agricultural assessment when the Cooperative Extension Service certifies that an act of God, natural disaster or continued adverse weather conditions has destroyed a farm operation's agricultural production (AML, § 305(1)(f)). Another new provision of regulatory § 194.1 would define "wind exploration, development or extraction activities" and would state that such activities may include the use of wind turbines (AML, § 301(5)).

Text of proposed rule and any required statements and analyses may be obtained from: Robert J. Mark, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, email: internet.legal@orps.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:** Real Property Tax Law [RPTL], § 202(1)(l), authorizes the State Board of Real Property Services to adopt such rules "as may be necessary for the exercise of its powers and the performance of its duties." Agriculture and Markets Law [AML], § 307, provides that "[t]he state board of real property services and the commissioner [of Agriculture and Markets] are each empowered to promulgate such rules and regulations... as each shall deem necessary to effectuate the purposes of this article ..."

2. **Legislative Objectives:** This proposal would further the State Board's obligation to furnish assessors with accurate information necessary to properly administer the agricultural assessment program (see, RPTL, § 202(1)(g)) by amending § 194.1 of Title 9, NYCRR, to conform to the current provisions of Agriculture and Markets [AML], Article 25-AA.

3. **Needs and Benefits:** Definitions within existing regulations applicable to the agricultural assessment program were last amended in 1995. Since that time, amendments to the Agriculture and Markets Law [AML], § § 301, 305 and 306, have revised the eligibility requirements for receiving agricultural assessments and for imposing payments after the conversion of former agricultural land.

This proposal would conform § 194.1 to the aforementioned current statutory provisions. The proposal would also define a "newly established farm operation" for the purposes of the agricultural assessment program. The proposal would further add a provision referring to the right of qualified commercial farm land, located within an agricultural district, to continue receiving an agricultural assessment when the Cooperative Extension Service certifies that an act of God, natural disaster or continued adverse weather conditions has destroyed a farm operation's agricultural production (AML, § 305(1)(f)). By adopting this proposal, the State Board would facilitate a more accurate and complete understanding of the agricultural assessment program by assessors and the farm community.

4. **Costs:** (a) To State Government: None.

(b) To local governments: None.

(c) To school districts: None.

(d) To private regulated parties: None.

(e) **Basis of cost estimates:** This proposal would not establish any new reporting, record-keeping or other compliance requirements and would not require the payment of any new fees or charges by the owners of agricultural land.

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

6. **Paperwork:** This proposal would impose no additional paperwork on the State or local governments.

7. **Duplication:** There are no comparable State or Federal requirements.

8. Alternatives: The State Board considered repealing § 194.1 of Title 9, NYCRR, because the existing regulation no longer conforms to the provisions of AML, Article 25-AA. The State Department of Agriculture and Markets asked ORPS to instead revise section 194.1 to conform to the current provisions of Article 25-AA of the Agriculture and Markets Law in order to help farmers understand the agricultural assessment program. This proposal has been reviewed by Agriculture and Markets which has concluded that the proposal is well drafted and appropriate for updating definitions relevant to the administration of the agricultural assessment program. The New York Farm Bureau believes the proposal would provide needed guidance to the farm community concerning the agricultural assessment program. The proposed regulatory amendment contains provisions suggested by the Farm Bureau.

9. Federal Standards: There are no Federal regulations concerning this subject.

10. Compliance Schedule: None.

Regulatory Flexibility Analysis

The amendment proposed would not impose any adverse economic conditions or any reporting, record-keeping or other compliance requirements on small businesses. The proposal is intended to help the agricultural industry by providing information concerning the agricultural assessment program to commercial farmers and owners of agricultural land.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal because the regulatory amendment would not impose any adverse economic conditions or any reporting, record-keeping or compliance requirements on public or private entities in rural areas.

Job Impact Statement

A job impact statement is not required for this rule making because the proposed amendment only concerns the furnishing of additional information to assessors and the farm community concerning a current administrative program to provide agricultural assessments to qualified farm land.

