

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 Audit and Control

EMERGENCY RULE MAKING

Reporting Requirements of Service, Salary, and Deduction Information for Employers to NYSLRS

I.D. No. AAC-17-08-00002-E

Filing No. 848

Filing Date: 2008-08-29

Effective Date: 2008-08-29

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

Action taken: Amendment of sections 315.2 and 315.3 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 34, 334, 11 and 311

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

Specific reasons underlying the finding of necessity: Recently conducted audits by the Office of the State Comptroller have raised substantial issues with respect to whether local governments and school districts are correctly classifying certain professionals engaged by local governments and school districts as employees eligible for membership in the NYSLRS and for service credit. The State Comptroller's Office has promulgated these amendments to regulations governing NYSLRS to provide additional guidance to local governments and school districts, to help them determine whether an individual is an employee or an independent contractor. A certification of the determination that an individual is an employee will now be required when a local government or school district initially reports to

the NYSLRS certain covered professionals- - those persons providing services as an attorney, physician, architect, engineer, accountant or auditor.

Promulgation of these regulations on an emergency basis is necessary to assist employers and the NYSLRS to prevent potential fraud, abuse or error from occurring in records for newly hired individuals that could otherwise result in taxpayers paying retirement contributions for persons who are not eligible for membership or credit in the NYSLRS.

Subject: Reporting requirements of service, salary and deduction information for employers to NYSLRS.

Purpose: To provide guidance to participating employees concerning whether an individual is an employee or independent contractor.

Text of emergency rule: Section 315.2 is amended to read as follows:

§ 315.2 [Definition] *Definitions.*

(a) As used in this Part, the term employer shall mean the State, a participating employer, and any other unit of government or organization obligated or agreeing to make contributions to the retirement system on behalf of its employees.

(b) The term employee shall mean an individual performing services for the employer for which the employer has the right to control the means and methods of what work will be done and how the work will be done.

(c) The term independent contractor shall mean a consultant or other individual engaged to achieve a certain result who is not subject to the direction of the employer as to the means and methods of accomplishing the result. For purposes of this part, when making a determination as to whether an individual is an employee or an independent contractor, the factors set forth hereinafter in § 315.3 (c) (2) shall be considered by the employer.

Subdivision (c) of section 315.3 is amended to read as follows:

(c) Employees to be reported.

(1) Only persons who are active members of the New York State and Local Employees' Retirement System or the New York and Local Police and Fire Retirement System and who have been assigned a registration number shall be included in the above reporting requirements. In the case of employees who are in the process of being registered to membership, all service, salary and deductions data and mandatory contributions shall be accumulated by each employer and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned. Members of the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System must be reported on separate reports.

(2) *Determination by Employer.* An individual serving the employer as an independent contractor or consultant is not an employee and should not be reported to the retirement system. The employer has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination, the employer must consider the following:

(i) *Factors supporting the conclusion that an individual is an employee rather than an independent contractor:*

(A) the employer controls, supervises or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;

(B) the individual reports to a certain person or department at the beginning or during each work day;

(C) the individual receives instructions as to what work to perform each day;

(D) the individual's decisions are subject to review by the employer;

(E) the employer sets hours to be worked;

(F) the individual works at established and fixed hours;

(G) the employer maintains time records for the individual;

(H) the employer has established a formal job description;

(I) the employer's governing board formally created the position with the approval of the local civil service commission where necessary;

- (J) the employer prepares performance evaluations;
- (K) the employer requires that the individual attend training;
- (L) the employer provides permanent workspace and facilities (including, but not limited to, office, furniture and/or utilities);
- (M) the employer provides the individual with equipment and support services (including, but not limited to, computer, telephone, supplies and/or clerical assistance);
- (N) the individual is covered by a contract negotiated between a union and the employer;
- (O) the individual is paid salary or wages through the employer's payroll system;
- (P) tax withholding and employee benefit deductions are made from the individual's paycheck; and
- (Q) the individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance and/or grievance procedures).
- (ii) Factors supporting the conclusion that an individual is an independent contractor rather than an employee:
- (A) the individual has a personal employment contract with the employer;
- (B) the employer pays the individual for the performance of services through the submission of a voucher;
- (C) the individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the employer;
- (D) the individual provides similar services to the public;
- (E) the individual is concurrently performing substantially the same services for other public employers; and
- (F) the individual is also employed or associated with another entity that provides services to the employer by contract, retainer or other agreement.
- (iii) Presumption:
- In the case of an individual whose service has been engaged by an employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and who is also a partner, associate, including an attorney in an "of counsel" relationship, or employee of another organization or entity that has a contract, retainer or other agreement to provide professional services to the participating employer, it shall be presumed that the individual is an independent contractor and not an employee of the participating employer;
- (iv) Examples:
- (A) An attorney who, in providing services to a participating employer, sets his own hours, is not supervised in the manner in which the work is performed, uses his or her own office and staff and has no deductions from salary is considered to be an independent contractor.
- (B) A physician who in performing examinations and providing medical services for a school district, is provided with office space in the school, has set hours, is provided with supplies and receives a fixed salary with regular payroll deductions is considered to be an employee;
- (3) Written explanation by participating employers; certain professions. In the case of an individual whose service has been engaged by a participating employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and the participating employer has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, such employer shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the chief fiscal officer of the employer, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant. Such certification shall be submitted to the retirement system at the time the individual is registered to membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by the participating employer to the system. In addition, such employer shall submit copies of documentation pertaining to the appointment of the individual as an employee and the decision to report the individual to the retirement system as well as the acceptance of the appointment by the local civil service commission where necessary. In the event appointments are made by a governing board of the participating employer, such documentation shall include a copy of the minutes of the meeting of such employer's governing board.
- (4) Explanation at the request of the retirement system. In the case of any individual who is currently a member or a retiree of a retirement system, the retirement system may require that an employer submit to the retirement system an explanation of the factors that led to the conclusion that an individual engaged by the employer was an employee. An employer receiving such a request shall submit a response within thirty days of the date of the request or provide an explanation as to why it is unable to do so.
- (5) Adjustment reports. In the event the retirement system or an employer determines that an individual has been incorrectly reported to a

retirement system, the employer, upon notification from the retirement system, or upon its own initiative, shall promptly file salary and service adjustment reports with the retirement system to correct the error.

