

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Civil Service

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

#### Jurisdictional Classification

**I.D. No.** CVS-35-10-00007-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Research Associate from 9 to 10 and Special Assistant from 22 to 23.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

#### Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

#### Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

#### Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

#### Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

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

#### Jurisdictional Classification

**I.D. No.** CVS-35-10-00008-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "State Insurance Fund," by adding thereto the position of øDirector NYSIF Disability Benefits Fund (1).

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

#### Regulatory Impact Statement

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#### Regulatory Flexibility Analysis

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#### Rural Area Flexibility Analysis

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#### Job Impact Statement

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

**Jurisdictional Classification**

**I.D. No.** CVS-35-10-00009-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Director of Probation and Correctional Alternatives.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

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**Regulatory Flexibility Analysis**

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**Rural Area Flexibility Analysis**

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**Job Impact Statement**

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NO HEARING(S) SCHEDULED**

**Jurisdictional Classification**

**I.D. No.** CVS-35-10-00010-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "State Insurance Fund," by increasing the number of positions of Special Investment Officer from 10 to 12.

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

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**Rural Area Flexibility Analysis**

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**Job Impact Statement**

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

**Jurisdictional Classification**

**I.D. No.** CVS-35-10-00011-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by increasing the number of positions of Community Interpretation Program Specialist 2 from 4 to 5.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

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**Regulatory Flexibility Analysis**

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**Rural Area Flexibility Analysis**

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**Job Impact Statement**

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

**Jurisdictional Classification**

I.D. No. CVS-35-10-00012-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Human Rights," by increasing the number of positions of øSecretary 2 from 1 to 2.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

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**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

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

**Jurisdictional Classification**

I.D. No. CVS-35-10-00013-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services, by adding thereto the position of øInformation Security Officer (1).

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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**Regulatory Impact Statement**

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**Regulatory Flexibility Analysis**

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**Rural Area Flexibility Analysis**

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**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

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

**Jurisdictional Classification**

I.D. No. CVS-35-10-00014-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a heading and position from the exempt class and to delete a heading and position from the non-competitive class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, by deleting therefrom the heading "State Northeastern Queens Nature and Historical Preserve Commission," and the position of Executive Director; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, by deleting therefrom the heading "State Northeastern Queens Nature and Historical Preserve Commission," and the position of øSecretary 1 (1).

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

**Job Impact Statement**

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## Department of Economic Development

### EMERGENCY RULE MAKING

#### Empire Zones Reform

**I.D. No.** EDV-35-10-00017-E

**Filing No.** 862

**Filing Date:** 2010-08-16

**Effective Date:** 2010-08-16

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

**Action taken:** Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

**Statutory authority:** General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

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

**Specific reasons underlying the finding of necessity:** Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

**Subject:** Empire Zones reform.

**Purpose:** Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

**Substance of emergency rule:** The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the

eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may

revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at [www.empire.state.ny.us](http://www.empire.state.ny.us)

**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 13, 2010.

**Text of rule and any required statements and analyses may be obtained from:** Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: [tregan@empire.state.ny.us](mailto:tregan@empire.state.ny.us)

#### Regulatory Impact Statement

##### STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commis-

sioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

##### LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

##### NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

##### COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

##### LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

##### PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

##### DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

##### ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

##### FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

##### COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

##### 2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relat-

ing to existing annual reporting requirements. Local governments are unaffected by this rule.

#### 3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

#### 4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

#### 5. Economic and technological feasibility

The Department of Economic Development (“DED”) estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

#### 6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

#### 7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

#### Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

#### Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Education Department

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

#### Qualified School Construction Bonds (QSCB) and Qualified Zone Academy Bonds (QZAB)

I.D. No. EDU-35-10-00019-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 155.22 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 207, 305(1) and (2); and 26 USC sections 54E and 54F

**Subject:** Qualified School Construction Bonds (QSCB) and Qualified Zone Academy Bonds (QZAB).

**Purpose:** Establish criteria for QSCB and to update QZAB provisions.

**Substance of proposed rule (Full text is posted at the following State website: [http://www.emsc.nysed.gov/facplan/documents/QZAB\\_WEBSITE\\_POSTING\\_1\\_091610.doc](http://www.emsc.nysed.gov/facplan/documents/QZAB_WEBSITE_POSTING_1_091610.doc)):** The Commissioner of Education proposes to amend section 155.22 of the Commissioner’s Regulations, effective December 8, 2010, relating to Quali-

fied School Construction Bonds issued pursuant to 26 USC section 54F and Qualified Zone Academy Bonds issued pursuant to 26 USC sections 1397E and 54E. The following is a summary of the substance of the proposed amendment.

Section 155.22 is revised to organize the regulation into subdivision (a), relating to Qualified Zone Academy Bonds, and subdivision (b), relating to Qualified School Construction Bonds. The provisions relating to Qualified Zone Academy Bonds (QZAB) are revised to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

Provisions relating to Qualified School Construction Bonds (QSCB) are established in section 155.22(b).

Section 155.22(b)(1) sets forth the purpose of the subdivision, to establish procedures for the allocation and issuance of QSCB as authorized by 26 USC section 54F.

Section 155.22(b)(2) sets forth definitions for terms used in the subdivision.

Section 155.22(b)(3) establishes procedures for allocating respective amounts of the QSCB State limitation amount to local educational agencies (LEAs), including provisions for allocating to the large city school districts, charter schools, and all other LEAs.

Section 155.22(b)(4) establishes procedures for making adjustments for unused allocations.

Section 155.22(b)(5) requires QSCB to be used within three years after issuance.

Section 155.22(b)(6) requires that capital construction projects to be financed through the issuance of QSCB must be submitted for review to the Office of Facilities Planning in the State Education Department.

Section 155.22(b)(7) provides that capital construction projects funded in whole or in part with QSCB and involving the repair, renovation or alteration of public school facilities that are approved by the Commissioner, shall be eligible to receive building aid pursuant to the provisions of Education Law section 3602(6).

**Text of proposed rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: [legal@mail.nysed.gov](mailto:legal@mail.nysed.gov)

**Data, views or arguments may be submitted to:** John B. King, Jr. Senior Deputy Commissioner P-12 Education, State Education Department, State Education Building Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: [NYSEDPI2@mail.nysed.gov](mailto:NYSEDPI2@mail.nysed.gov)

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

#### Regulatory Impact Statement

##### STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 305(1) provides that the Commissioner of Education is the chief executive officer of the State system of education and of the Board of Regents, and charged with the enforcement of all general and special laws relating to the educational system of the State and the execution of all educational policies determined by the Board of Regents. Section 305(2) provides that the Commissioner shall have general supervision over all schools and institutions subject to the Education Law or any statute relating to education.

26 USC section 54E, as added by section 313(a) of Title III of Division C of the Emergency Economic Stabilization Act of 2008, Pub.L. 110-343, 122 Stat. 3765, 3869, establishes a federal tax credit to holders of qualified zone academy bonds issued for qualified purposes under the statute, establishes a national zone academy bond limitation for such credit, and provides for the allocation of such limitation amount to state education agencies for allocation to qualified zone academies within each respective state.

26 USC section 54F, as added by section 1521(a) of Part III of Subtitle F of Title 1 of Div. B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or lo-

cal government within the jurisdiction of which such school is located; establishes a national qualified school construction bond limitation, and provides for the allocation of such limitation amount to state education agencies for allocation to bond issuers within each respective state.

#### LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutes and is necessary for the implementation of the provisions of 26 USC section 54F in that it will establish criteria for the allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and update the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds issued under 26 USC 54E.

#### NEEDS AND BENEFITS:

Internal Revenue Code section 54F (26 USC section 54F), as added by section 1521(a) of Title I of Part III of Subtitle F of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located. The statute establishes a national qualified school construction bond limitation for each of the 2009 and 2010 calendar years. Within such national bond limitation amount, the Secretary of the U.S. Treasury will allocate state limitation amounts to each state for the state's allocation to bond issuers within the state.

New York State is home to three city school districts, New York City, Buffalo and Rochester, that are large enough to qualify as part of the 100 largest nationwide school districts, and as such, these districts will receive direct federal Qualified School Construction Bond Allocations from the U.S. Treasury Secretary. Additionally, New York State received \$192 Million in the 2009 and \$178 Million in the 2010 calendar years to allocate to other districts in the State that did not receive a direct federal allocation.

The 2009 allocation was retained by the State to fund State expenditures for local district capital projects. The purpose of the proposed amendment to section 155.22 of the Commissioner's Regulations is to prescribe the procedures for New York State to allocate its \$174,782,000 2010 state limitation amount to those school district bond issuers not receiving a direct federal allocation.

In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

#### COSTS:

(a) Costs to State government: None. The proposed rule does not impose any additional costs on the State beyond those inherent in the authorizing statutes, 26 USC sections 54E and 54F. Although school districts participating in the QSCB and QZAB programs will be entitled to building aid for capital construction projects as they are under existing law, it is anticipated that there will be a reduced cost to the State as there is no interest on the bonds and the State will not be obligated to pay its share of interest on the borrowing.

(b) Costs to local government: The proposed rule does not impose any costs on local government. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and updates the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

(c) Costs to private, regulated parties: None. The proposed rule does not impact private parties in any way.

(d) Cost to the regulating agency for implementation and continued administration of this rule: None. The proposed rule does not impose any additional costs on the State Education Department beyond those imposed by the authorizing statutes, 26 USC sections 54E and 54F. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

#### LOCAL GOVERNMENT MANDATES:

The proposed rule will not impose any program, service, duty or responsibility on local governments. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

#### PAPERWORK:

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a).

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

#### DUPLICATION:

The proposed amendment does not duplicate existing State or Federal regulations.

#### ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed rule is necessary to establish the procedures for New York State to allocate its state limitation amount to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and to update the Qualified Zone Academy provisions to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E.

#### FEDERAL STANDARDS:

The proposed rule does not exceed any minimum standards of the Federal government for the same or similar subject areas. The proposed rule is consistent with the authority provided under 26 USC section 54F to establish a process for the allocation of the State's Qualified School Construction Bond state limitation amount to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and to update provisions in the Commissioner's Regulation regarding Qualified Zone Academy provisions to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E.

#### COMPLIANCE SCHEDULE:

The proposed amendment does not place any compliance requirements on school districts. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

#### Regulatory Flexibility Analysis

##### Small Businesses:

The proposed rule relates to the process by which local educational agencies gain access to a program entitled Qualified School Construction Bonds (QSCB), established in 26 USC section 54F, for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such bond issue. The purchaser of the bonds receives a Federal tax credit in lieu of interest payments on the bonds. The proposed rule merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of QSCB pursuant to 26 USC section 54F, and updates the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### Local Governments:

**EFFECT OF RULE:**

The proposed rule applies to all public school districts and boards of cooperative educational services in the State.

**COMPLIANCE REQUIREMENTS:**

The proposed rule will not impose any compliance requirements on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a).

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

**PROFESSIONAL SERVICES:**

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

**COMPLIANCE COSTS:**

The proposed rule does not impose any costs on local government. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

**ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed rule does not impose any new economic or technological requirements on local governments.

**MINIMIZING ADVERSE IMPACT:**

The proposed rule does not impose any compliance requirements or compliance costs on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

**LOCAL GOVERNMENT PARTICIPATION:**

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

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

The proposed rule applies to all school districts and boards of cooperative educational services in the State, including the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

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

The proposed rule will not impose any compliance requirements on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursu-

ant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a).

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

The proposed amendment will not impose any additional professional services requirements.

**COMPLIANCE COSTS:**

The proposed rule does not impose any costs on rural areas. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

**MINIMIZING ADVERSE IMPACT:**

The proposed rule does not impose any compliance requirements or compliance costs on rural areas. The proposed rule does not impose any compliance requirements or compliance costs on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

**RURAL AREA PARTICIPATION:**

Copies of the proposed amendment have been distributed to members of the Department's Rural Advisory Committee, which includes representatives of school districts in rural areas.

**Job Impact Statement**

The proposed amendment relates to the process by which local educational agencies gain access to a program entitled Qualified School Construction Bonds (QSCB), established in 26 USC section 54F, for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such bond issue. The purchaser of the bonds receives a Federal tax credit in lieu of interest payments on the bonds. The proposed amendment merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

**Office of General Services**

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

**Facility Use**

**I.D. No.** GNS-35-10-00001-P

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

**Proposed Action:** This is a consensus rule making to amend sections 300-1.2 and 300-3.1(k) of Title 9 NYCRR.

**Statutory authority:** Executive Law, section 200; title III of the Americans with Disabilities Act (28 CFR 36.104)

**Subject:** Facility Use.

**Purpose:** To add the definitions of disability and service animals, and clarify that service animals will be permitted within State Facilities.

**Text of proposed rule:** Subdivisions (e) and (o) of section 300-1.2 are added to read as follows:

(e) *Disability shall mean (i) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; (ii) a record of such an impairment; or (iii) a condition regarded by others as such an impairment.*

(o) *Service animal shall mean any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a Disability.*

Subdivisions (e)-(x) of section 300-1.2 shall be renumbered (f)-(z) accordingly.

Subdivision (k) of section 300-3.1 is amended to read as follows:

(k) **Animals.** No person shall introduce or possess any animals within a State facility except for [guide dogs] *Service Animals* [used by the visually or hearing impaired] and police and fire dogs under the control of their handler, without authorization from the commissioner. No person shall abandon an animal on State property.

**Text of proposed rule and any required statements and analyses may be obtained from:** Paula B. Hanlon, Esq., NYS Office of General Services, 41st Fl., Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, NY 12242, (518) 474-0571, email: paula.hanlon@ogs.state.ny.us

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

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

**Consensus Rule Making Determination**

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102 (11) (b), no person is likely to object to its adoption because it merely amends current regulation to be consistent with regulations adopted under Title III of the Americans with Disabilities Act (28 CFR 36.104).

The regulations adopted under Title III of the Americans with Disabilities Act (28 CFR 36.104) define “service animal” as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items”.

Additionally, 9 NYCRR 466.11(c)(2) defines “disability” as “(i) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; (ii) a record of such an impairment; or (iii) a condition regarded by others as such an impairment”.

The proposed amendments are consistent with these definitions.

**Job Impact Statement**

The Office of General Services projects there will be no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of this rule. The subject regulations simply provide definitions for the terms “disability” and “service animals” and provide that service animals are permitted within State facilities. Since nothing in the proposed regulations will increase or decrease the number of jobs in New York State, have an adverse impact on any specific region in New York State, and no adverse impact is anticipated on jobs in New York State, no

further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

**Federal Surplus Property**

**I.D. No.** GNS-35-10-00015-P

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

**Proposed Action:** This is a consensus rule making to repeal Part 298 and add a new Part 298 to Title 9 NYCRR.

**Statutory authority:** Executive Law, section 200; Education Law, section 3712; 40 U.S.C., section 549 and 41 CFR 102-37

**Subject:** Federal surplus property.

**Purpose:** To be consistent with the text of the New York State Plan of Operation approved by the Federal GSA on April 29, 2010.

**Substance of proposed rule:** This is the New York State plan of operation to comply with 40 U.S.C. 549 and Federal Management Regulations (FMR), 41 CFR 102-37, governing the acquisition and distribution of federal surplus personal property for public purposes. In the development of this plan and its subsequent implementation, consideration has been given to the relative needs and resources of all public agencies and other eligible institutions in the State.

Section 298.2 designates the “Bureau of Federal Property Assistance” as the State Agency for Surplus Property (SASP), responsible for administration and operation of the federal surplus personal property program in New York State as authorized by section 3712 of the New York State Education Law, and in conformance with 40 U.S.C. 549, and FMR 41 CFR 102-37.130 through 102-37.135 of the U.S. General Services Administration (GSA). Additionally, § 298.2 authorizes the SASP to acquire and distribute surplus property to eligible donees, carry out the other requirements of the State Plan, and to provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. Finally, § 298.2 provides the organizational structure of the Office of General Services (OGS) as it relates to the SASP and the physical address of the SASP office.

