

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; or C for first Continuation.)

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-49-03-00005-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Supervising Museum Exhibits Specialist (1).

Placement of such position shall be made retroactive to September 29, 1993.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mandatory Continuing Education Requirements for Chiropractors

I.D. No. EDU-49-03-00016-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 73.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 212(3); 6502(1); 6504 (not subdivided); 6507(2)(a); 6508(1); 6554-a(1)(a), (b) and (c), (2), (3), (4), (5) and (6); and L. 2003, ch. 269, section (2)

Subject: Mandatory continuing education requirements for chiropractors.

Purpose: To set forth continuing education requirements and standards that licensed chiropractors must meet to be registered to practice in New York State and requirements for approval of sponsors of such continuing education.

Substance of proposed rule: The Commissioner of Education proposes to add section 73.5 of the Regulations of the Commissioner of Education, relating to mandatory continuing education for licensed chiropractors. The following is a summary of the substance of the proposed regulation:

A new section 73.5 is added to the Regulations of the Commissioner of Education, establishing continuing education requirements for licensed chiropractors.

Subdivision (a) of section 73.5 establishes definitions for acceptable accrediting agency, higher education institution, national chiropractic professional organization, New York State chiropractic professional organizations and self-instructional coursework.

Subdivision (b) of section 73.5 cites the applicability of the continuing education requirement, namely that each licensed chiropractor required to register with the Department to practice in New York State shall comply with the mandatory continuing education requirements prescribed in the section. This subdivision also provides for exemptions and adjustments to the requirement.

Exemptions are allowed for those licensed chiropractors who are: (a) in the triennial registration period during which they are first licensed to practice chiropractic in New York State, except those first licensed pursuant to an endorsement of a license of another jurisdiction; and (b) licensees who are not engaged in the practice of chiropractic in New York State, as

evidenced by not being registered to practice in New York State, except as otherwise provided.

An adjustment to the requirement is permitted, provided that the licensee documents good cause that prevents compliance or the Department determines otherwise that there is good cause that prevents compliance, such as poor health or a specific physical or mental disability certified by an appropriate health care professional, or extended active duty with the armed forces of the United States, or other good cause beyond the licensee's control which in the judgment of the Department makes it impossible for the licensee to comply with the continuing education requirements in a timely manner.

Paragraph (1) of subdivision (c) of section 73.5 sets forth the general mandatory continuing education requirements for licensed chiropractors. Subparagraph (i) establishes the requirement: 36 hours of acceptable formal continuing education for each triennial registration period, provided that no more than 12 hours of such continuing education shall be in self-instructional coursework. Licensees whose first registration following January 1, 2004 is less than three years from that date, but on or after March 18, 2004, shall be required to complete continuing education hours on a prorated basis at the rate of one hour of acceptable formal continuing education per month for the period beginning January 1, 2004 up to the first registration date thereafter. During each registration period, the licensee shall complete a distribution of acceptable formal continuing education in subjects, as prescribed in paragraph (2) of this subdivision. Subparagraph (ii) sets forth the continuing education requirement during each registration period of less than three years.

Paragraph (2) of subdivision (c) defines formal continuing education that is acceptable to the State Education Department, as meeting the requirements of subparagraphs (i) and (ii) of this paragraph.

Subparagraph (i) of paragraph (2) prescribes that acceptable formal continuing education shall be in the subjects prescribed in this subparagraph, as follows:

(a) Subjects that are specifically designed solely to maximize the profits of a chiropractic practice shall be excluded as acceptable formal continuing education.

(b) The formal continuing education shall be in professional and clinical skills in accordance with the practice of chiropractic as defined in section 6551 of the Education Law. Such subjects may include but shall not be limited to: chiropractic technique, diagnosis, clinical interventions/evidence-based models, neurological testing, philosophy and principles of chiropractic, basic and clinical sciences and other sciences related to chiropractic practice, patient communications, recordkeeping, and matters of law and/or ethics which contribute to professional practice in chiropractic and the health and safety, and/or welfare of the public.

(c) If ten or more hours are required to be completed during a registration period, the licensee shall complete at least one-third of the continuing education hour requirement in one or more of the following subjects: patient communications, recordkeeping, and/or matters of law and/or ethics which contribute to professional practice in chiropractic and the health and safety, and/or welfare of the public.

(d) If nine or fewer hours are required to be completed during a registration period, the licensee shall complete coursework in any subject authorized in clause (b) of this subparagraph.

(e) All subject topics must be comparable to subject topics taught in professional education programs in chiropractic offered by higher education institutions that are accredited by the Council on Chiropractic Education.

Subparagraph (ii) of paragraph (2) prescribes that the continuing education shall be offered by a sponsor that meets the requirements and is approved by the Department pursuant to subdivision (i) of this section.

Subdivision (d) of section 73.5 provides that at each re-registration, the licensed chiropractor must certify to the Department compliance with or exemption or adjustment to the continuing education requirement.

Subdivision (e) of section 73.5 prescribes the requirement for a licensee returning to the practice of chiropractic after a lapse in practice, defined as not being registered to practice in New York State.

Subdivision (f) of section 73.5 prescribes the requirements for the issuance of a conditional registration to a licensed chiropractor who attests to or admits to noncompliance with the continuing education requirement.

Subdivision (g) of section 73.5 requires the licensed chiropractor to maintain and ensure access by the Department to records of completed continuing education as specified in the subdivision.

Subdivision (h) of section 73.5 provides for the measurement of continuing education study, specifically, that for continuing education courses 50 minutes shall equal one continuing education hour of credit and, for credit

bearing college or university courses, each semester-hour of credit equals 15 continuing education hours of credit and each quarter-hour of credit equals 10 continuing education hours of credit.

Subdivision (i) of section 73.5 prescribes sponsor approval requirements. Paragraph (1) of subdivision (i) states that sponsors of continuing education to licensed chiropractors must be a New York State chiropractic professional organization, a national chiropractic professional organization, or a higher education institution, as such entities are defined in subdivision (a) of this section.

Paragraph (2) of subdivision (i) requires sponsors of continuing education to licensed chiropractors to meet the requirements prescribed in paragraph (4) of the subdivision after a review by the Department, unless they are deemed approved pursuant to paragraph (3) of this subdivision.

Paragraph (3) of subdivision (i) provides that the Department will deem approved as a sponsor of continuing education to licensed chiropractors a higher education institution that offers programs that are registered pursuant to Part 52 of this Title as leading to licensure in chiropractic or a higher education institution that offers equivalent professional education programs in chiropractic and is accredited by the Council of Chiropractic Education or another acceptable accrediting agency that accredits chiropractic colleges.