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. AAC-17-08-00002-EP, Issue of April 23, 2008. The emergency rule will expire October 27, 2008.

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State St., Albany, NY 12236, (518) 474-9024, email: JElacqua@osc.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Sections 34 and 334 of the Retirement and Social Security Law, as added by chapter 510 of the Laws of 1974, require that the Comptroller adopt rules and regulations, which shall have the force and effect of law, for the reporting of service, salary and deductions information for all member-employees of employers which participate in the New York State Employees' Retirement System and the New York State Police and Fire Retirement System. Said statutes further provide that the chief fiscal officer of the participating employer, or other officer exercising similar duties, shall file the required report in such form and at such times as may be prescribed in the said rules and regulations. Sections 34 and 334 make the refusal or willful neglect to file the required report a violation which shall subject the officer so refusing or neglecting to a penalty of \$5 per day for each day's delay beyond seven days. Sections 11 and 311 of the Retirement and Social Security Law establish the Comptroller as the administrative head of the retirement system and authorize him to adopt and amend rules and regulations for the administration and transactions of the business of the retirement system.

2. Legislative objectives: Elected officials, public officers and employees of participating employers are eligible for membership in the retirement system; independent contractors are not. Public employers participating in the retirement system are required to report service and salary information for all their employees so that the retirement system may accurately determine the employers' obligation to contribute to the funding of the retirement system, the employees' entitlement to the benefits provided to members of the retirement system and, ultimately, calculate the amount of benefits due to members upon retirement or death. To prevent the assessment of unnecessary employer contributions and the unauthorized distribution of retirement funds, individuals providing services to a public employer who are not in an employment relationship with the employer should not be reported to the retirement system. The existing regulation instructs employers to report employees who are active members of the retirement system or who are in the process of being registered to membership and it provides some instructions for the reporting of these individuals.

3. Needs and benefits: The amendment to the existing regulation provides employers with more specific guidance to aid them in determining whether an individual is an employee and, therefore, eligible to be reported to the retirement system, or an independent contractor who should not be reported to the retirement system. The amendment includes a list of factors to be considered in making this determination as well as examples of individuals serving employers in both capacities. Furthermore, the amendment requires that, when an individual is engaged by a participating employer in the capacity of attorney, physician, engineer, architect, accountant or auditor and is first reported to the retirement system, the employer submit to the retirement system a certified form explaining the factors that led to the conclusion that the individual is serving as an employee and not an independent contractor. Finally, it requires an employer to submit a certified form in response to a request from the retirement system and requires employers to file salary and service adjustment reports to correct errors.

4. Costs: While there may be a modest administrative cost for employers associated with the preparation and submission of the form explaining the conclusion to consider certain individuals to be employees and not independent contractors, we anticipate that any such cost will be offset by the savings to employers resulting from the reduction in incorrect reporting of independent contractors and the associated contributions to the retirement system.

5. Local government mandates: The proposed rule imposes a duty on county, city, town, village, school district, fire district or other special district participating employers to submit to the retirement system a form explaining the factors that led to the conclusion that individuals in certain professions are serving as an employee and not an independent contractor.

6. Paperwork: To reduce the incorrect reporting of independent contractors, the proposed amendment will require the employer to complete and submit a form when deciding to report individuals providing certain professional services.

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

8. Alternatives: No significant alternatives were considered.
 9. Federal standards: Not applicable
 10. Compliance schedule: Not applicable

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because the proposal will not impose any adverse economic impact or significant reporting, record keeping or compliance requirements on small businesses or local governments. Rather, this proposal may result in an economic savings by local governments as a result of the reduction in incorrect reporting of independent contractors and the associated contributions to the retirement system.

Rural Area Flexibility Analysis

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Enactment of a Serialized New York State Prescription Form

I.D. No. HLT-38-08-00004-E

Filing No. 849

Filing Date: 2008-09-02

Effective Date: 2008-09-02

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

Action taken: Addition of Part 910 and amendment of Parts 80 and 85 of Title 10 NYCRR and amendment of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 21

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for the implementation of the use of statewide forge proof prescriptions by the April 19, 2006 date mandated by the law.

Immediate adoption of these regulations is necessary to allow the implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

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

Purpose: To enact a Serialized New York State Prescription Form.

Substance of emergency rule: Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis 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 emergency 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 are 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 Medicaid 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 section 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 section 367-a(9)(d).

- Language is added to reference prescription drugs filled in compliance with section 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.

- A change was made to a prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words “or supplies” were deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forge proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

- Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the Medicaid 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). Compounding 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 Medicaid—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 section 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 section 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 sections 3335 and 3336 because deleted by PHL 21 and added reference to PHL sections 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 section 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.

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 30, 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: regsqa@health.state.ny.us

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, administering 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 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 errors 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 Insurance 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 will 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. Savings to local government, from reduction in subsidizing of prescription costs for patients in their Medicaid population, will result in an estimated \$25 million.