Section 298.3 describes the inventory control and accounting systems.

Section 298.4 describes the process for returning donated property.

Section 298.5 describes financing of the program, the process for assessing service charges, and the Federal Property Inventory System.

Section 298.6 describes terms, conditions, and restrictions that may be imposed upon donable property.

Section 298.7 describes process for handling nonutilized donable property.

Section 298.8 describes the process for distributing property to eligible donees in a fair and equitable manner.

Section 298.9 describes the process the SASP will use to determine the eligibility of public agencies and nonprofit health and educational institutions and organizations in accordance with 40 USC 549, and implementing federal regulations FMR 102-37.380 through 102-37.430 and 102-37.445.

Section 298.10 describes the process for reviewing donee compliance with the terms, conditions, reservations and restrictions applying to the use of property and on all items of property having a unit government acquisition cost value of \$5,000 or more, and any passenger motor vehicle to verify that the donated property is placed into use and continuously used for the full restriction period, for the purpose for which it was acquired.

Section 298.11 describes the process for consultation of the SASP with advisory bodies, public and private groups.

Section 298.12 describes the audit process associated with the federal surplus property program.

Section 298.13 describes the authority of the SASP to enter into cooperative agreements.

Section 298.14 describes the process of liquidating the SASP.

Section 298.15 lists the forms used by the SASP to evidence the distribution of property to eligible donees.

Section 298.16 describes the time frames for retaining official records of the SASP.

**Text of proposed rule and any required statements and analyses may be obtained from:** Paula B. Hanlon, NYS Office of General Services, 41st fl Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, NY 12242, (518) 474-0571, email: paula.hanlon@ogs.state.ny.us

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

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

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

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(b), no person is likely to object to its adoption because it merely conforms to the New York State Plan of Operation (State Plan) for federal surplus property that was approved by the federal General Services Administration on April 29, 2010. There was no discretion in developing the text for these regulations since they were required to mirror the text of the approved State Plan.

#### **Job Impact Statement**

The Office of General Services projects there will be no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of this rule. The subject regulations simply conform to the New York State Plan of Operation (State Plan) for federal surplus property that was approved by the federal General Services Administration on April 29, 2010. Since nothing in the proposed regulations will increase or decrease the number of jobs in New York State, have an adverse impact on any specific region in New York State, and no adverse impact is anticipated on jobs in New York State, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Hudson River - Black River Regulating District

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### NOTICE OF ADOPTION

#### **Apportionment Grievance Hearing Procedure**

**I.D. No.** HBR-19-10-00004-A

**Filing No.** 857

**Filing Date:** 2010-08-13

**Effective Date:** 2010-09-01

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

**Action taken:** Addition of sections 606.126 through 606.134 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, art. 15, title 21, sections 15-2109(1) and 15-2121(5)

**Subject:** Apportionment Grievance Hearing Procedure.

**Purpose:** To establish a simplified due process procedure for contesting the apportionment of Regulating District costs.

**Text or summary was published** in the May 12, 2010 issue of the Register, I.D. No. HBR-19-10-00004-A.

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

**Text of rule and any required statements and analyses may be obtained from:** Glenn A. LaFave, Executive Director, Hudson River-Black River Regulating District, 350 Northern Boulevard, Albany, New York 12204, (518) 465-3491, email: hrao@hrbrd.com

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

The agency received no public comment.

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## Division of the Lottery

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

#### **Operation of the LOTTO Game and the New York Lottery Subscription Program**

**I.D. No.** LTR-35-10-00018-P

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

**Proposed Action:** Repeal of sections 2804.14 and 2804.15 and Part 2817; and addition of new sections 2804.14 and 2804.15 and Part 2817 to Title 21 NYCRR.

**Statutory authority:** Tax Law, sections 1601, 1604 and 1612

**Subject:** Operation of the LOTTO game and the New York Lottery subscription program.

**Purpose:** To revise the rules of the LOTTO game and related subscription provisions.

**Substance of proposed rule (Full text is posted at the following State website: nylottery.org):** The amendments revise the regulations for the operation of the LOTTO game. Due to the prolonged decline in popularity of the Lottery's former flagship game, the Lottery is relaunching LOTTO to make it more appealing to consumers, which should ultimately generate more revenue to the State for aid to education.

The revised game rules provide for a more attractive prize structure for players and are intended to re-ignite interest in the game. The first prize for the game shall be \$1,000,000 paid as a lump sum. There will be approximately three times as many top prizes as under the existing LOTTO game. The first prize will not be a shared prize unless a certain maximum number of game panels match the applicable numbers for a particular drawing. The revised regulations also address the second prize category through the fourth prize category.

Definitions are revised to accommodate the new design while also providing that certain specific game rules shall be publicly announced by the Lottery. The definition of the LOTTO game was revised to permit the Lottery to change the name of the game or to offer two or more versions of the LOTTO game with different fields of numbers and prize structures.

The LOTTO regulations are amended to permit minor changes in the game structure if marketing evidence suggests that alteration may result in greater interest in the game and increased revenue for the State. Game details not specified in the regulations will be communicated to players via the Lottery's official website, on which the Lottery will designate the odds of winning, the prize structure, including fixed prize amounts, and details about any additional version of the LOTTO game. The Lottery will also announce details regarding LOTTO in advertisements, news releases, play slips, brochures located at retailers, or in any other form that the Director may prescribe. Therefore, slight modifications to the game will not necessarily require amendment of the regulations. This ensures that the Lottery will be able to offer the best possible game, which will appeal to more customers and maximize revenue for aid to education in New York State.

The regulations relating to subscriptions are also amended to comply with revisions to the LOTTO game. The revised subscription regulations generally describe subscription costs and subscription application requirements. In addition to LOTTO, these regulations apply to any other game that the Lottery has or may have available under the subscription program.

Technical amendments are also made throughout the proposed regulations.

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

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

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

#### **Regulatory Impact Statement**

1. Statutory authority: The new regulations for the New York Lottery's subscription program and the LOTTO game are proposed pursuant to Tax Law, Sections 1601, 1604 and 1612.

Tax Law § 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively for aid to education. Tax Law § 1604 authorizes the Division of the Lottery (the Lottery) "to promulgate rules and regulations governing the establishment and operation thereof." Tax Law § 1612(a)(4) specifies the percentages for disposition of LOTTO sales revenues and describes the game as, "'Lotto', offered no more than once daily, a discrete game in which all participants select a specific subset of numbers to match a specific subset of numbers, as prescribed

by rules and regulations promulgated and adopted by the division, from a larger specific field of numbers, as also prescribed by such rules and regulations.”

2. Legislative objectives: The purpose of operating Lottery games is to generate earnings for the support of education in the State. Repeal and replacement of these regulations will improve the Lottery’s ability to generate earnings for education by increasing consumer interest in LOTTO games.

3. Needs and benefits: The LOTTO game has sustained competitive pressure from large jackpot lottery games, which has produced a decline in LOTTO revenues and a loss of player interest. A comparison of LOTTO revenues for 2004-05 to revenues for 2008-09 shows an annual decline of 12.9%. For the fiscal year ending on March 31, 2009, revenues declined to only \$178,100,000 from earlier levels of over \$356,000,000 a year. If the 12.9% annual decline in revenues continues through the fiscal year ending March 31, 2012, revenues for that year will total only \$117,900,000. The aid to education from this game will also drop from an estimated \$93,900,000 in FY 2008-09 to only \$62,200,000 in the fiscal year ending on March 31, 2012.

Repeal and replacement of the LOTTO regulations will allow the Lottery to reverse this trend and continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who play lottery games. The new regulations allow the Lottery to offer additional versions of the LOTTO game. Pursuant to the new regulations, including an emergency regulation adopted on July 31, 2009, the Lottery has, as of September 15, 2009, introduced a variation of the LOTTO game called Sweet Million with more attractive odds of winning intended to generate renewed interest in LOTTO games. Because the new variation of the LOTTO game has more favorable odds of winning a first prize, revenues are expected to increase.

Marketing research and consumer surveys indicate that interest in the new variation of the LOTTO game is high. Players are motivated by “better odds,” and many think the new game is a great value. Research reveals that players find the improved odds of winning when compared to the current LOTTO game to be the single most exciting aspect of the new game. Survey participants also responded favorably to first prize being paid as a lump sum. Of those surveyed, 86% prefer jackpot winnings to be paid all at once in cash as opposed to installments. This evidence suggests that New Yorkers are intrigued by the new game, and the State is likely to realize a tangible benefit in the form of increased earnings for education.

4. Costs:

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

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs; since current funds reserved for administrative expenses of operating lottery games are expected to be sufficient to support the new variation of the LOTTO game, including advertising expenses, point of sale material production costs, and the cost of printing play slips for the new game. The new variation of the LOTTO game will generate more earnings for aid to education, which will far exceed the minimal expenses necessary to operate the new game. More aid to education from the Lottery will have a positive effect on the State because less funds will then be required from other General Fund resources to aid education. Furthermore, if less funds are required from other General Fund resources to aid education, local governments will benefit because increased funding for local schools from Lottery earnings will ease local tax burdens. Local retailers will earn higher commissions as ticket sales increase, which may result in more employment opportunities.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Lottery’s experience in operating State Lottery games for more than 40 years.

5. Local government mandates: None. No local government is authorized or required to do any act, apply any effort, expend any funds, or use any other resources in connection with the operation of the LOTTO game or LOTTO game variations. All necessary actions will be carried out by the Lottery or licensed Lottery retailers who will be

completely responsible for all aspects of game operations at the local retail level. The Lottery has no authority and no need to impose any mandate on any local government. Consequently, no provision of the rule imposes any burden on any local government in the State.

6. Paperwork: There are no changes in paperwork requirements. Game information will be issued by the New York Lottery for public convenience on the Lottery’s website and through point of sale advertising materials at retailer locations.

7. Duplication: None.

8. Alternatives: The revised LOTTO regulations permit minor changes in the structure of any variation of the LOTTO game if marketing evidence suggests that alteration may result in greater interest in that game and increased revenue for the State. Specific game details not specified in the regulations will be communicated to players via the Lottery’s official website, on which the Lottery will designate the odds of winning, the prize structure, including fixed prize amounts, and details about any additional version of the LOTTO game. The Lottery will also announce details of LOTTO games in mass media advertisements, news releases, play slips, point of sale materials located at retailers, or in any other form that the Director may prescribe. Therefore, slight modifications to any variation of the LOTTO game will not require amendment of the regulations. This will ensure that the Lottery will be able to offer the best possible game or games, which will appeal to more customers and result in maximum sales and revenue for aid to education in New York State.

The alternative to amending the LOTTO regulations is to not address the declining revenues for the existing LOTTO game and forfeit the investment already made by the Lottery in the game. The annual LOTTO sales decline of 12.9% will likely continue, and the State will lose millions of dollars in revenue. The failure to proceed will also result in lost aid to education that is anticipated to be earned following introduction of a new variation of the LOTTO game.

9. Federal standards: None.

10. Compliance schedule: None.

***Regulatory Flexibility Analysis and Rural Area Flexibility Analysis***

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

The proposed amendments to the LOTTO game and subscription regulations will not impose any adverse economic or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Small businesses will not have any additional recordkeeping requirements as a result of the amendments. Additionally, the proposed amendments are anticipated to have a positive effect on the revenue of small businesses that sell lottery tickets as more players will be interested in the game, which will increase sales commissions paid to retailers. Local governments are not regulated by the New York Lottery or its subscription regulations, nor are any economic or recordkeeping requirements imposed on local governments as a result of the amendments.

***Job Impact Statement***

The proposed repeal and replacement of 21 NYCRR sections 2804.14 and 2804.15 and Part 2817 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York State. The repeal and replacement of the regulations is sought to relaunch the New York Lottery’s LOTTO game to generate more revenue for the State for aid to education.

The revisions may have a positive effect on jobs or employment opportunities as a result of an increase in LOTTO ticket sales, which would increase sales commissions paid to Lottery retailers.

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## Office of Mental Health

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

#### Correction of an Inaccurate State Agency Name

**I.D. No.** OMH-35-10-00023-P

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

**Proposed Action:** This is a consensus rule making to amend Part 505 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 7.09

**Subject:** Correction of an inaccurate State agency name.

**Purpose:** To update the name of the Commission on Quality of Care and Advocacy for Persons with Disabilities within existing regulation.

**Text of proposed rule:** Section 505.10 of Title 14 NYCRR is amended to read as follows:

Employees and agents of the Office of Mental Health, Commission on Quality of Care and Advocacy for [the Mentally Disabled] *Persons with Disabilities*, and other Federal, State and local agencies responsible for monitoring, inspecting, supervising, and investigating programs operated or certified by the Office of Mental Health shall have access to confidential HIV information to the extent necessary to discharge those responsibilities.

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

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

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

#### Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to make a technical correction. The rule is non-controversial, and no person is likely to object since it merely updates the incorrect name of a State agency.

Pursuant to Chapter 58 of the Laws of 2005, two State agencies (the former Commission on Quality of Care for the Mentally Disabled and the former New York State Office of Advocate for Persons with Disabilities) merged on April 1, 2005, and the new name of the combined agency is Commission on Quality of Care and Advocacy for Persons with Disabilities.

Statutory Authority: Section 7.09 of the Mental Hygiene Law authorizes the Commissioner of the Office of Mental Health to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

#### Job Impact Statement

A Job Impact Statement is not submitted with this Notice because it merely corrects an inaccurate reference in the regulation. It is obvious that there will be no impact on jobs and employment opportunities as a result of this rule making.

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

#### Correction of Inaccurate Address in Existing Regulation

**I.D. No.** OMH-35-10-00024-P

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

**Proposed Action:** This is a consensus rule making to amend Part 510 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09 and 33.02; Public Officers Law (Freedom of Information Law), art. 6

**Subject:** Correction of inaccurate address in existing regulation.

**Purpose:** To correct the address of the Department of State, Committee on Open Government.

**Text of proposed rule:** Subdivision (c) of section 510.10 of Title 14 NYCRR is amended to read as follows:

(c) Upon receipt of transmittal by the Office of Mental Health, copies of all appeals and related determinations shall be forwarded to the Committee on Open Government, Department of State, [41 State Street] *One Commerce Plaza, 99 Washington Avenue*, Albany, New York 12231.

**Text of proposed rule and any required statements and analyses may be obtained from:** Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1441, email: cocbjdd@omh.state.ny.us

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

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

#### Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that its purpose is to make a technical correction and is non-controversial. No person is likely to object to this rulemaking since it merely corrects an inaccurate address for another State agency. The address currently listed in regulation for the Department of State is no longer correct as that agency moved to a new location in February, 2008. The rule clarifies the proper address for the Department of State, Committee on Open Government.

Statutory Authority: Section 7.09 of the Mental Hygiene Law authorizes the Commissioner of the Office of Mental Health to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 33.02 of the Mental Hygiene Law establishes statutory rights of persons with mental disabilities and requires the Commissioner to publish regulations informing residents of facilities or programs operated or licensed by the Office of Mental Health of their rights under law. Article 6 of the Public Officers Law (Freedom of Information Law) establishes the criteria under which the public may access the records related to the process of governmental decision making.

#### Job Impact Statement

A Job Impact Statement is not submitted with this Notice because it merely corrects an inaccurate address in existing regulation. It is obvious from the nature of this rule that there will be no impact on jobs and employment opportunities as a result of this rulemaking.