Department of State

EMERGENCY RULE MAKING

To Extend and Expand an Existing Cease and Desist Zone for the County of Kings

I.D. No. DOS-32-08-00007-E

Filing No. 827

Filing Date: 2008-08-20

Effective Date: 2008-08-20

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

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

Statutory authority: Real Property Law, section 442-h

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

Specific reasons underlying the finding of necessity: The Department of State held a public hearing on September 6, 2007 to determine whether this rulemaking should be proposed. At the public hearing, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeated solicitation to list their homes for sale. The Department of State held the record open after the public hearing to afford others the opportunity to submit written testimony and proof. The testimony and evidence submitted to the Department of State amply demonstrates that some residents within the proposed geographic area are the subject of intense and repeated solicitation to list their homes for sale. This rule making will benefit residents of the defined area by providing a mechanism for them to notify the Department of State that they do not wish to be solicited. An existing cease and desist zone protecting a portion of the defined geographic area is due to expire on August 20, 2008. The Department of State has determined that these, and other residents, are in need of continued protection.

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

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

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

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

| Zone | Expiration Date |
|-----------------|-----------------|
| County of Bronx | August 1, 2009 |

Within the County of Bronx as follows:

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

| Zone | Expiration Date |
|------------------|-----------------|
| County of Queens | August 1, 2009 |

Cease and Desist Zone
(Mill Basin/Brooklyn)

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

Within the County of Kings as follows:

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

Cease and Desist Zone
(Canarsie)

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

Within the County of Kings as follows:

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

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

Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DOS-32-08-00007-P, Issue of August 6, 2008. The emergency rule will expire November 17, 2008

Text of rule and any required statements and analyses may be obtained from: Whitney A. Clark, Department of State, Division of Licensing Services, 80 South Swan Street, P.O., Box 22001, Albany NY 12231, (518) 473-2728, email: whitney.clark@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Real Property Law (RPL) section 442-h(3)(a) permits the Department of State (DOS) to adopt a rule establishing a cease and desist zone for a defined geographic area if it is determined that some owners of residential real property within the defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale with such real estate broker or salesperson. RPL section 442-h(3)(c) provides that a cease and desist zone shall be effective for a maximum of five years, after which the Secretary of State may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. Based on testimony received at a public hearing on September 6, 2007, the Secretary has determined that some homeowners residing in the proposed cease and desist zone in Brooklyn are subject to intense and repeated solicitation. Accordingly, DOS has express authority to adopt this rule, which extends and expands an existing cease and desist zone in several Brooklyn communities.

2. Legislative objectives:

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

Thus, RPL section 442-h was designed to protect the public. This rule re-enforces the objectives of the Legislature when it enacted RPL section 442-h by extending and expanding a cease and desist zone for an area that has demonstrated that some residents are the subject of intense and repeated solicitation. The current cease and desist order will be extended for an additional five years, and will be due to expire on November 30, 2012.

3. Needs and benefits:

DOS held a public hearing on September 6, 2007 at Junior High School 78 in Brooklyn, NY to determine whether to extend the cease and desist order that expired on November 30, 2007. The defined cease and desist zone would be the Mill Basin area of Brooklyn, which includes the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine. At the public hearing, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeated solicitation to list their homes for sale. The speakers included elected officials, local representatives and homeowners within the existing and proposed cease and desist zone. The speakers spoke primarily in support of the proposed cease and desist zone, citing the need to curb the aggressive solicitation practices of real estate agents in the affected communities. The speakers cited frequent mailings, unwanted flyers, as well as door-to-door solicitation as intrusive and unwanted solicitation practices by real estate brokers and salespersons. DOS held the record open after the public hearing to afford others the opportunity to submit written testimony and proof of undesired solicitation. The additional material provided to DOS was consistent with that obtained during the public hearing.