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, Elderly Pharmaceutical Insurance Coverage, 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 immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

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 ap-

proximately 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 drug 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 benzodiazepine 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

Nature of Impact:

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.

Department of Motor Vehicles

EMERGENCY RULE MAKING

It is Necessary for the Issuance of the Enhanced Driver's License, Which Shall Increase the Security of New York State's Border

I.D. No. MTV-38-08-00002-E

Filing No. 847

Filing Date: 2008-08-28

Effective Date: 2008-08-28

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

Action taken: Amendment of section 3.3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 508(1) and 508(4)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: It is necessary for the issuance of the Enhanced Driver's License, which shall increase the security of New York State's border crossing areas.

Subject: It is necessary for the issuance of the Enhanced Driver's License, which shall increase the security of New York State's border.

Purpose: Authorizes the fingerprinting of certain employees who are involved in the issuance of Enhanced Driver's Licenses.

Text of emergency rule: Section 3.3 is amended by adding new subdivisions (f) and (g) to read as follows:

(f) No employee or agent of the Department of Motor Vehicles shall be involved in the issuance of an enhanced drivers license or non-driver identification card, pursuant to section 503(2)(f-1) or 491(2) of the Vehicle and Traffic Law, unless such employee or agent: 1) is a United States citizen, and 2) has undergone a State and FBI fingerprint based criminal history background check, as required under an agreement between the Department of Motor Vehicles and the federal Department of Homeland Security, entered into pursuant to 8 CFR 235.1 and section 7209 of the intelligence reform and terrorism prevention act of two thousand four, public law 108-458, and such search indicates that such employee or agent has not been convicted of, or charged with, a disqualifying offense as set forth in 49 CFR 1572.103.

(g) The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled: Code of Federal Regulations, title 49, Part 1572, revised as of March 30, 2007, and 8 CFR 235.1, revised as of April 3, 2008 published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The provisions of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, have also been incorporated by reference and have been filed with the Secretary of State of the State of New York. The regulations and public law incorporated by reference may be examined at

the Office of the Department of State, One Commerce Plaza, 99 Washington Ave, Albany, NY 12231, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Motor Vehicles, Office of Counsel, 6 Empire State Plaza, Albany, NY 12228. They may also be purchased from the Superintendent of Documents, Government Printing Office Washington, DC 20402. Copies of the Code of Federal Regulations and public laws are also available at many public libraries and bar association libraries.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 25, 2008.

Text of rule and any required statements and analyses may be obtained from: Carrie L. Stone, Counsel's Office, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871.

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 508(1) provides that the Commissioner shall appoint agents to act on his behalf to issue drivers licenses and authorizes him or her to prescribe internal procedures to be followed by such agents with respect to such matters. VTL section 508(4) authorizes the Commissioner to promulgate regulations with respect to the administration of the provisions of Article 19, Licensing of Drivers.

2. Legislative objectives: The Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, established several measures to enhance the security of the United States. One proposal was the Western Hemisphere Travel Initiative (WHTI), as set forth by the Department of Homeland Security (DHS) in the June 26, 2007 and April 3, 2008 Federal Registers. A key component of WHTI is the issuance of an enhanced driver's license (EDL) that will enable US citizens to more easily enter the United States at land and sea crossings. DHS has issued a mandatory policy directive that employees may only issue EDLs if such employees are United States citizens and have been subject to a criminal history check. This proposed regulation, which subjects certain Department of Motor Vehicle and county employees to a criminal history check and requires verification of U.S. citizenship, is necessary to comply with the DHS policy directive.

3. Needs and benefits: As explained above, WHTI is a plan devised by the United States Department of Homeland Security pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004. Under WHTI, all travelers must present a secure document, such as a passport or other document, which denotes citizenship and identity when entering or departing the United States from within the Western Hemisphere. An enhanced driver license and enhanced non-driver photo identification card are documents designated as secure and acceptable documents under WHTI for land and sea travel border crossings. These enhanced documents will contain a vicinity Radio Frequency Identification (RFID) chip, and a Machine Readable Zone (MRZ) that can be scanned, to facilitate border and port processing, as well as include physical security features that will guard against tampering. The RFID technology will allow a device to read information contained in a wireless device or "tag" from a distance without making any physical contact or requiring a line of sight between the two.

The EDL, available only to US citizens, will enable its holders to more easily cross land and sea borders. It is critical to maintaining New York State's significant commercial and tourism relationship with Canada, with which we share a 445 mile border. It will also enhance our security by allowing Custom's officials to more readily screen those passing through our borders.

DHS policy mandates that employees who are involved in the issuance of EDLs must be U.S. citizens and be subject to criminal history checks. There are approximately 900 DMV employees and 900 county employees, who act as agents of the DMV Commissioner pursuant to Vehicle and Traffic Law section 205, who will be involved in the issuance of EDLs. These employees must be screened for citizenship and fingerprinted in accordance with DHS directive. The employees' prints will be transmitted to the Division of Criminal Justice Services for a State and federal criminal history check. Thus, this rulemaking is necessary to require such employees to be screened for citizenship and be fingerprinted prior to issuing EDLs.

4. Cost: To the State: DMV expects to purchase three Livescan units that perform electronic fingerprinting at a cost of about \$152,000. The Livescan machines will be used to fingerprint DMV employees. The counties will choose the method appropriate to them, but for many, it will be the ink and roll method. In addition to assuming the cost of fingerprinting all DMV employees, the Department will assume the cost of fingerprinting county employees who are employed prior to the implementation date of EDL issuance, which is targeted for late summer 2008. An ink and roll fingerprint costs \$61.00 per employee. A Livescan fingerprint costs \$38.00

per employee. Thus, fingerprinting all DMV employees using Livescan would cost about \$34,200.00. We cannot estimate the cost of fingerprinting county employees because we do not know how many will use Livescan and how many will use ink and roll.