Paragraph (4) of subdivision (i) sets forth the standards for Department review of sponsors to offer continuing education to licensed chiropractors.

Subdivision (j) of section 73.5 sets the fees for mandatory continuing education, conditional registration, and the fee for an organization desiring to offer continuing education to licensed chiropractors for a three-year term based upon a Department review.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@mail.nysed.gov

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department to determine and set fees for certifications and permits.

Subdivision (1) of section 6502 of the Education Law requires that a professional licensee must register with the State Education Department in order to practice in this State.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraph (a) of subdivision (1) of section 6554-a of the Education Law requires a licensed chiropractor to complete mandatory continuing education as a condition for registration to practice in New York State and provides an exception to chiropractors who have a conditional registration certificate.

Paragraph (b) of subdivision (1) of section 6554-a of the Education Law allows the licensed chiropractor to be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. It also authorizes the State Education Department to adjust the requirement in certain cases.

Paragraph (c) of subdivision (1) of section 6554-a of the Education Law provides an exemption from the continuing education requirement for licensees not engaged in the practice of chiropractic and directs the State Education Department to establish in regulation, after consultation with the State Board for Chiropractic, continuing education requirements for licensees reentering the profession.

Subdivision (2) of section 6554-a of the Education Law provides that a chiropractor must complete mandatory continuing education requirements to be registered to practice in New York State, and establishes the continuing education hour requirement and a proration formula for certain licensees.

Subdivision (3) of section 6554-a of the Education Law authorizes the State Education Department to issue conditional registrations for chiropractors who do not meet the regular continuing education requirement, to establish requirements for such licensees under conditional registration, and to charge a fee for such conditional registration.

Subdivision (4) of section 6554-a of the Education Law defines acceptable formal continuing education as formal programs of learning, which are sponsored by identified organizations or entities and contain subjects approved by an accredited chiropractic college that are prescribed in the Regulations of the Commissioner of Education, after consultation with the State Board for Chiropractic.

Subdivision (5) of section 6554-a of the Education Law requires chiropractors, at each triennial registration, to certify that the mandatory continuing education requirement has been met, maintain adequate documentation of compliance with the continuing education requirements and provide such documentation at the request of the State Education Department.

Subdivision (6) of section 6554-a of the Education Law authorizes the State Education Department to charge chiropractors a mandatory continuing education fee.

Section (2) of Chapter 269 of the Laws of 2003 authorizes the State Education Department to promulgate regulations necessary to implement the mandatory continuing education requirements for licensed chiropractors prescribed in section 6554-a of the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish standards relating to mandatory continuing education for licensed chiropractors. Specifically, the regulations would establish appropriate standards for what constitutes acceptable continuing education, educational requirements when there is a lapse in practice, requirements for licensees under conditional registration, recordkeeping requirements applicable to licensees, and standards for the approval of sponsors of continuing education to licensed chiropractors.

3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to set forth continuing education requirements and standards that licensed chiropractors must meet to be registered to practice in New York State and requirements for sponsors of such continuing education. The proposed regulation is needed to clarify and implement the requirements of section 6554-a of the Education Law, as added by Chapter 269 of the Laws of 2003. As required by statute, the proposed regulation will establish standards for what constitutes acceptable formal continuing education, educational requirements when there is a lapse in practice, and requirements for licensees under conditional registration. In addition, the proposed regulation is needed to establish continuing education requirements for registration periods that are less than three years' in duration. It is also needed to establish standards for the approval of sponsors of continuing education to licensed chiropractors and a fee for the review of the sponsors to defray the cost of such review by the State Education Department.

4. COSTS:

(a) Costs to State government. The proposed regulation implements statutory requirements and establishes standards as directed by statute. The regulation will not impose any additional cost on State government, over and above the cost imposed by the statutory requirements.

(b) Cost to local government. None.

(c) Cost to private regulated parties. The proposed regulation does not impose additional costs on licensed chiropractors beyond those imposed by statute. Statutory provisions impose a mandatory continuing education fee of \$45 for licensed chiropractors at each triennial registration and require that licensed chiropractors complete a prescribed number of hours of acceptable formal continuing education.

The proposed regulation establishes a \$900 fee for sponsors reviewed by the State Education Department for approval to offer acceptable formal continuing education to licensed chiropractors for a three-year term.

(d) Cost to the regulatory agency. As stated above in Costs to State government, the proposed amendment does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of section 6554-a of the Education Law relating to continuing education requirements for

licensed chiropractors. It does not impose any program, service, duty, or responsibly upon local governments.

6. PAPERWORK:

The proposed regulation requires each licensee to maintain or ensure access to, for six years, a record of completed continuing education, which includes: the title of the course, subject of the continuing education, the number of hours completed, the sponsor's name and any identifying number, attendance verification if a course, participation verification if self-instructional coursework, and the date and location of the program. In addition, the regulation requires sponsors of continuing education to licensed chiropractors, reviewed for approval by the State Education Department, to maintain a record for at least six years which includes the name and curriculum vitae of the faculty, a record of attendance of licensed chiropractors in the course if a course, a record of participation of licensed chiropractors in the self-instructional coursework if self-instructional coursework, an outline of the course, date and location of the course, and the number of hours required for completion of the course.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for the continuing education of licensed chiropractors.

10. COMPLIANCE SCHEDULE:

The proposed regulation implements and clarifies statutory requirements. Applicants must comply immediately with the proposed regulation on its effective date.

Regulatory Flexibility Analysis

The proposed regulation sets forth continuing education requirements and standards that individuals who are licensed chiropractors must meet to be registered to practice in New York State. It also establishes requirements for sponsors of continuing education. In accordance with section 6554-a of the Education Law, such sponsors must be New York State chiropractic professional organizations, national chiropractic professional organizations, or higher education institutions, none of which are small businesses or local governments. Accordingly, the regulation will not impose any reporting, recordkeeping, or other compliance requirements, or any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed regulation that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. All 6,263 licensed chiropractors who are registered to practice chiropractic in New York would be subject to the requirements of the proposed regulation. Of these, 766 reported that their permanent address of record is in a rural county of New York State. The State Education Department estimates that there will be fewer than ten approved sponsors of continuing education to licensed chiropractors, of which fewer than three will be located in a rural county of New York State. We arrived at this estimate by determining that none of the New York Chiropractic Associations is located in a rural area and only one higher education institution that offers chiropractic programs is located in a rural area. We expect that very few other higher education institutions will apply as sponsors.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

As required by section 6554-a of the Education Law, the proposed regulation requires licensed chiropractors, including those that reside or work in rural areas, to complete a prescribed number of hours of acceptable formal continuing education to be registered to practice in New York State. The proposed regulation prescribes standards for acceptable formal continuing education, including the subjects for that continuing education. The regulation requires licensees to certify to meeting the requirement upon applying for renewal of registration to practice in New York State. The proposed regulation requires each licensee to maintain prescribed information concerning completed acceptable formal continuing education.