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

4. Costs:

a. Costs to regulated parties:

The costs to real estate brokers and salespersons are minimal. DOS licenses approximately 11,926 real estate licensees in Brooklyn. DOS

maintains copies of the cease and desist lists on its website. This list is available for all to view, at no cost. Additionally, DOS will mail a copy of the list to any person desiring a copy for the minimal cost of \$10.00.

b. Costs to the Department of State:

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

Printing owners statements \$2,200

Mailing owners statements \$640

Processing statements:

Staff: SG-13: \$37,072

SG-23: \$58,406

10 weeks: \$7,129-\$11,231

Data entry:

Staff: SG-6: \$25,146

SG-9: \$29,595

SG-13: \$37,072

10 days: \$688-\$1,015

The costs for printing and mailing the cease and desist list are unknown. DOS anticipates that most licensees will access the list, at no cost, on its website. For those few who want to purchase a paper copy, DOS will likely print a copy, on an order-by-order basis, on existing equipment. The mailing costs will be dependent on the number of copies that are ordered. However, DOS expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

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

c. Costs to State and local governments:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

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

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

DOS did not consider any other alternatives.

9. Federal standards:

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

10. Compliance schedule:

Real estate licensees currently are required to comply with 19 NYCRR Part 175.17(c)(2). The original cease and desist zone contained in that part and addressed in this rule making expired on November 30, 2007, and had been in place for five years. DOS has extended this cease and desist zone by means of two 90-day emergency rule makings - the first took effect on November 26, 2007, and the second has been effective since February 25,

2008. Therefore, regulated parties currently are complying with the requirements proposed in this rule making.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule would extend and expand an existing cease and desist zone, and thereby would prohibit real estate brokers and salespersons from soliciting any resident within that zone that does not wish to be solicited. The defined cease and desist zone would be the Mill Basin area of Brooklyn, New York, which includes the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine. This rule will apply to most of the 11,926 real estate brokers and salespeople that have offices in Brooklyn, and many of these licensees in turn are small businesses, or are associated with small businesses. Real estate brokers and salespersons will remain free, however, to solicit listings from other residents in the defined zone and to participate in regulated transactions within the zone. Insofar as the rule making seeks to extend and expand an existing cease and desist zone, it is not anticipated that the solicitation limitations will place an undue financial burden or impose a hardship on real estate brokers and salespersons.

The rule does not apply to local governments.

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technical feasibility:

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

6. Minimizing adverse economic impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

2. Reporting, record-keeping and other compliance requirements:

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

3. Costs:

The rule does not impose any costs on rural areas.

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

Department of Taxation and Finance

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-24-08-00005-A

Filing No. 842

Filing Date: 2008-08-26

Effective Date: 2008-08-26

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 July 1, 2008 through September 30, 2008.

Text or summary was published in the June 11, 2008 issue of the Register, I.D. No. TAF-24-08-00005-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. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Assessment of Public Comment

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

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Sales Tax Re-registration of Show and Entertainment Vendors and Other Persons

I.D. No. TAF-37-08-00005-P

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

Proposed Action: Amendment of 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.

Substance of proposed rule (Full text is posted at the following State website: www.nystax.gov): This rule amends Parts 533, 539, and 540 of the Sales and Use Taxes Regulations concerning, respectively, Vendor Obligations, Vendor Registration, and Expiration of Certificates of Authority and Registration Renewals. The rule is a necessary part of the Department's plan to streamline the sales tax re-registration process by

eliminating the special certificate of authority and its specified annual term for a certain group of sales tax vendors known as show and entertainment vendors. Currently, this "Certificate of Authority for Show and Entertainment Vendors" is automatically reissued by the Department at the end of each calendar year provided the vendor has timely filed its tax returns and paid the applicable tax due. This rule will allow the Department to conform the treatment of show and entertainment vendors with all other certificate of authority holders for purposes of reissuing their certificates, i.e., as part of a sales tax re-registration program, and thereby obtain updated vendor information, delete obsolete registrations, and collect past-due taxes from them. Part LL-1 of Chapter 57 of the Laws of 2008 directs the Department to conduct such a re-registration program which should be completed by March 31, 2012.

Section 1 of the rule repeals paragraphs (2) through (6) of section 533.1(b) of the regulations, as these paragraphs are specific to the annual process by which show and entertainment vendors' certificates of authority are automatically reissued by the Department. Subdivision (b) is further amended to delete references to the distinct certificate of authority for show and entertainment vendors.

Sections 2, 3, 4, and 6 of the rule make conforming amendments to the regulations by deleting references to the special certificate of authority for show and entertainment vendors which will no longer exist. These sections also make other technical changes to the affected sections of Part 533 of the regulations.

