

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 Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incorporation by Reference in 1 NYCRR of the 2012 Edition of National Institute of Standards and Technology (“NIST”) Handbook 44

I.D. No. AAM-37-12-00001-P

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

Proposed Action: This is a consensus rule making to amend section 220.2(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporation by reference in 1 NYCRR of the 2012 edition of National Institute of Standards and Technology (“NIST”) Handbook 44.

Purpose: To incorporate by reference in 1 NYCRR the 2012 edition of NIST Handbook 44.

Text of proposed rule: Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [95th] *96th* National Conference on Weights and Measures [2010] *2011* as published in the National Institute of Standards and Technology Handbook 44, [2011] *2012* edition. This document is available from the National Conference on Weights and Measures, [15245 Shady Grove Road, Rockville, MD

20850] 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, or in the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

Text of proposed rule and any required statements and analyses may be obtained from: Mike Sikula, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: Mike.Sikula@agriculture.ny.gov

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 220.2 to incorporate by reference the 2012 edition of National Institute of Standards and Technology Handbook 44 in place of the 2012 edition which is presently incorporated by reference.

The proposed rule is non-controversial. The 2012 edition of Handbook 44 has been adopted by or is in the process of being adopted by every state; manufacturers of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State’s users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nationwide applicability. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 220.2 the 2012 edition of National Institute of Standards and Technology Handbook 44 (henceforth, “Handbook 44 (2012 edition)”) which contains specifications, tolerances and regulations for commercial measuring devices. The 2011 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2012 edition) differs from the 2009 edition in that it makes revisions to provisions relevant to devices that were manufactured prior to the effective date of certain applicable requirements but refurbished thereafter; changes to requirements regarding the accuracy of scales that are used to weigh commodities that are placed on such scales for prolonged periods of time; and revisions to provisions applicable to farm bulk milk tanks. Handbook 44 (2012 edition) has been adopted or is in the process of being adopted by every state; manufacturers and users of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

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

Incorporate by Reference in 1 NYCRR of the 2011 Edition of National Institute of Standards and Technology (“NIST”) Handbook 133

I.D. No. AAM-37-12-00002-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 section 221.11 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporate by reference in 1 NYCRR of the 2011 edition of National Institute of Standards and Technology (“NIST”) Handbook 133.

Purpose: To incorporate by reference in 1 NYCRR the 2011 edition of NIST Handbook 133.

Text of proposed rule: Section 221.11 of 1 NYCRR is amended to read as follows:

221.11 Test procedures, magnitude of permitted variations.

(a) The test procedures for testing packaged commodities shall be those contained in National Institute of Standards and Technology Handbook 133, [, Fourth Edition], issued [2005] 2011, Checking the Net Contents of Packaged Goods, as adopted by the 95th National Conference on Weights and Measures. The document is available from the National Conference on Weights and Measures, [15245 Shady Grove Road, Rockville, MD 20850] 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, 10B Airline Drive, Albany, NY 12235 or in the office of the Department of State, [41 State Street] One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

(b) The magnitude of variations permitted under section 221.10 of this Part shall be those contained in the procedures and tables of National Institute of Standards and Technology Handbook 133[, Fourth Edition], issued [2005] 2011, Checking the Net Contents of Packaged Goods, as adopted by the National Conference on Weights and Measures.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Sikula, Director, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: mike.sikula@agriculture.ny.gov

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 221.11 to incorporate by reference the 2011 edition of National Institute of Standards and Technology Handbook 133 in place of the 2005 edition which is presently incorporated by reference. Handbook 133 contains test procedures that are used by state regulatory officials to determine whether the actual weight of a packaged commodity is sufficiently consistent with the declaration of net weight set forth on its label.

The proposed rule is non-controversial. The 2011 edition of Handbook 133 has been adopted or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell such commodities in interstate commerce. In addition, several portions of this Handbook dealing with meat and poultry items have been incorporated by reference in federal regulation and are pre-emptive upon the states. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 221.11 the 2011 edition of National Institute of Standards and Technology Handbook 133 (henceforth, “Handbook 133 (2011 edition)”) which contains test procedures for weights and measures officials to determine whether the net weight declarations on labels of packaged commodities are accurate. The 2005 edition of Handbook 133 is presently incorporated by reference and Handbook 133 (2011 edition) differs substantively from the 2005 edition only to the extent that procedures for verifying the accuracy of test scales have been improved, amendments limiting the use of wet tare have been made, instructions for moisture allowance have been clarified, and rules for determining the net weight of ice glazed products have been set forth. These substantive changes in Handbook 133 (2011 edition) will help ensure that packaged commodities are uniformly evaluated for net contents.

Handbook 133 (2011) edition has been adopted by or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. In addition, several portions of this Handbook dealing with meat and poultry items have been incorporated by reference in federal regulation and are pre-emptive upon the states.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Media Review

I.D. No. CCS-25-12-00012-A

Filing No. 878

Filing Date: 2012-08-24

Effective Date: 2012-09-12

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

Action taken: Amendment of sections 712.1, 712.2, 712.3 and 712.5 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Media Review.

Purpose: To clarify and enhance existing procedures consistent with Penal Law and established regulations and to update the agency name.

Text of final rule: The following represents a summary of the rule making actions as listed in the Text of Rule for 7 NYCRR Part 712, Media Review.

The amendment to subdivision 712.2(a) is being made to improve grammar and clarity. The amendment of subdivision 712.2(b) is being made to expand upon and clarify what constitutes unacceptable printed materials consistent with the provisions of Penal Law Article 263, “Sexual Performance by a Child.”

The amendment of paragraph 712.2(h)(3) adds maps that could aid in an inmate escape from a correctional facility to the listing of prohibited materials.

A new paragraph 712.2(h)(7) is added to prohibit any gang related identifiers or text that would promote the formation of gangs or other unauthorized groups inside a correctional facility.

The note after subdivision 712.2(i) is being moved to follow the new paragraph 712.2(h)(7) and it is also being amended to specifically reference that paragraph for the sake of clarity.

The amendment to paragraph 712.3(a)(1) is being made to add recreation staff to the list of staff that may serve on the media review committee. The amendment of paragraph 712.3(a)(2) is being made to reflect current Department procedures in that the Office of the Deputy Commissioner for Program Services is the Executive Team member with direct oversight and administration of the media review program.

The amendment of paragraph 712.3(b)(3) includes minor changes to improve clarity and adds a clause to safeguard the confidentiality of a related ongoing investigation.

The amendments of paragraph 712.3(c)(4) includes a minor changes to improve clarity. The amendment of paragraph 712.3(c)(5) adds a clause to safeguard the confidentiality of a related ongoing investigation.

The addition of new paragraph 712.3(c)(6) introduces provisions for the “sender” of a publication or printed materials to be notified in the event that the facility media review committee disapproves a publication, or any portion thereof, and allows for the sender to appeal the disapproval to the central office media review committee.

The minor amendment of subdivision 712.3(d) simply improves clarity. The amendment of paragraph 712.3(d)(2) clarifies current procedure in that the decision regarding the option of blotting out or removing material that does not meet the guidelines as established in section 712.2 of 7 NYCRR is made at the discretion of the facility.

The addition of a new note after paragraph 712.3(d)(4) provides instructions for facility staff to hold disapproved publications for a reasonable period of time pending a possible appeal by the sender.

The amendment to subdivision 712.3(e) clarifies the inmate appeal process and also introduces the appeal process for the sender of the publication or printed materials.

The amendment to subdivision 712.3(f) adds a representative from the Department’s counsel’s office to the central office media review committee.

The amendment of subdivision 712.3(g)(1) is being made to reflect current procedures.

The amendments to subdivision 712.3(g)(4) introduce the procedures for notification to the inmate, the sender, or both, of the central office media review appeal determination. They also reflect current procedure in that the Facility Media Review Chairperson functions as the Superintendent’s designee in the capacity for oversight of the facility media review committee and clarify current practice with regard to the processing and distribution of Central Office Media Review Committee decisions.

The amendment of subparagraph 712.3(g)(5)(iv) reflects current procedure in that the superintendent can designate a staff person to carry out the disposal of disapproved materials, if a disposable option is not chosen by the inmate.

The amendments to subdivision 712.3(h) are made to name the Deputy Superintendent for Programs as the facility point of contact for the receipt and distribution of the listing of approved publications that is published by the Central Office Media Review Committee. This listing is used as a reference tool for the facility media review committees which function on behalf of the Superintendent and Deputy Superintendent for Programs.

The amendments to paragraph 712.3(d)(3) and subparagraph 712.3(g)(5)(ii) reflect the new agency name resulting from the merger with the former Division of Parole.

The amendment of subdivision 712.3(j), Exhibit A, clarifies the title of the initial referral notice.

Subdivision 712.3(k), Exhibit B, is repealed and replaced with a new subdivision 712.3(k) in order to reflect the amended disposal options as outlined in the new note after paragraph 712.3(d)(4).

A new subdivision 712.3(l), Exhibit C, is introduced to provide notice to the sender when materials are disapproved by the facility media review committee. This notice also provides the sender with the guidelines by which literature for inmates is reviewed.

New paragraph 712.3(m), Exhibit D (previously subdivision 712.3(l)), is amended by adding an appropriate title to the form and removes a disposal option that is no longer applicable due to the 30 day waiting period that is introduced to allow for the sender to possibly submit an appeal.

A new paragraph 712.3(n), Exhibit E, is added to reflect the new sender central office media review appeal determination that was introduced in the amendments to paragraph 712.3(g)(4).

The amendments to subdivision 712.5(c)(1) clarify existing policy with regard to limitations on the amount of materials that can be received, and also serves to allow materials printed from the internet to be subject to the media review process.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 712.1(a), 712.3(c)(6) and (h).

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, The Harriman State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@doccs.ny.gov

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted because this proposed rule with three non-substantive changes will have no adverse impact to the previously published RIS. This proposal is clarifying, expanding and updating existing procedures for the administration of the inmate media review program.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record

keeping or other compliance requirements on small businesses or local governments. This proposal is clarifying, expanding and updating existing procedures for the administration of the inmate media review program.

Revised Rural Area Flexibility Analysis

A revised 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 is clarifying, expanding and updating existing procedures for the administration of the inmate media review program.

Revised Job Impact Statement

A revised job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities, nor does it place any excess burden on staff. This proposal is clarifying, expanding and updating existing procedures for the administration of the inmate media review program.

Assessment of Public Comment

Since publication of the Notice of Proposed Rule Making (I.D. No. CCS-25-12-00012-P), in the State Register on June 20, 2012, the Department of Corrections and Community Supervision (DOCCS) received comments in the form of a letter from a legal advocacy organization. The comments are summarized below, followed by the department’s response:

Comment: There is an incorrect citation in the proposal and two improper references to “directive” rather than “regulation.”