The proposed regulation also establishes standards for the Department's review of sponsors desiring to offer acceptable formal continuing education, including sponsors that may be located in rural areas. The regulation requires such sponsors to maintain specified records for a six-year period from the date of completion of the coursework.

The proposed regulation does not impose a need for professional services other than educational services to meet the continuing education requirements.

3. COSTS:

The proposed regulation does not impose additional costs on licensed chiropractors beyond the costs imposed by statute. However, the regulation does establish a fee of \$900 for entities reviewed by the State Education Department to become an approved sponsor of continuing education to licensed chiropractors for a three-year term.

4. MINIMIZING ADVERSE IMPACT:

The proposed regulation implements and clarifies the continuing education requirements for licensed chiropractors found in section 6554-a of the Education Law. The statutory requirements make no exception for individuals who live or work in rural areas. The Department has determined that the requirements in the regulation should apply to all licensed chiropractors, regardless of their geographic location, to help ensure continuing competency across the State. The Department has determined that the requirements in the regulation should apply to all licensed chiropractors, regardless of their geographic location, to help ensure continuing competency across the State. The Department has determined that the requirements in the regulation should apply to all licensed chiropractors, regardless of their geographic location, to help ensure continuing competency across the State. The Department has determined that the requirements in the regulation should apply to all licensed chiropractors, regardless of their geographic location, to help ensure continuing competency across the State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulations were solicited from statewide organizations representing all parties having an interest in the practice of chiropractic. Included in this group were the State Board for Chiropractic and professional associations representing the chiropractic profession. These entities have members who live or work in rural areas of New York State. Also, the Department solicited comment from the degree-granting postsecondary institutions in the State that offers registered chiropractic programs and is located in a rural county of the State. Each of these organizations has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

Section 6554-a of the Education Law, as added by Chapter 269 of the Laws of 2003, establishes mandatory continuing education requirements for licensed chiropractors registered to practice in New York State. The proposed regulation establishes necessary standards for the continuing education, in accordance with the statutory requirement.

The proposed regulation implements specific statutory requirements and directives. Section 6554-a establishes the requirement that licensed chiropractors must complete a prescribed number of hours of acceptable formal continuing education in order to be registered to practice in this State. Therefore, any impact on jobs and employment opportunities by establishing a continuing education requirement for licensed chiropractors is attributable to the statutory requirement, not the proposed rule, which simply establishes consistent standards as directed by statute.

In any event, a similar statutory continuing education requirement was established for individuals licensed in public accountancy in 1985, and the Department is not aware that the requirement significantly affected jobs or employment opportunities in that profession. In addition, the statutory requirement should increase job and employment opportunities for instructors and administrators who will be needed to provide the continuing education instruction to licensees.

Because it is evident from the nature of the proposed regulation, which implements specific statutory requirements and directives, that the proposed rule will have no impact on jobs or employment opportunities attributable to its adoption, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Remedial Action Plans

I.D. No. ENV-49-03-00004-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 sections 372.7 and 373-1.11 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 3, title 3; art. 27, titles 7 and 9; and art. 71, titles 27 and 35

Subject: Remedial action plans (RAPs).

Purpose: To modify State regulations thereby increasing consistency with Federal regulations.

Text of proposed rule: (Subdivision 372.7(a) through paragraph 372.7(b)(2) remain unchanged.)

Paragraph 372.7(b)(3) is amended to read as follows:

(3) For shipments of hazardous wastes involving a rail or water (bulk *shipment*) transporter [as a transporter other than an] *who is not the* initial transporter, the generator must complete the manifest and comply with all related requirements as set forth in section 372.2(b) of this Part.

(Subparagraph 372.7(c)(1)(i) remains unchanged.)

Subparagraph 372.7(c)(1)(ii) is amended to read as follows:

(ii) *Reserved.* [For shipments of hazardous waste involving a water (bulk) transporter as the initial but not sole transporter:

(‘a’) the initial water (bulk) transporter may use a shipping document as set forth in subparagraph (i) of this paragraph in place of the manifest and must obtain the handwritten signature of the subsequent transporters and the date of delivery on the shipping document and retain a copy of such document in accordance with section 372.3(c)(2) of this Part.

(‘b’) any subsequent transporter is relieved from the obligation of carrying a manifest if the shipping document as set forth in subparagraph (i) of this paragraph accompanies the shipment. A subsequent transporter must obtain the handwritten signature of any other subsequent transporter or the designated facility and the date of delivery and must retain a copy of the shipping document in accordance with section 372.3(c)(2) of this Part.]

(Subparagraph 372.7(c)(1)(iii) introductory language through subclause 372.7(c)(1)(iii)(‘b’)(‘1’) remain unchanged.)

Subclause 372.7(c)(1)(iii)(‘b’)(‘2’) is amended to read as follows:

(‘2’) *deliver by water (bulk shipment) to the designated facility and* obtain the date of delivery and handwritten signature of the owner or operator of the designated facility [or any subsequent transporter (other than another rail or water (bulk) transporter)] on the shipping document; and

(Subclause 372.7(c)(1)(iii)(‘b’)(‘3’) through subdivision 372.7(d) remain unchanged.)

(Subdivision 373-1.11(a) through subparagraph 373-1.11(c)(4)(vii) remain unchanged.)

Subparagraph 373-1.11(c)(4)(viii) is amended to read as follows:

(viii) Such information as may be necessary to enable the Department to carry out the Department's duties under other State laws as is required for traditional Part 373 permits under [section 621.3] *Part 621* of this Title;

(Subparagraph 373-1.11(c)(4)(ix) through clause 373-1.11(d)(4)(i)(‘c’) remain unchanged.)

Clauses 373-1.11(d)(4)(i)(‘d’) and (‘e’) are amended to read as follows:

(‘d’) The Department shall send a notice of the Department's intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site and to individuals who have requested to be notified of completeness for your application or for all RAPS. The Department shall also publish notice of complete application in the Environmental Notice Bulletin, pursuant to [paragraph 621.6(a)(2)] *Part 621* of this Title.

(‘e’) The Department may provide or require you to provide other reasonable public notice of complete application and opportunity for public comment, pursuant to [paragraph 621.6(a)(2)] *Part 621* of this Title.

(Subparagraphs 373-1.11(d)(4)(ii) and (iii) remain unchanged.)

