

RULE MAKING ACTIVITIES

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

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

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

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Foreign Nationals

I.D. No. COR-10-11-00003-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 130.1(b), 130.2(c), (d), (e), (f)(2), (g), (i) and (j) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 5(4) and 71.1(b)1-b

Subject: Transfer of Foreign Nationals.

Purpose: To provide clarity regarding eligibility requirements, revise terminology and update an employee job title.

Text of proposed rule: Section 130.1(b) is amended as follows:

(b) Correction Law, section 5(4) authorizes the commissioner to convert the sentence of a person serving an indeterminate sentence, except for a person serving a sentence with a maximum term of life imprisonment, [for one with a life term maximum] to a determinate sentence equal to two-thirds of the maximum or aggregate maximum term imposed where such conversion is necessary to make the person eligible for transfer to Federal custody for transfer to foreign countries under treaties that provide for voluntary transfers.

Section 130.2(c) is amended as follows:

(c) Application.

(1) An inmate who wishes to be considered for voluntary transfer must complete and sign the transfer request form and forward it to the facility superintendent.

(2) Upon receipt, the superintendent shall forward a copy to the *executive* deputy commissioner [and counsel].

(3) Upon assessment of eligibility, the *executive* deputy commissioner, or designee [and counsel] shall forward the request to the commissioner, or designee, along with a recommendation and copies of:

(i) the inmate's request;
(ii) sentence conversion certificate (see subdivision (d) of this section);

(iii) a copy of the sentence and commitment order;
(iv) a copy of the most recent legal date computation printout;
(v) a copy of the statute(s) under which the inmate was convicted;
(vi) a copy of the final order of deportation against the inmate from

the U.S. Immigration and Customs Enforcement;

(vii) description of the inmate's intake interview;
(viii) inmate family and residence information; and

(ix) any other forms or information that may be required by the foreign country or treaty.

Amend section 130.2 (d) as indicated below:

(d) Conversion of indeterminate sentence to determinate sentence. Where it is necessary to convert an indeterminate sentence to a determinate sentence in order to make an applicant eligible for international transfer, the sentence shall be calculated as equal to two-thirds of the maximum or aggregate maximum term imposed. *Indeterminate sentences with a maximum term of life imprisonment may not be converted to a determinate sentence.*

The note after section 130.2(e) is amended as follows:

Note: This entire process, from the inmate's application through the final decision, typically requires [six months] up to one year, and may take longer. Upon receipt of notification of the decision, the inmate will be informed by letter from the *executive* deputy commissioner [and counsel].

Section 130.2(f)(2) is amended as follows:

(1) The commissioner, or designee, shall write to the Office of Enforcement Operations, *International Prison Transfer Unit*, U.S. Department of Justice, advising that New York State is willing to transfer a prisoner. The documentation listed in paragraph (c)(3) of this section shall be enclosed with this communication, and the inmate shall be provided with a copy of the cover letter.

(2) The Department of Justice will [may] approve or disapprove the request and will follow with documentation and instructions.

Section 130.2(g) is amended as follows:

(g) Costs. The facility is responsible for transporting the inmate to a U.S. Magistrate Judge for a *consent verification* hearing at the time of [to approve] the transfer.

Section 130.2(i) is amended as follows:

(i) Property. The inmate is responsible for disposing of his or her property prior to the *consent verification* hearing. Upon completion of the hearing, the inmate will be in the custody of the U.S. Marshal[']s Service and will not be permitted to have any property in his or her possession.

Section 130.2(j) is amended as follows:

(j) Qualifications for transfer to foreign countries.

(1) The inmate must be a citizen of the receiving country.
(2) The inmate must be convicted and sentenced to a term of imprisonment [which means there can be no outstanding appeals of conviction].

(3) The inmate must not be committed solely for a military or immigration offense.

(4) The inmate must have served at least one-half of the minimum term and have at least one year [six months] of the instant sentence remaining to be served at the time of request for transfer [and must not be serving a sentence with a maximum of life].

(5) The inmate must have no pending proceeding by way of appeal or collateral attack upon the instant conviction or sentence.

(6) The inmate must be convicted of a crime which is generally punishable as a crime under the laws of the other country.

(7) The inmate, the commissioner [New York], the United States Department of Justice, and the receiving country must all consent to the inmate's transfer.

(8) The inmate must have received an order of deportation from the U.S. Immigration and Customs Enforcement [Naturalization Service].

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue, Building 2 - State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCS.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority

Sections 5(4), 71.1(b) 1-a, 71.1(b) 1-b and 71.1(b) 1-c of Correction Law. Section 5(4) authorizes and empowers the Commissioner of DOCS to convert the sentence of a person serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, to a determinate sentence of imprisonment equal to two-thirds of the maximum or aggregate maximum term imposed where such conversion is necessary to make such person eligible to transfer to a federal custody or transfer to foreign countries under treaties that provide for voluntary transfer of such persons on the execution of penal sentences entered into by the government of the United States with foreign countries. Section 71.1(b) 1-a, states that the commissioner shall ensure that each general confinement facility Law Library has information regarding treaty nations, the existence of transfer treaties, the means by which to request a transfer to return to the nation of the persons citizenship and the most recent Amnesty International report of the prisons of each treaty nation. Section 71.1(b) 1-b, grants the Commissioner of DOCS the authority to promulgate such rules and regulations setting forth the procedures by which an inmate may voluntarily apply to be considered for transfer to a foreign nation and also indicates that final approval rests with United States Department of Justice. Section 71.1(b) 1-c, provides the definition of the term "treaty nation".

2. Legislative Objective

By vesting the commissioner with the rulemaking authority as listed in sections 5(4) and 71.1(b) 1-b, the legislature intended the commissioner to promulgate such rules and regulations that provide fair and consistent procedures with regard to the application and transfer of inmates to foreign nations. The legislature also intended for the affected inmates to have appropriate information in order to make an informed decision before making such a request for transfer to their nation of citizenship.

3. Needs and Benefits

The amendment to section 130.1 is made to ensure the wording of the statement of the eligibility exception for a foreign national prisoner transfer is consistent with Correction Law Section 5(4). There are several instances where the employee title "Deputy Commissioner and Counsel" has been changed to "Executive Deputy Commissioner" in order to update the appropriate staff person who is designated as the Commissioner's designee to carry out the related functions. There are two instances where the Federal agency name U.S. Bureau of Immigration and Naturalization was updated appropriately to the U.S. Immigration and Customs Enforcement (ICE). The change to section 130.2(c)(3)(vi) is made simply to clarify the agency that sends a copy of the final order of deportation. The amendment to section 130.2(d) regarding inmate eligibility exception for a foreign national prisoner transfer is made to be consistent with the change made in section 130.1 as stated above. The changes to sections 130.2(g) and 130.2(h) are made to be consistent with terminology as used by the U.S. Justice Department. The change to section 130.2(j)(2) is made to simplify the text and to avoid duplication with what is stated in section 130.2(j)(5) regarding pending proceedings. The change to section 130.2(j)(4) is made to assist in bringing a measure of uniformity to the discretionary authority given to the Commissioner of DOCS to make fair and consistent decisions regarding these transfer requests. This eligibility requirement is similar to the criteria used by the New York State Division of Parole in considering the release of inmates for conditional parole for deportation only and is pursuant to Executive Law 259- i (2)(d). The change in section 103.2(j)(4) to increase from six months to one year the time remaining on the inmate sentence is simply to ensure that there is sufficient time to process the request through DOCS, the U.S. Department of Justice and the receiving country. The changes made to section 130.2(j)(7) are made to identify the parties listed in clearer and more precise terms.

4. Costs

a. To agency, state and local government: No discernable costs are anticipated.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon the fact that the rule changes merely clarify and expand upon previously established rules regarding the transfer of inmates to foreign nations. No additional procedures or new staff are necessary to implement the proposed changes.

5. Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

6. Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

7. Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives

DOCS considered the alternative of not promulgating this rule. However, DOCS decided that this rule making was important to ensure that policies and procedures governing the Transfer of Foreign Nationals are clearly and accurately stated.