Response: These non-substantive corrections have been made.

Comment: The proposed regulation should include a definition of the term “gang.”

Response: The term “gang” is defined in 7 NYCRR § 270.2(B)(6)(iv) as “a group of individuals, having a common identifying name, sign, symbol or colors, who have individually or collectively engaged in a pattern of lawlessness (e.g., violence, property destruction, threats of harm, intimidation, extortion, or drug smuggling) in one or more correctional facilities or that are generally recognized as having engaged in a pattern of lawlessness in the community as a whole.” Appropriate correctional facility staff are well versed in this definition and, consequently, a definition of the term “gang” in the proposed section is not deemed necessary.

Comment: For the sake of clarity and simplicity Subdivision (h) of § 712.3 of the proposed regulation that currently reads, “will be expected to share,” should be changed to read, “shall share.”

Response: The requested non-substantive change has been made.

Department of Economic Development

EMERGENCY RULE MAKING

Economic Transformation and Facility Redevelopment Program

I.D. No. EDV-37-12-00007-E

Filing No. 880

Filing Date: 2012-08-27

Effective Date: 2012-08-27

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

Action taken: Addition of Parts 200 - 204 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 18

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Economic Transformation and Facility Redevelopment Program (“the Program”) which was created by Chapter 61 of the Laws of 2011. The Program is created to support communities affected by the closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe

for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be a key economic development tool for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from the closure of these facilities.

It bears noting that section 403 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Economic Transformation and Facility Redevelopment Program.

Purpose: Allow Department to implement the Economic Transformation and Facility Redevelopment Program.

Substance of emergency rule: The regulation creates new Parts 200-204 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Economic Transformation and Facility Redevelopment Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, preliminary schedule of benefits, net new jobs, new business, economic transformation area, and closed facility.

2) The regulation creates the application and review process for the Program. In order to become a participant in the Program, an applicant must submit a complete application by the later of: (1) the date that is three years after the date of the closure of the closed facility located in the economic transformation area in which the business entity would operate or (2) January 1, 2015. An applicant must also agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; and (c) agreeing to not participate in either the Excelsior Jobs Program, the Empire Zones Program or claim any tax credits under the Brownfield Cleanup Program if admitted into the Economic Transformation and Facility Redevelopment Program specifically with regard to the facility located in the economic transformation area.

3) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility. When considering an application, the Commissioner shall consider factors including, but not limited to, the overall cost and effectiveness of the project, and whether the project is consistent with the intent of the Program. If a participant does not start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the Program's tax credits.

4) The regulation sets forth the eligibility criteria for the Program. In order to qualify for the Program, (1) a participant must create and maintain at least five net new jobs in an economic transformation area, and must demonstrate that its benefit-cost ratio is at least ten to one; (2) a participant must be in compliance with all worker protection and environmental laws and regulations; (3) a participant must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan; and (4) the location of the participant's operations for which it seeks tax benefits must be wholly located within the economic transformation area.

5) In addition, a business entity that is primarily operated as a retail business is not eligible to participate in the program if its application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit such facilities. A business entity that is engaged in offering professional services licensed by the state or by the courts of this state is not eligible to participate in the Economic Transformation and Facility Redevelopment Program. In addition, a business entity that is or will be principally operated as a real estate holding company or landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state is also not eligible to participate in the Note, however, that that the commissioner may determine that such a business entity described in the preceding three sentences may be eligible to participate in the Program at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of such facility, the adaptive reuse plan is consistent with the strategic plan of the Regional Economic Development Council and it has been recommended by the Regional Economic Development Council to the Commissioner.

6) The regulation sets forth the fourteen (14) evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) the number of net new jobs to be created in New York State; or (2) the amount of capital investment to be made; or (3) whether the applicant is proposing to substantially renovate and reuse closed facilities; or (4) whether the applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (5) whether the application has been recommended by the Regional Economic Council representing the region where the project will be located; or (6) the degree to which the project is consistent with the strategic plan and priorities for the region; or (7) the degree of economic distress in the area where the applicant will locate the project identified in its application; or (8) the degree of an applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (9) the degree to which the project identified in the application supports New York State's minority and women business enterprises; or (10) the degree to which the project identified in the application supports the principles of Smart Growth; or (11) the estimated return on investment that the project identified in the application will provide to the state; or (12) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be created; or (13) the degree to which other state or local incentive programs are available to the applicant; or (14) the likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of state or local incentives.

7) The regulation states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

8) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or eligibility criteria of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

9) The regulation lays out the appeal process for participants who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://esd.ny.gov/BusinessPrograms/EconomicTransformation.html>.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 24, 2012.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 61 of the Laws of 2011 established Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the redevelopment of closed facilities and the economic transformation of surrounding communities. The Economic Transformation and Facility Redevelopment Program is created to support communities affected by closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures. The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program. The statute directed the Commissioner of Economic Development to adopt

regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act. New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be one of the State's key economic development tools for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from closure of these facilities.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Economic Transformation and Facility Redevelopment Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

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

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Economic Transformation and Facility Redevelopment Program. This emergency rule does not impose any costs to local governments for administration of the Economic Transformation and Facility Redevelopment Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program to establish and maintain complete and accurate books relating to their participation in the Economic Transformation and Facility Redevelopment Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

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

FEDERAL STANDARDS:

There are no federal standards in regard to the Economic Transformation and Facility Redevelopment Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Economic Transformation and Facility Redevelopment Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Economic Transformation and Facility Redevelopment Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program would be required to keep is information such businesses already must establish and

maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Economic Transformation and Facility Redevelopment Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive the tax incentives. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

The Economic Transformation and Facility Redevelopment Program is a tax credit program available to new businesses that locate in communities affected by the closure of correctional and juvenile justice facilities, create jobs and make private sector investments. Economic transformation areas will be designated through implementation of these regulations. New businesses to these areas that create jobs and make investments are eligible to apply to participate in the Program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Economic Transformation and Facility Redevelopment Program. The Economic Transformation and Facility Redevelopment Program will enable New York State to provide financial incentives to businesses that create jobs and make investments in communities affected by the closure of correctional and juvenile justice facilities. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment in certain areas designated as economic transformation areas. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to firms that commit to creating new jobs and/or to making significant capital investment in these areas, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

New York State Joint Commission on Public Ethics

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Agency Records

I.D. No. JPE-37-12-00006-EP

Filing No. 879

Filing Date: 2012-08-27

Effective Date: 2012-08-27

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

Proposed Action: Amendment of Part 937 of Title 19 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Under the recently-enacted Public Integrity Reform Act of 2011 ("PIRA"), all powers, duties and functions conferred upon the former Commission on Public Integrity and certain powers conferred upon the Legislative Ethics Commission were transferred to and assumed by the Joint Commission on Public Ethics ("Commission"). PIRA authorizes the Commission to make publicly available only the records set forth in Executive Law section 94(19)(a), as amended by PIRA. Effective August 15, 2011, PIRA changes the type and nature of certain records that shall be publicly disclosed, which in turn, creates the necessity that the existing regulations governing access to the Commission's publicly available records should be amended in accordance with these new provisions.

Many of the changes effectuated by PIRA serve to better inform New Yorkers about efforts to influence government decision-making processes through increased transparency. In order to effectuate this legislative intent, therefore, the rules governing which Commission records shall be publicly available must be amended immediately.

Subject: Public access to agency records.

Purpose: To provide a uniform procedure for accessing the Commission's publicly available records.

Text of emergency/proposed rule: CHAPTER XX. JOINT COMMISSION ON PUBLIC [INTEGRITY] ETHICS

PART 937

ACCESS TO PUBLICLY AVAILABLE RECORDS

937.1 Scope and purpose.

These regulations provide information concerning the procedures by which records of the Joint Commission on Public Ethics ("Commission") shall be available for public inspection and copying. [publicly available records set forth in section 94(17)(a) of the Executive Law may be obtained from the New York State Commission on Public Integrity ("Commission"). These records include:] Pursuant to Executive Law section 94(19)(a) the only records of the Commission which shall be available for public inspection and copying are set forth below:

*(a) The information set forth in an annual statement of financial disclosure filed pursuant to section 73-a of the Public Officers Law except the categories of value or amount, which shall remain confidential, and any other item of information deleted pursuant to Section 94(9)(h) [and (m)] of the Executive Law. *effective until January 1, 2013;

** (a) The information set forth in an annual statement of financial disclosure filed pursuant to section 73-a of the Public Officers Law except information deleted pursuant to section 94(9)(h) of the Executive Law. **effective January 1, 2013;

(b) Notices of [D]elinquency sent pursuant to section 94(1[1]2) of the Executive Law;

[(c) Notices of Reasonable Cause sent pursuant to section 94(12)(b) of the Executive Law;]

[(d)e) Notices of [C]ivil [A]ssessments imposed pursuant to section 94(1[3]4) of the Executive Law that shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the Commission, and any sanction imposed;

[(e)d) The terms of any [S]ettlement [Agreement] or compromise of a complaint or referral that includes a fine, penalty or other remedy; [and]

[(f)e) Those records required to be held or maintained publicly available pursuant to article one-A of the Legislative Law[.]; and

(f) Substantial basis investigation reports issued by the Commission pursuant to section 94(14)(a) and (b) of the Executive Law. With respect to reports concerning members of the Legislature or legislative employees or candidates for member of the Legislature, the Commission shall not publicly disclose or otherwise disseminate such reports except in conformance with the requirements of section 80(9)(b) of the Legislative Law.

937.2 Designation of Records Access Officer.

(a) The Commission designates its [Public Information Officer] Deputy Director for External Affairs to act as the Records Access Officer.

(b) The Records Access Officer is responsible for ensuring compliance with the regulations herein.

(c) The Records Access Officer is responsible for ensuring that Commission staff perform the following actions:

(1) Assist the requester in identifying the record sought, if necessary;

(2) Upon locating the requested record:

(i) [m]Make the record promptly available for inspection in accordance with [Subparts 937.3 and 937.4] procedures set forth herein; or

(ii) make copies [free of charge unless the request is for more than] available for the charge of \$.025 per page for requests exceeding 40 pages, [in which case the Commission shall charge \$0.25 per copy] or the actual cost of [electronic reproduction] compiling the records request.

[(iii) upon request, certify that a record is a true copy or reproduction.]

937.3 Requests for access to publicly available records.

(a) A request for access to records shall be in writing [or on a form approved by the Commission].

(b) A request shall reasonably describe the record sought. To the extent possible, a requesting person should supply identifying details such as the name of the person, entity or title associated with the record sought and dates or filing period.