Subparagraphs 373-1.11(d)(4)(iv) and (v) are amended to read as follows:

(iv) If, within the comment period, the Department receives written notice of opposition to the Department’s intention to approve or deny your RAP application and a request for a hearing, the Department must *in accordance with Part 621 of this Title*, hold a legislative hearing *in accordance with the process as set forth in Part 624 of this Title* to [discuss issues] *receive unsworn statements* relating to the approval or denial of your RAP application. The Department may also determine on the Department’s own initiative that a legislative hearing is appropriate. The legislative hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Department must schedule this legislative hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in subparagraph 373-1.11(d)(4)(i) of this subdivision. This notice must, at a minimum, include the information required by subparagraph 373-1.11(d)(4)(iii) of this subdivision and:

(‘a’) Reference to the date of any previous public notices relating to the RAP application;

(‘b’) The date, time and place of the hearing; and

(‘c’) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(v) *The determination to hold an adjudicatory public hearing will be made pursuant to 621 of this Title. Public notice for an adjudicatory hearing must be given according to the requirements in subparagraph 373-1.11(d)(4)(i) of this subdivision. This notice must, at a minimum, include the information required by subparagraph 373-1.11(d)(4)(iii) of this subdivision.*

(Subparagraph 373-1.11(d)(5)(i) through (iv) remain unchanged.)

Subparagraph 373-1.11(d)(5)(v) is amended to read as follows:

(v) When the Department issues its final RAP decision, it shall include notice of opportunity and procedures for [appealing the decision under paragraph 373-1.11(d)(6) of this subdivision.] *requesting an adjudicatory hearing pursuant to 621 of this Title if an adjudicatory hearing has not been held. If an adjudicatory hearing is held, public notice for an adjudicatory hearing must be given according to the requirements in subparagraph 373-1.11(d)(4)(i) of this subdivision. This notice must, at a minimum, include the information required by subparagraph 373-1.11(d)(4)(iii) of this subdivision. The final decision on the RAP application will be made pursuant to and using the procedures of Part 624 of this Title.*

(Subparagraph 373-1.11(d)(5)(vi) and (vii) remain unchanged.)

Paragraphs 373-1.11(d)(6) and (7) are amended to read as follows:

(6) May the decision to approve or deny my RAP application be administratively appealed?

(i) *If an adjudicatory hearing has been held, the decision on your RAP application is final. If an adjudicatory hearing has not been held, you can request an adjudicatory hearing after the Department’s decision to approve or deny your RAP application, pursuant to Part 621 of this Title. Public notice for an adjudicatory hearing must be given according to the requirements in subparagraph 373-1.11(d)(4)(i) of this subdivision. This notice must, at a minimum, include the information required by subparagraph 373-1.11(d)(4)(iii) of this subdivision. The process for adjudicatory hearings for RAPs is set forth in Part 624 of this Title.*

[If your RAP is denied or issued with significant conditions attached, you have a right to an adjudicatory hearing under section 621.9 of this Title. If your RAP is approved, any interested party may request that the Department modify, suspend, or revoke the RAP under section 621.14 of this Title. If the Department grants such a request, or initiates such an action on its own, you will be afforded an opportunity for a hearing before the determination becomes final.]

(ii) *Once the decision on your RAP application is final, you or an interested party could seek judicial review of the Department’s actions, pursuant to Article 78 of “Civil Practice Law and Rules” (CPLR).*

(7) When does my RAP become effective?

Your RAP becomes effective 30 days after the Department notifies you and all commenters that your RAP is approved unless:

(i) The] *the* Department specifies a later effective date in the decision[;

(ii) You or another person has requested a hearing, modification, suspension or revocation of your RAP under paragraph 373-1.11(d)(6) of this section (if the request for review is granted under paragraph 373-1.11(d)(6) of this section, conditions of your RAP are stayed according to 6 NYCRR Part 621 of this Title); or

(iii) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued].

(Paragraphs 373-1.11(d)(8) through subparagraph 373-1.11(e)(1)(i) remain unchanged.)

Subparagraph 373-1.11(e)(1)(ii) is amended to read as follows:

(ii) Any interested party may request that the Remedial Action Plan permit be modified, revoked, or suspended at any time at the request of the interested party, including the applicant, or upon the initiative of the Department, on any of the grounds set forth in [section 621.14] *Part 621* of this Title.

(Subparagraphs 373-1.11(e)(1)(iii) through (vi) remain unchanged.)

Subparagraph 373-1.11(e)(1)(vii) is amended to read as follows:

(vii) If you wish to renew your existing RAP, you must submit a complete application for permit renewal at least 180 days before the expiration date of the existing RAP as required by [section 621.13] *Part 621* of this Title.

Paragraph 373-1.11(e)(2) is amended to read as follows:

(2) May the decision to approve or deny a modification, revocation, suspension, or renewal of my RAP be administratively appealed?

(i) [Any interested party may request that the Remedial Action Plan permit be modified, revoked, or suspended at any time at the request of the interested party, including the applicant, or upon the initiative of the Department, on any of the grounds set forth in section 621.14 of this Title. The applicant may request that the RAP permit be renewed pursuant to section 621.13 of this Title.] *Paragraph 373-1.11(d)(6) of this section applies to modification, revocation, suspension, or renewal of your RAP. The process to request an adjudicatory hearing is provided in Part 621 of this Title. Public notice for an adjudicatory hearing must be given according to the requirements in subparagraph 373-1.11(d)(4)(i) of this section. This notice must, at a minimum, include the information required by subparagraph 373-1.11(d)(4)(iii) of this section. The process for adjudicatory hearings for RAPs is set forth in Part 624 of this Title.*

(ii) *Once the decision on your RAP application is final, you or an interested party could seek judicial review of the Department’s actions, pursuant to Article 78 of “Civil Practice Law and Rules” (CPLR).*

(Paragraph 373-1.11(e)(3) remains unchanged.)

Paragraph 373-1.11(e)(4) is amended to read as follows:

(4) What happens if I have applied correctly for a RAP renewal and met timely submittal requirements but have not received approval by the time my old RAP expires?

If you have submitted a timely and complete application for a RAP renewal pursuant to [section 621.13] *Part 621* of this Title, but the Department, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

(Subdivision 373-1.11(f) through clause 373-1.11(g)(1)(iv)(‘b’) remain unchanged.)

Clause 373-1.11(g)(1)(iv)(‘c’) is amended to read as follows:

(‘c’) The RAP is subject to the public notice requirements in [section 621.6] *Part 621* of this Title;

(Subparagraph 373-1.11(g)(1)(v) remains unchanged.)