9. Federal Standards

There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal provides consistency between departmental internal policy and the corresponding section of 7 NYCRR and provides clarity regarding the affected procedures and associated terminology.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal provides consistency between departmental internal policy and the corresponding section of 7 NYCRR and provides clarity regarding the affected procedures and associated terminology.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal provides consistency between departmental internal policy and the corresponding section of 7 NYCRR and provides clarity regarding the affected procedures and associated terminology.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sanitary Condition of Shellfish Lands

I.D. No. ENV-10-11-00005-P

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

Proposed Action: Amendment of section 41.2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify shellfish lands to allow the harvest of shellfish throughout the year.

Text of proposed rule: 6 NYCRR Part 41, Sanitary Condition of Shellfish Lands, is amended to read as follows:

Existing section 41.0 through sub-paragraph 41.2(b)(2)(v) remain unchanged.

Existing sub-paragraph 41.2(b)(3)(i) is repealed.

New sub-paragraphs 41.2(b)(3)(i) through 41.2(b)(3)(iii) are adopted to read as follows:

(i) *Long Island Sound.*

(a) *All that area of Long Island Sound, including tributaries, lying northerly and westerly of a line extending northeasterly from the northernmost point of land at Prospect Point to the northernmost point of land at Matinecock Point; and, thence continuing in a northeasterly direc-*

tion on a true bearing North 18 degrees East (magnetic bearing North 30 degrees East) from Matinecock Point to the New York-Connecticut State boundary.

(b) All tributaries of Long Island Sound, including Frost Creek, between Matinecock Point and Middle Chimney west of Oak Neck Point (local names, local landmarks).

(ii) Hempstead Harbor.

(a) All that area of Hempstead Harbor, including tributaries, lying southerly of a line extending northeasterly from the westernmost chimney on the seaward side of the large brown house (situated on the bluff within Sands Point Park and Preserve) located approximately 1300 yards northwesterly of Mott Point, to the western end of the rock jetty at Red Spring Point, on the opposite eastern shoreline, and then continuing along the northeasterly side of said jetty to the shore. Said jetty forms the northern enclosure of the private marina serving The Legend Yacht and Beach Club Community on Pembroke Drive, Glen Cove (local names, local landmarks).

(b) All that area of East Creek (the tidal creek and wetlands) located southerly of Prospect Point.

(c) All that area of West Pond and outer Hempstead Harbor lying southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks).

(iii) Dosoris Pond. All that area of Dosoris Pond.

Existing sub-paragraph 41.2(b)(4)(i) is repealed.

Existing sub-paragraphs 41.2(b)(4)(ii) through 41.2(b)(4)(iv) are renumbered 41.2(b)(4)(iv) through 41.2(b)(4)(vi).

New sub-paragraphs 41.2(b)(4)(i) through 41.2(b)(4)(iii) are adopted to read as follows:

(i) Long Island Sound.

(a) All that area of Long Island Sound, including tributaries, lying northerly and westerly of a line extending northeasterly from the northernmost point of land at Prospect Point to the northernmost point of land at Matinecock Point; and, thence continuing in a northeasterly direction on a true bearing North 18 degrees East (magnetic bearing North 30 degrees East) from Matinecock Point to the New York-Connecticut State boundary.

(b) All tributaries of Long Island Sound, including Frost Creek, between Matinecock Point and Middle Chimney west of Oak Neck Point (local names, local landmarks).

(ii) Hempstead Harbor.

(a) All that area of Hempstead Harbor, including tributaries, lying southerly of a line extending northeasterly from the westernmost chimney on the seaward side of the large brown house (situated on the bluff within Sands Point Park and Preserve) located approximately 1300 yards northwesterly of Mott Point, to the western end of the rock jetty at Red Spring Point, on the opposite eastern shoreline, and then continuing along the northeasterly side of said jetty to the shore. Said jetty forms the northern enclosure of the private marina serving The Legend Yacht and Beach Club Community on Pembroke Drive, Glen Cove (local names, local landmarks).

(b) All that area of East Creek (the tidal creek and wetlands) located southerly of Prospect Point.

(c) All that area of West Pond and outer Hempstead Harbor lying southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks).

(iii) Dosoris Pond. All that area of Dosoris Pond.

Renumbered sub-paragraphs 41.2(b)(4)(iv) through 41.2(b)(4)(vi) remain unchanged.

Existing sections 41.3 through 41.5 remain unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: William Hastback, Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0475, email: wghastba@gw.dec.state.ny.us

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

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

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department of Environmental Conservation.

Consolidated Regulatory Impact Statement

This Consolidated Regulatory Impact Statement is part of a rule making that will classify State shellfish lands as certified (open to shellfish harvesting) or uncertified (closed to shellfish harvesting) based on standards specified in 6 NYCRR Part 47.

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is given in Environmental Conservation Law (ECL) section 13-0307. Subdivision 1 of section 13-0307 of the ECL requires the Department of Environmental Conservation (department) to periodically conduct examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. Subdivision 2 of this section requires the department to certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified.

The statutory authority for promulgating regulations with respect to the harvest of shellfish is given in ECL section 13-0319.

2. Legislative objectives:

The legislative objectives are to ensure that shellfish lands are appropriately classified as either certified or uncertified and to protect public health by preventing the harvest and consumption of shellfish from lands that do not meet the standards for a certified shellfish land.

3. Needs and benefits:

Regulations that designate shellfish lands as certified are needed to ensure that State shellfish resources located within lands that meet the sanitary criteria for a certified area are available for harvest. Shellfish are a valuable State resource and, where possible, should be available for commercial and recreational harvest. The classification of previously uncertified shellfish lands as certified may provide additional sources of income for commercial shellfish diggers by increasing the amount of areas available for harvest. Recreational harvesters also benefit by having increased harvest opportunities and the ability to make use of a natural resource readily available to the public. The direct harvest of shellfish for use as food is allowed form certified shellfish lands only.

Regulations that designate shellfish lands as uncertified are needed to prevent the harvest and consumption of shellfish from lands that do not meet the sanitary criteria for a certified area. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses. These pathogens may cause the transmission of infectious disease to the shellfish consumer.

These regulations also protect the shellfish industry. Seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By prohibiting the harvest of shellfish from lands that fail to meet the sanitary criteria, these regulations can ensure that only wholesome shellfish are allowed to be sold to the shellfish consumer.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non-capital expenses, in order to comply with these proposed regulations.

The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are classified as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of August 1, 2010, the department had issued 1,868 New York State shellfish digger's permits. However, the actual number of those individuals who harvest shellfish commercially full-time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish diggers permits for that type of recreational harvest is unknown. The department's records do not differentiate between full-time and part-time commercial or recreational shellfish harvesters.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. When a particular area is classified as uncertified (closed to shellfish harvesting), harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to classify areas as certified or uncertified are not dependent on the shellfish resources in a particular area. They are based solely on the results of water quality analyses, sanitary surveys, the need to protect public health and statutory requirements.

There is no cost to the department. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No new paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any State or Federal requirement.

8. Alternatives:

There are no significant alternatives. ECL section 13-0307 stipulates that when the department has determined that a shellfish land meets the sanitary criteria for certified shellfish lands, the department must designate the land as certified and open to shellfish harvesting. All other shellfish lands must be designated as uncertified and closed to shellfish harvesting. These actions are necessary to protect public health.

9. Federal standards:

There are no Federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. NSSP is a cooperative program consisting of the Federal government, states and the shellfish industry. Participation in the NSSP is voluntary; each state adopts its own regulations to implement a shellfish sanitation program consistent with the NSSP. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non-conformity with NSSP guidelines can result in sanctions being taken by FDA, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non-conforming state's shellfish products from interstate commerce.

10. Compliance schedule:

Compliance with any new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties. Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health; harvesters must observe any new closure lines. Shellfish harvesters are notified of changes in the classification of shellfish lands by mail either prior to, or concurrent with, the adoption of new regulations. Therefore, immediate compliance can be readily achieved.