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## Office of Parks, Recreation and Historic Preservation

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### NOTICE OF ADOPTION

#### Safe Boating Education Program

**I.D. No.** PKR-12-10-00003-A

**Filing No.** 860

**Filing Date:** 2010-08-16

**Effective Date:** 2010-09-01

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

**Action taken:** Repeal of Part 451 and addition of new Part 451 to Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(8); Navigation Law, sections 49 and 75-79

**Subject:** Safe boating education program.

**Purpose:** To update the safe boating education program and the instructor certification program.

**Text or summary was published** in the March 24, 2010 issue of the Register, I.D. No. PKR-12-10-00003-P.

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

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

**Assessment of Public Comment**

The Office of Parks, Recreation and Historic Preservation (State Parks) is repealing and adopting a new 9 NYCRR Part 451 - Safe Boating Education and Instructor Certification Program. We received two sets of comments on the rule from Safe Boating America - a private for-profit boating instruction organization. The following are responses to those comments.

What is the effective date of the rule?

The date of publication of the Notice of Adoption in the State Register is the effective date of this rule.

Why aren't the U.S. Coast Guard Auxiliary (Coast Guard Auxiliary) and U.S. Power Squadron (Power Squadron) instructors required to follow the rule? They offer their own separate boating courses in New York. The certificates they issue to boaters for their own courses are recognized by State Parks.

If a member of the Coast Guard Auxiliary or the Power Squadron desires to teach the NY Safe Boating Course (NY Course) outlined in the rule (as a volunteer or commercial instructor) he or she must be certified by the State Parks Commissioner as an instructor, and use the forms, course materials and textbook provided by State Parks. Alternatively, Section 49 of the Navigation Law requires State Parks to recognize the boating certificates issued by these not-for-profit Coast Guard Auxiliary and Power Squadron organizations as equivalent to the NY boating safety certificate issued by the Commissioner.

Shouldn't the rule require the Coast Guard Auxiliary and the Power Squadron instructors to teach the NY Course?

No. The federal government through the Commandant of the U.S. Coast Guard has been directing and overseeing the Coast Guard Auxiliary's educational activities for decades in NY and other states. The Power Squadron, similarly, has been educating boaters for more than 50 years. These not-for-profit organizations are not regulated by State Parks. In teaching their own courses they use NASBLA-certified<sup>1</sup> materials. State Parks reviews for accuracy the New York portion of their NASBLA-certified course materials.

Doesn't the rule put commercial instructors and commercial organizations at a competitive disadvantage because the not-for-profit Coast Guard Auxiliary and Power Squadron may continue to teach their courses and issue their own certificates and they are not bound by the rule?

Section 49 of the Navigation Law requires State Parks to recognize the boating certificates issued by the not-for-profit Coast Guard Auxiliary and Power Squadron organizations as equivalent to the NY boating safety certificate issued by the Commissioner. As the Regulatory Impact Statement (RIS) notes, the safe boating programs have historically been taught by volunteers who did not charge a fee to boaters. State Parks' goal is to educate as many people as possible about safe boating principles.

In addition, State Parks must also ensure that qualified instructors are teaching the NY Course because today there is increasing public demand for the NY Course and for New York-issued boating safety certificates.

The State Legislature only requires the course and certificates for youths who operate vessels without adult supervision and for all persons age 14 or over who operate PWC (e.g., jet skis). Its decision, however, to provide State-approved rate reductions in boating liability insurance obtained from qualified insurers has provided the incentive for many adult boaters to voluntarily take the NY Course (Nav. Law § 78-a). Also, the State Legislature's decision in 2004 to allow instructors to charge a fee to youths taking the course provided an opportunity for commercial entities to market, administer and teach the course to more people. (Nav. Law § 79). To meet public demand, therefore, the new rule continues and fosters opportunities for the public to take free courses taught by volunteer instructors in the Coast Guard Auxiliary and Power Squadrons and those volunteer instructors teaching the NY Course. It also expands opportunities for the burgeoning commercial industry that teaches the NY Course for a fee to children and adults.

Under the rule may the NY safe boating classes be held in a residence or in facilities that do not have tables?

No. When the NY program is taught in a public or commercial area that has adequate facilities (including tables or desks) students are much better served. The setting is more appropriate for the learning experience. The student can spread out the course materials and take notes. When tables or desks are not available students are less likely to organize their material properly thus disrupting the learning process for them and other students.

Why should the rule require teaching facilities to be accessible to persons with disabilities?

In implementing its programs State Parks may not discriminate against persons with disabilities. Additionally, lack of adequate training facilities could discourage persons with disabilities from learning safe boating principles and dissuade them from obtaining a boating safety certificate. State Parks, therefore, strives to ensure the program has training facilities available and accessible to persons with disabilities.

Must NY-certified instructors teaching the NY safe boating course use the textbook provided by State Parks or may they procure NASBLA-approved textbooks directly from another publisher as is the practice in other states?

They must use the textbook provided by State Parks. During the last 25 years many instructors have complained that the other textbooks available for the NY Course do not follow the lesson plans, thus affecting their ability to provide a seamless course of instruction to students. Presently, instructors are using at least five different textbooks and various editions. By standardizing and distributing the textbook State Parks intends to make the instructional content uniform and to update the information as laws and practices change over time. In 2011 instructors will be allowed to exhaust their supplies of NASBLA-approved textbooks that they purchased before the effective date of the rule.

Notwithstanding the explicit regulatory language will State Parks send forms in batches greater than 250 maximum if larger numbers of students sign up for a course?

Yes. The two-week window for class registration allows State Parks to work with instructors and commercial organizations to provide forms in batches greater than 250 as needed. The rule, however, includes specific requirements to be followed by the commercial organization for tracking and accounting for the forms issued.

<sup>1</sup> NASBLA refers to the National Association of State Boating Law Administrators.

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## Commission on Public Integrity

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### NOTICE OF ADOPTION

**Procedure for Requesting an Exemption from Filing a Financial Disclosure Statement**

**I.D. No.** CPI-18-10-00006-A

**Filing No.** 863

**Filing Date:** 2010-08-16

**Effective Date:** 2010-09-01

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

**Action taken:** Amendment of Part 935 of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 94(9)(c) and (i)

**Subject:** Procedure for requesting an exemption from filing a financial disclosure statement.

**Purpose:** These rules set forth conditions for requesting an exemption pursuant to the Public Officers Law.

**Text or summary was published** in the May 5, 2010 issue of the Register, I.D. No. CPI-18-10-00006-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: scalnero@nyintegrity.org

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION****Procedure for Requesting Additional Time, or an Extension, for Filing an Annual Statement of Financial Disclosure**

**I.D. No.** CPI-18-10-00007-A

**Filing No.** 864

**Filing Date:** 2010-08-16

**Effective Date:** 2010-09-01

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

**Action taken:** Amendment of Part 936 of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 94(9)(c)

**Subject:** Procedure for requesting additional time, or an extension, for filing an annual statement of financial disclosure.

**Purpose:** These rules set forth a uniform procedure for requesting an extension.

**Text or summary was published** in the May 5, 2010 issue of the Register, I.D. No. CPI-18-10-00007-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: scalnero@nyintegrity.org

**Assessment of Public Comment**

The agency received no public comment.

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## Public Service Commission

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

**Possible Authorization of New Solicitations and Modifications to Bid Solicitation Eligibility or Bid Evaluation Rules**

**I.D. No.** PSC-35-10-00021-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 authorize new Renewable Portfolio Standard (RPS) program Main Tier procurement solicitations and changes to bid solicitation eligibility or bid evaluation design details and methodologies.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Possible authorization of new solicitations and modifications to bid solicitation eligibility or bid evaluation rules.

**Purpose:** To encourage electric energy generation for the State's consumers from renewable resources.

**Substance of proposed rule:** The Commission is considering whether to authorize new Renewable Portfolio Standard (RPS) program Main Tier procurement solicitations by the New York State Energy Research and Development Authority (NYSERDA), and whether to adopt, modify, or reject, in whole or in part, changes to bid solicitation eligibility or bid evaluation design details and methodologies.

The Commission is considering whether NYSEDA should be authorized to conduct, after consultation with Staff of the Department of Public Service, no less than one solicitation per calendar year, which authorization would allow NYSEDA to conduct as many solicitations per calendar year as NYSEDA deems necessary to implement the RPS Main Tier program without further or individual authorizations for solicitations by the Commission.

In order to balance the desire to promote incremental renewable generation construction and economic development with the need to provide developers flexibility in construction schedules and obtain renewable resources at the lowest reasonable price, the Commission is considering modifying the bid solicitation eligibility and bid evaluation design details and methodologies. The options to be considered by the Commission include, but are not limited to:

(1) Whether the economic benefits category for bid evaluation should be continued or eliminated;

(2) Whether the 30% percentage value established for the economic benefits evaluation approach is effective and reasonable, or whether some other percentage value should be used;

(3) Whether the requirement that "non-incremental" economic benefits not be counted for facilities already in commercial operation should be continued or eliminated;

(4) Whether "incremental" economic benefits should be measured:

(a) As of the date of the particular solicitation;

(b) As of the date of the particular contract award;

(c) Fixed as of the date (January 8, 2010) of the order setting the requirement that non-incremental economic benefits shall not be counted; or

(d) A date certain in advance of the date of the particular solicitation, such as one or two years prior to the date of the particular solicitation.

(5) Whether other changes regarding bid solicitation eligibility or bid evaluation design details and methodologies should be made.

**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. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@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.

(03-E-0188SP25)

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

**Authority to Issue New Long-Term Debt**

**I.D. No.** PSC-35-10-00022-P

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

**Proposed Action:** The Public Service Commission is considering whether to authorize, in whole or in part, a filing by KeySpan Gas East Corporation d/b/a National Grid to issue new long-term debt securities, through March 31, 2014, not to exceed \$1.086 billion.

**Statutory authority:** Public Service Law, sections 2, 5 and 69

**Subject:** Authority to issue new long-term debt.

**Purpose:** To authorize the issue and sale of new long-term debt.

**Substance of proposed rule:** The Public Service Commission is considering whether to accept or reject in whole or in part a petition by KeySpan Gas East Corporation d/b/a National Grid (Company/KeySpan), pursuant to Public Service Law § 69, to issue new long-term debt securities, through March 31, 2014, not to exceed \$1.086 billion. The Commission may approve, reject or modify, in whole or in part, the relief requested by KeySpan.

**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. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@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.

(10-M-0365SP1)

## Racing and Wagering Board

### EMERGENCY RULE MAKING

#### Pre-Race Detention for Horses Owned by a Person Other Than the Person Who Owned the Horse at the Time of TCO2 Violation

I.D. No. RWB-35-10-00016-E

Filing No. 858

Filing Date: 2010-08-13

Effective Date: 2010-08-13

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

**Action taken:** Amendment of section 4120.14 of Title 9 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** This emergency rulemaking is necessary to preserve the general welfare. Article I Section 9 of the New York State Constitution states that pari-mutuel wagering is authorized so that "the state shall derive a reasonable revenue for the support of government." In October, 2009, financial analysts announced that New York State faces a deficit of nearly \$50 billion over the next three and a half years. The imposition of pre-race detention orders against innocent third-party owners of race horses would be cost prohibitive, force owners to relocate their race horses out of state to compete, and impair the state's ability to derive reasonable revenue in support of government. In the present case, this rule is needed to suspend pre-race detention orders for at least 56 horses. The rulemaking will also amend the rule so that pre-race detention orders apply to persons, and not the horses, which are routinely transferred through sales or claiming races. The cost of pre-race detention for non-culpable owners offsets any potential profits that may be realized in purse money, and serves as a deterrent to race in New York for at least 8 months. The loss of even a few race horses in the state negatively impacts job creation and state revenue derived from pari-mutuel activities. This emergency rulemaking is needed to provide valuable revenue for a state that faces multi-year deficits.

**Subject:** Pre-race detention for horses owned by a person other than the person who owned the horse at the time of TCO2 violation.

**Purpose:** To allow the Board to suspend or terminate a detention order as a result of a court order involving 3rd party ownership.

**Text of emergency rule:** Subdivision (b) of Section 4120.14 is amended to read as follows:

(b) *Each owner who is using a trainer at the time the trainer commits a repeat violation of Rule 4120.13 shall be required for eight months to race in pre-race detention all standardbred horses, except those the owner had with a different trainer on the date of the repeat violation and any replacements of them. This shall not apply unless the trainer's earlier violation happened within the past twelve months. [All horses of a trainer who has violated Rule 4120.13 more than once in the preceding 12 months shall be placed under pre-race detention, without regard to whether the horses are transferred to a new trainer, for a period of eight (8) months from the date of the most recent violation.] The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six (6) hours before the start of the race program and as required by the judges. If during a detention period a trainer violates Rule 4120.13, then the detention period shall be extended for such time as the judges deem appropriate.*

New subdivision (c) is added to section 4120.14 to read as follows:

(c) *The board may suspend or terminate a detention order that inaptly applies to a third party due to a court action and the failure by a prior owner or trainer to disclose the pre-race detention requirement or to accept responsibility for its costs.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 10, 2010.

**Text of rule and any required statements and analyses may be obtained from:** Mark Stuart, Assistant Counsel, New York State Racing & Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: mstuart@racing.state.ny.us

#### Regulatory Impact Statement

1. **Statutory authority:** The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101 (1), 301(1) and (2)(a). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities. Section 301, subdivision (1), authorizes the Board to prescribe rules and regulations for harness racing. Section 301, subdivision (2), paragraph (a) directs the Racing and Wagering Board to prescribe rules and regulations for effectually preventing the administration of drugs or improper acts for the purpose of affecting the speed of harness horses in races in which they are about to participate.

2. **Legislative objectives:** To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. **Needs and benefits:** This rulemaking will give the Board the authority to modify or eliminate certain pre-race detention orders in cases where court action or the failure of a seller to disclose the order to a third-party buyer unjustly impacts the third-party buyer. It is necessary for the Board to adopt an emergency rule to relieve wholly innocent third parties of the pre-race detention orders.

The rulemaking will also change the rule that imposes a pre-race detention order against a horse, and makes such an order actionable against the owner. This is needed to avoid the problems of proving in an administrative hearing that a new owner had knowledge that a horse was under a pre-race detention order. Horses change ownership routinely through claiming races and out of state sales, where the board has little to no ability to ensure that the seller provides notice of the order to the new owner. Changing this rule would eliminate the issue of trying to determine innocent ownership of a horse that is under a pre-race detention order.

The issue of innocent third-party ownership arose as a result of a court proceeding challenging the Board's pre-race detention rule. The original case involved 81 horses trained by two different trainers, where, even though only two horses were found to have failed the excess TCO2 test, all of their 81 horses were subject to 8-month pre-race detention orders imposed by the New York State Racing & Wagering Board as required under Board Rule 4120.14.

Under Board Rule 4120.14, pre-race detention orders were applied to the horses that were under the trainer who was charged. Even if the horse was transferred to another trainer or new owner, the horse was subject to an eight-month pre-race detention order under the new trainer or owner.

In this case, the supreme court nullified the Board's pre-race detention rule. Eventually, the supreme court decision was overturned and the rule was declared valid by an appeals court. In the interim between the nullification decision and the validation decision, owners of some of the horses sold those horses. The lower court intervention clearly allowed the sales of the horses, and by the time the appeals court upheld the pre-race detention rule, 56 horses had been sold to different owners. The Board then had to apply the pre-race detention rule to the new owners. All of the owners of those horses subsequently appealed to the Board stating they are wholly innocent.

The court case brought to light the need to give the Board the authority to suspend pre-race detention orders in cases where, in the best interests of justice, a horse under a pre-race detention order is transferred to a new owner, and the seller failed to disclose such order.