(c) A response to a request that reasonably describes the record sought shall be made within five business days of receipt of the request by:

(1) Granting access to the record; or

(2) Acknowledging the receipt of the request in writing, including an approximate date when the request will be granted, which shall be reasonable under the circumstances and shall not be more than twenty business days after the date of the acknowledgement, or providing a statement in writing indicating the reason for the inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted; or

(3) If receipt of the request was acknowledged in writing and included an approximate date when the request would be granted within twenty business days of such acknowledgement, but circumstances prevent disclosure within that time, providing a statement in writing within twenty business days of such acknowledgement specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted.

937.4 Location of records for inspection.

(a) [Upon arranging an appointment with] Once granted access, ac-

cess to records will be arranged by the Records Access Officer, and the records will be made available in a convenient and appropriate manner [the records set forth in Subpart 937.1 shall be available for public inspection at the Commission's office].

(b) [Such] A[ppointments for public inspection of records at the Commission's office shall be arranged on days that the Commission is regularly open for business and during the hours of 9am-4:30pm.

937.5 Deletion of certain items of information from financial disclosure statements.

(a) Prior to making any financial disclosure statement publicly available, the Records Access Officer shall delete [the categories of value or amount and] any [other] item of information that the Commission has determined to delete pursuant to section 94(9)(h) [and (m)] of the Executive Law, and for filings prior to January 1, 2013, the categories of value or amount.

(b) In accordance with the rules set forth in 19 NYCRR 941.19(b)(1), pending any application for deletion to the executive director or notice of appeal filed with the members of the Commission, all information which is the subject or a part of the application or appeal shall remain confidential. Upon an adverse determination on appeal by the members of the Commission, the reporting individual may request, within five calendar days of receipt of an adverse determination, and upon such request the Commission shall provide, that any information which is the subject or part of the application remain confidential for a period of thirty days following notice of such determination. In the event that the reporting individual resigns from office prior to the issuance of a determination and holds no other office subject to the jurisdiction of the Commission, the information shall not be made public and shall be expunged in its entirety from the financial disclosure statement.

937.6 Records access appeals.

(a) The General Counsel, or Deputy Counsel in the General Counsel's stead, shall act as the Records Access Appeals Officer.

(b) Any person denied access in whole or in part to a record or records requested may within thirty days appeal in writing such denial to the Records Access Appeals Officer who shall within ten business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. This shall constitute the final determination of the Commission.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 24, 2012.

Text of rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: scalnero@jcope.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law Section 94(9)(c) generally directs the Joint Commission on Public Ethics ("Commission") to adopt, amend, and rescind rules and regulations to govern the procedures of the Commission.

2. Legislative objectives: The Public Integrity Reform Act of 2011 ("PIRA") comprehensively reformed the oversight and regulation of ethics and lobbying in New York State and established the new agency, the Joint Commission on Public Ethics (the "Commission"). The Commission assumed and continued the business and records of its predecessor agency, the Commission on Public Integrity ("CPI"), but was granted broader regulatory authority and oversight to include state legislators, candidates for the Legislature, and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch state employees, certain political party chairs, and lobbyists and their clients.

Pursuant to PIRA, the Commission is charged with the authority to promulgate rules governing its procedures including how it provides public access to available records. These rules promote transparency to the extent that they inform the public of the necessary steps to access only those records that the Commission is required to make publicly available pursuant to Executive Law section 94 (19)(a).

3. Needs and benefits: PIRA authorizes the Commission to make

publicly available only the records listed in Executive Law section 94 (19)(a); however, the new law enacted several substantive changes that impact the names and types of records that are publicly available. For example, PIRA changed the Commission's investigative procedure. In accordance with this change, the Commission under PIRA employs a new term for its accusatory instrument, termed a "Substantial Investigation Report," thus replacing CPI's counterpart term "Notice of Reasonable Cause." The "Substantial Investigation Report" is one of the publicly available documents set forth in Executive Law section 94 (19)(a) as amended by PIRA; therefore, the regulations should be amended to reflect the name of this publicly available record.

Moreover, Public Officers Law § 73?128;a requires state officers or employees who receive compensation in excess of the filing rate of an SG?128;24 (which was \$88,256 in 2011), or who hold a policymaking position as determined by their appointing authority, to file an Annual Statement of Financial Disclosure ("FDS"). This requirement applies to heads of state departments, boards, bureaus, divisions, commissions, councils, state agencies, and members or directors of public authorities, as well as the State University of New York and City University of New York. The four statewide elected officials (Governor, Lieutenant Governor, Attorney General and Comptroller), the state chairs of recognized political parties and certain county chairs of these parties are also required to file an FDS.

Effective January 1, 2013, however, the FDS required by legislators, candidates for those offices, and legislative staff will now be filed with and made available by the Commission. Also effective January 1, 2013, the "categories of value" on the FDS will no longer be confidential and must be disclosed pursuant to Executive Law section 94 (19)(a) as amended by PIRA. The amended regulations should and will incorporate these substantive changes. The amendments will also set forth uniform procedures for inspecting and copying the Commission's publicly available records through a designated Records Access Officer and for records access appeals. The amendments will also provide a uniform procedure for applying for the deletion of certain items of information in an FDS pursuant to Executive Law section 94(9) and an appeals process for such denials. Lastly, the amended rule will replace obsolete terms, such as the name of the predecessor entity, with the Commission's new name, the Joint Commission on Public Ethics.

4. Costs:

a. costs to regulated parties for implementation and compliance: None.

b. costs to the agency, State and local government: None.

c. cost information is based on the fact that the proposed rule making involves primarily the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: It will not require the preparation of any additional forms or paperwork.

7. Duplication: None.

8. Alternatives: The Commission determined that no viable alternative exists other than a formal rulemaking to amend Part 937 to comport with the changes effectuated by PIRA.

9. Federal standards: The proposed rule making pertains to public access to records and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: These rules shall become effective upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Emergency Adoption and Proposed Rulemaking since the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics Commission ("JCOPE") notes that while it is authorized by the Public Integrity Reform Act of 2011 ("PIRA") to enforce the reporting requirements of the Article 1-A of the Legislative Law, which requires those public corporations that conduct lobbying activity to register and report expenses in accordance with the law, these amendments to the rules governing access to JCOPE's publicly available records does not impose any adverse economic impact on those public corporations for compliance purposes. JCOPE makes these findings based on the fact that the amendments to these regulations do not affect small businesses and local governments are not affected in any way.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Emergency Adoption and Proposed Rule Making since the proposed rule making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other

affirmative acts on the part of rural areas. The Joint Commission on Public Ethics (“Commission”) makes these findings based on the fact that the regulations governing access to the Commission’s publicly available records do not affect rural areas in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Emergency Adoption and Proposed Rule Making since the proposed rulemaking will have no impact on jobs or employment opportunities. The Joint Commission on Public Ethics (“Commission”) makes this finding based on the fact that the proposed rule making is technical in nature and applies to the procedures by which records of the Commission shall be available for public inspection and copying. This regulation does not apply, nor relate to small businesses, economic development or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Source of Funding Reporting

I.D. No. JPE-37-12-00010-P

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

Proposed Action: Addition of Part 938 to Title 19 NYCRR.

Statutory authority: Legislative Law, sections 1-j(c)(4) and 1-h(c)(4); Executive Law, section 94(9)(c)

Subject: Source of funding reporting.

Purpose: To implement reporting that will inform the public of efforts to influence government decision making by lobbying entities.

Substance of proposed rule (Full text is posted at the following State website: www.jCOPE.ny.gov): The Public Integrity Reform Act of 2011 (“PIRA”) authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that lobbyists and clients of lobbyists who spend at least \$50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the “expenditure threshold”), disclose the sources of funding over \$5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure in these regulations for filers to seek an exemption if disclosure of a particular single source - or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources - would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions. Thus, these regulations provide comprehensive reporting requirements that set forth when and how sources of funding must be disclosed by lobbyists and clients who meet the expenditure threshold, articulate narrow standards for exempting single sources from disclosure and establish an appeal process for denials from such exemptions.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: scalnero@jCOPE.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Legislative Law Section 1-h(c)(4) requires certain registered lobbyists, whose lobbying activity is performed on its own behalf and not pursuant to retention by a client, to report the names of each source of funding over \$5,000 from a single source used to fund lobbying activities. Similarly, Legislative Law Section 1-j(c)(4) requires certain clients who have retained, employed or designated a registered lobbyist to report the names of each source of funding over \$5,000 from a single source used to fund lobbying activities. The statutes also provide that, in certain circumstances, lobbyists or clients of lobbyists can seek an exemption from disclosing one or more of their single sources provided certain criteria for exemption are met. Legislative Law Sections 1-h(c)(4) and 1-j(c)(4) direct the Joint Commission on Public Ethics (“JCOPE”) to promulgate

regulations to implement these requirements. More generally, Executive Law Section 94(9)(c) directs JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures.

2. Legislative objectives: The Public Integrity Reform Act of 2011 (“PIRA”) established JCOPE. PIRA authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that lobbyists and clients of lobbyists who spend at least \$50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the “\$50,000/3% expenditure threshold”), disclose the sources of funding over \$5,000 from each single source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular single source-or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources-would cause harm, threats, harassment, or reprisals to the single source or to individuals or property affiliated with the single source, as well as an appeal procedure from denials of requests for such exemptions. By setting forth when and how sources of funding must be disclosed by lobbyists and clients who meet the statutory conditions, as well as the narrow standards for exempting single sources from disclosure, these rules provide comprehensive reporting requirements for lobbyists and clients.

3. Needs and benefits: The proposed rulemaking is necessary to fulfill JCOPE’s statutory mandate under PIRA. The regulations strike a reasonable balance between disclosure and burden on filers by requiring a client or lobbyist who has met the \$50,000/3% expenditure threshold to disclose in a client semi-annual report the identity of any single source who has contributed more than \$5,000 to the client or lobbyist over the course of a calendar year and the amount of that contribution.

Part 938.2 defines key terms in the regulations. Among other definitions, it sets forth the two calculation methods for determining when a lobbyist or client has met the statutorily prescribed \$50,000/3% expenditure threshold for lobbying activity in New York State: a twelve-month calculation and a calendar-year calculation. The twelve-month calculation looks to the twelve-month period preceding and including the last day of the applicable client semi-annual reporting period. The calendar-year calculation spans from January 1 to the last day of the applicable client semi-annual reporting period. If the \$50,000/3% expenditure threshold is met using either calculation, a client or lobbyist will be deemed to have met the financial spending threshold, triggering the disclosure requirement. This will provide for comprehensive disclosure as the Legislature intended.