Consolidated Regulatory Flexibility Analysis

This Consolidated Regulatory Flexibility Analysis for Small Businesses and Local Governments is part of a rule making that will classify State shellfish lands as certified (open to shellfish harvesting) or uncertified (closed to shellfish harvesting) based on standards specified in 6 NYCRR Part 47.

Effect on small business and local government:

As of December 31, 2010, there were 1,868 licensed shellfish diggers in New York State. The number of permits issued for areas in the State is as follows: New York City, 37; Westchester, 5; Town of Hempstead, 111; Town of Oyster Bay, 125; Town of North Hempstead, 6; Town of Babylon, 72; Town of Islip, 130; Town of Brookhaven, 347; Town of Southampton, 182; Town of East Hampton, 259; Town of Shelter Island, 51; Town of Southold, 268; Town of Riverhead, 66; Town of Smithtown, 29; Town of Huntington, 164; other, 5.

Whenever shellfish lands are classified as uncertified (closed to shellfish harvesting), there may be some loss of income for shellfish diggers who harvest shellfish from the lands to be closed. This loss is determined by the acreage to be closed, the amount of time the shellfish land is closed (whether year-round or only closed seasonally), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource present in the particular area.

When uncertified shellfish lands are found to meet the sanitary criteria for a certified shellfish land and are then classified as certified (open to shellfish harvesting), there is also a potential to affect the income of commercial shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in shellfish harvest and in income. The effect of the re-opening a shellfish land on the income of a harvester is determined by the shellfish species present in the area, the area's productivity, and the market value of the shellfish resource present in the area.

Local governments on Long Island exercise management authority for shellfish lands within their boundaries and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These are the Towns of Hempstead, North Hempstead and Oyster Bay in Nassau County and the Towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above the level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

Minimizing adverse impact:

The classification of shellfish lands as uncertified may have an adverse impact on the harvest opportunities available to commercial shellfish diggers. All harvesters in the towns affected by proposed closures will be notified by mail of the changes in classification of local shellfish lands, prior to the date the changes go into effect. To minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for a conditional shellfish harvest program or a shellfish transplant project. These programs allow shellfish harvesters to utilize shellfish resources present in areas uncertified for the harvest of shellfish, under the direction of the Department of Environmental Conservation (department). Shellfish harvesters will also be able to shift harvesting effort to nearby certified shellfish lands. Lastly, seasonal closures will be implemented whenever possible; harvest will be closed only those times during the year when an area fails to meet the sanitary criteria for a certified land. There should be no significant adverse impact on local governments from most changes in the classification of shellfish lands.

Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the department, is comprised of representatives of local baymen's associations and local town officials. Through their representatives, shellfish harvesters can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, State legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rulemaking prior to filing with the Department of State.

Economic and technological feasibility:

As specified above, there are no reporting, recordkeeping or affirmative acts that small businesses or local governments must undertake to comply with the proposed rules which result in the reclassification of shellfish harvesting areas as certified or uncertified. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for small businesses and local governments to comply with rules of this type.

Consolidated Rural Area Flexibility Analysis

This Consolidated Rural Area Flexibility Analysis statement is part of a rule making that will classify State shellfish lands as certified (open to shellfish harvesting) or uncertified (closed to shellfish harvesting) based on standards specified in 6 NYCRR Part 47. This statement is attached to explain why a Rural Area Flexibility Analysis is not required for this type of rule.

Amendments to Part 41 of 6 NYCRR Sanitary Conditions of Shellfish Lands will not impose an adverse impact on rural areas. Only the State's marine district will be directly affected by regulatory amendments to open or close shellfish lands. The Department of Environmental Conservation (department) has determined that there are no rural areas within the marine district, and no shellfish lands within the marine district are located adjacent to any rural areas of the State. The proposed regulations will not impose reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by amendments to Part 41 of 6 NYCRR, the department has determined that a Rural Area Flexibility Analysis is not required.

Consolidated Job Impact Statement

This Consolidated Job Impact Statement is part of a rule making that will classify State shellfish lands as certified (open to shellfish harvesting) or uncertified (closed to shellfish harvesting) based on standards specified in 6 NYCRR Part 47.

Nature of impact:

The proposed rule will amend 6 NYCRR Part 41 and classify shellfish lands as certified or uncertified for the harvest of shellfish based on sanitary criteria specified in 6 NYCRR Part 47.

When a shellfish land is classified as certified (open to shellfish harvesting), there may be increased job opportunities for shellfish harvesters due to the increased area available for harvest, a positive impact on jobs. In the event an area is classified as uncertified (closed to shellfish harvesting) there may be a decrease in harvesting opportunities due to the decrease in area available for harvest and negative impacts on jobs for shellfish harvesters. The extent of the impact on shellfish harvesters will be determined by the amount of area opened or closed, the amount of time during the year the area is closed (year-round or seasonally), the area's productivity, and the market value of the shellfish present in the area. In

general, any negative impacts are small because the Department of Environmental Conservation (department) actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the State. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect fishing effort to adjacent certified areas.

The department does not have specific information regarding the specific locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers.

Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments to 6 NYCRR Part 41. Most harvesters are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surfclams or ocean quahogs in the Atlantic Ocean.

As of August, 2010, there were 1,868 licensed shellfish diggers in New York State. The number of permits issued for areas in the State is as follows: New York City, 37; Westchester, 5; Town of Hempstead, 111; Town of Oyster Bay, 125; Town of North Hempstead, 6; Town of Babylon, 72; Town of Islip, 130; Town of Brookhaven, 347; Town of Southampton, 182; Town of East Hampton, 259; Town of Shelter Island, 51; Town of Southold, 268; Town of Riverhead, 66; Town of Smithtown, 29; Town of Huntington, 164; other, 5. It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainder is seasonal or part-time harvesters.

Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located in or adjacent to Nassau County, Suffolk County, and a portion of the Atlantic Ocean south and east of New York City. There is no potential adverse impact to jobs in any other areas of New York State.

Minimizing adverse impact:

There are no adverse impacts when areas are classified as certified.

Shellfish lands are classified as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. As resources allow, the department may operate conditional harvesting programs at the request of, and in cooperation with, local governments. Conditional harvesting programs allow harvest in uncertified areas under prescribed conditions, determined by studies identifying when the area meets the sanitary criteria. Additionally, the department operates transplant harvesting programs which allow removal of shellfish from uncertified areas for relay and cleansing in certified areas, thereby recovering a valuable resource. Conditional and transplant programs increase harvesting opportunities by making the resource in uncertified areas available to harvest under controlled conditions.

Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-employed. Rule makings to amend the classification of shellfish lands may have an impact on self-employment opportunities. The impact is dependent on the amount of area affected by the amendment, the productivity of the affected area, the type of shellfish present in the area and the availability of adjacent lands for shellfish harvesting.

Purpose: To authorize Willsboro Bay Water Company to charge rates for annual and seasonal customers.

Substance of final rule: The Commission, on February 17, 2011 adopted an order authorizing Willsboro Bay Water Company (company) to charge a rate of \$250 per residence for all seasonal and annual customers and directing the company to file Leaf 12, Revision 1 to its electronic tariff schedule to go into effect on March 1, 2011, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-W-0217SA1)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-37-10-00010-A

Filing Date: 2011-02-22

Effective Date: 2011-02-22

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

Action taken: On 2/17/11, the PSC adopted an order approving, with modifications, the Village of Richmondville’s amendments to P.S.C. No. 1—Electricity, effective January 1, 2011 and postponed to March 1, 2011.

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

Subject: Minor Rate Filing.

Purpose: To approve the Village of Richmondville’s amendments to P.S.C. No. 1—Electricity.

Substance of final rule: The Commission, on February 17, 2011 adopted an order approving, with modifications, the Village of Richmondville’s amendments to P.S.C. No. 1—Electricity, effective January 1, 2011 and postponed to March 1, 2011, for a total revenue increase of \$61,485 or 5.3%, subject to the terms and condition set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0418SA1)

NOTICE OF ADOPTION

Lightened Regulation in Conjunction with the Construction and Operation of a Gas Plant

I.D. No. PSC-41-10-00012-A

Filing Date: 2011-02-22

Effective Date: 2011-02-22

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

Action taken: On 2/17/11, the PSC adopted an order approving DMP New York Inc. and Laser Northeast Gathering Company, LLC’s request for a lightened regulation in conjunction with the construction and operation of the gas plant in the Town of Windsor.