#### 4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None. This rulemaking will allow the Board to relieve certain horse owners and innocent third-party horse owners from pre-race detention orders and the costs associated with such orders.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information

and the methodology upon which the cost analysis is based: Board staff conducted a basic review of this rule by analyzing various scenarios where an owner of a harness race horse is relieved of a pre-race detention order. There will be no new cost to the agency.

Pre-race detention orders are currently appealable under the Board's adjudication rules and the State Administrative Procedure Act and this rulemaking will not expand the scope of matters that may be appealed. This rulemaking will only expand the scope of relief that the Board may grant.

There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The Board will utilize the existing documents for administrative adjudication to determine whether the suspension of a pre-race detention order is appropriate.

7. Duplication: None.

8. Alternatives: The Board considered tailoring the rule to provide relief only to the third-party owners. The idea was rejected because it would have failed to include potential third-party owners who may be victim of non-disclosure transactions in the future. This rule must be narrow enough to provide redress for an innocent party whose horse is under a pre-race detention order, and broad enough to encompass buyers who are victims of non-disclosure.

9. Federal standards: None.

10. Compliance schedule: Once submitted as an emergency rule-making, the rule can be implemented immediately.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely authorizes the Racing and Wagering Board to suspend orders of pre-race detention. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, record-keeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

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## Department of State

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### NOTICE OF ADOPTION

**Cease and Desist Zone for Queens and Bronx Counties**

**I.D. No.** DOS-25-10-00011-A

**Filing No.** 866

**Filing Date:** 2010-08-17

**Effective Date:** 2010-09-01

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

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

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

**Subject:** Cease and desist zone for Queens and Bronx Counties.

**Purpose:** To adopt cease and desist zones for the Counties of Queens and the Bronx.

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

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

Zone	Expiration Date
County of Bronx	August 1, [2009] 2014

Within the County of Bronx as follows:

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

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

Zone	Expiration Date
[County of Queens County of Queens	August 1, 2009] August 1, 2014

Within the County of Queens as follows:

*All that area of land in the County of Queens, City of New York, otherwise known as Bayside, Bellerose, Queens Village, Rockaways, South Ozone Park, Woodhaven and Whitestone bounded and described as follows:*

*Bayside: Located in northern Queens. Francis Lewis Boulevard to the west, 233rd Street to the east, Grand Central Parkway to the South and Cross Island Parkway to the north and bounded by the geographical boundaries of the following zip codes: 11361, 11359, 11360, and 11364.*

*Bellerose: Little Neck Parkway to the east, Grand Central Parkway to the west, the Credmoor State Hospital grounds to the north and Braddock and Jamaica Avenues to the south and bounded by the geographical boundary of the zip code 11426.*

*Queens Village: Nassau County and Belmont Park to the east, Cambria Heights and St. Albans to the south. Hollis to the West, and Bellerose and Holliswood to the north and bounded by the geographical boundaries of the following zip codes: 11427, 11428 and 11429.*

*Rockaways: Located in southern Queens. 11 miles long peninsula with Jamaica Bay to the north, the Atlantic Ocean to the south and Nassau County to the east and bounded by the geographical boundaries of the following zip codes: 11690, 11691, 11692, 11693, 11694, 11695 and 11697.*

*South Ozone Park: Van Wyck Expressway to the east, Aqueduct Race Track to the west, Liberty Ave to the north and Conduit Avenue and Belt Parkway to the south and bounded by the geographical boundaries of the zip code 11420.*

*Woodhaven: Forest Park and Park Lane South to the north, Richmond Hill to the east, Ozone Park and Atlantic Avenue to the south and borough of Brooklyn to the west and bounded by the geographical boundaries of the zip code 11421.*

*Whitestone: Located in northern Queens between the East River to the north and 25th Avenue to the south, Whitestone Bridge to the west and the Throgs Neck Bridge to the east and bounded by the geographical boundaries of the zip code 11357.*

Cease and Desist Zone	
(Mill Basin/Brooklyn)	
Zone	Expiration Date
County of Kings (Brooklyn)	November 30, 2012

Within the County of Kings as follows:

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

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 175.17(c)(2).

**Text of rule and any required statements and analyses may be obtained from:** Whitney Clark, NYS Department of State, Division of Licensing Services, 80 South Swan Street, Albany, NY 12231-0001, (518) 473-2728, email: whitney.clark@dos.state.ny.us

**Revised Regulatory Impact Statement**

1. Statutory authority:

Real Property Law (RPL) section 442-h(3)(a) permits the Department of State (DOS) to adopt rules establishing cease and desist zones for defined geographic areas if it is determined that some owners of residential real property within a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale. RPL section 442-h(3)(c) provides that a cease and desist zone shall be effective for a maximum of five years, after which the Secretary of State may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. The entire County of Queens and a portion of Bronx County (Community Districts 9, 10, 11 & 12) were previously subject to cease and desist rules, which rules expired on August 1, 2009.

The Department held three public hearings to determine if the rules should be readopted; two in Queens County and one in the Bronx. Based on the testimony received at these public hearings and additional documentation submitted to the Department after the close of said hearings, the Secretary has determined that some homeowners residing in portions of the Bronx are subject to intense and repeated solicitation. The Secretary also determined that, while insufficient evidence exists to readopt a cease and desist order for all of Queens County, certain portions still are subject to repeat and intense solicitation and should, properly, be protected by a cease and desist rule.

2. Legislative objectives:

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

RPL section 442-h was designed to protect the public. This proposed rule furthers the objectives of the Legislature. If adopted, the proposed rule would establish cease and desist zones for two areas that have demonstrated that some residents are subject to intense and repeated solicitation to sell their homes.

3. Needs and benefits:

Prior to proposing this rule, the Department held three public hearings. At these hearings, testimony was taken and evidence submitted about the real estate climate in Bronx and Queens and, specifically, about solicitations received by residents to sell or list their homes. Subsequent to the close of these hearings, which were held on May 28, 2009, May 29, 2009 and June 8, 2009, the Department of State continued to receive additional evidence from residents of Queens and the Bronx. The Department received testimony and evidence from elected officials, local representatives and homeowners within the proposed cease and desist zones. All

comments received advocated for the adoption of the proposed rule, citing the need to curb the aggressive solicitation practices in the affected communities.

The evidence received by the Department, establishes that some homeowners within the proposed zones have received frequent mailings, unwanted flyers, telephone calls, and door-to-door solicitation soliciting the sale or listing of their property.

As of August 1, 2004, when the prior cease and desist zones were implemented, DOS had received 442 complaints from Queens and Bronx alleging violations of the cease and desist rule. The number of complaints received by the Department coupled with the testimony and evidence submitted to DOS, amply demonstrate that some residents within the proposed geographic areas are the subject of intense and repeated solicitation. This rule will benefit residents of the defined areas by providing a mechanism for them to notify DOS that they do not wish to be solicited.

4. Costs:

a. Costs to regulated parties:

The costs to real estate brokers and salespersons are minimal. DOS licenses approximately 10,956 real estate licensees in Queens and 2,641 in Bronx. DOS maintains copies of the cease and desist lists on its website. This list is available for all to view, at no cost. Additionally, DOS will mail a copy of the list to any person desiring a copy for the minimal cost of \$10.00.

b. Costs to the Department of State:

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

Printing owners statements \$2,200

Mailing owners statements \$640

Processing statements:

Staff: SG-13: \$37,072

SG-23: \$58,406

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

Data entry:

Staff: SG-6: \$25,146

SG-9: \$29,595

SG-13: \$37,072

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

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

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

c. Costs to State and local governments:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

DOS did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to RPL section 442-h(2)(a). However, DOS concluded that a cease and desist order could provide homeowners with relief from intense and repeated so-

licitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone.

DOS also considered allowing the prior cease and desist order to expire in August 2009, and to not readopt new zones for Queens and Bronx Counties. It was determined, however, that to do so would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitation to sell their homes.

9. Federal standards:

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

10. Compliance schedule:

The rule will be effective as of the date it is published in the State Register. The Department had previously proposed having the rule be effective 90 days after adoption in order to provide time for real estate licensees to become aware of, and comply, with the new regulation. The Department has, since then adopted the rule on an emergency basis thereby eliminating the need to delay the effective date of the rule.

**Revised Regulatory Flexibility Analysis**

The Department has not attached a Revised Regulatory Flexibility Analysis because changes to the rule are non-substantive. When the rule was proposed, the rule text inadvertently included an expired cease and desist zone for Canarsie. Said cease and desist rule was not readopted and was repealed as a consensus rule.

**Revised Rural Area Flexibility Analysis**

The Department has not attached a Revised Rural Area Flexibility Analysis because changes to the text are non-substantive. When the rule was proposed, the rule text inadvertently included an expired cease and desist zone for Canarsie. Said cease and desist rule was not readopted and was repealed as a consensus rule.

**Revised Job Impact Statement**

The Department has not attached a Revised Job Impact Statement because changes to the rule are non-substantive. When the rule was proposed, the rule text inadvertently included an expired cease and desist zone for Canarsie. Said cease and desist rule was not readopted and was repealed as a consensus rule.

**Assessment of Public Comment**

The agency received no public comment.

the requirement that rules be adopted and effective as soon as practicable and consistent with the explicit legislative authorization to adopt the rules on an emergency basis.

**Subject:** City of New York withholding tables and other methods.

**Purpose:** To provide current City of New York withholding tables and other methods.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.nystax.gov](http://www.nystax.gov)):** Section 1309 of the Tax Law and section 11-1771 of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of New York personal income tax on residents reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule amends Appendix 10-C of Title 20 NYCRR, replacing pages T-39, T-40, and T-40-A, Method II: Exact Calculation Method (Single, Married, and Examples, respectively) of Appendix 10-C, New York City Personal Income Tax on Residents Withholding Tables and Other Methods of such Title, to provide new City of New York withholding tables and other methods. The amendments to Appendix 10-C reflect the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over \$500,000 provided in Part EE of Chapter 57 of the Laws of 2010, and the requirement in the new law that the withholding rates for the remainder of tax year 2010 reflect the full amount of tax liability for tax year 2010 as accurately as practicable. This rule also reflects the increase in the City of New York supplemental withholding tax rate to be applied to supplemental wage payments.

The rule applies to wages and other compensation subject to withholding paid on or after September 1, 2010.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 14, 2010.

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

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

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

**Regulatory Impact Statement**

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1309 (not subdivided) provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York. Section 4 of Part EE of Chapter 57 of the Laws of 2010 requires the Commissioner to adopt rules to implement changes in the withholding tax tables and methods relating to the personal income tax increases made by Part EE.

2. Legislative objectives: The proposal amends Appendix 10-C related to the exact calculation method (Method II) for the City of New York personal income tax on residents for withholding purposes as required by Chapter 57 of the Laws of 2010. Because the income tax changes made by Chapter 57 relate to taxpayers with incomes over certain amounts, the wage bracket table method (Method I) tables are not affected. Amendments to provisions regarding withholding on supplemental wages are also made to reflect the new rate of withholding. The amendments implement revised City of New York withholding tables and other methods applicable to wages and other compensation paid on or after September 1, 2010. Specifically, the amendments reflect the increased rate of New York City personal income tax applicable to income over \$500,000 provided in

## Department of Taxation and Finance

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

**City of New York Withholding Tables and Other Methods**

**I.D. No.** TAF-35-10-00020-EP

**Filing No.** 865

**Filing Date:** 2010-08-17

**Effective Date:** 2010-08-17

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

**Proposed Action:** Amendment of section 291.1(b) and Appendix 10-C of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First; 671(a)(1); 697(a); 1309(not subdivided); and 1312(a); Administrative Code of the City of New York, sections 11-1771(a); 11-1797(a); L. 2010, ch. 57, Part EE, section 4

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

**Specific reasons underlying the finding of necessity:** As part of the recently enacted Budget legislation, Part EE of Chapter 57 of the Laws of 2010 made certain changes to the personal income tax law that require the Commissioner to adjust the withholding tables and other methods in Appendix 10-C of 20 NYCRR, and to promulgate rules to implement the changes for 2010 as soon as practicable. Section 4 of Part EE specifically authorizes emergency action to adopt rules implementing these changes. These rules are being adopted on an emergency basis in accordance with

Part EE of Chapter 57. As required by the new law, the withholding rates for the remainder of tax year 2010 reflect the full amount of tax liability for tax year 2010 as accurately as practicable.

3. Needs and benefits: This rule sets forth amendments to the City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after September 1, 2010, reflecting the revision of the tax rates contained in Part EE of Chapter 57 of the Laws of 2010. This rule benefits taxpayers by providing City of New York withholding rates that more accurately reflect the current income tax rates. If this rule is not promulgated, the use of the existing withholding tables would cause some under-withholding for some taxpayers.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of City of New York personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule conforms Appendix 10-C of Title 20 NYCRR to the rates of the City of New York personal income tax on residents, as required by Chapter 57 of the Laws of 2010, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York City Personal Income Tax on Residents Regulations and to Appendix 10-C arises due to the statutory changes in the rates of the City of New York personal income tax on residents, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

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

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the amendments to the tables and other methods and directed to the Department's website for the updated tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 11-1771(a) of the Administrative Code of the City of New York and Chapter 57 of the Laws of 2010 require that withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

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

10. Compliance schedule: The required information will be made available to affected employers in sufficient time to implement the revised City of New York withholding tables and other methods for wages and other compensation paid on or after September 1, 2010.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, that are currently subject to the City of New York withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised City of New York withholding tables and other methods. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms, or paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of such services.

4. Compliance costs: Small businesses and local governments are already subject to the City of New York withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

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

6. Minimizing adverse impact: Section 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1309 of the Tax Law mandates, in part, that the City of New York withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the National Tax Committee for the National Conference of CPA Practitioners; and the New York State Society of CPAs. In addition, the changes were developed in consultation with the New York City Office of Management and Budget.

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

1. Types and estimated numbers of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(13) of the State Administrative Procedure Act, that is currently subject to the City of New York withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The number of employers that are also public or private interests in rural areas cannot be determined with any degree of certainty. The effect on employers in rural areas is minimized because the changes relate to the New York City personal income tax on residents withholding requirements. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms, or other paperwork.

Further, many employers currently utilize bookkeepers, accountants, and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the City of New York withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these City of New York changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York State withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the withholding requirements.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the National Tax Com-

mittee for the National Conference of CPA Practitioners; the New York State Society of CPAs; and the Business Council of New York State.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. The purpose of the rule is to provide City of New York withholding tables and other methods, applicable for compensation paid on or after September 1, 2010, which reflect a the revision of the New York City rate enacted pursuant to Chapter 57 of the Laws of 2010. The rule also reflects the increase in the City of New York supplemental withholding rate applied to supplemental wage payments.

### **NOTICE OF ADOPTION**

#### **Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-22-10-00003-A

**Filing No.** 851

**Filing Date:** 2010-08-11

**Effective Date:** 2010-08-11

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

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

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

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

**Purpose:** To set the sales tax component and the composite rate per gallon for the period July 1, 2010 through September 30, 2010.

**Text or summary was published** in the June 2, 2010 issue of the Register, I.D. No. TAF-22-10-00003-P.

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

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

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

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

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

#### **Sales of Cigarettes on Indian Reservations**

**I.D. No.** TAF-35-10-00002-P

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

**Proposed Action:** Addition of sections 74.6 and 74.7 to Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 471(1), (4) and (5); 471-e; 475 (not subdivided); and L. 2010, ch. 134, part D

**Subject:** Sales of cigarettes on Indian reservations.

**Purpose:** To implement certain provisions of recently enacted legislation concerning sales of cigarettes on Indian reservations.

**Substance of proposed rule (Full text is posted at the following State website: [www.nystax.gov](http://www.nystax.gov)):** This rule concerns the collection of taxes on sales of cigarettes made on New York State Indian reservations as required by sections 471 and 471-e of the Tax Law, and provides procedures to be followed by New York State licensed cigarette stamping agents for the certification process required by section 471 of the Tax Law. The rule was previously adopted as an emergency measure.