This section also defines a contribution as any payment to, or for the benefit of, a lobbyist or client filer and which is intended to fund, in whole or in part, the filer’s activities or operations. A payment in exchange for goods or services rendered or delivered directly to the individual or entity making the payment is not a contribution under these regulations. The definition of contribution closes a potential loophole and recognizes that money is fungible, and that even if contributions to a lobbyist or client are not expressly designated for lobbying activities in New York State, those contributions can allow the lobbyist or client to spend other funds on lobbying activities.

Part 938.2 defines a single source to include not only individuals and entities that make contributions to a client or lobbyist who must disclose its sources of funding, but also deems a single source two or more people living in the same house, two or more entities related in certain ways, such as parent/subsidiary, and a sole proprietorship and its sole proprietor. Such individuals and entities must only be reported as a single source if the filer has actual knowledge of the relationship in the case of people or entities, or reason to know of the relationship in the case of entities. This regulation will minimize incentives to evade disclosure through structured or coordinated contributions that individually do not total in excess of \$5,000 but that exceed \$5,000 when aggregated. The knowledge standards strike a reasonable balance that prevents this regulation from imposing too onerous of a burden on filers.

Part 938.3 specifies the reporting requirements for contributions. Part 938.3 also explains the methods by which contributions from a single source must be aggregated over a calendar year, and details how such contributions should be reported. Aggregating contributions over a calendar year to determine whether a single source has contributed more than \$5,000 will provide the public with useful information, impose a reasonable burden on filers, and minimize instances where single sources could attempt to structure contributions across a calendar year in order to avoid disclosure.

Part 938.3 also clarifies that a lobbyist whose lobbying activity is performed on its own behalf and not pursuant to retention by a client need only report contributions received from a single source in a client semi-annual report and is not additionally required to report those contributions on a lobbyist bimonthly report. This determination is reasonable because it will require lobbyist-filers—who are also clients—to provide data more accurately and usefully through client semi-annual reports. The regulations simplify the reporting requirement and avoid the potential confusion that would be caused by dual reporting.

As required by statute, Parts 938.4 through 938.8 specify the standards and procedures that will be used by JCOPE in responding to filers' requests for exempting particular single sources from disclosure where disclosure of the single source will cause harm, threats, harassment or reprisals to the single source or individuals or property affiliated with the single source. The statute and regulations set out two tests for exemptions: one for those entities that have tax-exempt status under I.R.C. § 501(c)(4) and whose primary activities relate to an area of public concern, and one for all other clients or lobbyists required to disclose their sources of funding.

In the case of organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources can be exempt from disclosure if the filer shows that its primary activities involve areas of public concern that create a substantial likelihood that disclosure of its single sources will cause harm, threats, harassment or reprisals to the single sources or individuals or property affiliated with the single sources. This standard is consistent with the statutory language and allows such organizations to more easily meet their burden to show that an entire class of contributors, as opposed to individual contributors, could suffer harm from disclosure.

All other filers must show by clear and convincing evidence that the same harms would result to a particular single source or single sources. For both types of filers, the regulations provide a non-exclusive list of factors that JCOPE will consider in making this determination. These standards will ensure that the exemptions are only granted in narrow and compelling circumstances and will not be used as a means to avoid otherwise proper disclosure.

Part 938.5 explains the procedure for applying for an exemption from disclosure. Making such an application with respect to particular single sources does not relieve a filer from the obligation to disclose information about any other single sources that it is otherwise required to disclose.

Part 938.6 identifies the requirements for filing an appeal from a denial of an application for an exemption from disclosure. Part 938.7 sets forth the appeal procedure and the standard of review on appeal. An independent judicial hearing officer will review the entire record and will only reverse JCOPE's denial of an exemption if that denial is clearly erroneous in view of the evidence in the record. A decision by the judicial hearing officer to affirm or reverse the Commission's denial of an exemption will be considered a final determination by JCOPE. The requirements for filing an appeal create a streamlined process and provide filers with prompt determinations as to what single sources, if any, are exempt from disclosure.

Part 938.8 specifies that all exemption-related materials submitted by a filer will be kept confidential, but the fact that a filer has submitted such an application or that such an application has been granted will not, in itself, be confidential. This satisfies the need for confidentiality to protect the single sources at issue but also fulfills the objective of informing the public as to how the exemption process is used by filers.

Part 938.9 states that the penalties for filing a late or false, mislead-

ing, or knowingly inaccurate client semi-annual report or failing to file a client semi-annual report in accordance with these regulations are set forth in either Legislative Law § 1-j or § 1-o.

Part 938.10 imposes a duty to correct oversights or inaccuracies with respect to the sources of funding within 10 days of discovery.

As required by the statute, Part 938.11 exempts from disclosure any corporation registered pursuant to article seven-A of the executive law that has tax-exempt status under § 501(c)(3) and any governmental entity.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: No costs to state and local governments. Moderate administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be no costs to regulated parties and state and local government. The cost to the agency is based on the estimated increase in staff resources to implement the regulations.

5. Local government mandate: The proposed regulation does not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This regulation may require the preparation of any additional forms or paperwork. Such additional paperwork is expected to be minimal, and many filers will complete any additional forms online.

7. Duplication: This regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: PIRA created an affirmative duty on JCOPE's part to promulgate these regulations, therefore there is no alternative to conducting a formal rulemaking.

9. Federal standards: The proposed rulemaking pertains to a new lobbying disclosure requirement that specifically relates to lobbying activity in New York State. These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Emergency Adoption and Proposed Rulemaking since the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics Commission ("JCOPE") notes that while it is authorized by the Public Integrity Reform Act of 2011 ("PIRA") to enforce the reporting requirements of the Article 1-A of the Legislative Law, which requires those public corporations that conduct lobbying activity to register and report expenses in accordance with the law, these regulations do not impose any adverse economic impact on those public corporations for compliance purposes. JCOPE makes these findings based on the fact that the source of funding regulations affect certain lobbyists and clients that meet a high financial threshold. Small businesses and local governments are not affected in any way by these regulations.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Emergency Adoption and Proposed Rule Making since the proposed rule making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the source funding regulations affect only certain lobbyists and clients that meet a high financial threshold. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Emergency Adoption and Proposed Rule Making since the proposed rulemaking will have no impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes this finding based on the fact that the proposed

rule making applies only to certain lobbyists and clients that meet a high financial threshold. This regulation does not apply, nor relate to small businesses, economic development or employment opportunities.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Upstate Commercial Submetering; On-Line Bill Calculator

I.D. No. PSC-37-12-00008-P

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

Proposed Action: The Commission is considering eliminating the requirement that all New York commercial properties seek PSC approval to submeter and requiring Consolidated Edison tariff changes to provide ready access to bill calculators for customers.

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Upstate commercial submetering; on-line bill calculator.

Purpose: Lighten regulation of commercial submetering. Help submetered residents check electric bills.

Substance of proposed rule: The Public Service Commission is considering whether to (1) eliminate the current requirement that all New York State commercial property owners outside the service territory of Consolidated Edison Company of New York, Inc. (Consolidated Edison) obtain Commission approval before submetering electricity; and, (2) require Consolidated Edison to provide certain information that may be used by residential submeterers and their submetered tenants to determine whether electric charges are in accordance with the rate cap provisions of the Residential Submetering Regulations, 16 NYCRR, Part 96.

On November 14, 1979, the Commission issued an Opinion and Order on Submetering of Electricity and Gas, in which it ended the prohibition on submetering for owners of commercial properties in Consolidated Edison's service territory. Currently, the Commission requires commercial property owners in service territories other than Consolidated Edison's to obtain Commission approval before commencing submetering. The Commission seeks comments on whether it is appropriate to remove the requirement that commercial electric submetering outside of Consolidated Edison's service territory requires prior Commission approval.

The Commission's submetering regulations limit the charges that may be applied to submetered residents to the amount that each resident would have been charged under the utility's residential direct metered tariff. An historic utility bill calculator, on the utility's website, would assist submeterers in rendering accurate bills and enable submetered residents to verify that their charges comply with the regulations. The Commission seeks comments on whether Consolidated Edison should be directed to develop, implement, and maintain an accurate web-based historic utility bill calculator to assist submeterers and submetered residents.

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.ny.gov/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.ny.gov

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

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.

(12-E-0381SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Modification by Con Edison of Its Procedures to Calculate Estimated Bills to Its Customers

I.D. No. PSC-37-12-00009-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify, in whole or in part the petition of Consolidated Edison Company of New York, Inc. (Con Edison) to modify its procedures for calculating estimated bills it renders to its customers.

Statutory authority: Public Service Law, sections 4(1), 39(1), (2), (3) and 66(1)

Subject: Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers.

Purpose: Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers.

Substance of proposed rule: The Commission is considering whether to adopt, modify or reject, in whole or in part, the proposal by Consolidated Edison Company of New York, Inc. (Con Edison) to modify its procedures to estimate customer bills. The Company requests approval of what it describes as a methodological enhancement to its existing bill estimation procedures. The proposed enhancement consists of a rule-based procedure to account for the impact of extreme variations in weather. When triggered by specific applicability criteria, an adjustment factor will be determined. The Company states that it expects the use of this factor to bring estimated bills closer to actual consumption during the billing period. According to Con Edison, more accurate estimated bills will benefit customers by reducing the difference between the charges billed for estimated usage and the rebilled charges based on a subsequent actual meter reading.

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.ny.gov/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.ny.gov

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

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.

(12-M-0369SP1)

Racing and Wagering Board

NOTICE OF WITHDRAWAL

Maximum Fines for Violations in Thoroughbred, Harness and Quarterhorse Racing

I.D. No. RWB-32-12-00016-W

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

Action taken: Notice of proposed rule making, I.D. No. RWB-32-12-00016-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on August 8, 2012.

Subject: Maximum fines for violations in thoroughbred, harness and quarterhorse racing.

Reason(s) for withdrawal of the proposed rule: August 8, 2012 Notice of Proposed Rulemaking was duplicative. A previous Notice of Proposed Rulemaking appeared June 6, 2012.

Department of State

NOTICE OF ADOPTION

Allowable Spans for Lintels Supporting Masonry Veneer

I.D. No. DOS-14-12-00015-A

Filing No. 877

Filing Date: 2012-08-23

Effective Date: 90 days after filing

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

Action taken: Amendment of section 1220.1(c) of Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: Allowable spans for lintels supporting masonry veneer.

Purpose: To make a correction to the Uniform Code by adding a table showing the allowable spans for lintels supporting masonry veneer.

Text or summary was published in the April 4, 2012 issue of the Register, I.D. No. DOS-14-12-00015-P.