5. Cost to local governments: DMV will assume the cost of fingerprinting county employees who are hired prior to the implementation of EDL issuance, which is targeted for late summer 2008. This will minimize the adverse impact on local governments.

6. Paperwork: DMV will develop a system to track employees who have been fingerprinted and the results of the fingerprint check. Each county will be responsible for keeping track of its employees. DMV and each county will develop processes to validate citizenship, such as reviewing an employee's birth certificate or passport.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: A "no action alternative" was considered but was deemed not viable, because DHS requires that certain employees must be U.S. citizens and be fingerprinted in order for them to issue EDLs. DMV contacted CSEA and PEF regarding this matter, because it affects covered employees. DMV negotiated a policy statement with the two unions that encapsulates the requirements of U.S. citizenship and fingerprinting. The unions did not offer an alternative to these two requirements.

9. Federal standards: This rule does not exceed or conflict with any federal law or regulation.

10. Compliance Schedule: Upon adoption of the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: This proposal does not affect small businesses. Fifty-one counties will need to validate their employees' citizenship status and fingerprint those employees who will be involved in the issuance of Enhanced Drivers Licenses (EDLs). DMV estimates 900 county employees will be subject to the fingerprint requirement. In addition, approximately 900 DMV employees will be fingerprinted.

2. Compliance requirements: All county employees who are involved in the issuance of EDLs shall be subject to the criminal history check and citizenship verification.

3. Professional services: None are mandated. For example, the county may choose to use the local sheriff's department as a fingerprinting resource. The county, however, may contract with a vendor to purchase Livescan equipment for electronic fingerprinting.

4. Compliance costs: DMV will pay the costs to fingerprint county employees who are employed by the county prior to the implementation of the EDL program, which is targeted for the summer 2008. The county would assume the cost of purchasing a Livescan machine, which costs about \$50,000 per unit.

5. Economic and technological feasibility: The county may utilize the ink and roll fingerprinting technique or may purchase Livescan machines that electronically fingerprint individuals.

6. Minimizing adverse impact: The Department will minimize the impact by paying the cost of fingerprinting county employees who are employed by the county prior to EDL issuance, which is targeted for late summer 2008. DMV has had numerous meetings and contacts with the 51 county clerks who will be impacted by the program. DMV will continue to assist them with developing procedures to implement the EDL program.

7. Small business and local government participation: The Department has met with the 51 county clerks on several occasions to assist them with implementing the EDL program. DMV has a County Clerk liaison who works with the clerks on a daily basis to address their concerns.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development. DMV and county employees who are not U.S. citizens and/or who are found to have been convicted of a disqualifying offense pursuant to a criminal history check will not be terminated. Such employees will perform other motor vehicle related services that do not involve the issuance of the Enhanced Drivers License (EDL), such as issuing registrations or non-EDLs.

Public Service Commission

NOTICE OF ADOPTION

Rochester Gas and Electric Corporation's Fixed Price Option

I.D. No. PSC-12-08-00020-A

Filing Date: 2008-08-28

Effective Date: 2008-08-28

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 modifying, Rochester Gas and Electric Corporation's (RG&E) Fixed Price Option, pursuant to its review of the continuation of RG&E's Rate Plan.

Statutory authority: Public Service Law, sections 65(1), (2), (3), (4), (5), (10) and 66(1), (2), (2-a), (3), (5), (9), (10), (11), (12), (12-a) and (14)

Subject: Rochester Gas and Electric Corporation's Fixed Price Option.

Purpose: To approve Rochester Gas and Electric Corporation's Fixed Price Option.

Substance of final rule: The Commission, on August 20, 2008, adopted an order modifying, Rochester Gas and Electric Corporation's (RG&E) Fixed Price Option (FPO), upon a review of the continuation of RG&E's Electric Rate Plan. The FPO component of the Rate Plan was to continue beyond the December 31, 2008 expiration date, unless modified by the Commission, 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

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.

(03-E-0765SA9)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-19-08-00012-A

Filing Date: 2008-08-27

Effective Date: 2008-08-27

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 filed by 138 Court Street LLC, to submeter electricity at 138 Court Street, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 138 Court Street LLC, to submeter electricity at 138 Court Street, Brooklyn, New York.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving a petition by 138 Court Street LLC, to submeter electricity at 138 Court Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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.

(08-E-0394SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-19-08-00013-A

Filing Date: 2008-08-27

Effective Date: 2008-08-27

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 filed by 194 Atlantic LLC, to submeter electricity at 194 Atlantic Avenue, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 194 Atlantic LLC, to submeter electricity at 194 Atlantic Avenue, Brooklyn, New York.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving a petition by 194 Atlantic LLC, to submeter electricity at 194 Atlantic Avenue, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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.

(08-E-0395SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-19-08-00014-A

Filing Date: 2008-08-27

Effective Date: 2008-08-27

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 filed by 2130 George Investors LLC, to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Blvd., New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 2130 George Investors LLC, to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Blvd., NY, NY.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving a petition by 2130 George Investors LLC, to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Blvd., New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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.