Section 1 of the rule adds a new section 74.6 to the cigarette tax regulations to address sales of cigarettes on Indian reservations and to describe the two statutory mechanisms (systems) for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of their qualified members based on their probable demand plus the amount needed for official nation or tribal use. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system

established in section 471-e of the Tax Law, or, if such election is not made, the prior approval system established in section 471(5) of the Tax Law will be used. Under the prior approval system New York State licensed cigarette stamping agents and wholesale dealers that have received prior approval from the Tax Department may sell certain quantities of stamped untaxed packages of cigarettes to Indian nations or tribes and reservation cigarette sellers. The rule provides specificity concerning the methodology and procedures to be used by the department for the statutorily required calculation of probable demand used in both systems.

Section 2 of the rule adds a new section 74.7 to the cigarette tax regulations relating to the statutory provisions of section 471(4) that require every cigarette stamping agent that purchases unstamped packages of cigarettes intended for resale in New York State to annually provide its supplier and the Tax Department with a certification, under penalty of perjury, that the cigarettes will not be resold in violation of Article 20 of the Tax Law. Procedures to be followed for the certification process are set forth in the rule, such as certification signature and swearing requirements, time periods covered by the certification, and the contents of the certification. With regard to the contents, the certification must specifically provide that the agent will only make sales of tax-exempt stamped packages of cigarettes to Indian nations or tribes or to reservation cigarette sellers that are in accordance with the provisions of new section 74.6 of the rule.

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

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

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

#### **Regulatory Impact Statement**

1. Statutory authority: Tax Law, sections 171, subdivision First; 471, subdivisions (1), (4), and (5); 471 e; 475 (not subdivided); and Part D of Chapter 134 of the Laws of 2010. Section 171, subdivision First provides general authority for the Commissioner of Taxation and Finance to make reasonable rules and regulations that may be necessary for the exercise of the Commissioner's powers and the performance of his or her duties under the Tax Law. Part D of Chapter 134 of the Laws of 2010 amended sections 471(1) and 471-e and added section 471(5) to the Tax Law to set forth a dual system for the delivery of quantities of tax exempt cigarettes to Indian nations or tribes for the use or consumption of the nations or tribes and their members up to their probable demand. Section 471(1), as amended by Chapter 134, imposes the tax on cigarettes, including all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians, and provides for a dual system to ensure that adequate quantities of stamped but tax exempt cigarettes are available for purchase by the nation or tribe and its members for their use or consumption based on their probable demand. Section 471-e, as amended by Chapter 134, establishes the "Indian tax exemption coupon system" which Indian nations or tribes may elect to participate in to obtain such tax-exempt cigarettes. Section 471(5), as added by Chapter 134, provides that for any year that this election is not made, the "prior approval" system will be used. Section 471(4) provides that cigarette stamping agents must provide their suppliers and the department with a certification, under penalty of perjury, that cigarettes will not be resold in violation of Article 20 of the Tax Law, which imposes the cigarette tax. Section 475 authorizes the Commissioner specifically to administer the tax on cigarettes imposed under Article 20 of the Tax Law.

2. Legislative objective: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part D of Chapter 134 of the Laws of 2010 and to take regulatory action to help enable the department to better ensure compliance with the provisions contained in Article 20 of the Tax Law that call for the imposition of cigarette taxes as well as sales of sufficient quantities of untaxed cigarettes for the use or consumption of Indian nations or tribes and their members up to their probable demand. The rule provides specifics concerning the methodology for the statutorily required calculation of probable demand for cigarettes by qualified Indians and the Indian nations or tribes. The rule also provides procedures for the agent certification process required by section 471(4) of the Tax Law.

3. Needs and benefits: This rule is necessary in connection with the implementation of recently enacted legislation concerning sales of cigarettes on Indian reservations. The rule details the dual statutory system that provides for adequate quantities of stamped but tax-exempt cigarettes to be available for the use or consumption of Indian nations or tribes and their members based on their probable demand. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system established in section 471-e of the Tax Law. For any year that such elec-

tion is not made, the prior approval system established in section 471(5) of the Tax Law will be used. Under the prior approval system New York State licensed cigarette stamping agents and wholesale dealers may sell certain quantities of stamped untaxed packages of cigarettes to Indian nations or tribes and reservation cigarette sellers with the prior approval of the Tax Department. The rule provides specificity concerning the methodology and procedures to be used by the department for the statutorily required calculation of probable demand used in both systems. The probable demand for tax-exempt use by the Indian nations or tribes and their members is set based on Census data and federal consumption figures. For purposes of this calculation for the twelve-month period beginning September 1, 2010, that is contained in the rule, these figures are derived from the United States Department of Agriculture, Economic Research Service.

The rule also provides procedures to be followed for the agent certification process required by section 471(4) of the Tax Law, such as certification signature and swearing requirements, as well as the time periods covered by the certification.

4. Costs: (a) Costs to regulated parties. The rule applies to approximately 73 New York State licensed cigarette stamping agents and approximately 265 New York State licensed wholesale dealers (including the licensed cigarette agents). Although the implementation of the statutory amendments requiring the use of a dual system to provide adequate quantities of stamped tax-exempt cigarettes to Indian nations and tribes and those requiring the certification of stamping agents will have fiscal consequences in terms of collection and payment of taxes that are already due under the Tax Law, the consequences are the result of the statute imposing the taxes. There will be no tax liability impact for the implementation of and continuing compliance with this rule. Requirements for both the use of the dual system and the agent certification process are statutory. The provisions of the rule regarding the calculation of probable demand merely provide greater specificity to the calculation required by the statute, and the provisions regarding agent certification merely set forth procedures to comply with the statute. Any agents or wholesale dealers that make sales involving Indian reservations will be required to use the prior approval system as to the amount of stamped untaxed cigarettes that they may sell to an Indian nation or tribe or reservation cigarette seller on its reservation if the nation or tribe has not timely elected to participate in the Indian tax exemption coupon system. The prior approval system will be a simple system resulting in minimal administrative costs.

(b) Costs to the State and its local governments including this agency. The costs of obtaining and providing the coupons, processing refunds, developing forms that stamping agents will be required to file, and issuing the technical memorandum to explain the rule are all attributable to the implementation of the statutory changes. There will be minimal administrative costs to the department associated with granting prior approval to agents and wholesale dealers to sell stamped untaxed cigarettes to Indian nations or tribes and reservation cigarette sellers. Although the implementation of the statutory amendments regarding the dual system for ensuring adequate quantities of stamped tax-exempt cigarettes to Indian nations or tribes and the certification of stamping agents will have fiscal consequences in terms of collection and payment of taxes that are already due under the Tax Law, the consequences are the result of the statute imposing the taxes. The rule itself does not have any State or local fiscal consequences apart from the statutory amendments.

(c) Information and methodology. This analysis is based on review of the rule and statutory requirements and discussions among personnel from the Department's Office of Tax Policy Analysis, Office of Counsel, Office of Tax Enforcement, and the Office of Budget and Management Analysis, including the Management Analysis and Project Services Bureau.

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

6. Paperwork: The rule does not impose any additional reporting or paperwork requirements on agents or wholesale dealers making sales of untaxed cigarettes to an Indian nation or tribe, a reservation cigarette seller, or any other person on a reservation.

7. Duplication: There are no relevant rules or other legal requirements of the federal or state governments in effect that duplicate, overlap, or conflict with this rule.

8. Alternatives: There are no alternatives to the statutory dual system that provides for adequate quantities of stamped tax-exempt cigarettes to be available for purchase for the use or consumption of Indian nations or tribes and their members based on their probable demand. This rule introduces a probable demand formula developed by the department to estimate the demand for cigarettes by Indian nations or tribes and their members. The formula uses federal data because it is the most reliable and consistent source of information regarding cigarette demand. It is noted that the methodology was previously published in the March 10, 2010, issue of the *State Register* in the department's proposed rule making number TAF-10-

10-00004-P, upon which public comments were invited. A medical doctor submitted comments on the proposed rule making stating that the method of computing probable demand of cigarettes by the Indian nations or tribes and their members resulted in a calculation that is too high. The doctor suggested that, rather than basing the calculation on federal data, a survey should be commissioned every five years. The department believes that the rule's reference to widely available federal per capita data is appropriate, and the methodology will "leave ample room for legitimately tax-exempt sales" consistent with Department of Taxation and Fin. of N.Y. v. Milhelm Attea & Bros., Inc. (512 US 61, 75-76).

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

10. Compliance schedule: There is no period of time necessary to enable the stamping agents and wholesale dealers to achieve compliance with this rule. This rule will take effect on the date that the Notice of Adoption is published in the *State Register*. The department's prior emergency rule making number TAF 27 10-00013-E for this action was previously published in the July 7, 2010, issue of the *State Register*, and applies to all cigarettes sold on or after September 1, 2010, in the manner provided in Part D of Chapter 134 of the Laws of 2010, as amended by Chapter 136 of the Laws of 2010.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: The rule will apply to the approximately 73 New York State licensed cigarette stamping agents and the approximately 265 New York State licensed wholesale dealers (including the licensed cigarette stamping agents), some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule does not distinguish between different business sizes and applies to all stamping agents and wholesale dealers in the same manner, regardless of the size of the business operation. Under the statute, agents or wholesale dealers that make sales involving Indian reservations will be required to use either a prior approval system pursuant to section 471(5) of the Tax Law, or, with respect to Indian nations or tribes that timely elect, the Indian tax exemption coupon system under section 471-e of the Tax Law, to determine the amount of stamped untaxed cigarettes they may sell to an Indian nation or tribe or reservation cigarette seller on its reservation. Approximately 10 stamping agents currently make sales involving Indian reservations. The amount of stamped untaxed cigarettes under either system is determined based upon the probable demand of the qualified Indians on the nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use. The rule provides specificity concerning the methodology and procedures to be used by the department for the statutorily required calculation of probable demand.

The agent certification process described by the rule is applicable to all agents pursuant to section 471(4) of the Tax Law.

2. Compliance requirements: The rule will not impose any adverse economic impact or any additional reporting, recordkeeping, or compliance requirements on local governments.

For any year that an Indian nation or tribe elects to participate in the Indian tax exemption coupon system established in section 471-e of the Tax Law, agents and wholesale dealers may make sales of the amount of stamped untaxed cigarettes to that Indian nation or tribe or reservation cigarette sellers on that reservation as allowed on each Indian tax exemption coupon received. For any Indian nation or tribe that does not make such election, agents or wholesale dealers that make sales involving that nation's or tribe's reservation will be required to use the prior approval system as to the amount of stamped untaxed cigarettes that they may sell to the Indian nation or tribe or reservation cigarette sellers on its reservation. The act of obtaining prior approval from the Tax Department under this system will be simple.

Section 471(4) of the Tax Law provides that every cigarette stamping agent that purchases unstamped packages of cigarettes from any person, including, but not limited to, a tobacco product manufacturer, that are intended for resale in or into New York State, must provide that person and the Tax Department with a certification on an annual basis under penalty of perjury that the cigarettes will not be resold in violation of Article 20 of the Tax Law. The rule provides further guidance pertaining to certification requirements.

This rule will take effect on the date that the Notice of Adoption is published in the *State Register*. The department's prior emergency rule making number TAF-27-10-00013-E for this action was previously published in the July 7, 2010, issue of the *State Register*, and applies to all cigarettes sold on or after September 1, 2010, in the manner provided in Part D of Chapter 134 of the Laws of 2010, as amended by Chapter 136 of the Laws of 2010.

3. Professional services: The rule imposes no requirements for professional services upon small businesses or local governments. However, an affected stamping agent may decide to use professional services, in addition to those it may already employ to prepare its tax returns, to comply with the certification paperwork required pursuant to the statute and set forth in the rule.

4. Compliance costs: There are no compliance costs to local governments as a result of this rule.

The rule applies to approximately 73 New York State licensed cigarette stamping agents and 265 New York State licensed wholesale dealers (including the licensed cigarette stamping agents). There will be no tax liability impact for the implementation of and continuing compliance with this rule. Any agents or wholesale dealers that make sales involving Indian reservations will be required to obtain prior approval from the Tax Department for their sales of untaxed packages of cigarettes involving Indian reservations when the reservation's Indian nation or tribe has not timely elected to participate in the Indian tax exemption coupon system. The act of obtaining such prior approval by agents or wholesale dealers under the prior approval system required by statute will be simple and result in minimal administrative costs.

The requirement for agents to provide the certification to their suppliers and to the department is statutory.

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

6. Minimizing adverse impact: The rule details the dual statutory system that provides for adequate quantities of stamped but tax-exempt cigarettes to be available for the use or consumption of Indian nations or tribes and their members based on their probable demand. While there are no alternatives to this dual statutory system, the rule provides specifics concerning the methodology for the statutorily required calculation of probable demand. This rule also relates to the statutory requirement that every cigarette stamping agent that purchases unstamped packages of cigarettes from any person, including, but not limited to, a tobacco product manufacturer, that are intended for resale in or into New York State, must provide that person and the department with a certification on an annual basis under penalty of perjury that the cigarettes will not be resold in violation of Article 20 of the Tax Law. In this regard the rule provides further guidance pertaining to certification requirements.

7. Small business and local government participation: The following organizations were notified that the Department was in the process of developing this rule and were given the opportunity to participate in its development: the New York State Association of Wholesale Marketers and Distributors; the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. In addition, a copy of the emergency rule was sent to all New York State licensed cigarette stamping agents and wholesale dealers.

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

1. Types and estimated numbers of rural areas: The rule will apply to the approximately 73 New York State licensed cigarette stamping agents (about 10 of whom currently make sales involving Indian reservations) and the approximately 265 New York State licensed wholesale dealers (including the licensed cigarette agents), some of which are located in rural areas as defined by section 102(10) of the State Administrative Procedure Act. Some of the Indian reservations are located in rural areas. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile). The rule applies to all stamping agents and wholesale dealers in the same way; it does not distinguish between stamping agents and wholesale dealers located in rural, suburban, or metropolitan areas of this State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Under the statute, agents or wholesale dealers that make sales involving Indian reservations will be required to use either a prior approval system pursuant to section 471(5) of the Tax Law, or, with respect to Indian nations or tribes that timely elect, the Indian tax exemption coupon system under section 471-e of the Tax Law, to determine the amount of stamped untaxed cigarettes they may sell to an Indian nation or tribe or reservation cigarette seller on its reservation. Approximately 10 agents currently make sales involving Indian reservations. The amount of stamped untaxed cigarettes under either system is determined based upon the probable demand of the qualified Indians on the nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use. The rule provides specificity concerning the methodology and procedures to be used by the department for the statutorily required calculation of probable demand.

For any year that an Indian nation or tribe elects to participate in the Indian tax exemption coupon system established in section 471-e of the Tax Law, agents and wholesale dealers may make sales of the amount of stamped untaxed cigarettes to that Indian nation or tribe or reservation cig-

arette sellers on that reservation as allowed on each Indian tax exemption coupon received. For any Indian nation or tribe that does not make such election, agents or wholesale dealers that make sales involving that nation's or tribe's reservation will be required to use the prior approval system as to the amount of stamped untaxed cigarettes that they may sell to the Indian nation or tribe or reservation cigarette sellers on its reservation. The act of obtaining prior approval from the Tax Department under this system will be simple.

Section 471(4) of the Tax Law provides that every cigarette stamping agent that purchases unstamped packages of cigarettes from any person, including, but not limited to, a tobacco product manufacturer, that are intended for resale in or into New York State, must provide that person and the Tax Department with a certification on an annual basis under penalty of perjury that the cigarettes will not be resold in violation of Article 20 of the Tax Law. The rule provides further guidance pertaining to certification requirements.