Text of proposed rule and any required statements and analyses may be obtained from: Deborah L. Aldrich, Department of Environmental Conservation, Division of Solid and Hazardous Materials, 625 Broadway, 9th Fl., Albany, NY 12233-7250, (518) 402-8730, e-mail: dlaldrich@gw.dec.state.ny.us

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

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

This action was not under consideration at the time this agency’s regulatory agenda was submitted.

Consensus Rule Making Determination

This rule making is a consensus rule because it corrects errors made in a previous rule making. The previous rule making addressed changes made to federal regulations upon which the State regulations are based, and corrected State regulations where an inconsistency with Federal regulations was found. Adopting these changes is necessary to continue consistency between the State and Federal regulations with regard to the hazardous waste management program.

Job Impact Statement

A Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State. The amendments merely clarify that the existing State permitting process will be followed for Remedial Action Permits (RAPs) and correct an error in State requirements for transportation of water (bulk) shipments which was inconsistent with Federal requirements.

The proposed rule is not expected to result in a decrease of more than one hundred full-time annual jobs and employment opportunities which would otherwise be available to the residents of the State in the next two years.

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

Underage Drinking on State Lands

I.D. No. ENV-49-03-00014-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 Parts 51 and 190 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 9-0105, 11-2101

Subject: Underage drinking.

Purpose: To prohibit underage drinking on State lands under the jurisdiction of the Department of Environmental Conservation.

Text of proposed rule: The Department proposes amendment of 6 NYCRR Parts 51 and 190 to add subdivisions 6 NYCRR 51.6(h) and 190.8(q), respectively, to read as follows:

Unless accompanied by a parent or guardian, no person under 21 years of age shall possess alcoholic beverages. Persons age 21 or over who possess alcoholic beverages must produce adequate identification and proof of age upon demand of any peace or police officer.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew T. Jacob, Department of Environmental Conservation, 625 Broadway, 8th Fl., Albany, NY 12233-2560, (518) 402-8839, e-mail: atjacob@gw.dec.state.ny.us

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

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

Consensus Rule Making Determination

The proposed rules prohibit possession of alcoholic beverages by persons under 21 years of age unless they are accompanied by a parent or guardian. Similar provisions already exist elsewhere in 6 NYCRR (see, e.g., 6 NYCRR 54.6 and 190.7). The adoption of the proposed rules will extend this prohibition to additional State lands under the jurisdiction of the Department.

Because the proposed rules (i) are intended to reduce the incidence of underage drinking on lands under the Department's Jurisdiction and (ii) are similar to existing rules governing activities on other such lands, the Department has determined that no person is likely to object to the rules as written.

Job Impact Statement

The Department has determined that the proposed rules will not have a negative impact on jobs or employment opportunities because the rules do not pertain to activities that generate employment. Rather, the proposed rules are intended to reduce the incidence of underage drinking on lands under the Department's Jurisdiction.

Higher Education Services Corporation

**EMERGENCY
RULE MAKING**

World Trade Center Memorial Scholarships

I.D. No. ESC-49-03-00001-E

Filing No. 1281

Filing date: Nov. 21, 2003

Effective date: Nov. 21, 2003

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

Action taken: Addition of section 2201.2 to Title 8 NYCRR.

Statutory authority: Education Law, sections 544.4, 608, 652.2, 653.9, and 668-d

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

Specific reasons underlying the finding of necessity: These regulations address a program that was effective July 23, 2002 and retroactive to April 1, 2001. These regulations provide necessary clarification of program criteria.

Subject: World Trade Center Memorial Scholarships.

Purpose: To define "severely and permanently disabled," and "impact area."

Text of emergency rule: New section 2201.2 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.2 World Trade Center Memorial Scholarships.

(a) Definitions. As used in sections 608 and 668-d of the Education Law, the following terms shall have the following meanings:

(1) Impact Area:

(i) the secure zone established by the City of New York comprising that area surrounding the World Trade Center which is bordered by Broadway to the East, the Hudson River to the West, Chambers Street to the North and Rector Street to the South during the period of time beginning at 8:45 a.m., Eastern Standard Time, on September 11, 2001 and ending on May 30, 2002; or

(ii) the crash site of United Airlines flight 93 in Shanksville, Pennsylvania on September 11, 2001; or

(iii) the crash site of American Airlines flight 77 on the grounds of the Pentagon on September 11, 2001.

(2) Severely and Permanently Disabled: An innocent victim is severely and permanently disabled when a doctor of medicine or osteopathy, licensed to practice in a state, has determined that such person is unable to engage in any occupation for remuneration or profit due to a physical or mental impairment. Such physical or mental impairment shall have been sustained in the Impact Area as a direct result of the September 11, 2001 attack on the United States of America or while engaged in the subsequent rescue and recovery efforts.

(3) Physical or mental impairment. For purposes of this section, "physical or mental impairment" is an impairment resulting from anatomical, physiological or psychological abnormality which is demonstrable by medically acceptable clinical and laboratory diagnostic techniques and which did not exist prior to September 11, 2001 unless said impairment was worsened as a direct result of the September 11, 2001 terrorist attacks and now prevents the victim from engaging in any occupation for remuneration or profit.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 18, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Donna Fesel, Senior Attorney, Office of Counsel, Higher Education Services Corp., 99 Washington Ave., Rm. 1350, Albany, NY 11255, (518) 486-6192, e-mail: Donna_Fesel@hesc.com

Regulatory Impact Statement

Statutory authority:

Education Law sections 652.2, 653.9 and 655.4 authorize the New York State Higher Education Corporation, through its Board of Trustees,

to promulgate regulations to facilitate the administration of student financial aid programs. Education Law sections 608 and 668-d authorize the World Trade Center Memorial Scholarships (WTC Scholarship).

Legislative objectives:

The legislature enacted the WTC Scholarship program to provide assistance to victims and families of victims of the terrorist attacks of September 11, 2001 or the subsequent rescue and recovery efforts (9-11 attacks). This assistance is in the form of undergraduate awards covering the cost of attendance at the State University of New York, City University of New York, or a commensurate amount to attend an eligible college or university. This regulation serves these objectives by providing detailed definitions for the statutory terms “severely and permanently disabled” and “impact area.”

Needs and benefits:

The purpose of this rule is to provide guidance to potential recipients and schools by specifying the “impact area” and defining “severely and permanently disabled,” the eligibility criteria for this scholarship.

The definition of “impact area” includes the “secure zone” as established by the City of New York around the World Trade Center, the crash site in Shanksville, Pennsylvania, and the crash site at the Pentagon. This definition also identifies the periods of time during which an injury resulting in death or severe and permanent disability must have occurred to satisfy eligibility criteria.