Statutory authority: Public Service Law, section 4(1)

Subject: Lightened regulation in conjunction with the construction and operation of a gas plant.

Public Service Commission

NOTICE OF ADOPTION

Water Rates, Charges, Rules and Regulations

I.D. No. PSC-22-10-00009-A

Filing Date: 2011-02-18

Effective Date: 2011-02-18

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

Action taken: On 2/17/11, the PSC adopted an order authorizing Willsboro Bay Water Company to charge a rate of \$250 per residence for all seasonal and annual customers.

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

Subject: Water rates, charges, rules and regulations.

Purpose: To approve a lightened regulation in conjunction with the construction and operation of a gas plant.

Substance of final rule: The Commission, on February 17, 2011, adopted an order approving DMP New York Inc. and Laser Northeast Gathering Company, LLC's (Certificate Holders) request for a lightened regulation in conjunction with the construction and operation of the gas plant in the Town of Windsor, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-G-0462SA1)

NOTICE OF ADOPTION

Partial Waiver of the Individual Residential Living Unit Metering Requirements in Opinion 76-17

I.D. No. PSC-45-10-00013-A

Filing Date: 2011-02-18

Effective Date: 2011-02-18

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

Action taken: On 2/17/11, the PSC adopted an order approving the Petition of Concern for Independent Living, Inc. for a waiver of the Individual Residential Living Unit Metering Requirements in Opinion 76-17.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Partial waiver of the Individual Residential Living Unit Metering Requirements in Opinion 76-17.

Purpose: To approve a partial waiver of the Individual Residential Living Unit Metering Requirements in Opinion 76-17.

Substance of final rule: The Commission, on February 17, 2011 adopted an order approving the Petition of Concern for Independent Living, Inc. for a waiver of the Individual Residential Living Unit Metering Requirements in Opinion 76-17 to Allow Master Metering at 801-815 East New York Avenue, Brooklyn, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0495SA1)

NOTICE OF ADOPTION

Electronic Filing, Distribution and Issuance of Documents

I.D. No. PSC-50-10-00007-A

Filing No. 212

Filing Date: 2011-02-22

Effective Date: 2011-02-22

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

Action taken: Amendment of Parts 1-6, 8, 85, 105, 153, 215, 216, 227, 293, 350, 351, 420, 442, 480, 481, 500, 540, 543, 545, 585, 586, 604, 641, 663, 685, 686, 720, 730 and 897 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4(1), 5(2), 7(1), 16(1) and 20(1)

Subject: Electronic filing, distribution and issuance of documents.

Purpose: To approve the incorporation of references to electronic filing, distribution and issuance of documents.

Substance of final rule: The Commission, on February 17, 2011 adopted an order approving a Memorandum and Resolution adopting amendments to 16 NYCRR Chapters I, II, III, IV, V, VI, VII and VIII, for electronic filing and service of documents as the preferred method of service, while allowing hard copy filing in certain instances, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

A NOPR was published in the *State Register* on December 15, 2010 in accordance with State Administrative Procedure Act (SAPA) § 201(1). The comment period expired on January 31, 2011. We received comments from Assemblywoman Roann M. Destito, Chair, Assembly Standing Committee on Governmental Operations, New York State Electric and Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RGE") (Jointly), tw telecom of new york, l.p. ("Time Warner"), Time Warner Cable, Verizon New York Inc. (Verizon), and Consolidated Edison Company of New York, Inc. ("Con Edison") and Orange and Rockland Utilities, Inc. ("O&R") (jointly). In response to a notice concerning an earlier version of the proposed rule posted on our Web site in July 2010, we received joint comments from The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid (collectively "National Grid"). The commenter's generally support the purpose and intent of the proposed rule change. Specific comments are addressed below.

NYSEG and RGE, Time Warner and Time Warner Cable submitted statements of support for the proposed updating of our rules to allow electronic filing and service. Their comments site conservation of resources, efficiency and flexibility, as well as reduced costs and environmental benefits that will result from the rule.

Verizon supports the proposed rule changes and our objectives in implementing them. Verizon does, however, ask that we clarify that Section 1.1(m) relating to web posting as a means of electronic service is proper only for service of Commission documents. It contends that a party should not be obligated to go to all other parties' Web sites to secure those parties' pleadings since significant delays in obtaining such documents might well result if the Web sites were experiencing technical problems. Verizon's point has merit, but we believe that the best way to handle the issue is through filing and service guidelines on our Web site.

Con Edison and O&R support our efforts to revise the rules to provide for electronic filing and service of documents, but submitted comments intended to clarify the rule changes. Con Edison and O&R wish us to add to our rules information that is currently posted prominently on our Web site as filing guidance for the public. Much of the requested information is captured on our Web site, or is in process of being added to our Web site by work within our agency. Specifically, Con Edison and O&R ask us to include in the definition section new terms "Active Parties List" and "Service List." These terms are noted on our Web site. In addition, we are in the design and implementation process of adding a new section to our Web site that will explain, and allow selection of, options for participating and monitoring our proceedings. The new Web page will explain the participation options, including Active Parties and Service List, as well as how to monitor proceedings through our Web postings. To participate in a proceeding as an Active Party or by being on the Service List, the person will be asked to submit contact information. Inclusion of contact information was another suggestion of Con Edison and O&R for addition to our rules. Since this information will be readily available to the public through our Web site, we do not see the need to add this language.

Con Edison and O&R suggest that the rules establish a time of day deadline for filing and more explicit (traditional) statements clarifying when a filing is "sent" and "received." Also, Con Edison and O&R suggest that a generic email inbox be instituted at each utility for such service for use by the Secretary in notifying the utility about new proceedings. This process, they allege, avoids potential service of documents on the utility through an individual who may not be available to receive such service. Consistent with statutory requirements, the proposed rule establishes the method, mode and timing of filings and the Guidelines for Filing with the Secretary, prominently displayed on our Web site, will clarify filing requirements and will be changed as technology permits and as more efficient means of service evolve. As to the suggestion of an email

inbox for each utility, this suggestion is one worth pursuing and the Secretary will address this in the Guidelines for Filing with the Secretary.

Con Edison and O&R also urge us to change the use of the word "receive" to "service" in Section 6-1.3(g). The use of the word "receive" is consistent with the Public Officers Law, therefore, we will retain this word.

Finally, Con Edison and O&R suggest changes to sections 216(a), 351.1, 481.1, 586.1, 686.1 and 641.7 that are intended to correct the grammar and redundant language of existing, similar rule provisions and to delete misplaced provisions from the section (specifically, Section 641.7). These are appropriate and the minor corrections will be made.

In commenting on an earlier version of the rule, National Grid agreed that the contemplated changes are beneficial because they reflect better the current and future electronic setting and protect the environment by lowering consumption of paper, lowering the use of electricity and decreasing our carbon footprint. In addition, National Grid states, the rules promote administrative efficiency, saving the time and expense of printing multiple copies of the same document to serve on various parties, all of which reduce costs and result in savings to ratepayers. National Grid suggested some clarifying language and an extension of one day for the submission of reply comments submitted electronically, especially when a party is served electronically on a Friday or over the weekend. The request for an additional day for submission of comments is one that is addressed routinely by the Secretary by request of the parties in accord with our rules at Section 3.3. Generally, requests for extension are granted unless contrary to the orderly conduct of a proceeding.

Assemblywoman Roann M. Destito's comments address provisions in Section 6-1.2 and 6-1.3 regarding fees for preparing and reproducing records and the standard applicable in showing that a record contains confidential commercial information. She also expressed concern about our compliance with the requirements of SAPA in proposing the rule. Assemblywoman Destito views our proposed provision in Section 6-1.2 as conflicting with provisions of the Freedom of Information Law (FOIL), Public Officers Law Article 6, since the rule does not set forth specific fees for reproduction of records. The agency fees for reproduction of records are posted on our Web site and are, as they must be, in accord with the requirements of FOIL and the State Finance Law. Moreover, as our records are now entered into our document and matter management system in electronic form, requests for records increasingly are answered by a return email attaching the requested record. Such a process does not incur cost to the agency, thus no cost is passed onto the public. Assemblywoman Destito claims that Section 6-1.3(b)(2) is inconsistent with FOIL; however, that provision reflects the decision of the New York Court of Appeals in *Encore College Bookstores, Inc. v. Auxiliary Services Corporation of the State University of New York at Farmingdale*, 87 N.Y.2d 410 (1995).