(08-E-0396SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-21-08-00005-A

Filing Date: 2008-08-27

Effective Date: 2008-08-27

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 filed by Herbert E. Hirschfeld, on behalf of West Village Houses, to submeter electricity at West Village Houses, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Herbert E. Hirschfeld, on behalf of West Village Houses, to submeter electricity.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving a petition by Herbert E. Hirschfeld, on behalf of West Village Houses, to submeter electricity at West Village Houses, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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. (00-E-1918SA2)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-23-08-00007-A

Filing Date: 2008-08-27

Effective Date: 2008-08-27

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 a petition by Linden Plaza Preservation LP, to submeter electricity at Linden Plaza, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Linden Plaza Preservation LP, to submeter electricity at Linden Plaza, Brooklyn, New York.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving a petition by Linden Plaza Preservation LP, to submeter electricity at Linden Plaza, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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. (08-E-0433SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-23-08-00010-A

Filing Date: 2008-08-27

Effective Date: 2008-08-27

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 filed by Riverview II Preservation LP, to submeter electricity at 47 Riverdale Avenue, Yonkers, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Riverview II Preservation LP, to submeter electricity at 47 Riverdale Avenue, Yonkers, New York.

Substance of final rule: The Commission, on August 20, 2008, adopted an order approving a petition by Riverview II Preservation LP, to submeter electricity at 47 Riverdale Avenue, Yonkers, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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. (08-E-0439SA1)

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

Niagara Mohawk’s Proposal to Implement “Fast Track” Electric Energy Efficiency Programs

I.D. No. PSC-38-08-00005-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by Niagara Mohawk Power Corporation (Niagara Mohawk) to implement electric energy efficiency programs.

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

Subject: Niagara Mohawk’s proposal to implement “fast track” electric energy efficiency programs.

Purpose: To consider Niagara Mohawk’s electric energy efficiency “fast track” filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation on August 22, 2008 entitled “Niagara Mohawk Power Corporation d/b/a National Grid – Proposed Expedited Electric and Gas Energy Efficiency Programs”. The proposal is to implement electric energy efficiency programs for residential central air conditioning and small business direct installation pursuant to an order in Case 07-M-0548 entitled “Order Establishing Energy Efficiency Portfolio Standard and Approving Programs” issued by the Public Service Commission on June 23, 2008.

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

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

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

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

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

(08-E-1014SA1)

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

O&R’s Proposal to Implement “Fast Track” Electric Energy Efficiency Programs

I.D. No. PSC-38-08-00006-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by Orange and Rockland Utilities, Inc. (O&R) to implement electric energy efficiency programs.

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

Subject: O&R's proposal to implement "fast track" electric energy efficiency programs.

Purpose: To consider O&R's electric energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. in a document entitled "Orange and Rockland Utilities, Inc. Small Business and Residential HVAC Programs Filed Pursuant to the Commission's June 23rd Order in Case 07-M-0548" dated August 21, 2008. The proposal is to implement electric energy efficiency programs for residential central air conditioning and small business direct installation pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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

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

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

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

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

(08-E-1003SA1)

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

Con Edison's Proposal to Implement "Fast Track" Electric Energy Efficiency Programs

I.D. No. PSC-38-08-00007-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by Consolidated Edison Company of New York, Inc. (Con Edison) to implement electric energy efficiency programs.

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

Subject: Con Edison's proposal to implement "fast track" electric energy efficiency programs.

Purpose: To consider Con Edison's electric energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. in a document entitled "Small Business Direct Installation and Residential HVAC Programs" dated August 21, 2008. The proposal is to implement electric energy efficiency programs for residential central air conditioning and small business direct installation pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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

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

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

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

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

(08-E-1007SA1)

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

Central Hudson's Proposal to Implement "Fast Track" Electric Energy Efficiency Programs

I.D. No. PSC-38-08-00008-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject in whole or in part, a proposal by Central Hudson Gas & Electric Corporation (Central Hudson) to implement electric energy efficiency programs.

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

Subject: Central Hudson's proposal to implement "fast track" electric energy efficiency programs.

Purpose: To consider Central Hudson's electric energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation in a letter dated August 22, 2008 by Robert J. Glasser, Esq., of Thompson Hine LLP. The proposal is to implement electric energy efficiency programs for residential central air conditioning and small business direct installation pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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

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

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

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

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

(08-E-1019SA1)

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

O&R's Proposal to Implement a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-38-08-00009-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject in whole or in part, a proposal by Orange and Rockland Utilities, Inc. (O&R) to implement a gas energy efficiency program.

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

Subject: O&R's proposal to implement a "fast track" gas energy efficiency program.

Purpose: To consider O&R's gas energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. entitled "Orange and Rockland Utilities, Inc. - Small Business and Residential HVAC Programs Filed Pursuant to the Commission's June 23rd Order in Case 07-M-0548" dated August 21, 2008. The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard

and Approving Programs” issued by the Public Service Commission on June 23, 2008.

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-1004SA1)

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

Con Edison’s Proposal to Implement a Gas “Fast Track” Energy Efficiency Program

I.D. No. PSC-38-08-00010-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by Consolidated Edison Company of New York, Inc. (Con Edison) to implement a gas energy efficiency program.

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

Subject: Con Edison’s proposal to implement a gas “fast track” energy efficiency program.

Purpose: To consider Con Edison’s gas energy efficiency “fast track” filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. in a document entitled “Small Business Direct Installation and Residential HVAC Programs” dated August 21, 2008. The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled “Order Establishing Energy Efficiency Portfolio Standard and Approving Programs” issued by the Public Service Commission on June 23, 2008.

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-1008SA1)

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

Corning’s Proposal to Implement a “Fast Track” Gas Energy Efficiency Program

I.D. No. PSC-38-08-00011-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject in whole or in part, a proposal by Corning Natural Gas Corporation (Corning) to implement a gas energy efficiency program.

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

Subject: Corning’s proposal to implement a “fast track” gas energy efficiency program.