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

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

from: Raymond J. Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Taxation and Finance

NOTICE OF ADOPTION

Real Property Tax Administration

I.D. No. TAF-18-12-00008-A

Filing No. 876

Filing Date: 2012-08-23

Effective Date: 2012-09-12

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

Action taken: Renumbering of Parts 185 through 202 of Title 9 NYCRR to Parts 8185 through 8202 of Title 20 NYCRR; and amendment of Parts 8185 through 8202 of Title 20 NYCRR.

Statutory authority: Real Property Tax Law, sections 201(1) and 202(1)(k)

Subject: Real Property Tax Administration.

Purpose: To move rules for real property tax administration from Title 9 to Title 20.

Substance of final rule: Part W of Chapter 56 of the Laws of 2010 transferred various responsibilities relating to real property tax administration from the State Board of Real Property Services and the Office of Real Property Services to the Commissioner of Taxation and Finance. As amended, Real Property Tax Law (RPTL), section 201 provides that the functions, powers and duties of the State Board of Real Property Services and the Office of Real Property Services shall be functions, powers and duties of the Commissioner of Taxation and Finance except as provided for the State Board in section 200-a of the RPTL.

The purpose of this proposal is to move the rules for real property tax administration from Chapter I of Subtitle F of Title 9 to Title 20, which contains the rules of the Commissioner of Taxation and Finance, as a new Chapter XVI, Real Property Tax Administration. Parts 185 through 201 of the former Chapter I of Subtitle F of Title 9 will be renumbered Parts 8185 through 8201 within Chapter XVI of Title 20. This summary will refer to the provisions as renumbered.

In addition to the renumbering, the rule corrects obsolete refer-

ences, updates functions in line with current statute, and makes other technical updates. References to the State Board or board where the State Board retains its authority pursuant to section 200-a of the RPTL remain.

Overall:

a. References to ORPS, State Office, executive director, Counsel to the State Board, board, State Board, Bureau of Equalization Rates, State Valuation Services were updated where appropriate to conform with statute.

b. These references were amended to Department, Commissioner, Deputy Commissioner or ORPTS in most cases. References to the State Board or board where the State Board retains its authority pursuant to section 200-a of the RPTL remain.

Part 8185 General Administration:

a. Definitions for “certified counties” (41), “certified school districts” (42), “engineering report” (79) and “VO-3 additions and retirements” (310) are repealed. “Certified counties” relate to RPTL, section 845, which was repealed and “certified school districts” relate to RPTL, section 1315, which was also repealed. The definitions for “engineering report” and “VO-3 additions and retirements” refer to the Interstate Commerce Commission which is now an obsolete reference and reporting is not necessary.

b. The definition for “Arm’s-length transfer” is amended to conform to current forms and procedures (section 8185-1.1(a)(14)).

c. The definition for “general tendency” is corrected to be “central tendency” (section 8185-1.1(a)(40)). The definition for “final assessment roll data file” is updated to reference current electronic media language for the filing of data files with the department (section 8185-1.1(a)(99)).

d. A definition for the State Board of Real Property Tax Services (State Board) is added (section 8185-1.1(a)(253)).

e. References to the Interstate Commerce Commission are updated to the national Surface Transportation Board (Part 8185).

f. Subpart 8185-2, Public Access to Records is repealed as this authority can be found in 20 NYCRR 2370.1.

g. Subpart 8185-3, Personal Records is repealed as this authority can be found in 20 NYCRR 2371.2.

h. Subpart 8185-4, Environmental Quality Review is repealed as this authority is no longer required as an office in the Tax Department.

i. Subpart 8185-5, Declaratory Rulings is repealed as this authority can be found in 20 NYCRR 2375.3.

j. Subpart 8185-6, Issuance of Certificates is repealed as this is no longer a State Board function and it is not Tax Department policy to charge for certifications of documents.

Part 8186 State Equalization Rates, Ratios and Adjustments:

a. References to delegations by the State Board are deleted as the State Board does not retain the authority to institute policy or directives to staff of the new Office of Real Property Tax Services. (i.e., NYCRR, sections 8186-3(b)) and 8186-4.3).

b. References to former section 186-1.1 of 9 NYCRR regarding general definitions are updated to note that the section is now repealed and set forth in section 8185-1.1 and RPTL, sections 1801 and 1901.

c. Subpart 8186-5, pertaining to special equalization rates for certain parts of cities and towns, was updated to conform the initiation and determination of segment special equalization rates to current process. Specifically, in addition to conforming any references of the State Board to ORPTS or Commissioner, the rule deletes references to particular prior and current assessment rolls, and provides that copies of information submitted with a request for a segment rate will be provided to any affected party upon request.

d. References to school districts designated in former section 186-6.1 of 9 NYCRR, are updated to note that the section is now repealed and set forth in RPTL, section 1230.

e. References to definitions in former sections Subparts 190-3.1 and 190-4.1 of 9 NYCRR are noted as repealed and set forth in RPTL, sections 1801 and 1802, and section 1901 respectively.

f. References to former Subparts 186-2 186-7, 186-8, 186-11 and 186-22 of 9 NYCRR are noted as repealed.

g. The process concerning the preparation of proposed findings and determinations of rate complaints (section 8186-15.10) was updated to current practice with the inclusion of language regarding the preparation of a resolution for the State Board.

Part 8187 Informational Hearings, Adjudicatory Proceedings and Review Proceedings:

Subpart 8187-3 regarding local disciplinary action is repealed as the governing authority in Real Property Tax Law, section 324 was repealed.

Part 8188 Minimum Qualification Standards, Training and Certification of Local Assessment Administration Personnel:

a. References to the Municipal Service Division in the State Department of Civil Service is corrected to the new agency name - Office of Commission Operations and Municipal Assistance.

b. References to certain form names and templates such as for assessor training reimbursement are updated.

c. A new subdivision (a) is added to NYCRR, section 8188-4.3 regarding the minimum qualification standards for county directors. This language was mistakenly repealed in 1998 and is needed in rules so that staff has a standard with which to review the qualifications of new directors taking office between October 1, 1998 and September 30, 2013. The current section in regulation only applies to county directors taking office subsequent to October 1, 2013. The language being included is the same language that was in existence when the rule amendments were adopted in 1998.

d. Paragraphs (c) and (d) of NYCRR 8188-2.5 concerning review of a negative determination of qualifications of a newly appointed assessor are added as these paragraphs were inadvertently deleted in 1999. These paragraphs are necessary as there needs to be a mechanism for an assessor to appeal ORPTS' decision where his/her qualifications are not approved. A similar process is in the rules for county directors and other local government officials.

Part 8189 Preparation and Maintenance of Tax Maps for Real Property Assessment and Taxation Administration:

Reference to delegation by the State Board is rescinded as the State Board does not retain the authority to institute policy or directives to staff of the new Office of Real Property Tax Services. (i.e., section 8189.15).

Part 8190 Assessment Rolls:

Section 8190-3.1 is amended to conform regulation to RPTL, section 1590. Section 1590 was amended by Chapter 56 of the Laws of 2010 to provide that a copy of the tentative assessment roll be filed with ORPTS and that the assessing unit maintain a website and post a copy of the roll on its website. The amended regulation now includes this language, along with the required time frames.

Section 8190-3.2 is amended to clarify that only active parcels are included in the number of parcels when determining the fee for use of the New York State Real Property System.

Part 8191 Real Property Transfers:

Section 8191-3.1, pertaining to criteria for use of sales in establishing residential assessment ratios, is repealed as it is obsolete based on changes to RPTL section 738, which was amended effective September 1, 2008.

Part 8193 Assessor's Reports:

a. References to certain forms required for the filing of Assessors' Reports are conformed to the current naming convention.

b. Subpart 8193-3 "Assessor's Report for Equalization Purposes and of Exempt Property for All Assessment Rolls Beginning with those filed in the Year 1984" is repealed as it is outdated.

Part 8197 Special Franchise Assessment:

a. References to certain forms required for annual reporting by special franchise companies are conformed to current naming conventions.

b. Section 8197-5.1 is amended to update the special revenue fund calculation and confirm it to the circumstances of the merger with the Tax Department (i.e., no rental costs).

Part 8200 Railroad Ceilings:

a. References to certain forms required for annual filing by railroad companies reporting are conformed to current naming conventions.

b. Section 8200-7.1 is amended to update the special revenue fund calculation and confirm it to the circumstances of the merger with the Tax Department (i.e., no rental costs).

Part 8201 State Assistance for the Maintenance of a System of Improved Real Property Tax Administration:

Subpart 8201-2 "Assessment Rolls filed in 1999 and thereafter" is repealed as it is outdated.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 8185-1.1, 8186-5.3, 8186-5.5, 8190-3.2 and Subpart 8191-3.

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.ny.gov

Revised Job Impact Statement

A revised Job Impact Exemption is not required to be submitted with this rule because the revisions made to the proposed rule are not substantial and do not affect any of the statements made in the Job Impact Exemption document submitted with the proposal.

The nonsubstantial revisions merely reflect current department procedures and correct a reference that would have inadvertently been repealed.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

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

I.D. No. TAF-24-12-00002-A

Filing No. 875

Filing Date: 2012-08-23

Effective Date: 2012-08-23

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

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

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

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

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2012 through September 30, 2012.

Text or summary was published in the June 13, 2012 issue of the Register, I.D. No. TAF-24-12-00002-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.ny.gov

Assessment of Public Comment

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. TAF-37-12-00003-P

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

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

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

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

Purpose: To set the sales tax component and the composite rate per gallon for the period October 1, 2012 through December 31, 2012.

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 (lxviii) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxvii) July-September 2012					
16.0	24.0	40.9	16.0	24.0	40.05
(lxviii) October-December 2012					
16.0	24.0	41.8	16.0	24.0	40.05

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.ny.gov

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

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

Regulatory Impact Statement, 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**

Elimination of the One-Week Stay Test to Determine Nontaxable Occupancy of Bungalows and Similar Living Units

I.D. No. TAF-37-12-00004-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 section 527.9 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided)

Subject: Elimination of the one-week stay test to determine nontaxable occupancy of bungalows and similar living units.

Purpose: To conform the regulations to current statutory interpretation concerning sales tax on hotel occupancy.

Text of proposed rule: Section 1. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 527.9 of the regulations is amended to read as follows:

(iii) [maid] *housekeeping*, linen, or other customary hotel services are provided for occupants; and

Section 2. Subparagraph (i) of paragraph (7) of subdivision (b) of section 527.9 of the regulations is amended to read as follows:

(i) "Rent" is the consideration received for hotel occupancy valued in money, whether received in money or otherwise. The term "rent" includes charges for accommodations, services, facilities, amenities, and items that are incidental to the occupancy of the room or rooms, whether those charges are separately stated or included as one sum in the rate for the room or rooms. This includes, but [it] is not limited to, charges for the use of furnishings and equipment; charges for [maid] *housekeeping* service, towel and linen service, local telephone service (not billed on a per-call basis); and other similar incidental charges. See, also, subdivision (i) of this section concerning miscellaneous transactions.