The Assemblywoman also expresses concern that we did not follow requirements of SAPA. Specifically, she alleges that we failed to submit all required impact statements affecting small business, local governments and rural areas. Our submitted Regulatory Impact Statement was a generic one that incorporated impacts on small business, local governments, rural areas and jobs. In addition, each impact statement was submitted individually with a reference to consult the Regulatory Impact Statement. In view of the nature of the rulemaking, this was considered efficient and appropriate by our agency and was submitted in consultation with the Governor's Office of Regulatory Reform and the Department of State. As to the cost impact on small business and local government, concerning which the Assemblywoman faults us for not having conducted a study, we addressed this aspect by reference to the cost study of the General Accounting Office. In addition, presumptively, reduction of paper usage and postage will result in savings for small businesses and local governments. If a small business or local government cannot comply with the electronic filing requirements, they would continue to submit paper filings as is the current practice and no additional costs would be imposed.

Having carefully considered the comments received, we will adopt the regulations with minor clarifications, removal of redundant language and correction of typographical or grammatical errors found in Sections 216.1(a), 351.1, 481.1, 586.1, 686.1 and 641.7. (09-M-0544SA1)

NOTICE OF ADOPTION

Waiver of Tariff Rules 8.6 and 47, Filed on Behalf of Fredonia Place Assisted Living Facility

I.D. No. PSC-50-10-00008-A

Filing Date: 2011-02-18

Effective Date: 2011-02-18

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

Action taken: On 2/17/11, the PSC adopted an order granting Niagara Mohawk Power Corporation d/b/a National Grid's request for waiver of its tariff rules 8.6 and 47, filed on behalf of Fredonia Place Assisted Living Facility.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Waiver of tariff rules 8.6 and 47, filed on behalf of Fredonia Place Assisted Living Facility.

Purpose: To grant a waiver of tariff rules 8.6 and 47, filed on behalf of Fredonia Place Assisted Living Facility.

Substance of final rule: The Commission, on February 17, 2011 adopted an order granting Niagara Mohawk Power Corporation d/b/a National Grid's request for waiver of its tariff rules 8.6 and 47, filed on behalf of Fredonia Place Assisted Living Facility, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0564SA1)

NOTICE OF ADOPTION

Meter Reading - No Access Charge

I.D. No. PSC-51-10-00019-A

Filing Date: 2011-02-17

Effective Date: 2011-02-17

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

Action taken: On 2/17/11, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to P.S.C. No. 2 — Electricity, effective March 1, 2011 to specify the amount of its no access charge for non-residential meter reading.

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

Subject: Meter reading - No Access Charge.

Purpose: To approve Orange and Rockland Utilities, Inc.'s amendments to P.S.C. No. 2 — Electricity, effective March 1, 2011.

Substance of final rule: The Commission, on February 17, 2011 adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to P.S.C. No. 2 — Electricity, effective March 1, 2011 to specify the amount of its no access charge for non-residential meter reading.

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

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

Assessment of Public Comment

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

(10-E-0605SA1)

NOTICE OF ADOPTION

Installed Reserve Margin for the NY Control Area for the Capability Year Beginning May 1, 2011 to April 30, 2012

I.D. No. PSC-52-10-00007-A

Filing Date: 2011-02-22

Effective Date: 2011-02-22

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

Action taken: On 2/17/11, the PSC adopted the Installed Reserve Margin

of 15.5% for the New York Control Area for the Capability Year beginning May 1, 2011 and ending April 30, 2012.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: Installed Reserve Margin for the NY Control Area for the Capability Year beginning May 1, 2011 to April 30, 2012.

Purpose: To adopt the Installed Reserve Margin for the NY Control Area for the Capability Year beginning May 1, 2011 to April 30, 2012.

Substance of final rule: The Commission, on February 17, 2011, adopted the Installed Reserve Margin of 15.5% for the New York Control Area for the Capability Year beginning May 1, 2011, and ending April 30, 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-0088SA5)

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

Establish the Surcharge to Repay the Loan for Up to an Amount of \$3,000,000

I.D. No. PSC-10-11-00004-P

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

Proposed Action: The Commission is considering a petition filed by West Valley Crystal Water Company, Inc. for approval of a loan with the Drinking Water State Revolving Fund (DWSRF) to complete replacement of the current system.

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

Subject: Establish the surcharge to repay the loan for up to an amount of \$3,000,000.

Purpose: To allow West Valley Crystal Water Company, Inc. to enter into a loan agreement and to charge customers a surcharge.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by West Valley Crystal Water Company, Inc. for approval of a loan with the Drinking Water State Revolving Fund (DWSRF) to replace the current system. West Valley Crystal Water Company, Inc. is also proposing a surcharge as high as \$570 per customer per year for 30 years to repay a loan of up to \$3,000,000. Action on the final loan amount will await a determination by the Environmental Facilities Corporation as to whether a portion of the rebuilding expense will be covered by a grant. The Commission shall consider all other related matters.

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: Jaelyn A. Brillling, 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.

(11-W-0059SP1)

**Department of Taxation and
Finance**

**EMERGENCY
RULE MAKING**

Assistance Program to Encourage Local Governments to Reassess on a Cyclical Basis

I.D. No. TAF-02-11-00011-E

Filing No. 181

Filing Date: 2011-02-16

Effective Date: 2011-02-16

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

Action taken: Addition of Subpart 201-3 to Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 201(1), 202(1)(k) and 1573(1)(a); and L. 2010, ch 56, parts W and Y

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

Specific reasons underlying the finding of necessity: The amendments to Real Property Tax Law section 1573 enacted by Chapter 56 took effect immediately and apply to the 2010 assessment rolls for municipalities with a taxable status date on or after March 1, 2010. These rolls are final and the assistance payments for the 2010 rolls must be made before the end of the current fiscal year. An emergency rule was needed to implement the program and insure that the payments could be made. An emergency rule was adopted on October 6, 2010 and readopted and proposed as a permanent rule on December 28, 2010. A second re-adoption of the emergency rule is needed in connection with the continued administration of the program until the rule can be adopted as a permanent rule.

Subject: Assistance Program to encourage local governments to reassess on a cyclical basis.

Purpose: To provide rules to implement the statutory authorized assistance to local governments to encourage a cycle of reassessments.

Text of emergency rule: Section 1. A new subpart 201-3 is added to such regulations to read as follows:

Subpart 201-3 ASSESSMENT ROLLS WITH TAXABLE STATUS DATES OCCURRING ON OR AFTER MARCH 1, 2010

Section 201-3.1 Applicability. The provisions of this Subpart shall pertain to applicants for state assistance for purposes of assessment rolls with taxable status dates occurring on or after March 1, 2010, pursuant to section 1573(1) and (2) of the Real Property Tax Law, as amended by Chapter 56 of the Laws of 2010, Part Y.

Section 201-3.2 Plan to be filed for state assistance.

(a) A written plan containing the reappraisal schedule and the reinspection schedule for the applicant must be received no later than 120 days prior to the filing date of the tentative assessment roll implementing the first reappraisal in that plan. The plan must be signed by the chief executive officer of the assessing unit and the assessor. For plans involving a coordinated assessment program, the assessor may file a single plan providing that it contains the signatures of the chief executive officer of each member municipality.

(b) In accordance with an approved plan, state assistance shall be payable in an amount not to exceed five dollars per parcel for an assessment roll upon which a reassessment is implemented, and not to exceed two dollars per parcel for an assessment roll upon which a reassessment is not implemented. The amount payable on a per parcel basis shall exclude parcels which are wholly exempt or assessed by the state.

Section 201-3.3 State standards for quality assessment administration.