Purpose: To consider Corning’s gas energy efficiency “fast track” filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Corning Natural Gas Corporation on August 22, 2008 entitled “Corning Natural Gas Corporation, Residential Energy Efficiency Portfolio Standard Program”. The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled “Order Establishing Energy Efficiency Portfolio Standard and Approving Programs” issued by the Public Service Commission on June 23, 2008.

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-1010SA1)

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

NYSEG’s Proposal to Implement a “Fast Track” Gas Energy Efficiency Program

I.D. No. PSC-38-08-00012-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by New York State Electric & Gas Corporation (NYSEG) to implement a gas energy efficiency program.

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

Subject: NYSEG’s proposal to implement a “fast track” gas energy efficiency program.

Purpose: To consider NYSEG’s gas energy efficiency “fast track” filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation on August 22, 2008 entitled “Gas Program Plan of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation”. The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled “Order Establishing Energy Efficiency Portfolio Standard and Approving Programs” issued by the Public Service Commission on June 23, 2008.

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-1012SA1)

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

RG&E's Proposal to Implement a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-38-08-00013-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by Rochester Gas and Electric Corporation (RG&E) to implement a gas energy efficiency program.

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

Subject: RG&E's proposal to implement a "fast track" gas energy efficiency program.

Purpose: To consider RG&E's gas energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Rochester Gas and Electric Corporation on August 22, 2008 entitled "Gas Program Plan of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation". The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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-1013SA1)

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

Niagara Mohawk's Proposal to Implement a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-38-08-00014-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) to implement a gas energy efficiency program.

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

Subject: Niagara Mohawk's proposal to implement a "fast track" gas energy efficiency program.

Purpose: To consider Niagara Mohawk's gas energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Niagara

Mohawk Power Corporation d/b/a National Grid on August 22, 2008 entitled "Niagara Mohawk Power Corporation d/b/a National Grid – Proposed Expedited Electric and Gas Energy Efficiency Programs". The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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-1015SA1)

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

KeySpan NY's Proposal to Implement a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-38-08-00015-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by The Brooklyn Union Gas Company d/b/a KeySpan Energy – New York (KeySpan NY) to implement a gas energy efficiency program.

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

Subject: KeySpan NY's proposal to implement a "fast track" gas energy efficiency program.

Purpose: To consider KeySpan NY's gas energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY & KeySpan Energy of New York on August 22, 2008 entitled "The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid LI – Proposed Expedited Gas Energy Efficiency Program". The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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-1016SA1)

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

St. Lawrence's Proposal to Implement a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-38-08-00016-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by St. Lawrence Gas Company, Inc. (St. Lawrence) to implement a gas energy efficiency program.

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

Subject: St. Lawrence's proposal to implement a "fast track" gas energy efficiency program.

Purpose: To consider St. Lawrence's gas energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by St. Lawrence Gas Company Inc. on August 22, 2008 entitled "St. Lawrence Gas Company, Inc. Residential Energy Efficiency Program (EEP)". The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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-1021SA1)

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

KeySpan LI's Proposal to Implement a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-38-08-00017-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal by KeySpan Gas East Corporation d/b/a KeySpan Energy—Long Island (KeySpan LI) to implement a gas energy efficiency program.

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

Subject: KeySpan LI's proposal to implement a "fast track" gas energy efficiency program.

Purpose: To consider KeySpan LI's gas energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a National Grid NY & KeySpan Energy of Long Island on August 22, 2008 entitled "The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corp d/b/a National Grid LI—Proposed Expedited Gas Energy Efficiency Program". The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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-1017SA1)

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

Water Rates and Charges

I.D. No. PSC-38-08-00018-P

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

Proposed Action: On August 28, 2008, Groman Shores LLC (Groman) made a filing to increase its revenues by approximately \$14,571 or 155.49%, change its billing periods, increase the escrow surcharge and institute charges for customers who leave the water system.

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

Subject: Water rates and charges.

Purpose: For approval of Groman Shores LLC's tariff filing.

Substance of proposed rule: On August 28, 2008, Groman Shores LLC (Groman Shores or the company) filed, in Case 08-W-0996, to become effective on March 1, 2009, tariff amendments (Leaf No. 12, Revision 1) to its electronic tariff schedule P.S.C. No. 1 - Water containing new rates designed to increase its revenues by \$14,571 or 155.49% which would produce total annual revenues of \$23,942. The company is also requesting a revision of tariff amendment (Leaf No. 9, Revision 1) under Discontinuance of Service - Other to reflect a charge of \$200 to be incurred by the customers who opt to be permanently disconnected from the system. This charge would cover the cost of parts, labor, excavation, backfilling, permits and road restoration costs. Additionally, discontinued customers who opt to return to the water system would be charged actual costs incurred to reconnect a service line plus the installation of a shut-off valve. These customers would also have to pay a proportion of any surcharge amounts for capital improvements collected since leaving the system; this would be returned to the prior existing customers on a proportional basis. The company also requests a customer base change relative to its 28 campsites where 5 campsites are equal to one EDU (estimated domestic usage) and the fact that a few customers left the system. Rates and surcharges would now be based on 57 users rather than 80. The company requests to increase the surcharge to fund and replenish its \$5,000 escrow account to reflect the change in number of users. The current semi-annual surcharge of \$30.12 will increase to \$43.86. The company is also requesting to revise its billing to an annual basis occurring on April 1 for the 6-month season covering the annual charge plus any escrow replenishment and that a second billing be established on September 1 for the remainder of the escrow replenishment for the year. Groman Shores currently provides unmetered water service on a seasonal basis, April 15 to October 15, to 52 homeowners and 28 campsites in the Town of Sandy Creek, Oswego County. The company's tariff, along with its proposed changes, will be available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) 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, Secre-

tary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@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-0996SA1)

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

Central Hudson's Proposal to Implement a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-38-08-00019-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject in whole or in part, a proposal by Central Hudson Gas & Electric Corporation (Central Hudson) to implement a gas energy efficiency program.