Section 3. A new cross-reference is added to follow subparagraph (vi) of paragraph (8) of subdivision (b) of section 527.9 of the regulations to read as follows:

"Cross-reference:" For definition of terms as applicable to "room remarketers," see section 1101(c) of the Tax Law.

Section 4. Paragraph (5) of subdivision (e) of section 527.9 of the regulations is amended to read as follows:

(5) Bungalows and similar living units. [(i)] A bungalow or similar furnished living unit limited to a single-family occupancy is not a hotel provided[:

"(a)" no [maid] *housekeeping*, food, or other common hotel services, such as entertainment or planned activities, are provided by the lessor[; and

"(b)" the rental is for at least one week].

[(ii)] The furnishing of linen by the lessor without the service of changing the linen does not alter the nontaxable status of any rental charges.

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.ny.gov

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

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

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 it merely repeals a regulatory provision that is no longer applicable to any person and makes related clarifying and technical changes. The rule updates certain provisions in section 527.9 of the Sales and Use Taxes Regulations concerning the sales tax on hotel occupancy.

The rule repeals the at least one-week stay requirement that was a component part of the longstanding test for nontaxable bungalow occupancy contained in section 527.9(e)(5) of the regulations. The test is used to determine whether the rental of a bungalow or similar living unit constitutes the rental of hotel occupancy, which is subject to sales tax, or the rental of real property, which is not subject to sales tax. On June 2, 2011, a Division of Tax Appeals Administrative Law Judge found the one-week stay component of the test to be invalid. The Department did not take exception to this determination and decided to accept the ALJ's conclusion. This change was announced in TSB M 12(4)S, Elimination of One-Week Stay Test to Determine if the Rental of a Bungalow or Similar Living Unit is Subject to Sales Tax. As noted in TSB M 12(4)S, the regulations are now being amended to conform to this position by eliminating the one-week stay requirement contained in the regulations.

The rule also makes clarifying changes in section 527.9 of the regulations to delete the gender-specific term "maid," and a technical change to acknowledge, by the addition of a new cross-reference, that amendments to the Tax Law were made in 2010 which affect the application of sales tax on rent received for hotel occupancy by room remarketers (Chapter 57 of the Laws of 2010). These changes are non-controversial in nature.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs and employment opportunities. The purpose of the rule is simply to repeal a regulatory provision that is no longer applicable to any person and to make related clarifying and technical changes in section 527.9 of the Sales and Use Taxes Regulations concerning the sales tax on hotel occupancy. Accordingly, a job impact statement is not required for this rulemaking.

The rule repeals the at least one-week stay requirement that was a component part of the longstanding test for nontaxable bungalow occupancy contained in section 527.9(e)(5) of the regulations. The test is used to determine whether the rental of a bungalow or similar living unit constitutes the rental of hotel occupancy, which is subject to sales tax, or the rental of real property, which is not subject to sales tax. On June 2, 2011, a Division of Tax Appeals Administrative Law Judge found the one-week stay component of the test to be invalid. The Department did not take exception to this determination and decided to accept the ALJ's conclusion. This change was announced in TSB

M 12(4)S, Elimination of One-Week Stay Test to Determine if the Rental of a Bungalow or Similar Living Unit is Subject to Sales Tax. As noted in TSB M 12(4)S, the regulations are now being amended to conform to this position by eliminating the one-week stay requirement contained in the regulations.

The rule also makes clarifying changes in section 527.9 of the regulations to delete the gender-specific term "maid," and a technical change to acknowledge, by the addition of a new cross-reference, that amendments to the Tax Law were made in 2010 which affect the application of sales tax on rent received for hotel occupancy by room remarketers (Chapter 57 of the Laws of 2010).

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Combined Reports

I.D. No. TAF-37-12-00005-P

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

Proposed Action: Amendment of Parts 3, 6 and 21; and addition of Part 33 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 1096(a), 1468 and 1519

Subject: Combined Reports.

Purpose: To update rules and codify Department interpretation regarding combined reports.

Substance of proposed rule (Full text is posted at the following State website: www.tax.ny.gov): This proposal amends the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of Title 20 NYCRR, the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I of such Title, and the Franchise Taxes on Insurance Corporations Regulations, as published in Subchapter C of Chapter I of such Title, relating to combined reports.

Section 1 amends section 3-2.2 of the regulations to eliminate language contained in such section relating to Foreign Sales Corporations (FSCs) because the corresponding IRC provisions relating to FSCs have been repealed.

Sections 2 and 3 amend sections 3-11.1 and 3-12.1 of the regulations relating to Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs), respectively, to refer taxpayers to section 211.4 of the Tax Law for rules relating to the inclusion of such entities in a combined report.

Sections 4 and 5 amend sections 3-13.2 and 3-13.5 of the regulations, respectively, to correct cross-references to section 6-2.2(b) relating to the definition of unitary business that was moved to section 6-2.3(e) by section 12 of this proposal.

Section 6 makes technical amendments to the index of Subpart 6-2 of the regulations.

Sections 7 and 8 amend section 6-2.1 of the regulations to eliminate the discretionary language relating to when a combined report is permitted or required. This language has been replaced with rules as to when a combined report is required or permitted due to the presence or absence of substantial intercorporate transactions among related corporations.

Section 9 amends section 6-2.2 of the regulations to delete the language relating to the unitary business requirement. The unitary business language has been moved to section 6-2.3 relating to the substantial intercorporate transactions requirement as it is more appropriately suited there. Technical and clarifying amendments have also been made to the language relating to the capital stock requirement. Language has also been added to the capital stock requirement to provide that for purposes of measuring the 80 percent stock ownership/control requirement, such ownership will be determined based on the total voting power rather than the total number of shares of the stock owned. In addition, it provides a definition of the term "related corporations".

Sections 10, 11, and 12 rename section 6-2.3 of the regulations and make numerous other amendments to the section. Many of the amendments are derived from technical memorandum TSB-M-08(2)C. The

existing discretionary language relating to when a combined report is permitted or required and the language and examples relating to the presumption of distortion have been eliminated. This language has been replaced with language that requires a combined report where there are substantial intercorporate transactions. The new language provides a list of activities and transactions that are considered in determining whether substantial intercorporate transactions exist. It further provides rules as to how the requirement may be met applying certain percentage tests. It also provides a series of steps for taxpayers to follow in determining whether a combined report is required, and if so, which corporations are included in the report. In addition, language has been added to provide that a combined report may be required or permitted where substantial intercorporate transactions are absent, but such a report is necessary in order to properly reflect the tax liability under Article 9-A. Lastly, it adds language previously contained in section 6-2.2 of the regulations relating to the determination of whether a corporation is part of a unitary business.

Section 13 renames section 6-2.4 of the regulations and makes various technical and clarifying amendments to the section.

Section 14 amends section 6-2.5 of the regulations to delete language which provides that a foreign corporation not subject to tax will not be required to be included in a combined report unless inclusion is necessary to properly reflect the tax liability of one or more taxpayers in the group because of substantial intercorporate transactions or some agreement, understanding, arrangement or transaction whereby the activity, business, income or capital of any taxpayer is improperly or inaccurately reflected. It also makes it clear that corporations organized under the laws of a country other than the United States may not be included in a combined report. It eliminates language that requires a FSC to be included in a combined report because the IRC provisions relating to FSCs have been repealed. Examples that illustrate when a FSC is required to file a combined report have also been eliminated. It also makes it clear that a corporation subject to or that would be subject to, if subject to tax, another New York State Franchise tax may not be included in a combined report under Article 9-A. In addition, it adds language to conform to the statute, that aviation corporations and railroad and trucking corporations that allocate pursuant to Tax Law sections 210.3(a)(7)(A) and 210.3(a)(8), respectively, may not be included in a combined report with any other corporation unless such corporation allocates in the same manner. Various technical and clarifying amendments have also been made.

Section 15 renames section 6-2.6 of the regulations and adds language to refer REITs and RICs to section 211.4 of the Tax Law for information relating to the inclusion of such entities in a combined report.

Section 16 renumbers section 6-2.7 of the regulations to 6-2.8 and adds a new section 6-2.7 that provides examples illustrating where a combined report is required or permitted.

Section 17 makes technical and clarifying amendments to section 6-2.8 of the regulations, as renumbered by section 16.

Section 18 amends section 6-3.2 of the regulations to delete language requiring that all corporations in the combined group use the same accounting period. New language has been added providing that where a corporation's taxable year differs from that of the taxpayer parent, that the applicable taxable year to be included in the combined report is the taxable year that ends within the taxable year of the taxpayer parent. Technical and clarifying amendments have also been made.

Sections 19 and 20 make amendments to sections 21-2.1 and 21-3.2 of the Article 32 regulations to correspond with the Article 9-A amendments described in section 18 of this summary.

Section 21 adds a new Part 33 to the Article 33 regulations to provide that the provisions of Subpart 6-2 of Article 9-A regulations are applicable to combined returns filed under section 1515(f) of the Tax Law except where otherwise provided by the Tax Law or Part 33. Specific language is provided to codify certain exceptions.

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.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, subdivision First; 1096(a), 1468 and 1519. Section 171, subdivision First, provides for the Commissioner to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 1096(a) of Article 27 authorizes the Commissioner to make such rules and regulations as are necessary to enforce the New York State Franchise Tax on Business Corporations imposed by Article 9-A of the Tax Law. Section 1468 of Article 32 cites the provisions of Article 27 as being applicable and having the same force and effect on the Franchise Tax on Banking Corporations imposed by Article 32 of the Tax Law. Section 1519 of Article 33 cites the provisions of Article 27 as being applicable and having the same force and effect on the Franchise Taxes on Insurance Corporations.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner administer the provisions of the Tax Law by providing guidance with respect to legislative amendments made by Chapter 60 of the Laws of 2007 to section 211.4 of the Tax Law. The amendments changed the circumstances under which a taxpayer corporation is required or permitted to file a combined report with other related corporations. The rule also reflects technical corrections to the Chapter 60 amendments made by Chapter 57 of the Laws of 2008, relating to the filing of combined reports by Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs).