Sections 5, 11, and 13 of the rule make technical amendments to the affected sections of Parts 533, 539, and 540, respectively, of the regulations by updating information related to the filing of certificates of registration.

Section 7 of the rule conforms existing section 539.2(j)(1) of the regulations to recently enacted Part LL-1 of Chapter 57 of the Laws of 2008 which requires fees be collected from certain applicants in conjunction with this legislation's directed sales tax re-registration program.

Sections 8, 9, 10, 12, 14, and 15 of the rule make clarifying, technical, and conforming amendments in Parts 539 and 540 of the regulations in accordance with sections 1134(a)(2) and (5) of the Tax Law. The amendments clarify that a certificate of authority may be issued by the Department for a specified period of not less than three years or, in the case of show, entertainment, and temporary vendors for a specified period of less than three years, and that such certificate would, by its terms, expire at the end of the specified period. Also, as clarified in Part LL-1 of Chapter 57 of the Laws of 2008, a certificate of authority may be subject to an expiration and renewal process as part of a sales tax re-registration program conducted by the Department even though it has not been in effect for its specified period.

Section 10 of the rule also contains a transitional provision for show and entertainment vendors whose certificates of authority expire on December 31, 2008, to automatically receive from the Department a new certificate of authority, effective January 1, 2009, (provided that the vendor has timely filed tax returns and paid the applicable tax due) in order to allow these vendors ample time to become familiar with the provisions of the new rule.

Section 16 of the rule makes technical amendments to section 540.2 of the regulations to modify the term "mailed" to the more general term "issued" which accommodates the utilization of more modern and cost-effective means of communication between taxpayers and the Department with regard to the sales tax re-registration process.

Section 17 of the rule repeals superfluous subdivision (a) of section 540.3 of the regulations which mirrors statutory language concerning grounds under which the Department may refuse to issue a certificate of authority, and adds a new subdivision (a) which merely references the applicable statute.

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

1. Statutory authority: Tax Law, sections 171, 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. Section 171, First, authorizes the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 1134(a)(2) of the Tax Law provides that a cer-

tificate of authority to collect sales and compensating use taxes may be issued for a specified term, and will be subject to renewal in accordance with rules promulgated by the Commissioner. Section 1134(a)(5) provides that, if the Commissioner considers it necessary for the proper administration of the sales and use taxes, the Commissioner may require every person holding a certificate of authority to surrender the current certificate and to file a certificate of registration (application) for a new certificate of authority not more than once every three years. Part LL-1 of Chapter 57 of the Laws of 2008 directs the Commissioner to conduct such a re-registration program, which should be completed by March 31, 2012, and to collect a \$50 application fee from all persons required to file a new certificate of registration pursuant to this program except annual filers. Sections 1142(1) and (8) of Article 28 and section 1250 of Article 29 of the Tax Law provide for the adoption of rules and regulations that are appropriate to carry out and jointly administer the New York State and local sales and use taxes imposed by and pursuant to the authority of these Articles.

2. Legislative objectives: This rule is being proposed pursuant to this statutory authority to re-examine the existing policies of the Department of Taxation and Finance with respect to sales tax re-registration, and to prescribe a rule that will enable the Department to better administer and ensure compliance with the provisions contained in Articles 28 and 29 and in Part LL-1 of Chapter 57 of the Laws of 2008. The re-registration program directed by Part LL-1 will enable the Department to update taxpayer information, delete obsolete registrations, and collect past-due taxes.