The standards for quality assessment administration are:

(a) In reassessment years.

- (1) The reassessment must:
 - (i) be conducted pursuant to a plan for cyclical reassessment of not less than four years,
 - (ii) provide for the reappraisal of all parcels in the first and last year of the plan,
 - (iii) provide for a reappraisal of all parcels at least once every four years; and
 - (iv) collect inventory data at least once every six years.

(2) Reappraisal means developing and reviewing a new determination of market value for each parcel, based upon current data, by the ap-

appropriate use of one or more of the three accepted approaches to value (cost, market, or income).

(3) Review of the appraisal values consists of a visit to each property, and includes a review of the recorded inventory, examination and analysis of the appraisal estimates, and determination and documentation of a final appraised value. An office review may be substituted if appraisers have collected data or reinspected the property characteristics data as part of the reappraisal, or if the review utilizes oblique aerial, orthophoto, or street-level photography that was taken within three years of the reappraisal. In special assessing units an office review may be substituted if the property characteristics data has been systematically collected from other governmental sources.

(b) Annually. The assessor or the chairman of the board of assessors has filed a signed statement verifying that the following actions were taken in accordance with the statute or rule:

(1) Parcels on the data file have complete and accurate inventories as of taxable status date,

(2) Pertinent sales data on the data file is complete and accurate,

(3) Parcels on the assessment roll filed pursuant to Article 15-C of the Real Property Tax Law have valid property tax exemption codes,

(4) The final assessment roll meets the requirements of Part 190 of this Title,

(5) The assessor's report meets the requirements of Part 193 of this Title and is reconciled by the Office of Real Property Tax Services,

(6) Data files required pursuant to Article 15-C of the Real Property Tax Law and Part 190 of this Title are filed in accordance with Section 1590 of the Real Property Tax Law,

(7) Sales corrections required by Part 191 of this Title are received in an Office of Real Property Tax Services approved computerized format. Transactions are received on a timely basis,

(8) Notice of assessment inventory was published as required by section 501 of the Real Property Tax Law,

(9) Notice of tentative assessment roll was published as required by section 506 of the Real Property Tax Law,

(10) Assessment change notices were sent as required by section 510 of the Real Property Tax Law,

(11) Assessment disclosure notices as required by section 511 of the Real Property Tax Law are sent and required meetings have been held,

(12) The tentative assessment roll was posted on the Internet as required by section 1590 of the Real Property Tax Law,

(13) Notice of final assessment roll was published as required by section 516 of the Real Property Tax Law,

(14) Renewal forms for the senior citizens' exemptions were sent as required by section 467 of the Real Property Tax Law,

(15) Notices of denial for the STAR exemptions were sent as required by section 425 of the Real Property Tax Law,

(16) The uniform percentage appears on the tentative assessment roll or in instances where a tentative assessment roll is not printed, a sign that contains the uniform percentage is posted in a conspicuous location,

(17) In a reassessment year, all parcels were reappraised and reviewed in accordance with the Assessing Unit's plan, and

(18) The Assessing Unit has a method to collect or reinspect all parcels at least once every six years in accordance with section 201-3.3(a) of this Subchapter.

Section 201-3.4 Application for state assistance.

(a) A written application for state assistance must be filed with the Office of Real Property Tax Services annually. Applications must be filed no later than 90 days after the filing of the final assessment roll for which state assistance is applied.

(b) A written application for state assistance must be signed by the chief executive officer of the assessing unit and the assessor. For purposes of this section assessor means the assessor or the chairman of the board of assessors or the county director where the county is assessing on behalf of a city or town assessing unit or the assessor of a consolidated assessing unit or coordinated assessment program or the Chairman of the Board of Directors of a consolidated assessing unit.

(c) For applications involving a coordinated assessment program, the assessor may file a single application, providing that it contains the signatures of the Chief Executive Officer of each member municipality.

Section 201-3.5 Review of Application.

(a) The Office of Real Property Tax Services shall adopt procedures that contain acceptable performance indicators of substantial compliance with standards contained in section 201-3.2 of this Subpart, including ranges of acceptable performance determined in accordance with nationally recognized standards. Office of Real Property Tax Services staff will review applications in accordance with such procedures.

(b) The determination made pursuant to the procedures for the applicable full value measurement as provided in 9 NYCRR 186-2.15 shall be conclusive as to whether a reassessment occurred and a uniform percentage of value was attained.

(c) An applicant must provide assessment roll, inventory, sales files and the corresponding libraries in an Office of Real Property Tax Services approved computerized format. The files must be supplied with the data files submitted pursuant to Article 15-C of the Real Property Tax Law.

(d) In determining compliance, facts and conditions are assumed as of the final roll date for the assessment roll for which state assistance is requested, unless otherwise stated.

(e) Upon approval, Office of Real Property Tax Services staff shall certify the amount of state assistance payable pursuant to this Part.

(f) For computing the amount of state assistance payable pursuant to this Part, the number of parcels are obtained from the data files submitted pursuant to Article 15-C of the Real Property Tax Law.

(g) Upon disapproval, Office of Real Property Tax Services staff will notify the applicant of the disapproval and the reason for the disapproval. The assessing unit shall have 30 days from the date of the mailing of the notification to appeal this denial to the Deputy Commissioner.

(h) Applications for state assistance made pursuant to section 1573 of the Real Property Tax Law are subject to audit. A state-wide verification process with detailed audits of randomly selected individual assessing units will be conducted annually before payments are certified.

(i) Where an applicant receives payment as a result of a false or erroneous statement on the application, or any other act of omission or commission on the part of the applicant, such that the recipient would otherwise have been considered ineligible to receive such payment, the recipient shall be required to refund the improper payment to the state.

Section 201-3.6. Transition provisions for 2010 assessment rolls.

(a) For purposes of assessment rolls completed in 2010, the applicant will be deemed to meet the reappraisal requirement of section 201-3.2 of this Subpart if a reassessment was implemented pursuant to a six-year plan filed in compliance with Subpart 201-2 of this Part.

(b) Notwithstanding the provisions of section 201-3.2(a) and 201-3.4(a) of this Subpart, for purposes of assessment rolls completed in 2010, a plan and an application may be filed no later than 60 days after the effective date of these rules.

(c) For applications involving a coordinated assessment program, a participant municipality shall be eligible for state assistance if it meets the state standards for quality assessment administration as outlined in 201-2.2 of this subpart, notwithstanding the failure of another participant municipality to qualify.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. TAF-02-11-00011-EP, Issue of January 12, 2011. The emergency rule will expire April 16, 2011.

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

Regulatory Impact Statement

1. Statutory Authority: Real Property Tax Law, sections 201(1), 202(1)(k), and 1573(1)(a). Section 201(1) of Real Property Tax Law, assumption of responsibilities by the Department of Taxation and Finance, provides that certain functions, powers and duties of the State Board of Real Property Services are considered functions, powers and duties of the Commissioner of Taxation and Finance. Section 202(1)(k) of the Real Property Tax Law authorizes the Commissioner of Taxation and Finance in relation to real property tax administration to adopt such rules not inconsistent with law, as may be necessary for the exercise of his or her powers and the performance of his or her duties. Section 1573 of the Real Property Tax Law provides that the assessing units must satisfy standards of quality assessment administration to qualify for assistance, as established pursuant to regulations promulgated by the commissioner. Part W of Chapter 56 of the Laws of 2010 added section 201(1) and amended section 202(1) and Part Y of Chapter 56 of the Laws of 2010 amended section 1573.

2. Legislative Objectives: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part Y of Chapter 56 of the Laws of 2010 to restructure the State's reassessment assistance program to better encourage local governments to maintain updated property assessments on a regular cycle within available funding levels.

3. Needs and Benefits: Under the previous reassessment assistance program, a local assessing unit could receive assistance for conducting a full value reassessment without making any commitment to reassess again. Assessment equity can quickly deteriorate if not actively maintained. Recent amendments to section 1573 of the Real Property Tax Law have changed the reassessment assistance program so that to receive assistance, an assessing unit would have to adopt a multi-year plan of at least four years that calls for a full value reassessment to be completed in the first

and last years of the plan, thereby establishing a reassessment cycle of the local government's own choosing. The amount payable on a per parcel basis shall exclude parcels which are wholly exempt or assessed by the state. If an assessing unit withdraws from an approved plan, it will only be responsible for remission of per parcel payments for non-revaluation years.