It is necessary to define “severely and permanently disabled” because this terminology is undefined in the statute. This definition also prescribes the means by which severe and permanent disability is established. Severe and permanent disability is defined as a condition, due to injury or illness as a result of the 9-11 attacks, that prevents an individual from being employed or will result in death. The regulation further clarifies that severe and permanent disability is established upon certification by a doctor of medicine or osteopathy.

Defining these terms will clarify eligibility for applicants and schools, and speed determination of eligibility for an award under this program.

Costs:

a. It is anticipated that there will be no costs to regulated parties for the implementation of, or continuing compliance with this rule, except for programmatic administration costs.

b. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule. It is anticipated that there will no costs for the implementation of, or continuing compliance with, this rule, with the exception of programmatic administration costs. As this rule merely implements an existing State financial aid program, it does not result in any costs not already mandated by statute.

Between the 2001 and 2003 academic years (June 1, 2001 – May 31, 2004) HESC expects to pay approximately \$506,564.3 to thirty-two (32) students based upon the severe and permanent disability of a victim as defined by this regulation. As of October 7, 2003, HESC has verified the disability of thirty-six (36) victims using this definition of severe and permanent disability. Five (5) victims do not meet this definition. Currently, one hundred-two (102) applicants are eligible for this scholarship based on the severe and permanent disability of a victim. Twenty-eight (28) of these are not yet of college age. Future costs are dependent on new applications received for this award and future SUNY costs of attendance.

c. The source of the cost data in (b) above is HESC’s transaction records for this program. These records include the number of applications received based on the severe and permanent disability of a victim, the amount of money paid to these applicants and the number of awards pending payment to these applicants for the spring 2004 academic term.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This rule will require potential recipients of WTC Scholarships to submit an application as well as supporting documentation to establish their eligibility for this program. No additional paperwork will be required.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping or conflicting with this rule were identified.

Alternatives:

HESC considered not promulgating any regulations defining impact area and severe and permanent disability. This alternative is unfeasible because it would not provide potential applicants or their schools with the definitions they need to evaluate eligibility for this program.

Federal standards:

This rule does not exceed any minimum standards of the Federal Government. Indeed, our definition of severely and permanently disabled is based on the Department of Education’s definition of total and permanent disability found in Part 682 of Title 34 of the Code of Federal Regulations.

Compliance schedule:

Regulated parties will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption dated November 21, 2003, seeking to add new section 2201.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption dated November 21, 2003, seeking to add new section 2201.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption dated November 21, seeking to add new section 2201.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any impact on jobs or employment opportunities. This agency finds that this rule will not have any impact on jobs or employment opportunities because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

**EMERGENCY
RULE MAKING**

Prepayment Methods of General and Academic Performance Awards

I.D. No. ESC-49-03-00002-E
Filing No. 1282
Filing date: Nov. 21, 2003
Effective date: Nov. 21, 2003

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

Action taken: Amendment of section 2206.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 652.2, 653.9, 655.4 and 665.3

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

Specific reasons underlying the finding of necessity: Changing of dates effectuated by section 2206.3(b)(1), will result in cost savings to New York State this fiscal year. This regulation removes outdated language and conforms to current business practices. It will also result in increased administrative efficiency.

Subject: Prepayment methods of general and academic performance awards.

Purpose: To more accurately reflect the prepayment method which results in cost savings and improves administrative efficiency.

Text of emergency rule: Section 2206.3 of the Title 8 of the NYCRR and is amended to read as follows:

Section 2206.3 Methods of payment.

(a) Institutions of higher education, except during the initial year a school offers approved programs, shall select, from the payment methods described below, the method by which the institution chooses to receive award payments for the benefit of eligible students during each academic year. During the initial year a school offers approved programs, such school shall not be eligible for the prepayment method of payment.

(b) Prepayment method.

(1) Awards may be prepaid to institutions, for the benefit of eligible students who have submitted applications for awards, by means of a single check or *electronic funds transfer* in an amount representing a percentage of the total amount of awards which would be payable if the institution certified to the corporation the eligibility of every student appearing on the roster of applicants provided to the institution. Except as provided herein, prepayments shall be made no sooner than 30 days before the start of any term, and shall be made only for rosters or applicants for the summer term issued prior to [October] *September* 30th, for the fall term issued prior to [December] *November* 30th, for the winter term issued prior to [March 31st] *February 28th* and for the spring term issued prior to [May] *April* 30th of the academic year. Payments relating to rosters issued after these dates shall be made by the lump sum payment method. The percentage to be utilized by the corporation for each institution for each term of the academic year shall be determined by the president and, except as provided in subdivision [(e)] (d) of this section, shall be the percentage as determined by the following calculation:

(i) certified value of institution's rosters for the corresponding term of the prior academic year which have been submitted to the corporation by a date to be established by the president, divided by:

(ii) value of all rosters for the corresponding term of the prior academic year submitted to the institution for certification at least 60 days prior to the date to be established by the president in accordance with subparagraph (i) of this paragraph.

(2) The prepayment to be made based upon the resultant percentage shall be determined by reference to the table below:

When historical certification rate is:		TAP prepayment percentage is
Greater than or equal to	but less than	
93%	100%	90%
88%	93%	85%
83%	88%	80%
78%	83%	75%
73%	78%	70%
68%	73%	65%
63%	68%	60%
58%	63%	55%
53%	58%	50%
48%	53%	45%
43%	48%	40%
38%	43%	35%
33%	38%	30%
28%	33%	25%
23%	28%	20%
18%	23%	15%
[0%] 13%	18%	10%
0%	13%	0%

(3) In the event that a new program is created in an existing institution and a separate payment plan is to be used for that new program, the prepayment percentage shall be the same percentage utilized for the existing institution or 75 percent whichever is lower. Should the existing institution include more than one program with different prepayment percentages, the prepayment for the new program shall be the percentage for that program within the institution most closely associated with the new program or 75 percent, whichever is lower.

(4) The *term* prepayment [percentage] *percentages* for each institution shall be recalculated for each new academic year or when deemed necessary by the president pursuant to the provisions of this subdivision. After the institution's certification of eligibility, additional payments, if any, shall be made to the institution, for the benefit of eligible students, or refunds of overpaid amounts shall be made by the institution to the corporation.

[(c) Individual check method. Awards may be paid to institutions, for the benefit of eligible students who have submitted applications for awards and been certified as eligible by the institution, by means of individual checks in amounts reflecting each student's award eligibility for a term of study, made payable to each student whose name appears on a roster provided to the institution. Institutions selecting this method of payment assume responsibility for the appropriate endorsement and release of each check. If an institution receives a check on behalf of a student whose eligibility for an award has not been certified or whose certification of eligibility has been rescinded by the institution, the institution shall return the check to the corporation.]