3. Needs and benefits: Under existing regulations, show and entertainment vendors, i.e., vendors at flea markets, craft shows, and the like, are issued special certificates of authority that are valid for only one calendar year. These certificates are automatically reissued by the Department on an annual basis provided there are no sales tax delinquencies in existence for the vendor at that time. The Department plans to replace this special Certificate of Authority for Show and Entertainment Vendors and its specified term with the existing standard Certificate of Authority that has no specified term, so that show and entertainment vendors will instead, for purposes of reissuing their certificates, be folded into any sales tax re-registration program the Department may conduct. This rule is a necessary part of this plan to streamline the re-registration process in that it allows the Department to eliminate the special certificate of authority with its specified annual term and to discontinue the practice of automatically reissuing annual certificates of authority to show and entertainment vendors. Rather, the rule allows the Department to conform the treatment of show and entertainment vendors with all other certificate of authority holders for purposes of reissuing their certificates, and the rule is in harmony with Part LL-1 of Chapter 57 of the Laws of 2008 and its directed (and impending) re-registration program. By conforming the process by which a show or entertainment vendor's certificate of authority will be issued, the rule is beneficial to both the regulated parties and the Department.

This uniform treatment of all certificate of authority holders will result in some corollary benefits to both the Department and the regulated parties. The rule facilitates the Department's effort, also in harmony with Part LL-1, to have the most accurate information on file for its registrants. The rule will assist the Department in obtaining updated show and entertainment vendor information, deleting their obsolete registrations, and collecting outstanding tax liabilities from them as part of any sales tax re-registration program. In this respect it is expected that tax compliance for show and entertainment vendors will improve because this group of vendors will now, like all other holders of certificates of authority and as part of any re-registration program, be required to update their Department records with current and reliable information and be subject to a clearance check of all outstanding liabilities/assessments. In order to obtain a new certificate of authority, show and entertainment vendors will now have to pay, arrange for payment of, or otherwise dispose of to the satisfaction of the Department, any unpaid liabilities that are existing grounds, under section 1134(a)(4) of the Tax Law, for refusing to issue the certificate of authority. By leveling the playing field in this manner all other holders of certificates of authority benefit as well.

The rule is also beneficial in that it contains other clarifying, technical, and conforming amendments. It conforms to the re-registration fee imposed by Part LL-1 of Chapter 57 of the Laws of 2008. References to the specific "certificate of authority for show vendors" are removed and information related to the filing of certificates of registration is corrected. The rule amends language to provide clearer guidance on associated, consolidated, or combined certificates of authority with regard to re-registration and thereby removes any ambiguity that may exist on the part of holders of such certificates in these situations. By modifying the term "mailed" to the more general term "issued," the rule provides flexibility for the utilization of more modern and cost-effective means of communication between certificate holders and the Department with regard to the sales tax re-registration process. For example, the Department intends to make the new certificate of registration (application) available on its website for convenient access.

Lastly, the rule will benefit the Department by eliminating the two costly processes of automatically reissuing certificates of authority to show and entertainment vendors on an annual basis and of verifying there are no existing delinquencies, i.e., following up on transient show and entertainment vendors who may no longer be involved in taxable selling activities.

4. Costs: (a) Costs to regulated parties: The regulated parties affected by this rule are approximately 40,000 show/entertainment vendors. There will be no costs to these regulated parties for the implementation of and continuing compliance with this rule. Further, the rule accommodates the utilization of more modern and cost-effective means of communication between these vendors (and other holders of certificates of authority) and the Department with regard to the sales tax re-registration process. However, it is noted that there will be administrative costs associated with the requirements of the re-registration program that the Department will conduct as directed by Part LL-1 of Chapter 57 of the Laws of 2008, such as the completion and submission of new certificates of registration and the associated fee required by Part LL-1.

(b) Costs to the state and its local governments including this agency. The rule itself will have no revenue impact on New York State or its local governments. The re-registration process directed by Part LL-1 of Chapter 57 of the Laws of 2008 will have a revenue impact, but that cannot be attributed to this rule. Implementation of the rule will result in personal service costs of \$11,100 to this agency for coding, analysis, and testing. However, the agency will save an estimated \$14,000 in annual printing and postage costs by eliminating the automatic annual reissuance of the special certificates of authority to show and entertainment vendors. The rule will result in further cost savings to the Department as it provides for the utilization of more modern means of communication with taxpayers regarding the sales tax re-registration process.

(c) Information and methodology. This analysis is based on discussions among personnel from the Department's Office of Tax Policy Analysis, Management Analysis and Project Services Bureau, Office of Budget and Management Analysis, Office of Counsel, Taxpayer Guidance Division, and Office of Processing and Taxpayer Services.