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

Subject: Central Hudson's proposal to implement a "fast track" gas energy efficiency program.

Purpose: To consider Central Hudson's gas energy efficiency "fast track" filing.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation in a letter dated August 22, 2008 by Robert J. Glasser, Esq., of Thompson Hine LLP. The proposal is to implement a gas energy efficiency program for residential efficient gas equipment pursuant to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008.

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_brilling@dps.state.ny.us

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

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

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

(08-E-1020SA1)

Department of State

**EMERGENCY
RULE MAKING**

Qualifying Experience and Education for Real Estate Appraisers

I.D. No. DOS-38-08-00001-E

Filing No. 846

Filing Date: 2008-08-27

Effective Date: 2008-08-27

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

Action taken: Amendment of sections 1103.1, 1103.3, 1103.7, 1103.8 1103.10, 1103.12(a), 1103.21, 1103.22(f), 1107.2, 1107.4(b)-(d), 1107.5 and 1107.9; repeal of sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6, 1105.7 and 1105.8; and addition of sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6 and 1105.7 to Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

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

Specific reasons underlying the finding of necessity: The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to do would have resulted in the State losing Federal recognition of the State program. Legislation was therefore passed permitting the Department of State to adopt the required revisions by rule making. The Department has adopted emergency rules which have been in place since January 1, 2008 so that New York's appraiser program would not lose federal recognition.

If New York were to lose Federal recognition of its appraiser program, federal financial institutions and many State financial institutions would be prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would be prohibited from preparing an appraisal for any such transaction and New York consumers would be forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant.

Subject: Qualifying experience and education for real estate appraisers.

Purpose: To amend current regulations in order to conform said regulations with recent statutory amendments.

Substance of emergency rule: Section 1103.1 of Title 19 NYCRR is amended to specify the course work and education required for licensure as an appraiser assistant, licensed real estate appraiser and certified real estate appraiser.

Section 1103.3(f) of Title 19 NYCRR is amended to specify that course waivers may only be granted in 15 hour segments.

Section 1103.7 of Title 19 NYCRR is amended to permit the Department of State to approve courses of study for appraiser assistants.

Section 1103.8 of Title 19 NYCRR is repealed and a new section 1103.8 is added to specify the course content and hours of study required for licensure as an appraiser assistant, licensed and certified real estate appraiser.

Section 1103.9 of Title 19 NYCRR is repealed and a new section 1103.9 is added to specify the course content and hours of study required for general real estate appraiser certification.

Section 1103.10 of Title 19 NYCRR is amended to specify the educational requirements for the 15 hour National USPAP course.

Section 1103.12(a) of Title 19 NYCRR is amended to provide that students must physically attend 90 percent of each course offering in order to satisfactorily complete said course.

Sections 1103.21 and 1103.22(f) of Title 19 NYCRR is amended to set forth the registration fees for schools and instructors.

Section 1105.1 of Title 19 NYCRR is repealed and a new section 1105.1 is adopted to permit test providers who are approved by the Appraiser Qualifications Board to administer appraiser examinations in New York State.

Section 1105.2 of Title 19 NYCRR is repealed and a new section 1105.2 is adopted to set forth the procedure for test providers to obtain approval from the Department of State to administer appraiser examinations in New York State.

Section 1105.3 of Title 19 NYCRR is repealed and a new section 1103 is adopted to set forth the procedure and requirements for registering and scheduling exam candidates for appraiser examinations.

Section 1105.4 of Title 19 NYCRR is repealed and a new section 1105.4 is adopted to permit the Department to prescribe New York State specific examination questions.

Section 1105.5 of Title 19 NYCRR is repealed and a new section 1105.5 is adopted to require exam providers to report examination results to the Department of State in such form and manner as prescribed by the Department of State.

Section 1105.6 of Title 19 NYCRR is repealed and a new section 1105.6 is adopted to set forth the procedures associated with suspension and denials of approval to offer appraiser examinations.

Section 1105.7 of Title 19 NYCRR is repealed and a new section 1105.7 is adopted to require test providers to copy the Department of State on any reports sent to the Appraisal Qualifications Board.

Section 1105.8 of Title 19 NYCRR is repealed.

Section 1107.2 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.4(b)-(d) of Title 19 NYCRR is amended to specify that no more than 14 hours of continuing education credit may be offered for authorship of an appraisal course of study or publication.

Section 1107.5 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.9 Title 19 NYCRR is amended to remove a dated provision that, for all licenses and certifications expiring on or before December 31, 2003, licensees were required to complete the 15 hour Ethics and Professional Practice Program or a course prescribed by subdivision b of section 1107.9.

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 24, 2008.

Text of rule and any required statements and analyses may be obtained from: Whitney A. Clark, NYS 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:

Executive Law section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers meet certain minimum requirements for licensure. To meet this purpose, the Department of State, in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1103, 1105 and 1107 of Title 19 NYCRR and is proposing this rule making.

2. Legislative Objectives:

Executive Law, Article 6-E, requires the Department of State to license and regulate real estate appraisers. The statute requires prospective licensees to meet certain minimum requirements for licensure, including completion of approved qualifying education. These statutory requirements were changed during the 2007 Legislative Session in order to require the Department of State to implement such minimum requirements for licensure as are imposed on the State by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require States to enact such minimum standards for licensure and/or certification. The rule making advances the legislative objective by conforming the education regulations with the requirements of the Appraisal Subcommittee in accordance with the 2007 statutory amendment.