The rule does not require professional services. An affected stamping agent may decide to use professional services, in addition to those it may already employ to prepare its tax returns, to comply with the certification paperwork required pursuant to the statute and set forth in the rule. The rule does not impose any requirements on public entities in rural areas.

This rule will take effect on the date that the Notice of Adoption is published in the *State Register*. The department's prior emergency rule making number TAF-27-10-00013-E for this action was previously published in the July 7, 2010, issue of the *State Register*, and applies to all cigarettes sold on or after September 1, 2010, in the manner provided in Part D of Chapter 134 of the Laws of 2010, as amended by Chapter 136 of the Laws of 2010.

3. Costs: There are no variations in costs for public or private concerns in rural areas. The regulated parties to which this rule is applicable are approximately 73 New York State licensed cigarette stamping agents and approximately 265 New York State licensed wholesale dealers (including the licensed cigarette stamping agents). With regard to the affected agents or wholesale dealers located in rural areas or elsewhere, there will be no tax liability impact for the implementation of and continuing compliance with this rule. Any agents or wholesale dealers that make sales involving Indian reservations will be required to obtain prior approval from the Tax Department for their sales of untaxed packages of cigarettes involving Indian reservations when the reservation's Indian nation or tribe has not timely elected to participate in the Indian tax exemption coupon system. The act of obtaining prior approval by agents or wholesale dealers under the prior approval system required by statute will be simple and result in minimal administrative costs.

The requirement for agents to provide the certification to their suppliers and to the department is statutory.

4. Minimizing adverse impact: The rule does not distinguish between cigarette stamping agents and wholesale dealers located in rural areas and those located elsewhere. The rule details the dual statutory system that provides for adequate quantities of stamped but tax-exempt cigarettes to be available for the use or consumption of Indian nations or tribes and their members based on their probable demand. While there are no alternatives to this dual statutory system, the rule provides specifics concerning the methodology for the statutorily required calculation of probable demand. This rule also relates to the statutory requirement that every cigarette stamping agent that purchases unstamped packages of cigarettes from any person, including, but not limited to, a tobacco product manufacturer, that are intended for resale in or into New York State, must provide that person and the department with a certification on an annual basis under penalty of perjury that the cigarettes will not be resold in violation of Article 20 of the Tax Law. In this regard the rule provides further guidance pertaining to certification requirements.

5. Rural area participation: The following organizations were notified that the Department was in the process of developing this rule and were given the opportunity to participate in its development: the New York State Association of Wholesale Marketers and Distributors; the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. These organizations include members in rural areas. In addition, a copy of the emergency rule was sent to all New York State Indian nations or tribes and all New York State licensed cigarette stamping agents and wholesale dealers, some of which are located in rural areas.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it could have no impact on jobs and employment opportunities.

This rule relates to recently enacted legislation regarding the collection of taxes on cigarettes sold on New York State Indian reservations to non-Indians and non-members of an Indian nation or tribe and methods to make available adequate quantities of tax-exempt cigarettes for the use or consumption of the nation or tribe and its members based on their probable demand. The statute, specifically, section 471(1) of the Tax Law, imposes the tax on cigarettes, including all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians, and provides for a dual system to ensure that adequate quantities of stamped but tax-exempt cigarettes are available for purchase by the nation or tribe and its members for their use or consumption based on their probable demand. The rule provides specifics concerning the methodology for the statutorily required calculation of probable demand for cigarettes by qualified Indians and the Indian nations or tribes. The rule also provides procedures to be followed for the agent certification process required by section 471(4) of the Tax Law, such as certification signature and swearing requirements, as well as the time periods covered by the certification.

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

#### Cigarette Tax

**I.D. No.** TAF-35-10-00003-P

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

**Proposed Action:** Amendment of sections 70.1 and 80.2 and Parts 74 and 82; repeal of section 79.2; and addition of new section 79.2 to Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First; 472(1); 475 (not subdivided); and L. 2010, ch. 134, part D

**Subject:** Cigarette tax.

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

**Substance of proposed rule (Full text is posted at the following State website: [www.nystax.gov](http://www.nystax.gov)):** This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on June 21, 2010, by Part D of Chapter 134 of the Laws of 2010.

Part D of Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law to increase the excise tax on cigarettes from \$2.75 for each 20 cigarettes, or fraction thereof, to \$4.35, effective July 1, 2010. It also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business on June 30, 2010, based on the increased rate of excise tax. The purpose of the rule is to make necessary regulatory changes related to implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes for purposes of the Cigarette Marketing Standards Act (CMSA). The rule was previously adopted as an emergency measure on June 29, 2010.

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

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

Section 6 of the rule repeals section 79.2 of the regulations and adds a new section 79.2 to reflect the additional amount of tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed tax stamps as of the close of business on June 30, 2010, based on the increased rate of excise tax. For purposes of taking the required June 30, 2010, close of business inventories, the rule allows dealers that operate vending machines to estimate the contents of such machines at one-half of their normal fill capacities. This provision results from the fact that it may not be possible to take an actual physical inventory of every machine a dealer operates in the State on a given day. The rule also outlines the procedures by which a tax on existing inventories will be reported and paid. Pursuant

to the statutory provisions, the additional amount of tax on existing inventories must be paid no later than September 20, 2010.

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

Sections 8, 9, 10, and 11 of the rule make technical amendments to sections 82.2, 82.3, 82.4 and 82.5 of the Cigarette Marketing Standards regulations, respectively, to reflect the change to the basic cost of cigarettes made by section 7 of the rule. These changes are carried through the illustrations outlining the minimum prices at which cigarettes may be sold at various points in the distribution chain.

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

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

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

#### Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, subdivision First; 472(1); 475 (not subdivided), of the Tax Law; and Part D of Chapter 134 of the Laws of 2010. Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations consistent with the law that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 472(1) of the Tax Law directs the Commissioner to prescribe stamps and authorizes the Commissioner to prescribe commissions. Section 475 (not subdivided) of the Tax Law provides such authority to the Commissioner specifically with respect to the cigarette tax imposed by Article 20 of the Tax Law. Part D of Chapter 134 of the Laws of 2010 amended sections 471(1) and 471-a of the Tax Law to increase the tax on cigarettes from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. In addition, Part D of Chapter 134 imposes a tax on inventories of cigarettes possessed for sale in New York State based on the increased cigarette tax, subject to the terms and conditions as the Commissioner of Taxation and Finance may prescribe.

2. Legislative objectives: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part D of Chapter 134 of the Laws of 2010 to increase the rate of the cigarette tax imposed by Article 20 of the Tax Law. This statutory rate increase was necessary to provide additional revenue for the 2010 - 2011 state fiscal year to support health care programs.

3. Needs and benefits: Part D of Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law to increase the tax on cigarettes from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof effective July 1, 2010. Additionally, Part D of Chapter 134 imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 30, 2010, based on the increased rate of tax.

The purpose of these amendments is to make necessary regulatory changes related to the implementation of these provisions, including providing procedures relating to the tax on the inventory, and to set the commissions allowable to cigarette agents for affixing cigarette stamps based on the new face value of such stamps as of July 1, 2010. In providing for commissions, the rule maintains the current percentage rates per stamp and related threshold amount to which different rates apply. The resulting effect will be an increase in the amount of commission allowable per stamp to take into consideration the amount of the July 1, 2010 tax increase. Finally, the rule updates the calculation of the basic cost of cigarettes.

#### 4. Costs:

(a) Costs to regulated persons: The regulated parties directly affected by this rule are 73 licensed cigarette agents; approximately 265 licensed wholesale dealers (including the licensed cigarette agents), 103 of which are strictly vending machine operators; and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations). Part D of Chapter 134 of the Laws of 2010 increased the tax on cigarettes imposed by Article 20 from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on the regulated parties for the implementation of and continuing compliance with the rule, as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties needed to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part D

of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase and the retention of the current percentage rates and related threshold for determining commissions, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

(b) Costs to the State and its local governments including this agency: This rule does not have a revenue impact on New York State or its local governments. As a result of the statutory increase and the retention of the current percentage rates and related threshold for determining commissions, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase. It is estimated that the implementation and continued administration of this rule will have no fiscal impact on the Department of Taxation and Finance.

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

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

6. Paperwork: Under the statute and in accordance with the rule, which has been adopted as an emergency measure, regulated parties need to file a return on or before September 20, 2010, showing the quantity of cigarettes possessed for sale in New York State and any unaffixed cigarette tax stamps, as of the close of business on June 30, 2010. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. Form CG-11, Cigarette Floor Tax Return, has been mailed to affected parties and is available on the Department's Web site.

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

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

8. Alternatives: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis. This is consistent with the handling of commissions for previous rate increases. Section 79.2 of the regulations provides for taking a physical inventory of all cigarettes possessed in the State as of close of business on June 30, 2010. Subdivision (b) of section 79.2 provides for estimating of vending machines that cannot be physically inventoried of close of business on June 30, 2010, rather than requiring each vending machine in the state to be physically inventoried. Allowing commissions to increase and providing an alternative for physical inventorying of each vending machine in the state will have a positive impact on regulated parties.

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

10. Compliance schedule: Part D of Chapter 134 of the Laws of 2010, requires all agents, wholesale dealers and retail dealers to pay an amount of tax on all cigarettes and unaffixed cigarette tax stamps in inventory as of the close of business on June 30, 2010, based on the increased rate of tax. This amount of tax due must be paid by September 20, 2010. The rule, which was adopted as an emergency measure, provides for the filing of returns by September 20, 2010, showing the quantity of such cigarettes and unaffixed stamps as of the June 30, 2010, close of business inventory. A notice explaining the cigarette tax increase and the related tax on inventory as of the close of business on June 30, 2010, along with Form CG-11, Cigarette Floor Tax Return, have been mailed to affected parties and are available on the Department's website.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: There are 73 licensed cigarette agents; approximately 265 licensed wholesale dealers (including the licensed cigarette agents),

103 of which are strictly vending machine operators; and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations), some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act, which will be affected by this rule.

2. Compliance requirements: Part D of Chapter 134 of the Laws of 2010, requires all agents, wholesale dealers and retail dealers, including small businesses, to pay an amount of tax on all cigarettes possessed for sale in New York State and unaffixed cigarette tax stamps in inventory as of the close of business on June 30, 2010, based on the increased rate of tax. This amount of tax due must be paid by September 20, 2010. The rule, which has been adopted as an emergency measure, provides that returns must be filed by September 20, 2010, showing the quantity of all cigarettes and unaffixed stamps as of the June 30, 2010, close of business inventory. The rule provides procedures relating to the tax on the inventory, including rules for the physical inventory of cigarettes in vending machines.

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

4. Compliance costs: Section 5 of Part D of Chapter 134 of the Laws of 2010 increased the tax on cigarettes imposed by Article 20 from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. While there will be no additional costs imposed on state or local governments, including the department, by the rule, the statutory amendments necessitate some form changes. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on regulated parties that are small businesses, for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties that are small businesses needed to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by section 13 of Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date.

Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

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

6. Minimizing adverse impact: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis. This is consistent with the handling of commissions for previous rate increases. Section 79.2 of the regulations provides for taking a physical inventory of all cigarettes possessed in the State as of close of business on June 30, 2010. Subdivision (b) of section 79.2 provides for estimating of vending machines that cannot be physically inventoried of close of business on June 30, 2010, rather than requiring each vending machine in the state to be physically inventoried. Allowing commissions to increase and providing an alternative for physical inventorying of each vending machine in the state will have a positive impact on regulated parties that are small businesses.

7. Small business and local government participation: The following organizations have been given an opportunity to participate in the rule's development: the Association of Towns of New York State; Empire State Development, Division of Small Business; the National Federation of Independent Businesses; the New York Association of Convenience Stores; the New York State Association Counties; the New York Conference of Mayors and Municipal Officials; the New York State Department of State, Office of Coastal, Local Government, and Community Sustainability; the Small Business Council of the New York State Business Council; the

Retail Council of New York State; and the New York State Association of Wholesale Marketers and Distributors.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: There are 73 licensed cigarettes agents; approximately 265 licensed wholesale dealers (including the licensed cigarette agents), 103 of which are strictly vending machine operators; and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations); some of which are located in rural areas as defined in section 102(10) of the State Administrative Procedure Act. There are 44 counties in the State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: Part D of Chapter 134 of the Laws of 2010, requires all agents, wholesale dealers and retail dealers in rural areas to pay an amount of tax on all cigarettes possessed for sale in New York State and unaffixed cigarette tax stamps in inventory as of the close of business on June 30, 2010, based on the increased rate of tax. This amount of tax due must be paid by September 20, 2010. The rule, which has been adopted as an emergency measure, provides that returns must be filed by September 20, 2010, showing the quantity of all cigarettes and unaffixed stamps as of the June 30, 2010, close of business inventory. The rule provides procedures relating to the tax on the inventory, including rules for the physical inventory of cigarettes in vending machines.

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

3. Costs: Part D of Chapter 134 of the Laws of 2010 increased the tax on cigarettes imposed by Article 20 from \$2.75 to \$4.35 for each 20 cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on the regulated parties in rural areas for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties in rural areas needed to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date.

Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase.

4. Minimizing adverse impact: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis. This is consistent with the handling of commissions for previous rate increases. Section 79.2 of the regulations provides for taking a physical inventory of all cigarettes possessed in the State as of close of business on June 30, 2010. Subdivision (b) of section 79.2 provides for estimating of vending machines that cannot be physically inventoried of close of business on June 30, 2010, rather than requiring each vending machine in the state to be physically inventoried. Allowing commissions to increase and providing an alternative for physical inventorying of each vending machine in the state will have a positive impact on regulated parties in rural areas.

5. Rural area participation: The following organizations have been given an opportunity to participate in the rule's development: the Association of Towns of New York State; Empire State Development, Division of Small Business; the National Federation of Independent Businesses; the New York Association of Convenience Stores; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the New York State Department of State, Office of Coastal, Local Government, and Community Sustainability; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York State Association of Wholesale Marketers and Distributors.

**Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no impact on

jobs and employment opportunities. This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on June 21, 2010, by Part D of Chapter 134 of the Laws of 2010. Part D of Chapter 134 increases the excise tax on cigarettes and imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 30, 2010, based on the increased rate of excise tax. The purpose of the rule is to make necessary regulatory changes related to the implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes. These amendments will have no impact on jobs or employment opportunities.

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

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-35-10-00004-P

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

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

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

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

**Purpose:** To set the sales tax component and the composite rate per gallon for the period October 1, 2010 through December 31, 2010.

**Text of proposed rule:** Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendment to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Sales Tax Component	Motor Fuel			Diesel Motor Fuel		
	Composite Rate	Aggregate Rate		Sales Tax Component	Composite Rate	Aggregate Rate
(lix) July - September 2010	16.0	24.0	40.3	16.0	24.0	38.55
(lx) October - December 2010	15.6	23.6	39.9	16.0	24.0	38.55

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

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

**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.

## Office for Technology

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

#### Electronic Signatures and Records Act (ESRA)

I.D. No. OFT-35-10-00006-P

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

**Proposed Action:** Amendment of Part 540 of Title 9 NYCRR.

**Statutory authority:** State Technology Law, sections 103, 303, 304 and 305

**Subject:** Electronic Signatures and Records Act (ESRA).

**Purpose:** The Amendment will support Executive Order 17 and reduce the impact of existing mandates on local governments.