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

6. Paperwork: There is no paperwork which will be required as a result of this rule. Moreover, the rule provides a transitional provision that allows show and entertainment vendors whose certificates of authority expire on December 31, 2008, to automatically receive from the Department a new certificate of authority, effective January 1, 2009, provided that the vendor has timely filed tax returns and paid the applicable tax due. However, it is noted that these vendors will have to file a new certificate of registration in conjunction with the re-registration program that the Department will conduct as directed by Part LL-1 of Chapter 57 of the Laws of 2008. That is, upon notification by the Department of the pending expiration of their certificates of authority, show and entertainment vendors will have to complete and file, either by mail or online, the new certificate of registration (application) and be approved in order to have their new certificates of authority issued prior to expiration of the old certificates.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State government that duplicate, overlap, or conflict with this rule.

8. Alternatives: The alternative to this rule is for the Department to keep in place its current policy of annually reissuing certificates of authority to show and entertainment vendors. This is not a practical option, however, in light of the recent statutory changes that require the Department to conduct a re-registration program for all holders of certificates of authority. While the existing annual process for show and entertainment vendors could operate concurrently with the requirements of Part LL-1 of Chapter 57 of the Laws of 2008, show and entertainment vendors would unnecessarily be subjected to the duplicative processes of annual reissuance and global re-registration. Therefore, by establishing only one process by which a show or entertainment vendor's certificate of authority will be issued, the rule is beneficial to both the regulated parties and the Department.

The Department also considered the alternative of discontinuing the automatic reissuance of show/entertainment vendor certificates of authority that expire on December 31, 2008, but rejected this idea in order to allow these vendors ample time to become familiar with the provisions of the new rule. As provided in the rule, holders of certificates of authority will be notified individually of the re-registration requirements. The Department also intends to issue additional guidance as necessary.

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

10. Compliance schedule: The rule will take effect on the date that the Notice of Adoption is published in the State Register. The rule includes a transitional provision that will allow show and entertainment vendors

whose existing certificates of authority expire on December 31, 2008, to receive new certificates that will be effective January 1, 2009, under the Department's current policy of automatic reissuance (provided there are no sales tax delinquencies in existence). Therefore, there is no time period necessary for the regulated parties to achieve compliance with the rule.

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

A Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and Job Impact Statement are not being submitted with this rule because this rule will not impose any adverse economic impact on small businesses or local governments or on public or private entities in rural areas, nor any additional reporting, record-keeping, or other compliance requirements on these entities. Further, it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

This rule eliminates the existing Department policy of issuing special certificates of authority (to collect sales and use taxes) to show and entertainment vendors and automatically reissuing new certificates on an annual basis provided the vendor has timely filed its tax returns and paid the applicable tax due. The elimination of this policy will allow the Department to streamline the sales tax re-registration process in a manner that is less burdensome for both show/entertainment vendors and the Department. Part LL-1 of Chapter 57 of the Laws of 2008 directs the Department to complete a sales tax re-registration program applicable to all persons holding a certificate of authority by March 31, 2012. While the directed re-registration program could be administered with the existing policy in place, it would create duplicative processes of annual reissuance and global re-registration for show and entertainment vendors. By eliminating the practice of annual reissuance, this rule conforms the process by which show and entertainment vendors' certificates of authority will be issued to the process applicable to other persons.

The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the Association of Towns of New York State; the Division of Local Government Services of the New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. The notified groups did not submit any comments concerning the rule.

**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-37-08-00006-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 October 1, 2008 through December 31, 2008.

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

| Motor Fuel | | | Diesel Motor Fuel | | |
|---------------------------------|----------------|----------------|---------------------|----------------|----------------|
| Sales Tax Component | Composite Rate | Aggregate Rate | Sales Tax Component | Composite Rate | Aggregate Rate |
| (xlxi) July-September 2008 | | | | | |
| 14.0 | 22.0 | 38.4 | 14.0 | 22.0 | 36.65 |
| (xlxii) October - December 2008 | | | | | |
| 14.0 | 22.0 | 38.4 | 14.0 | 22.0 | 36.65 |

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, 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.