3. Needs and benefits: The rule makes amendments to Subpart 6-2, of the regulations titled, Combined Reports. A taxpayer is now required to file a combined report with its related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price of such intercorporate transactions. Related corporations are corporations that meet the existing ownership and control requirements of section 211.4 of the Tax Law and section 6-2.2 of the regulations (generally an 80 percent direct or indirect stock ownership test). In addition, a combined report may be required or permitted where substantial intercorporate transactions are absent if a combined report is necessary in order to properly reflect the tax liability under Article 9-A of the Tax Law. Under prior law and regulations, a group of related corporations could only, in the discretion of the Commissioner, be permitted or required to file a combined report if reporting on a separate basis distorted the activities, business, income, or capital in New York State of the related corporations. The activities, business, income, or capital were presumed to be distorted if there were substantial intercorporate transactions among the corporations. The Department issued a technical memorandum (TSB-M-08(2)C) that outlined and interpreted the provisions and provided guidance with respect to determining what corporations are required to be included in a combined report. The rule largely codifies the information contained in the TSB-M. The codification will benefit taxpayers and practitioners by providing guidance as to when a combined report is required or permitted and, if so, what corporations are to be included in the report.

A draft of the rule was circulated to outside organizations for comment. Comments were received from the Tax Section of the New York State Bar Association (Bar) and the Business Council of the New York State (Business Council). Both the Bar and the Business Council were concerned with the removal of the unitary business principle as a prerequisite for combination. In response, language was added to acknowledge that the unitary business principle continues to apply. Both organizations also provided comments regarding the asset transfer test for substantial intercorporate transactions, some of which warranted revising the rule. As a result, language was added to make it clear that the test applies to assets transferred after January 1, 2007. Language was also added to provide that gross income directly derived from an asset includes partnership interests and that where the asset transferred

is an interest in a partnership or an entity treated as a partnership, the income distributed to the transferee by such entity is gross income directly derived from the transferred asset. The Bar also suggested that the rule regarding the multi-year test for substantial intercorporate transactions be explicit that the test be used not only to satisfy the substantial intercorporate transactions test, but to prove that the test is not satisfied. A clarifying revision was made in response. Several other minor clarifying revisions were made as a result of the comments received.

As a result of internal discussions regarding the comments, several changes were made to the rule that represent a departure from interpretations set forth in the TSB-M. These changes relate to the substantial intercorporate transactions determination. Specifically, the rule changes the treatment of interest paid and received on loans between related corporations where the loan constitutes subsidiary capital. Under the TSB-M, these loans were not considered in the determination. It also provides that, generally, only assets transferred in exchange for stock or paid in capital are considered for purposes of the asset transfer test. Under the rule, transfers of assets other than for stock or paid in capital, including through a nonmonetary property dividend, would not be considered unless the principal purpose of the transfer is the avoidance or evasion of tax. Previously, only assets transferred in exchange for stock or paid in capital would be considered. In addition, the rule expands the treatment of income from the sale of items produced from transferred production equipment. It now provides that income from the sale of items produced from transferred assets, by itself, would not constitute gross income derived directly from the transferred assets, but a transfer of assets constituting substantially all of the production process, including associated intangibles, such as might occur in the transfer of an operating division, would constitute gross income derived directly from the transferred assets. Several technical and clarifying changes were also made. The rule will benefit taxpayers and practitioners by providing guidance and clarification with respect to these changes in interpretation.

4. Costs:

(a) Costs to regulated persons: The rule does not impose any new reporting, recordkeeping or other compliance costs on regulated persons. The rule benefits regulated persons by providing guidance needed to determine when a combined report is required or permitted and as to which corporations are included. Since the rule largely codifies legislative amendments and the interpretations set forth in TSB-M-08(2)C, the impact on the regulated persons is estimated to be none or minimal. The changes that depart from the interpretations set forth in the TSB-M (see Needs and Benefits) may have an impact on the tax liability of some taxpayers. The impact of these changes on a particular taxpayer, which could be positive or negative, will depend on the specific circumstances of the taxpayer. We estimate that these changes will have minimal revenue impact on taxpayers as a whole.

(b) Costs to the agency and to the State and local governments for the implementation and continuation of this rule: It is estimated that the implementation and continued administration of this rule will not impose any costs upon this agency, New York State, or its local governments.

(c) Information and methodology: These conclusions are based upon an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau. The rule largely codifies legislative amendments that require corporations with substantial intercorporate transactions to file a combined report. The combined report more properly reflects the tax on related corporations.

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

6. Paperwork: The rule imposes no reporting requirements, forms, or other paperwork upon the regulated parties beyond those required by existing law and regulations.

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

8. Alternatives: Since the legislative amendments made by Chapter 60 of the Laws of 2007 and by Chapter 57 of the Laws of 2008 significantly changed the circumstances under which a taxpayer corporation will be required or permitted to file a combined report with other related corporations, updating the existing rules relating to combined reports was the only viable alternative.

In developing the rule, the Department solicited feedback from various industry groups and associations (see Section 7 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments). Several alternatives that were considered resulted from comments received from the Tax Section of the New York State Bar Association (Bar) and the Business Council of New York State (Business Council).

Both the Bar and the Business Council were concerned about the removal of the unitary business requirement as a prerequisite for combination. While the legislative amendments did not specifically express that the related corporations be engaged in a unitary business for combination to be permitted or required, such principle is embedded in federal case law. The Department decided that the concern was valid and included language in the rule to acknowledge the unitary principle.

Another alternative considered arose from a concern expressed by the Bar in the determination of substantial intercorporate transactions. The legislative amendments provide that one of the transactions/activities considered in determining whether substantial intercorporate transactions exist is “incurring expenses that benefit, directly or indirectly, one or more related corporations”. Specifically, the Bar suggested that the Department offer more guidance with respect to what types of activities and transactions are considered and how the determination of expenses directly versus expenses indirectly be made. The Department views these determinations as factual and based on the facts and circumstances for each taxpayer. Therefore, it was decided that offering further guidance in this area was not an alternative.

Another suggestion was made by the Bar regarding the multi-year test for substantial intercorporate transactions. The rule provides that in any year where intercorporate receipts or expenditures are between 45% and 55%, that the substantial intercorporate transactions test will be satisfied if, during that taxable year and prior two years, the intercorporate transactions are in aggregate, 50% or more of the total receipts or expenditures for that period. It was suggested that the rule make it explicit that the multi-year test should be used not only to satisfy the substantial intercorporate transactions test, but to prove that the test is not satisfied. The Department considered providing clarity in this area to be a valid alternative. A clarifying revision was made.

Lastly, both the Bar and the Business Council provided comments concerning the asset transfer test for substantial intercorporate transactions. The Department felt some of these comments warranted revising the rule. As a result, language was added to make it clear that the test applies to assets transferred on or after January 1, 2007. Language was also added to provide that gross income directly derived from an asset includes partnerships interests and that where the asset transferred is an interest in a partnership or an entity treated as a partnership, the income distributed to the transferee by such entity is gross income directly derived from the transferred asset.

It should be noted that the main focus of the comments received from the Business Council were basically the same as those submitted regarding technical memorandum TSB-M-08(2)C. The Business Council felt that the methodology used in determining which corporations are included in the group would be difficult for large multinational corporations to follow. They also felt that the methodology exceeded the scope of the authority the legislature granted with respect to which corporations are required to be included in the combined return. The Department continues to disagree and believes that the interpretations contained in the technical memorandum and the draft rule are the proper reflection of the legislative intent of the statutory amendments.

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

10. Compliance schedule: The amendments will take effect when the Notice of Adoption is published in the State Register. No ad-

ditional time is needed in order for the regulated parties to comply with this rule.

Regulatory Flexibility Analysis

1. Effect of rule: The adoption of rules that provide guidance with respect to legislative amendments that changed the circumstances under which a taxpayer corporation will be required or permitted to file a combined report with other related corporations, is applicable to all businesses, large and small. We do not have the information to estimate the number of small businesses that may be affected with any degree of certainty. Local governments are not affected. The rule does not affect the New York City General Corporation Tax.

2. Compliance requirements: No new reporting, recordkeeping or other compliance requirements are being imposed as a result of this proposal. The Department issued a technical memorandum (TSB-M-08(2)C) that outlined and interpreted legislative amendments and provided guidance regarding the determination of what corporations are required to be included in a combined report. This rule largely codifies the information in that TSB-M. The Department believes that this rule will not impose any additional compliance requirements on small businesses. There are no requirements for local governments.

3. Professional services: No additional professional services beyond those already employed by a small business in preparing its taxes will be required in order to comply with this rule.

4. Compliance costs: The rule does not impose any new reporting, recordkeeping or other compliance costs on regulated parties. The rule may have an impact on the tax liability of particular taxpayers. See Part 4 of the “Regulatory Impact Statement” for this rule. There would be no variation in costs for small businesses. There are no costs for local governments.

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

6. Minimizing adverse impact: The rule does not distinguish between affected small businesses and other types of businesses as there is no distinction in the statute being interpreted. The rule places no burdens on small businesses or local governments.

7. Small business and local government participation: The following organizations are being given an opportunity to participate in the rule’s development: the Association of Towns of New York State; the Division of Local Government Services of the New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. In addition, drafts of the rule were sent to the following: the Business Council of New York State, the New York State Bar Association, the Association of the Bar of the City of New York, and the New York State Society of CPAs.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The purpose of these amendments is to provide guidance with respect to legislative amendments that changed the circumstances under which a taxpayer corporation will be required or permitted to file a combined report with other related corporations. Some taxpayers affected by these rules may be located in rural areas throughout the State. There are 43 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: No new reporting, recordkeeping or other compliance requirements are being imposed as a result of this proposal. The Department issued a technical memorandum (TSB-M-08(2)C) that outlined and interpreted legislative amendments and provided guidance regarding the determination of what corporations are required to be included in a combined report. This rule largely codifies the information in that TSB-M. The Department believes that this rule will not impose any additional compliance requirements on taxpayers in rural areas. Taxpayers in rural areas also will not require additional professional services to comply with this rule.

3. Costs: The rule does not impose any new reporting, recordkeeping or other compliance costs on regulated parties. The rule may have an impact on the tax liability of particular taxpayers. See Part 4 of the "Regulatory Impact Statement" for this rule. There are no variations in costs for public or private concerns in rural areas.

4. Minimizing adverse impact: The rule does not distinguish between rural areas and non-rural areas as there is no distinction in the statute being interpreted. There is no adverse impact on public and private entities in rural areas.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Division of Local Government Services of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. In addition, drafts of the rule were sent to the following: the Business Council of New York State, the New York State Bar Association, the Association of the Bar of the City of New York, and the New York State Society of CPAs.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities. The purpose of the rule is to provide guidance with respect to legislative amendments that changed the circumstances under which a taxpayer corporation will be required or permitted to file a combined report with other related corporations. The rule also makes technical and clarifying changes.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Supplemental Nutrition Assistance Program

I.D. No. TDA-22-12-00022-A

Filing No. 883

Filing Date: 2012-08-28

Effective Date: 2012-11-01

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

Action taken: Amendment of sections 351.2, 384.3 and 387.9; and repeal of section 388.8 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 95 and 131(1); L. 2012, ch. 41; and 7 United States Code, section 2020(a)

Subject: Supplemental Nutrition Assistance Program.