**Text of proposed rule:** PART 540

#### ELECTRONIC SIGNATURES AND RECORDS ACT

(Statutory authority: State Technology Law, § § 103, [104, 105, 107] 303, 304(1) and 305(1) [; Executive Law, § 206-a])

Section 540.1(a) is amended to read as follows:

(a) The purpose of this Part is to establish standards and procedures governing the use and authentication of electronic signatures and the utilization of electronic records in accordance with Article III of the State Technology Law, which establishes the Electronic Signatures and Records Act (ESRA). ESRA requires the Office for Technology (OFT), as the electronic facilitator, to establish rules governing the use of electronic signatures and records. ESRA recognizes the importance of technology to the State and the need to build a foundation for its acceptance, implementation and use by State agencies, local government, the private sector and citizens. Consistent with legislative intent, ESRA establishes that electronic signatures and records have the same force and effect as signatures and records produced by non-electronic means and should be utilized to facilitate both business in, as well as the business of, New York State.

A new Subdivision (g) of Section 540.2 is added to read as follows:

(g) *Electronic transaction means an action or set of actions occurring through the use of electronic technology by or with a governmental entity.*

Subdivisions (g), (h), (i), (j) and (k) of Section 540.2 are re-lettered to read as follows:

[(g)] (h) Governmental entity means any State department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other governmental entity or officer of the State having statewide authority, except the State Legislature, and any political subdivision of the State.

[(h)] (i) Material change means a substantial change in the operating practices of a certification authority that affects the issuance, revocation, security, disposition, and any other aspect of the management of a certificate.

[(i)] (j) Person means a natural person, corporation, trust, estate, partnership, incorporated or unincorporated association or any other legal entity, and also includes any department, agency, authority, or instrumentality of the State or its political subdivisions.

[(j)] (k) Public Key, for purposes of public key cryptography, means the key made public for encryption.

[(k)] (l) Receiving device means any physical or virtual point capable of receiving electronic records including, but not limited to, a website, e-mail address, hardware device or application.

The opening paragraph of Section 540.3(a) is amended to read as follows:

(a) OFT, as the Electronic Facilitator, is responsible for administering this Part. In accordance with ESRA [and Article 10-A of the Executive Law], OFT has the following functions, powers and duties, including, but not limited to:

Section 540.4(c) is amended to read as follows:

(c) A governmental entity shall complete and document a business analysis and risk assessment when selecting an electronic signature to be used or accepted by that governmental entity in an *electronic transaction*. A governmental entity may elect to collaborate with other governmental entities in the completion and documentation of a business analysis and risk assessment when selecting an electronic signature for use or acceptance in an electronic transaction common to such governmental entities. A governmental entity may elect to adopt an existing business analysis and risk assessment completed and documented by another governmental entity when selecting an electronic signature for use or acceptance in the same type of electronic transaction to which the existing business analysis and risk assessment applies.

Section 540.4(d)(1)(xi) is amended to read as follows:

(xi) personal privacy policy - reciting the certification authority's statutory obligation to maintain the confidentiality of personal information in accordance with the provisions of subdivision two of section [108] 308 of the State Technology Law and section 540.6 of this Part;

The opening paragraph of Section 540.5(b) is amended to read as follows:

(b) Pursuant to ESRA and this Part, governmental entities are authorized and empowered[, but not required,] to produce, receive, accept, acquire, record, file, transmit, forward and store electronic records. If any governmental entity uses electronic records it shall:

**Text of proposed rule and any required statements and analyses may be obtained from:** John Aveni, Esq., Office for Technology, State Capitol, ESP, P.O. Box 2062, Albany, New York 12220-0062, (518) 473-5115, email: john.aveni@cio.ny.gov

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

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

#### Regulatory Impact Statement

1. Statutory Authority: Sections 103, 303(2)(a), 304(1) and 305(1) of the State Technology Law authorize the Office for Technology (OFT) to promulgate rules and regulations to implement the Electronic Signatures and Records Act (ESRA), State Technology Law, Article III, including rules and regulations governing the use and authentication of electronic signatures and the utilization of electronic records.

2. Legislative Objectives: ESRA was enacted in 1999 to support and encourage electronic commerce and electronic government by allowing the people of New York State to use electronic signatures and electronic records in lieu of handwritten signatures and paper documents in private and public sector transactions. In accordance with ESRA, OFT adopted Part 540 as a rule to establish implementation standards and procedures necessary for the use and authentication of electronic signatures and the utilization of electronic records in both private and public sector transactions. In the year 2000, the federal Electronic Signatures in Global and National Commerce Act (E-Sign Law) was adopted to permit and encourage the expansion of electronic commerce in interstate and foreign commercial transactions. Like ESRA, this federal law authorizes the use and acceptance of electronic signatures and electronics records in the context of these commercial transactions. By Chapter 314 of the Laws of 2002, ESRA was amended to ensure that these two Laws are interpreted and applied compatibly and consistently, to better achieve their shared purpose to promote the use of electronic technology in the everyday lives and transactions of citizens, businesses and governments. In particular, ESRA's definition of an electronic signature was amended to conform to the definition of electronic signature in the E-Sign Law.

Consistent with this amendment to ESRA, Part 540 was amended in 2003 by deleting from the then existing State regulation certain implementation standards and procedures for the use and authentication of electronic signatures that were no longer relevant under the amended ESRA. In addition, this prior regulatory amendment supported the Legislature's objective, as set forth in the Introducer's Memorandum in Support of Chapter 314 of the Laws of 2002, of protecting the public's interest in the use of sound and appropriate practices when engaging in electronic transactions with governmental

entities. As noted in the Introducer's Memorandum in Support, the Legislature specifically recognized that OFT retained its authority to delineate, in regulations and guidelines, a process for government entities to determine the type of electronic signature that should be employed in a given electronic transaction. In support of this objective, the amendments to Part 540 that were promulgated in 2003 mandated the employment of a business analysis and risk assessment process by state agencies and local governments when selecting electronic signatures for use or acceptance by such entities in given electronic transactions. Subsequently, OFT published guidelines that governmental entities can use in completing and documenting such business analyses and risk assessments.

The currently proposed regulatory amendment to Part 540 continues to support this legislative objective while furthering the Governor's objectives in the recently issued Executive Order No. 17 (EO 17) to reduce the impact of existing regulatory mandates on local governments.

3. Needs and Benefits: The proposed regulatory amendments further the goals and objectives of EO 17 to evaluate and lessen the costs of state mandates on local governments in order to advance property tax relief. EO 17 required state agencies to review existing agency regulations and identify those opportunities for regulatory amendments that would achieve these local government savings. The proposed regulatory amendment was identified by OFT as such an action. This action will alleviate the impact existing mandates have on local governments by allowing governmental entities to conduct joint business analyses and risk assessments when selecting an appropriate electronic signature solution for use or acceptance in electronic transactions common to such entities. The proposed amendment to § 540.4(c) will accomplish this by allowing all governmental entities to collaborate in the completion and documentation of those business analyses and risk assessments involving electronic transactions common to such entities. The proposed changes also will allow a governmental entity to adopt as its own a business analysis and risk assessment that has been completed and documented by another governmental entity that involves that same electronic transaction. By combining and leveraging efforts to select appropriate electronic signature solutions for use in government electronic transactions, governmental entities, including local governments, will be able to eliminate redundant, time-consuming and costly activities.

This proposed action also modifies Part 540 by adding a definition for the term "electronic transaction", a term that has appeared in the regulation since 2003, to § 540.2(g). This definition is needed to better explain the proposed amendment to § 540.4(c). Other technical modifications are proposed for purposes of conforming the rule to numbering and language changes that occurred in ESRA since 2003. In particular, these changes were made to the statutory authority portion of the heading to Part 540, and the following sections of Part 540: § 540.1(a), § 540.3(a), § 540.4(d)(1)(xi), and § 540.5(b). Finally, § 540.2(h-l) were re-lettered for formatting purposes. These modifications amount to nonsubstantive changes and do not materially alter the purpose, meaning or effect of the original text.

4. Costs: The adoption of these amendments does not mandate any costs on persons or entities electing to use electronic signatures and records. Moreover, this rule making does not impose any additional reporting, record keeping or other compliance requirements on persons electing to use such technologies. In fact, this rule making allows governmental entities, who are required under Part 540 to complete and document a business analysis and risk assessment of any electronic transaction in which a governmental entity will use or accept an electronic signature, to collaborate in the completion and documentation of those business analyses and risk assessments involving electronic transactions common to such entities, thereby eliminating redundant and costly activities. Typically, governmental entities employ their own internal staff in completing the business analysis and risk assessment process required under Part 540. This rule making does not increase the usual costs associated with this process. On the contrary, this regulatory change reduces a barrier to entry for local governments desiring to deliver more information and provide services online, by allowing such entities to collaborate and share resources in the completion of this process. There will likely be a result-

ing cost savings to local governments which have limited time, resources, and expertise to conduct their own unique business analysis/risk assessment.

There are no additional costs imposed on OFT, the State or local governments by the implementation of this rule making.

5. Local Government Mandates: This rule making does not impose any program, service, duty or responsibility upon any local government. Under the existing rule, local governments who choose to engage in electronically signed transactions are already required to complete and document a business analysis and risk assessment for such a transaction before selecting an electronic signature solution for use in that transaction. This rule making will not impose additional mandates on those entities, but will instead provide government entities with an alternative method of complying with those requirements more efficiently.

6. Paperwork: This rule making does not impose any reporting requirements on anyone who elects to use or accept an electronic signature or record. No specific forms or paperwork are required to be filed with OFT or other governmental entities by any party. Nor does this rule making impose any reporting requirements on OFT beyond those already established in existing statutes.

7. Duplication: There are no State or federal government rules or legal requirements that duplicate, overlap or conflict with this rule making.

8. Alternatives: The option to allow governmental entities flexibility in meeting the requirements for a business analysis and risk assessment is not required under any new or existing law. OFT could have simply made minor technical modifications to the text of Part 540, conforming the rule to numbering and language changes that occurred in ESRA since 2003. Instead, and in support of the Governor's objective of reducing the impact of existing regulatory mandates on local governments as expressed in EO 17, OFT has decided to make the changes to § 540.4(c) as outlined above. In so doing, OFT decided to not only allow governmental entities to collaborate in the completion and documentation of business analyses and risk assessments in those electronic transactions common to such entities, but to maximize the flexibility afforded to governmental agencies engaged in this process by allowing a governmental entity to adopt as its own a business analysis and risk assessment that has been completed and documented by another governmental entity that involves that same electronic transaction.

9. Federal Standards: On June 30, 2000, the federal government enacted Public Law 106-229, Electronic Signatures in Global and National Commerce Act (E-Sign Law), effective October 1, 2000. The E-Sign Law authorizes the use and acceptance of electronic signatures and electronic records in lieu of handwritten signatures and paper documents in interstate and international commercial transactions. As noted above, ESRA does the same for purposes of private and public sector transactions in New York State. Chapter 314 of the Laws of 2002 amended ESRA to conform State law to that provision of the E-Sign Law that defined an electronic signature. Part 540 was subsequently amended to reflect that change. This rule making is consistent with that amendment and ensures that ESRA's implementing regulation continues to promote the use of electronic technology in New York State.

10. Compliance Schedule: This rule making will be effective upon publication of the notice of its adoption in the State Register.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis (RFA) is not attached, because this amended rule will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This finding is based upon the fact that this amended rule addresses standards and procedures related to the voluntary use of electronic signatures and records by private and public parties, including small businesses and local governments. Neither the Electronic Signatures and Records Act (ESRA), which authorizes the adoption of this rule, nor the amended rule itself requires anyone to use an electronic signature or create an electronic record. For those who elect to use such technologies, this amended rule does not impose any reporting, record keeping or other compliance requirements beyond those that are already directed by existing statute, other rules or typical business practices. Instead, this proposed

rule making provides all governmental entities, including local governments, with greater flexibility in complying with existing regulatory requirements.

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

A Rural Area Flexibility Analysis (RAFA) is not attached, because this amended rule will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based on the fact that this amended rule addresses standards and procedures related to the voluntary use of electronic signatures and records by private and public parties, including those located in rural areas or rural communities in the State. Neither the Electronic Signatures and Records Act (ESRA), which authorizes the adoption of this rule, nor the amended rule itself requires anyone to use an electronic signature or create an electronic record. For those who elect to use such technologies, this rule does not impose any reporting, recordkeeping or other compliance requirements other than those that are already directed by existing statute, other rules or typical business practices. Instead, this proposed rule making provides public entities in rural areas, including local governments, with greater flexibility in complying with existing regulatory requirements.

#### **Job Impact Statement**

A Job Impact Statement (JIS) is not attached, because amendments made to 9 NYCRR Part 540 will not have a substantial adverse impact on jobs and employment opportunities as apparent from the amended rule's continued nature and purpose. This rule will continue to address standards and procedures to implement the Electronic Signatures and Records Act (ESRA) in relation to electronic transactions voluntarily conducted by private and public parties. ESRA and this amended rule encourage individuals, public and private entities to use electronic signatures and records to facilitate, advance and improve commercial transactions and government operations throughout the State. Such use will improve commerce and provide economic growth in this State. Consequently, this amended rule will have a positive impact on jobs and employment opportunities.

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## Office of Temporary and Disability Assistance

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

#### **Child Support**

**I.D. No.** TDA-35-10-00005-P

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

**Proposed Action:** Amendment of sections 347.6, 347.7 and 347.8 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 111-a(1), (2), 111-b(3), (4), 111-g, 111-h(9), 111-k(1), 111-r, 111-s(1), 111-v and 143; Family Court Act, section 542; 45 CFR sections 301.1, 303.3(b)(1) and 303.101(b)(1); 42 USC section 666(c)(1)

**Subject:** Child Support.

**Purpose:** To conform Title 18 NYCRR to State and federal statutes and federal requirements concerning the use of locate sources including the State and federal parent locator services by local districts in providing child support services.

**Text of proposed rule:** Paragraph (1) of subdivision (a) of section 347.6 of Title 18 of the NYCRR is amended to read as follows:

(1) File a petition with the family court to establish paternity, complete service of process or document on the Child Support Management System (CSMS) the unsuccessful diligent efforts to serve process, as defined in section [347.7(a)] 347.7(b)(7) of this Part.

Section 347.7 of Title 18 of the NYCRR is amended to read as follows:

§ 347.7 Location of [absent] *noncustodial* parents [and] / putative fathers and sources of income or assets.

(a) Location means obtaining information concerning the physical

whereabouts of [an absent] *a noncustodial* parent/putative father, [an absent] *a noncustodial* parent's/putative father's employer(s), or other sources of income, [or] assets, or *medical support information* [which belong to an absent parent,] as appropriate, which [is] are sufficient and necessary to take the next appropriate action in a case. [Financial investigation of a putative father may not be conducted until paternity has been established.]

(b) For [each case] all cases referred to the child support enforcement unit or applying for child support services under section 347.17 of this Part in which the location of [an absent] *the noncustodial* parent/putative father or the income, assets, or *medical support information* of such person is unknown or unverified, the child support enforcement unit must:

(1) Use appropriate location sources such as the Federal Parent Locator Service (PLS) and State PLS; interstate location networks, local officials and employees administering public assistance, general assistance, medical assistance, food stamps, and social services; records of State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, drivers licenses and vehicle registration, and criminal records; relatives and friends of the *noncustodial* parent/putative father; current or past employers; utilities, the local telephone company and the U.S. Postal Service; financial references; unions and fraternal organizations; and police, corrections, parole, and probation records, if appropriate; and other sources.

(2) Establish working relationships with all appropriate agencies in order to utilize location resources effectively.

(3) Employ methodologies that safeguard all confidential information and data pertaining to the *noncustodial* parent/putative father obtained through location sources as provided in section 111-v of the Social Services Law.