Anticipated benefits include a reduced effort to maintain equity if reassessments are conducted on a cyclical basis rather than having a long gap ensue, improved clarity for taxpayers if their assessment closely mirrors the actual value of their property, and less drastic shifts in assessed values if reassessments are conducted once every four years rather than at longer intervals. The public can better understand and withstand small changes in value every few years rather than annual changes or huge changes that would likely occur if assessed values are left unchanged for long intervals.

The purpose of these amendments is to make necessary regulatory changes related to the implementation of these provisions and to assure that the funds for the assistance program are effectively managed. This rule provides: plan requirements, the state standards for quality assessment administration that must be satisfied by the assessing unit to qualify for state assistance, requirements for applications for state assistance, and transitional rules for 2010 assessment rolls.

4. Costs:

(a) Costs to regulated persons: None - there are no regulated persons; the regulated parties are the local governments.

(b) Costs to the State and its local governments including this agency: Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance.

Chapter 55 of the Laws of 2010 contained an appropriation of \$6,900,000. This level of funding reflects a \$1,350,000 reduction from the 2009-10 budget. The effect will be limited in 2010 as there are provisions in the rules to provide assistance for revaluations conducted in 2010 according to the provisions of the previous program. In future years some local governments which had received assistance of \$5 per parcel for annual reassessments will only receive assistance of \$2 per parcel for the years between reassessments.

(c) Information and methodology: The appropriation figures were determined by the Division of Budget and Chapter 55 of the Laws of 2010.

5. Local Government Mandates: None. Participation in this assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance.

6. Paperwork: If the local government elects to participate in this assistance program, a written plan and application are prescribed by the rule along with statutorily required documentation.

7. Duplication: There are no conflicting state or federal requirements.

8. Alternatives: There were no significant alternatives to consider. The special transitional provisions of the rule were needed to implement this new program because this law became effective after most municipalities filed their tentative assessment rolls and would have otherwise failed to qualify for the program.

This newly established program of Aid for Cyclical Reassessments replaces both the Annual and Triennial Aid programs. Outreach was conducted with the Real Property Tax Administration Committee (RPTAC) and their feedback was considered. In addition to ORPTS executive staff, RPTAC is comprised of Assessors and County Directors of Real Property Tax Services who represent a cross section of large and small assessing units from both the upstate and downstate areas. Most of the comments that were received were technical questions about how the program would work. More comments may be forthcoming as the program is implemented and as local governments prepare their annual assessment rolls. As such, it is too soon to fully evaluate the effectiveness of the program.

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

10. Compliance Schedule: The compliance schedule for a local government that elects to participate in the assistance program is specifically set forth in the rule. A written plan must be received no later than 120 days prior to the filing date of the tentative assessment roll implementing the first reappraisal in that plan.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the rule because the rule will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small business or local governments. Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is

purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The rules are the administrative structure to implement the statutorily authorized assistance program.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The rules are the administrative structure to implement the statutorily authorized assistance program.

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 impact on jobs and employment opportunities. Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The rules are the administrative structure to implement the statutorily authorized assistance program.

Assessment of Public Comment

Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The rule is the administrative structure to implement the statutorily authorized assistance program.

Written comments were received regarding proposal TAF-02-11-00011-EP from Jim Tyger, the Assessor for the Town of Washington in Dutchess County, on behalf of the Dutchess County Assessor's Association. The association consists of assessors from the municipalities within the County.

Additional comments were received from Brad Brennan, CRA, SCAA, assessor for the towns of Salina and Cicero in Onondaga County.

Mr. Tyger submitted three main comments and four suggestions for changes.

Comments:

1. The work needs to be done on an annual basis so that we can incrementally improve the assessment with a level workload.

2. Managing a budget where the budget changes from two to five dollars per parcel does not make sense.

3. The process implemented by the assessors in the annual program seems to make much more sense.

Suggestions:

1. Annualize the aid so that it is consistent each year (example: 5, 4, 3 dollars/parcel each year).

2. Allow physical inventory to be performed over the current 6-year plan (sales, new construction and outliers annually).

3. Continue to allow the use of RPS or similar product as the tool for appraising properties.

4. Allow appraisals to be done over the entire cycle – 5 years – maybe 6 years.

All three comments and all but the third suggestion are directed at amendments to section 1573 of the Real Property Tax Law and not the rule. Section 1573(1)(c) establishes the intervals for revaluation and establishes a 6-year interval for inventory collection which already matches the second suggestion. Section 1573(2)(a) outlines the amount of assistance payable that is dependent on whether a revaluation is implemented in a specific year. The suggestion for a fixed annual dollar amount is therefore in conflict with statute. Section 1573(1)(c) conditions the assistance upon a determination by the Commissioner that, among other things, "the revaluation was implemented pursuant to a plan, approved pursuant to the rules of the commissioner, of not less than four years that provides, at a minimum, for a revaluation in the first and last year of such plan, but in no case less than once every four years, and for inventory data to be collected at least once every six years."

Section 1573(2)(a) provides:

"State assistance pursuant to subdivision one of this section shall be payable in an amount not to exceed five dollars per parcel for an assessment roll upon which a revaluation is implemented in accordance with an approved plan, and not to exceed two dollars per parcel for any assessment roll upon which a revaluation is not implemented in accordance with an approved plan. The amount payable on a per parcel basis shall exclude parcels which are wholly exempt or assessed by the commissioner."

The third suggestion, to continue to allow the use of RPS (Real Property System) or similar product as the tool for appraising properties is consistent with the rule in any year in which a revaluation is not implemented.

The last suggestion, to allow appraisals to be done over the entire cycle of 5 or 6 years, is in conflict with section 1573(1)(c), which specifies plan length and intervals for revaluation. The rule simply follows the same timelines outlined in statute.

Mr. Brennan's comments recognize that the law and not the rule introduces changes to the state assistance program. Mr Brennan states:

Salina has conducted yearly reassessment since 2001. Cicero is completing a reassessment project for the 2011 roll. The changes to Chapter 56 will impose an insurmountable personnel and financial burden on most towns in New York State. My two towns will not be able to participate in the new program, which will have a negative impact on my equity.

"The previous 6 year reassessment cycle has accomplished much in equity and the attainment of full value assessments. The proposed changes will end both for many town[s]."

Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The towns for which Mr. Brennan is an assessor can still maintain equity in the assessment rolls without having to meet the statutory requirements for state assistance.

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-49-10-00001-A

Filing No. 179

Filing Date: 2011-02-16

Effective Date: 2011-02-16

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 January 1, 2011 through March 31, 2011.

Text or summary was published in the December 8, 2010 issue of the Register, I.D. No. TAF-49-10-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: 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.

NOTICE OF ADOPTION

Cigarette and Tobacco Products Taxes

I.D. No. TAF-49-10-00002-A

Filing No. 180

Filing Date: 2011-02-16

Effective Date: 2011-03-09

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

Action taken: Amendment of sections 70.2, 78.4, 89.1 and 89.2 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First and 475 (not subdivided)

Subject: Cigarette and tobacco products taxes.

Purpose: To reference current statute for definitions and penalties and eliminate obsolete provisions.

Text or summary was published in the December 8, 2010 issue of the Register, I.D. No. TAF-49-10-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

The agency received no public comment.

**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-10-11-00001-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 April 1, 2011 through June 30, 2011.

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

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxi) January-March 2011					
15.9	23.9	40.9	16.0	24.0	39.25
(lxii) April-June 2011					
16.0	24.0	41.0	16.0	24.0	39.25

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: ax_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.

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

Bureau of Conciliation and Mediation Services Procedures

I.D. No. TAF-10-11-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 4000 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 170(3-a) and 171, subdivision First

Subject: Bureau of Conciliation and Mediation Services procedures.

Purpose: To reflect statutory provisions relating to filing of certain petitions and to make other minor technical amendments.