Purpose: Eliminate finger imaging for purposes of the Supplemental Nutrition Assistance Program (SNAP), as OTDA has implemented a new Statewide Clearance process designed to prevent the receipt of duplicate SNAP benefits, in order to reduce food insecurity and improve nutrition.

Text of final rule: Subdivision (a) of section 351.2 of Title 18 NYCRR is amended to read as follows:

(a) Identity. The applicant or recipient must furnish verification of his or her identity, as a condition of eligibility, at the time of application or recertification for public assistance or care. Any member of a household 18 years of age or older and the head of a household who is receiving or applying for safety net assistance, emergency safety net assistance, public institutional care for adults, family assistance or emergency assistance to needy families with children, is, when requested to do so by the social services district, required to establish his or her identity by means of finger images to be used in the automated finger imaging system authorized in Part 384 of this Title. No household can receive safety net assistance, emergency safety net assistance, public institutional care for adults, family assistance or

emergency assistance to needy families with children if any member of the household, 18 years of age or older, or the head of the household, refuses to allow his or her finger images to be obtained for use in the automated finger imaging system. Any such household's application must be denied or, if the household is participating in the program, benefits must be discontinued. [Persons applying for or receiving benefits under the food stamp program or food assistance program must also allow their finger images to be obtained in accordance with sections 387.9 and 388.8 of this Title.]

Subparagraph (i) of paragraph (3) of subdivision (a) of section 384.3 of Title 18 NYCRR is amended to read as follows:

(i) provide notice of the provisions of [sections] *section* 351.2(a) [and 360-3.2(m)] of this Title and the provisions of this subdivision to applicants for or recipients of safety net assistance, emergency safety net assistance, public institutional care for adults, family assistance, *and* emergency assistance to needy families with children[, benefits under the food stamp program, benefits under the food assistance program and medical assistance];

Subdivision (c) of section 387.9 of Title 18 NYCRR is hereby repealed, and a new subdivision (c) is added to read as follows:

(c) *Prohibition against automated finger imaging for the Supplemental Nutrition Assistance Program.*

(i) *The use of an automated finger imaging system is prohibited for any purpose under this Part.*

(ii) *No social services district may require any applicant or recipient household member to be finger imaged for purposes of the Supplemental Nutrition Assistance Program.*

Section 388.8 of Title 18 NYCRR is repealed.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 387.9(c).

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement. The new language in subdivision (c) of section 387.9 of Title 18 NYCRR was updated to replace the name "Food Stamp Program" with the new name "Supplemental Nutrition Assistance Program." This revision is consistent with Chapter 41 of the Laws of 2012, which changed the name of the "Food Stamp Program" to the "Supplemental Nutrition Assistance Program" effective August 29, 2012.

Revised Job Impact Statement

A Job Impact Statement is not required for the proposed amendment. It is apparent from the nature and the purpose of the proposed amendment that it would not have a substantial adverse impact on jobs and employment opportunities in New York State. The proposed amendment would not affect private businesses. The proposed amendment would not affect in any significant way the jobs of the workers in the social services districts or at the Office of Temporary and Disability Assistance. Thus the changes would not have any adverse impact on jobs and employment opportunities in New York State.

Assessment of Public Comment

During the public comment period, the Office of Temporary and Disability Assistance (OTDA) received 211 comments regarding the proposed rule. There were 208 comments that supported the proposed rule (over 98%), and only two comments (less than 1%) that opposed it. One additional comment did not take a position but questioned whether the proposed rule would increase participation rates. The supportive comments asserted that the finger imaging requirement deters eligible persons from applying for nutritional assistance. Numerous comments stated that eliminating finger imaging will increase access to nutritional assistance, remove an unneeded and inappropriate stigma, and break down barriers to enrollment in the Food Stamp Program. It should be noted that effective August 29, 2012, the new name for the Food Stamp Program in New York State is the Supplemental Nutrition Assistance Program (SNAP). As such, all references in the comments and in this assessment to food stamps, food stamp benefits or the Food Stamp Program refer and apply to SNAP.

OTDA received an outpouring of public comments that applauded the proposed elimination of finger imaging for the Food Stamp Program and asserted that the elimination of this barrier to enrollment will increase participation in the Food Stamp Program. One of the comments stated that finger imaging “discriminates against a wide range of people and significantly reduces valid participation by eligible households.” Other comments asserted that “the policy of finger imaging for food stamps has repeatedly and unnecessarily left families most at risk - those with children, elderly, and disabled individuals - without desperately needed food assistance... Ending this practice will break down barriers to enrollment and allow more eligible people to obtain the nutritional assistance they need.”

One of the 208 supportive comments included recommendations regarding protections for individuals. It remains a priority of OTDA to protect the rights of individuals in the implementation of its fraud prevention measures.

Three of the comments in support of the proposed rule asserted that the finger imaging requirement should be eliminated not only for the Food Stamp Program, but also for the public assistance programs. While OTDA notes the concerns expressed in these comments, issues related to finger imaging under the public assistance programs are outside the scope of the proposed rule and will not be addressed in this Assessment of Public Comments.

One of the two comments submitted in opposition to the proposed rule came from a non-profit trade association. This comment claimed that no stigma is associated with finger imaging, in contrast to the vast majority of comments. The commentator also claimed that finger imaging is the most effective tool available to prevent individuals from using multiple identities in order to fraudulently receive food stamp benefits. Although finger imaging can be used as a means of identity verification, the commentator neglects to recognize that the effectiveness of finger imaging is limited by the universe in which it operates. In New York State, using finger imaging to prevent fraud in the Food Stamp Program is an incomplete approach because there is no requirement that food stamp applicants throughout the State be finger imaged.

The only other comment submitted in opposition to the proposed rule came from a social services district (hereinafter “district”). The district expressed concern that the proposed rule would weaken the integrity of the Food Stamp Program and questioned the effectiveness of the new functions instituted by the State to prevent fraud. However, the district fails to cite any basis for this concern. The district appears to disregard the new functions recently implemented by the State as well as other measures previously in place that effectively prevent fraud in the Food Stamp Program. The new functions utilized by the State include matches of Social Security Numbers (SSNs), names, dates of birth and gender. The matching of SSNs is the industry standard, meeting the requirements of the United States Department of Agriculture (USDA) and is operationally effective in 48 other states. Identifying applicants who are already active or applying in another district allows eligibility and case workers to resolve discrepancies and prevent duplicate participation at the time of eligibility determination. The new Statewide Clearance function enables all 58 districts to be able to check for duplicate participation in real time. Further, the new Statewide Clearance process does not operate in a vacuum; it is an additional control over existing Statewide computer matches. These measures include OTDA’s data matching processes such as Social Security Number Validation and benefit and deceased client matches with the Social Security Administration (SSA), the Public Assistance Reporting Information System (PARIS) interstate duplicate participation match, the Prison match and the Resource File Integration (RFI) income and resource matches. In addition, there are also general and specific edits and controls over eligibility data such as the automatic closing of cases meeting defined criteria in these matches and providing control reports to eligibility workers for action. Together these controls clearly comply with the federal requirement to prevent duplication of food stamp benefits.

The district also maintained that finger imaging is a necessary and effective deterrent to fraud. However, the district fails to cite any current study to support this assertion. Again, it is important to recognize that while finger imaging is a reliable means of identity verification,

its usefulness in preventing fraud is limited by the universe in which it operates. The current method of comparing finger images utilized by the district is incomplete, since there is not a universal requirement for all clients in New York State to be imaged. The new Statewide Clearance process will be a major improvement in preventing duplication of food stamp benefits, as it identifies all applicants who are already active or applying in another district, rather than a subset. Further, the district also fails to provide any data to support its position that finger imaging is needed to prevent fraud. OTDA supports a wide range of effective fraud detection mechanisms that render finger imaging unnecessary.

The district further expressed its view that finger imaging is not a barrier to program enrollment and does not stigmatize food stamp applicants. This view was overwhelmingly contradicted by the 208 public comments that supported the proposed amendment. Those comments strongly asserted that finger imaging is a deterrent to participation in the Food Stamp Program and does present a stigma for those participating in the program. OTDA maintains that the connection of criminality to finger imaging is a common perception in American society and leads to a widely perceived stigma. This is clearly supported by the numerous references to the stigma associated with finger imaging set forth in the comments.

The district also asserts that finger imaging in the Food Stamp Program is consistent with the existing policies of the United States Department of Agriculture (USDA). However, Kevin Concannon, USDA Under Secretary for Food, Nutrition and Consumer Services, expressed serious concerns that finger imaging requirements may be a barrier to participation. He strongly encouraged New York State to consider alternatives to finger imaging, and in response to the Governor’s announcement that regulations would be offered to end food stamp finger imaging, Under Secretary Concannon stated, “I applaud Governor Cuomo’s actions today to ban finger imaging. Forty-eight States have implemented effective and less intrusive ways to prevent fraud. This is an important step forward in providing accessible, efficiently administered food stamp benefits to eligible low-income New Yorkers. This can also ease the administrative burden for the agencies as well as for consumers.” Clearly, the proposed rule is consistent with the direction and guidance provided OTDA by USDA Under Secretary Concannon.

Thoroughbred Breeding and Development Fund

NOTICE OF ADOPTION

Disqualification of Certain Owners and Breeders Charged with Cruelty and Abuse of Horses from Receiving Breeding Funds

I.D. No. TBD-51-11-00021-A

Filing No. 884

Filing Date: 2012-08-28

Effective Date: 2012-09-12

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

Action taken: Renumbering of section 4081.12 to section 4081.13; and addition of new section 4081.12 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 254(2)

Subject: Disqualification of certain owners and breeders charged with cruelty and abuse of horses from receiving breeding funds.

Purpose: To ensure that New York State Thoroughbred Breeding and Development Funds are not awarded to persons convicted of horse cruelty.

Text or summary was published in the December 21, 2011 issue of the Register, I.D. No. TBD-51-11-00021-P.

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

Text of rule and any required statements and analyses may be obtained from: Tracy Egan, Executive Director, New York State Thoroughbred and Breeding Development Fund, Saratoga Spa State Park, 19 Roosevelt

Dr., Suite 250, Saratoga Springs, New York 12866, (518) 580-0100, email:
nybreds@nybreds.com

Assessment of Public Comment

The agency received no public comment.