3. Needs and Benefits:

The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to have done so would have resulted in the State losing Federal recognition of the State program.

During the 2007 legislative session, a bill was passed to require the Department of State to adopt education requirements that are no less stringent than those required by the AQB. In response to this bill, the Department has adopted emergency rules which have been in effect since January 1, 2008. If the Department had failed to adopt these requirements, the New York appraisal program would have lost Federal recognition. This would have resulted in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would have been prohibited from preparing an appraisal for any such transaction and New York consumers would have been forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would have been significant.

To ensure that the AQB mandate is met, and to conform the existing

education regulations with the statutory amendments, this rule making is necessary.

4. Costs:

a. Costs to regulated parties:

The Department of State currently licenses and certifies 7,311 real estate appraisers. Prospective licensees will face increased education costs due to a greater number of required course hours. Currently, each appraiser course costs approximately \$300 resulting in an anticipated cost of \$2,100 for the assistant appraiser courses, \$3,000 for the certified residential courses and \$3,300 for the certified general courses. The costs for continuing education are not expected to increase as a result of this rule making.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local government for the implementation and continuation of the rule.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements. Insofar as prospective licensees are already required to satisfactorily complete qualifying education, conforming the regulations with the recent statutory amendments will not result in additional paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State discussed the need to adopt the rule making at several meetings of the New York State Appraisal Board. Few comments were received that suggested alternatives to the current proposal. General comments were received, including the expressed concern that increasing the educational hours required for certification and licensure would make it more difficult to become licensed and certified. Because the Department is required to propose this rule making by Federal mandate, the hour requirements as set forth in the rule making could not be reduced.

One alternative that is being considered is a legislative amendment to permit on-line qualifying education. While this would not decrease the hours of education required for certification and licensure, it would provide an educational option and flexibility to prospective students.

9. Federal Standards:

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 establishes the Appraisal Qualifications Board (AQB) which establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB. This rule making conforms the education regulations with the required federal standard.

10. Compliance Schedule:

Prospective licensees will be required to comply with the rule on January 1, 2008. Insofar as the AQB has conducted outreach to the regulated public about the relevant changes effected by this rule making, licensees and prospective licensees have been notified about the changes and should be able to comply with the rule on its effective date.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to prospective real estate appraisers who are applying for licensure pursuant to Article 6-E of the Executive Law after January 1, 2008. During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law to require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

The rule does not apply to local governments.

2. Compliance requirements:

Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record-keeping or other compliance requirements.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Licensees will not need to rely on any new professional services in order to comply with the rule. Licensees are already required to satisfy minimum education and experience qualifications pursuant to Article 6-E of

the Executive Law. Insofar as licensees must already attend and complete approved education courses, conforming the regulations with the statute will not result in the need to rely on any new professional services. The Department expects existing education providers to begin offering new approved courses in accordance with the amended statute and the rule making.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The rule making will not result in any new compliance costs. Prospective licensees are already required to complete, and pay for, qualifying education pursuant to Article 6-E of the Executive Law. Insofar as licensees must already complete and pay for approved education courses, conforming the education regulations with the recent statutory amendments will not result in any new compliance costs.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the rule does not provide any new record keeping requirements on prospective licensees, it will be technologically feasible for these persons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or record keeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E.

7. Small business participation:

Prior to proposing the rule, the Department discussed the proposal at numerous public meetings of the New York State Real Estate Appraisal Board, the minutes of which were posted on the Department's website. The public was given an opportunity to issue comments during the public comment period of these meetings. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rule making. Additional comments will be received and entertained.

Rural Area Flexibility Analysis

A rural flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Article 6-E of the Executive Law was amended during the 2007 legislative session, to, in relevant part, require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for licensed or certified real estate appraisers.

During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law. In pertinent part, the bill requires the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. This rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Amendments to the Traffic and Parking Regulations of the State University of New York at Potsdam

I.D. No. SUN-38-08-00003-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 567.6(d) of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)(d)

Subject: Proposed amendments to the traffic and parking regulations of the State University of New York at Potsdam.

Purpose: To regulate the flow of traffic on the campus by increasing the number of stop signs on the campus.

Text of proposed rule: Section 567.6(d) is amended by adding new subdivisions (27), (28), (29), (30) and (31) as follows:

Intersection of	With stop sign on	Entrance(s) from
(27) College Park Drive	Parking Lot #8	Northwest
(28) Canton Drive	Watertown Drive	North
(29) Tupper Lake Drive	Saranac Lake Drive	North
(30) Pierrepont Avenue	Akwesasne Drive	West
(31) Canton Drive	Watertown Drive	South

Text of proposed rule and any required statements and analyses may be obtained from: Dona S. Bulluck, State University of New York, State University Plaza, Albany, New York 12246, (518) 443-5101, email: Dona.Bulluck@suny.edu

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: Education Law § 360(1) authorizes the State University of New York Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The proposed amendments will allow the State University of New York at Potsdam to regulate traffic flow as intended by Education Law § 360.1.

3. Needs and benefits: The proposed amendments are required to facilitate the safety of those traveling on the grounds of the State University of New York at Potsdam.

4. Costs: Any costs relating to the purchase and erection of the signs will be borne by the campus.

5. Local government mandates: None

6. Paperwork: Any paperwork required will be completed by the campus.

7. Duplication: None

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: The campus will notify the campus community of the signage. Compliance should be immediate upon the erection of the signs.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local government's. The proposal addresses internal traffic regulations on the campus of the State University of New York at Potsdam.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal

parking regulations on the campus of the State University of New York at Potsdam.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal traffic regulations on the campus of the State University of New York at Potsdam.