Text of proposed rule: Section 1. Subdivision (e) of section 4000.1 is amended to read as follows:

(e) "Request, requester." The term "request" means the [written] application for a conciliation conference. The term "requester" means the person who files a request (see section 4000.3 of this Part).

Section 2. Subdivision (a) of section 4000.3 is amended to read as follows:

(a) "Filing of request." (1) Any person who has received a statutory notice may request a conciliation conference *using the form prescribed by the department or by filing a written request*, and one conformed copy, with the Bureau of Conciliation and Mediation Services, either in person at the offices in Albany or by mail addressed to:

Bureau of Conciliation and Mediation Services
Department of Taxation and Finance
Building 9
W. A. Harriman Campus
Albany, New York 12227

(2) A request for a conciliation conference regarding the denial of an application for a license, permit or registration, or the cancellation, suspension or revocation of a license, permit or registration, shall be addressed to the director of the Bureau of Conciliation and Mediation Services. [The request shall]

(3) *Requests should be typewritten, if possible, and should include the information set forth in paragraph (b)(1) of this section. Because the conciliation conference provides an informal and inexpensive way to resolve controversies without the need for a hearing, it is strongly recommended that a request for a conciliation conference be filed prior to the filing of a petition with the Division of Tax Appeals.*

(4) *In addition to the methods prescribed in paragraph (1) above, a person who has received a statutory notice may request a conciliation conference with the Bureau of Conciliation and Mediation Services in any other manner as prescribed by the department.*

Section 3. Paragraph 2 of subdivision (b) of section 4000.3 is REPEALED and paragraph (3) is renumbered paragraph (2).

Section 4. Section 4000.4 is amended to read as follows:

Section 4000.4 Compromise.

If, during a conciliation conference proceeding, a requester wants to compromise his tax liability pursuant to the provisions of Part 5000 of this Title, the requester shall submit his or her offer in compromise to the conciliation conferee. If the offer is based on doubt as to liability, the conciliation conferee shall forward the requester's offer to the counsel for the Department of Taxation and Finance. If the offer is based on doubt as to collectability, the conciliation conferee shall forward the requester's offer to the director of the [Tax Compliance] *Collections and Civil Enforcement* Division. Thereafter, the provisions of Part 5000 of this Title shall apply to the offer.

Section 5. Paragraph (3) of subdivision (b) of section 4000.5 is amended to read as follows:

(3) Where a requester fails to appear personally or by representative and where an adjournment has not been granted, the conciliation conferee may issue a conciliation order dismissing the request for nonappearance. Upon written application filed within 30 days after the issuance of a conciliation order dismissing the timely request, such order may be vacated and a conciliation conference scheduled where the requester shows a reasonable excuse for the nonappearance. In the alternative, the requester may file a petition with the Division of Tax Appeals (see Part 3000 of this Title) within [90 days after the conciliation order dismissing the timely request is issued] *the time limitations prescribed by section 170.3-a(e) of the Tax Law.*

Section 6. Paragraph 4 of subdivision (c) of section 4000.5 is amended to read as follows:

(4) In the absence of a showing of fraud, malfeasance or misrepresentation of a material fact, such order will be binding on the Division of Taxation and the requester. However, a conciliation order will not be binding on the requester if such person petitions for a hearing concerning the statutory notice within [90 days after the conciliation order is issued] *the time limitations prescribed by section 170.3-a(e) of the Tax Law.* The petition must be filed in accordance with section 3000.3 of this Title.

Section 7. Subdivision (b) of section 4000.6 is amended to read as follows:

(b) The receipt of a request for discontinuance shall be acknowledged. The requester will have 90 days from the time the request for discontinuance is filed to petition for a hearing in the Division of Tax Appeals (see Part 3000 of this Title), *except that the petition must be filed with the Division of Tax Appeals within 30 days from the time the request for discontinuance is filed if it is related to a written notice as described in section*

170.3-a(h) of the Tax Law. The Bureau of Conciliation and Mediation Services will promptly notify the Division of Tax Appeals and any other appropriate divisions or bureaus of the department when a request for discontinuance is filed.

Section 8. Subparagraph (ii) of paragraph (1) of subdivision (a) of section 4000.7 is amended to read as follows:

(ii) In general and except as otherwise provided for in this Chapter or the Tax Law, where any document required to be served or filed within a prescribed period or on or before a prescribed date under the authority of section 170.3-a of article 8 of the Tax Law is, after such period or date, delivered by United States mail to the appropriate address of the Bureau of Conciliation and Mediation Services, the date of the United States postmark as stamped on the envelope or other wrapper in which such document is contained will be deemed to be the date of service or filing. *A similar rule applies with respect to certain designated delivery services. See section 2399.2(a)(1) of this Title.* Where delivery is made by courier, delivery messenger or similar service *that is not a designated delivery service*, the date of receipt by the Bureau of Conciliation and Mediation Services will be deemed to be the date of service or filing.

Section 9. Subparagraph (iii) of paragraph (1) of subdivision (a) of section 4000.7 is added to read as follows:

(iii) *In addition to the methods prescribed in subparagraph (i) above, requests for a conciliation conference may also be filed with the Bureau of Conciliation and Mediation Services in any other manner as prescribed by the department.*

Section 10. Subdivision (d) of section 4000.7 is REPEALED.

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.

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because the amendments conform to statutory provisions, make technical changes, and is not controversial.

This rule amends the Bureau of Conciliation and Mediation Services Regulations as published in Chapter XII of Title 20 NYCRR. Section 2 of Subpart C of Part V-1 of Chapter 57 of the Laws of 2009 amended Tax Law section 170 to amend the time that a petition is required to be filed with the Division of Tax Appeals from 90 days to 30 days for certain types of notices, such as fraud penalty cases and most license refusals or revocations. Subpart A of Part S of Chapter 57 of the Laws of 2010 amended section 170(3-a)(h) of the Tax Law to clarify that protests of denials, revocations, or suspensions of certificates of registration for retail dealers of cigarette or tobacco products under section 480-a of the Tax Law are not covered by these provisions.

The purpose of this proposal is to amend Part 4000 of the regulations to reflect current statutory provisions. The rule will also allow the Department to expand the manner in which one may request a conciliation conference in the future, such as allowing requests in an electronic format. It also references mailing rules relating to designated delivery services and makes other minor technical amendments.

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 impact on jobs and employment opportunities.

This rule amends the Bureau of Conciliation and Mediation Services Regulations as published in Chapter XII of Title 20 NYCRR. Section 2 of Subpart C of Part V-1 of Chapter 57 of the Laws of 2009 amended Tax Law section 170 to amend the time that a petition is required to be filed with the Division of Tax Appeals from 90 days to 30 days for certain types of notices, such as fraud penalty cases and most license refusals or revocations. Subpart A of Part S of Chapter 57 of the Laws of 2010 amended section 170(3-a)(h) of the Tax Law to clarify that protests of denials, revocations, or suspensions of certificates of registration for retail dealers of cigarettes or tobacco products under section 480-a of the Tax Law are not covered by these provisions.

The purpose of this proposal is to amend Part 4000 of the regulations to reflect current statutory provisions. The rule will also allow the Department to expand the manner in which one may request a conciliation conference in the future, such as allowing requests in an electronic format. It also references mailing rules relating to designated delivery services and makes other minor technical amendments.

Office of Victim Services

NOTICE OF ADOPTION

Practices and Procedures Before the Office of Victim Services

I.D. No. OVS-01-11-00007-A

Filing No. 195

Filing Date: 2011-02-22

Effective Date: 2011-03-09

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

Action taken: Repeal of Part 525; and addition of new Part 525 to Title 9 NYCRR.

Statutory authority: L. 2010, ch. 56

Subject: Practices and procedures before the Office of Victim Services.

Purpose: To implement regulations necessary for the proper implementation of Chapter 56 of the Laws of 2010.

Text or summary was published in the January 5, 2011 issue of the Register, I.D. No. OVS-01-11-00007-EP.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Office of Victim Services, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: john.watson@ovs.ny.gov

Assessment of Public Comment

The agency received no public comment.