[(d)] (c) Lump sum payment method. Awards may be paid to institutions, for the benefit of eligible students, by means of a single check representing the value of awards to students whose eligibility has been certified to the corporation by the institution. A single check will be issued, payable to the institution, after the corporation has received and reviewed the roster of applicants whose eligibility has been certified by the institution for a term.

[(e)] (d) Disqualification from prepayment. The president, for good cause, may disqualify an institution from participating in the prepayment method set forth in subdivision (b) of this section or where the institution has a history of delinquency in refunding excess prepayments, reduce an institution's prepayment percentage to a rate lower than that determined by the method set forth in that subdivision. Good cause shall include revision of the institution's academic calendar or revision of the institution's programs of study where such revision has an effect upon the calculation of the prepayment percentage, a finding of insufficient administrative practices at the institution, the assertion of a claim of refund from the institution pursuant to Part 2007 of this Subchapter, suspension of the license of any school pursuant to section 5001(4)c of the Education Law, the placement of any school on probation pursuant to section 5001(5) of the Education Law (for the duration of the probationary period), the providing of notice by any school of its intent to close or cease operation as required by section 5001(7), of the Education Law, the establishment of a trust fund by any school if required by the commissioner pursuant to section 5008 of the Education Law, or other good cause established to the satisfaction of the president. A disqualified institution shall be afforded an opportunity for a hearing within 30 days after such disqualification provided that a written request therefor is served on the corporation within 10 days of notice of such disqualification.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 18, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Donna Fesel, Senior Attorney, Office of Counsel, Higher Education Services Corp., 99 Washington Ave., Rm. 1350, Albany, NY 11255, (518) 486-6192, e-mail: Donna_Fesel@hesc.com

Regulatory Impact Statement

Statutory authority:

Education Law sections 652.2, 653.9, and 655.4 authorize the New York State Higher Education Corporation (HESC), through its Board of Trustees, to promulgate regulations to facilitate the administration of student financial aid programs.

Legislative objectives:

Education Law section 665.3 describes institutional certification, audit and payment procedure for general and academic awards to institutions of higher education. The Codes Rules and Regulations of the State of New York section 2206.3 outlines the methods of payment of general and academic awards to institutions of higher education.

Section 2206.3 of Title 8 of the Codes, Rules and Regulations of the State of New York outlines the methods of payment of general and academic awards to institutions of higher education. This emergency regulation includes "electronic funds transfer," and deletes "individual check method," from the list of available methods of payment. These amendments will modify the regulation to reflect current business practices.

Section 2206.3 of Title 8 of the Codes, Rules and Regulations of the State of New York also delineates the dates awards may be prepaid to institutions. This emergency regulation moves these dates up. This will encourage institutions to have their students apply for financial aid earlier and result in a cost savings to the state.

Section 2206.3 of Title 8 of the Codes, Rules and Regulations of the State of New York also authorizes prepayments to schools with historical certification rates less than thirteen percent (13%). This emergency regulation disallows prepayments to these schools. This will encourage these

institutions to have only students likely to receive financial aid apply for payment to their schools and result in a cost savings to the state.

Needs and benefits:

Section 2206.3 of Title 8 of the Codes, Rules and Regulations of the State of New York outlines the methods of payment of general and academic awards to institutions of higher education. This regulation implements section 665.3 of the Education Law. These amendments conform how prepayments are made to current business practices and should result in administrative efficiencies as well as cost savings.

This emergency regulation adds "electronic funds transfer," and deletes "Individual check method," from the list of available methods of payment. These amendments modify the regulation to reflect current business practices. HESC no longer makes payments using the "Individual check method."

Section 2206.3 of Title 8 of the Codes, Rules and Regulations of the State of New York also delineates the dates awards are prepaid to institutions. This emergency regulation moves these dates up, providing a more business like environment. This will also minimize the amount of prepayments made based on rosters containing ineligible students. Often students apply for financial aid payments in terms for which they have not attended. Their payment requests are included in the total sum appearing on term rosters, against which the prepayment percentage is applied, resulting in inflated prepayments. This is particularly true in December. Prepayments made in December for the fall term are calculated against rosters containing students ineligible for payment. This commingling of fall and spring requests for payment is attributable to late or very early financial aid applications from students requesting financial aid for the fall term, even though their first semester isn't until the following spring. Unfortunately, their request for financial aid is included in the sum against which the prepayment percentage is applied. Moving the fall prepayment date back from December 31 to November 30 should minimize this overlap reducing erroneous prepayments.

Currently, section 2206.3 of Title 8 of the Codes, Rules and Regulations of the State of New York authorize prepayments to schools with historical certification rates less than thirteen percent (13%). This results in prepayments being made to schools where less than 13% of their students applying for financial aid are ever certified as eligible for payment. Yet, the ineligible students' payment requests are included in the total sum against which the prepayment percentage is applied, resulting in inflated prepayments. The amendment disallowing prepayments to these schools will result in a cost savings to New York State. It will encourage these schools to be more selective about the students applying for financial aid at their institution thereby decreasing the number of ineligible students appearing on rosters. Schools will no longer benefit from receiving large prepayments based on students unlikely to attend or otherwise be decertified for payment. Rather than allowing these schools to earn interest on prepayments until they are compelled to decertify the students' eligibility, the state will retain these funds.

One of the main purposes of prepayment is to provide funds to defer tuition and credit student accounts. It is clear the later term prepayments and prepayments made to schools with low certification rates are not used for this purpose. In any event, since the advent of electronic funds transfer and weekly certification, schools do not wait long for payments based on actual certification. This emergency regulation will lower prepayments made by HESC, resulting in a more businesslike and appropriate cash flow for both the state and the schools. It will also compel schools to certify their rosters in a timelier manner. Greater administrative efficiencies should be realized by these results.

Finally, this emergency regulation will compel schools to certify the later rosters in a more timely manner.

Costs:

a. It is anticipated that there will be no actual monetary costs to regulated parties for the implementation of or continuing compliance with this rule. These emergency rules primarily affect when prepayments are made and what schools are prepaid rather than the amounts ultimately received by the schools. However, schools may perceive effects on their cash flow. Moving the prepayment dates up and disallowing prepayments to schools with historical certification rates less than 13% could cause schools to receive less prepaid money prior to final certification. In any event, schools can minimize this effect by having their students apply for financial aid earlier and by taking steps to minimize unlikely students from applying for financial aid. Schools will ultimately receive payment for their students after certifying their rosters rather than beforehand as prepayments.