(1) As soon as possible, but no later than (4) Within no more than 75 calendar days [after] of determining that [it is] location efforts are necessary [to locate an absent parent/putative father, initiate location activities using the CSMS, location leads and other local sources, and], access all appropriate location sources including transmitting appropriate cases to the State and the Federal PLS where there is sufficient information to initiate automated location efforts, ensure that [the case] location information [obtained] is sufficient to take the next appropriate action in a case, and update [CSMS] the automated case record as appropriate. Information critical to location activities includes the [absent] *noncustodial* parent's/putative father's name, social security number, last known address(es) and employer(s), and the date of birth of his or her children.

(2) Upon receipt of new information which may aid in location, immediately update CSMS and attempt to locate the absent parent/putative father. CSMS will submit these cases automatically to appropriate PLS sources based on the updated data.]

(5) Refer appropriate cases to the IV-D agency of any other state. The IV-D agency of the other State shall follow the procedures as described in paragraphs (1), (2), (3) and (4) above; except that the responding State is not required to access the Federal PLS under paragraph (4).

(6) Repeat location attempts in cases in which previous attempts to locate the *noncustodial* parent/putative father or sources of income and/or assets have failed but adequate identifying and other information exists to warrant submittal for location either immediately upon receipt of new information, or quarterly, whichever occurs sooner. Repeated attempts based on new information must meet the requirements of paragraph (4) of this subdivision. Quarterly attempts may be limited to automated sources but must include accessing State employment security files, including new hire reporting, wage reporting, and unemployment insurance benefits.

(3)] (7) Make a diligent effort to serve process on the [absent] *noncustodial* parent/putative father, in cases in which previous attempts have failed but new information adequate to serve such process exists. Diligent effort to serve process on a *noncustodial* parent/putative father means an attempt to serve process as soon as adequate information with respect to the location of the [absent] *noncustodial*

parent/putative father is obtained, but no later than 90 calendar days after receipt of such information.

[(b)] (c) The child support enforcement unit is designated as the local agent to accept applications for State PLS services from agencies and individuals authorized by [OCSE] *the Division of Child Support Enforcement within the Office of Temporary and Disability Assistance*.

Subparagraph (v) of paragraph (3) of subdivision (a) of section 347.8 is amended to read as follows:

(v) Ascertain the ability of both parents to support, as set forth in subparagraph [(1)] (iii) of paragraph (1) of this subdivision [, unless paternity is still an issue. In the latter case, do not conduct a financial investigation of the putative father until after paternity is adjudicated].

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Section 20 (3) (d) of the Social Services Law (SSL) authorizes the New York State Office of Temporary and Disability Assistance (OTDA) to establish rules, regulations and policies to carry out its powers and duties.

Section 34 (3) (f) of the SSL requires the Commissioner of OTDA to establish regulations for the administration of public assistance and care within the State.

Section 111-a (1) of the SSL designates OTDA as the single State agency to supervise the administration of the State's child support program.

Section 111-a (2) of the SSL requires OTDA to promulgate regulations necessary to obtain and retain approval of its Child Support State Plan, required to be submitted to the federal Department of Health and Human Services (DHHS) by Part D of Title IV of the federal Social Security Act (herein "Title IV-D").

Section 111-b (3) of the SSL authorizes and requires OTDA to utilize location services made available through the DHHS including the federal parent locator service, the federal case registry, and the national directory of new hires.

Section 111-b (4) of the SSL authorizes and requires OTDA to maintain and operate a State parent locator service. This statute also requires OTDA to request and receive information from various public and private sources to enable OTDA and the social services districts to properly carry out their powers and duties to locate parents and enforce parental duties to support their children.

Section 111-g of the SSL provides that services in relation to the establishment of paternity and the establishment and enforcement of support obligations are to be made available to persons not in receipt of family assistance upon application by such person. Section 347.17 of 18 NYCRR sets forth the scope of child support services to be provided to individuals in receipt of services pursuant to section 111-g of the SSL, i.e. that all child support services under Parts 346 and 347 of Title 18 must be made available to such individual upon application therefore. Application must be made for all necessary services that are rendered free of charge.

Section 111-h (9) of the SSL authorizes and requires employers to report to the support collection unit full information as to the earnings of a respondent in a support or paternity establishment proceeding under Article 4, 5, 5-A or 5-B of the Family Court Act.

Section 111-k(1) of the SSL authorizes the social services district to confer with a respondent or potential respondent to obtain an acknowledgment of paternity for a child born out of wedlock. Section 111-k(2) of the SSL provides that when the paternity of a child is contested, the social services district may order the mother, child, and the alleged father to submit to one or more genetic marker or DNA tests to aid in the determination of whether or not the alleged father is the father of

the child. Such order may be issued prior to, or subsequent to, the filing of a paternity petition. In addition, section 111-k(1)(b) of the SSL authorizes the social services district to enter into an agreement with the respondent or potential respondent to make support payments.

Section 111-r of the SSL requires all employers, upon request of a social services district or another State's child support enforcement agency, to provide prompt information on the employment, compensation and benefits of any individual employed by the employer as an employee or contractor, when such information is requested for the purpose of establishing paternity, or establishing, modifying, or enforcing an order of support. Pursuant to this statute, the information requested and provided shall include, but not be limited to, information regarding the individual's last known address, date of birth, social security number, plans providing health care or other medical benefits by insurance or otherwise, wages, salaries, earnings or other income of the individual.

Section 111-s (1) of the SSL authorizes OTDA and social services districts to access information contained in records of other State and local government agencies, as well as certain records held by private corporations, companies or other entities. This authority is provided for purposes of establishing paternity, or establishing, modifying or enforcing an order of support. Access is to be provided without the necessity of obtaining an order from any other judicial or administrative tribunal, subject to safeguards on privacy and information security.

Section 111-v of the SSL requires that all information and data in the automated child support enforcement system be maintained in a confidential manner designed to protect the privacy rights of the parties. Furthermore, this section prohibits disclosure of such information and data except for the purpose of, and to the extent necessary to, establish paternity, or establish, modify or enforce an order of support.

Section 143 of the SSL requires the officials or executives of any corporation or partnership and all employers of labor doing business within the State of New York to provide, upon request from a social services district, certain information with respect to any applicant for, or recipient of public assistance or care, or of any relative legally responsible for the support of such person or any person in receipt of services pursuant to section 111-g of the SSL. The information that may be requested about such individual includes the last known address, social security number, available plans providing care or other medical benefits by insurance or otherwise, and wages, salaries, earnings or other income.

Section 542 of the Family Court Act provides that the court shall order a temporary order of support in a paternity proceeding, notwithstanding that paternity of the subject child has not been established nor an order of filiation entered against the respondent, where the respondent willfully fails to comply with an order made by the court or an order by the social services district for testing pursuant to section 111-k of the SSL and willfully fails to appear before the court when otherwise required.

45 CFR § 301.1 defines the "IV-D agency" as the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State Plan under Title IV-D. In New York, this refers to the Division of Child Support Enforcement (DCSE).

45 CFR § 303.3 (b) (1) requires a State IV-D agency, the single and separate organizational unit tasked with administration of the Title IV-D State Plan, to locate all noncustodial parents or sources of income and/or assets using appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); records of State agencies and departments, which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, drivers' licenses and vehicle registration, and criminal records; relatives and friends of the noncustodial parent; current or past employers; the local telephone company and the U.S. Postal Service; financial references; unions and fraternal organizations; and police, parole and probation records; and other sources.

45 CFR § 303.101 (b) (1) requires a State IV-D agency to have in effect and use, in interstate and intrastate cases, expedited processes to establish paternity and to establish, modify, and enforce support orders.

42 USC § 666 (c) (1) requires each State, in order to maintain Title IV-D State Plan compliance, to have in effect laws requiring the use of expedited processes allowing for administrative action by the State IV-D agency. In particular, the State IV-D agency must have the authority to take certain actions in relation to the establishment of paternity and the establishment, modification, and enforcement of support orders, without the necessity of obtaining a court order. The State laws must recognize and enforce the authority of State agencies of other States to take such actions. With respect to all for-profit, non-profit, and governmental employers, the State must have authority to require such entities to promptly provide information on the employment, compensation, and benefits of any individual employed by the entity as an employee or contractor, and to sanction a failure to respond to any such request. With respect to information contained in the records of other State and local government agencies and records held by certain private entities (public utilities, cable television companies and financial institutions), the expedited administrative authority must include the ability to obtain access, subject to safeguards on privacy and information security, as well as the nonliability of the entity affording access to the record.

#### 2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that, to the greatest extent possible, parents provide financial support for their children.

#### 3. Needs and benefits:

Existing State regulations do not conform to current federal regulation relating to location services (45 CFR § 303.3). Existing law (SSL § 111-b (3) and (4)) allows for the use of the State and federal parent locator services. The proposed amendments to section 347.7 of 18 NYCRR conform State regulations to the federal regulations with regard to location services. The proposed amendments clarify that the location services outlined in section 347.7 of 18 NYCRR are to be used in all cases referred to the child support enforcement unit and in all cases applying for child support services under section 111-g of the SSL. (See also, 18 NYCRR § 347.17.)

Existing State regulations also do not provide for the financial investigation of a person who may be legally responsible for a child who is the subject of a child support matter, or in receipt of public assistance and care, prior to establishing paternity. However, existing State statutes allow for such financial investigations. In particular, sections 111-h (9), 111-r and 143 of the SSL require that employers furnish wage and health benefit information for persons who may be legally responsible in a paternity establishment or child support enforcement case. The proposed amendments to sections 347.7 and 347.8 of 18 NYCRR will make the State regulations consistent with State statutes. While State law already provides in section 111-k of the SSL that a local child support district may obtain voluntary acknowledgments of paternity and voluntary support agreements, circumstances present in a particular case may indicate that the putative father cannot be located or, if capable of being located, that such person is unwilling to acknowledge paternity and/or provide information in a timely manner as to income or assets. The proposed amendments give the local child support districts the authority needed to address all variations in case circumstances that may be encountered and to verify with reliable sources the accuracy and completeness of any information voluntarily obtained, while also allowing the child support districts to proceed with their statutory duties in a timely and efficient manner. Removing the regulatory restriction on conducting a financial investigation prior to the establishment of paternity will allow the local child support districts the opportunity to provide seamless services between establishing paternity and obtaining an order of support by reducing delay in the production of pertinent financial information needed to establish an order of support. The benefit of reducing delay in obtaining an appropriate order of support for the child is balanced

against the privacy interests of the noncustodial parent/putative father. All information collected by the local child support districts as part of the effort to establish paternity or establish, modify and enforce a child support order is subject to strict safeguarding provisions. These safeguarding provisions serve to protect the privacy rights of the parties by prohibiting disclosure of information except for the purpose of, and to the extent necessary to, establish paternity, or establish, modify or enforce an order of support.

#### 4. Costs:

DCSE, on behalf of the social services districts, provides for location services as required by federal regulations. As one part of this undertaking, DCSE issues a notice to the employers of individuals who are or may be legally responsible for child support. The notice requests financial and related information necessary for establishing appropriate orders of support including, but not limited to, last known addresses, dates of birth, health insurance benefits, and wages. The proposed regulatory amendment will clarify when this location tool requesting financial and related information can be issued. Therefore, no additional costs are associated with the amendments to the regulations.

#### 5. Local government mandates:

No new or additional requirements will be imposed on social services districts.

#### 6. Paperwork:

The use of State and federal location services will continue. The notice to employers will continue to be used to collect financial information.

#### 7. Duplication:

The proposed amendments do not duplicate, overlap or conflict with any existing State or federal regulations. Instead, the proposed amendments to sections 347.6, 347.7 and 347.8 of 18 NYCRR will make the State regulations consistent with the authority provided for in federal regulation and in State statutes.

#### 8. Alternatives:

While the obligation to repeat location attempts quarterly might have been revised to include a requirement that all location sources be used as opposed to simply accessing automated sources, it was determined that a regulatory change in that direction would unduly increase the burden upon the local district for minimum benefit given that the duty already exists to repeat full location efforts upon the receipt of new information.

#### 9. Federal standards:

The proposed amendments do not exceed federal minimum standards for the same or similar subject areas.

#### 10. Compliance schedule:

In accordance with statutory authority, the notice to employers is currently used to collect information for the financial investigation of individuals who are or may be legally responsible for child support. Accordingly, there will be no delay by social services districts in achieving compliance.

#### *Regulatory Flexibility Analysis*

##### 1. Effect of rule:

There are 57 social services districts in addition to New York City that will be affected by the amendment to the regulations.

Small businesses that employ persons who are or may be legally responsible for child support will continue to be obligated to provide information as to sources of income, assets, and medical support pursuant to sections 111-b (3) and (4), 111-h (9), 111-r and 143 of the Social Services Law.

##### 2. Compliance requirements:

The proposed amendments apply to all social services districts. However, given that the changes to the regulations only conform State regulation to federal regulation and clarify the timing of affirmative action needed on a case, no new reporting or recordkeeping is required by the social services districts. The NYS Division of Child Support Enforcement (DCSE), on behalf of the social services districts, will continue to provide location services consistent with State and federal requirements and issue the notices to employers to collect information for the financial investigation of noncustodial parents.

3. Professional services:

Given that the changes are expected to clarify existing procedures, social services districts will not need to hire additional staff.

4. Compliance costs:

The proposed changes to the State regulations will not result in increased administrative costs for social services districts. DCSE continues to share all administrative costs of location services and issuing the notices to employers with the social services districts.

5. Economic and technological feasibility:

DCSE continues to share with the social services districts all administrative costs of location services and issuing the notices to employers on behalf of the social services districts. Technological feasibility is not a concern for the social services districts since DCSE maintains and operates the State parent locator service and issues the notices to employers on their behalf.

6. Minimizing adverse impact:

The proposed regulatory amendments will not have an adverse impact on small businesses or local governments since this is only clarifying the timing of a financial investigation that is already being conducted. Approaches for minimizing adverse economic impacts on small businesses and local governments were not considered since no adverse economic impact will result from the proposed amendments.

7. Small business and local government participation:

The concepts for the proposed regulatory changes regarding financial investigation prior to paternity establishment were discussed with local district child support enforcement personnel in conversation focused on expediting support establishment and in the development of the notices to employers, as noted above, which are used for inquiries in financial investigations.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

There are 44 social services districts in rural areas that will be affected by the amendment to these regulations.

Small businesses in rural areas that employ persons who are or may be legally responsible for child support will continue to be obligated to provide information as to sources of income, assets and medical support pursuant to sections 111-b (3) and (4), 111-h (9), 111-r and 143 of the Social Services Law.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed amendments apply to all social services districts, including those in rural areas. However, given that the changes only conform State regulation to federal regulation and clarify the timing of affirmative action needed on a case, no new reporting or recordkeeping is required by the social services districts in rural areas. The NYS Division of Child Support Enforcement (DCSE), on behalf of the social services districts, will continue to provide location services consistent with State and federal requirements and issue notices to employers to collect information for the financial investigation of noncustodial parents.

Given that the changes are expected to clarify existing procedures, social services districts in rural areas will not need to hire additional staff.

3. Costs:

The proposed changes to the State regulations will not result in increased administrative costs for social services districts in rural areas. DCSE continues to share all administrative costs of location services and issuing the notices to employers with the social services districts.

4. Minimizing adverse impact:

The proposed changes to the regulations will not have an adverse impact on social services districts, including those in rural areas, since this is only clarifying the timing of a financial investigation that is already being conducted. Approaches for minimizing any adverse impact on these districts were not considered since no adverse impact will result from the proposed amendments.

5. Rural area participation:

The proposed regulatory changes regarding financial investigation prior to paternity establishment were suggested by, and discussed with, local district child support enforcement personnel, including those in rural districts.

**Job Impact Statement**

A job impact statement has not been prepared for the proposed regulatory amendment. It is evident from the subject matter of the amendment that the jobs of the local district child support enforcement personnel will not be impacted in any real way by the proposed amendment. Thus the changes will not have any impact on jobs and employment opportunities in the State.