Given the complexities involved in HESC's prepayment transactions, it is difficult to project the effects changing the prepayment dates will have on schools. However, in 2002 the following later term prepayments were made: October (summer term) - \$1,174,691; December (fall term) - \$20,494,208; March (winter term) - \$1,065,082; May (spring term) - \$4,379,916. It follows, by moving up the dates to which prepayments are made these amounts will be reduced. Especially this fiscal year since it is unlikely schools will be able to affect when a student applies for financial aid. In any event, the schools will be paid after they certify their rosters.

Institutions with historical certification rates less than thirteen percent (13%) may perceive an effect on their cash flow in the short term. Last year HESC prepaid \$1,157,069.17 to fifty-six (56) of these schools that will not receive any more prepayments as a result of this regulation. However, increasing their certification volume to at least 13% will result in the resumption of prepayments to them the following year.

b. It is anticipated that there will be no costs to HESC, the state or local governments for the implementation of, or continuing compliance with, this rule. As this rule merely implements an existing State financial aid program, it does not result in any costs not already mandated by statute.

Given the complexities involved in HESC's prepayment transactions, it is difficult to project the cost savings anticipated by these amendments. HESC expects to realize increased administrative efficiency and a cost savings to the state in the form of additional interest income. In addition, there will be a one-time costs reduction in cash expenditures this fiscal year (those payments made before April 1, 2004).

Using the 2002 figures, prepayments approximating \$27,113,897 were made during October, December, March and May of 2002. Moving the prepayment dates up by one month will undoubtedly reduce the amounts prepaid this year. This will provide an opportunity for the state to earn more interest on these amounts the longer they are retained in state accounts. Additionally, moving the fall term prepayment dates up (December 31 to November 30) will minimize the commingling of fall and spring requests for payment attributable to late financial aid applications from students; thereby decreasing the number of erroneous prepayments. While this effect should be realized for all prepaid terms, HESC expects it will be more pronounced this December.

The section disallowing pre-payments to schools with historical certification rates less than thirteen percent (13%) will also result in a cost savings to the State of New York. Last year HESC prepaid \$1,157,069.17 to these schools. Eliminating these prepayments provides the state an opportunity to earn interest on these monies while they remain in state accounts. This may have a carry over effect into next year since it is unlikely these schools will be able to increase their certification rates to 13% or more this year. In any event, this regulation should compel schools to be more selective about who they have apply for financial aid to their institutions. The more students ultimately certified as eligible for payment, the higher the schools prepayment percentage will be the following year and the less inflated these prepayments will be. This also presents an opportunity for the state to earn interest on prepayments that would otherwise have been made to these schools.

Prepayments provide funds to defer tuition and credit student accounts promptly. It is clear the later term prepayments and prepayments made to schools with low certification rates are not used for this purpose. Since the advent of electronic funds transfer and weekly certification, schools do not wait long for payments based on actual certification. This emergency regulation will lower prepayments made by HESC, resulting in a more businesslike and appropriate cash flow for both the state and the schools. These results should lead to increased administrative efficiencies.

c. The sources for the cost data in (b) above are HESC's transaction records. These records include the dollar amounts of prepayments made based on student rosters generated during the months of October, December, March and May in the 2002 academic year.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

No additional paperwork will be required. However, schools may be compelled to certify and return their rosters sooner. In any event, except for a few unique programs, most rosters are certified electronically; particularly TAP rosters.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping or conflicting with this rule were identified.

Federal standards:

This rule does not appear to exceed any minimum standards of the Federal Government.

Alternatives:

An alternative would be to leave the regulation intact. However, this would not remove the outdated language authorizing payments by the "Individual Check Method" and would negate the potential savings and administrative efficiencies to be realized.

Compliance schedule:

HESC does not expect regulated parties to respond to the new prepayment schedules this fiscal year. However, it is possible that the regulation will compel institutions to certify their rosters earlier. In any event, the affects of these amendments will depend on an institutions ability to certify their payment rosters within these new parameters.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption dated November 21, 2003, seeking to amend section 2206.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption dated November 21, 2003, seeking to amend section 2206.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption dated November 21, 2003, seeking to amend section 2206.3 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any impact on jobs or employment opportunities. This agency finds that this rule will not have any impact on jobs or employment opportunities because it implements a financial aid program for post secondary education, funded by New York State and administered by a State agency.

Insurance Department

NOTICE OF ADOPTION

Viatical Settlements

I.D. No. INS-38-03-00001-A

Filing No. 1285

Filing date: Nov. 25, 2003

Effective date: Jan. 1, 2004

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

Action taken: Amendment of section 380.6(g)(1) (Regulation 148) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 7807; and L. 1997, ch. 436, part B, section 108

Subject: Viatical settlements.

Purpose: To delete the obsolete term "aid to families with dependent children" and substitute in its place the term "the family assistance program" in a notice required to be set forth in an application for a viatical settlement contract, in conformity with a statutory amendment enacted in 1997.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-38-03-00001-P, Issue of September 24, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Address Updates

I.D. No. INS-38-03-00002-A

Filing No. 1284

Filing date: Nov. 25, 2003

Effective date: Dec. 10, 2003

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

Action taken: Amendment of sections 62-5.2(b) (Regulations 21 and 96) and 68.8(a) (Regulation 83) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Addresses of certain State and city governmental agencies for reporting purposes.

Purpose: To update obsolete references.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-38-03-00002-P, Issue of September 24, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Loss Portfolio Transfers

I.D. No. INS-38-03-00003-A

Filing No. 1287

Filing date: Nov. 25, 2003

Effective date: Dec. 10, 2003

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

Action taken: Amendment of Part 112 (Regulation 108) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Loss portfolio transfers.

Purpose: To remove an obsolete reference, add correct references matter and update obsolete references.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-38-03-00003-P, Issue of September 24, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Accounting Calculations for Reinsurance Transactions

I.D. No. INS-39-03-00006-A
Filing No. 1286
Filing date: Nov. 25, 2003
Effective date: Dec. 10, 2003

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

Action taken: Amendment of section 127.2 (Regulation 102) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Accounting calculations for reinsurance transactions by authorized life insurers and certain other authorized insurers.

Purpose: To delete references to specific citations in the 1992 annual statement.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-39-03-00006-P, Issue of October 1, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Terri Marchon, Public Affairs, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2283, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Regular at least 30 minutes [\$60.00] \$66.00
 Brief at least 15 minutes [30.00] 33.00
 Group at least 60 minutes [21.00] 23.10
 Collateral at least 30 minutes [60.00] 66.00
 Group Collateral at least 60 minutes [21.00] 23.10
 Crisis at least 30 minutes [60.00] 66.00

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates counties:

Regular at least 30 minutes [\$54.00] \$59.40
 Brief at least 15 minutes [27.00] 29.70
 Group at least 60 minutes [18.90] 20.79
 Collateral at least 30 minutes [54.00] 59.40
 Group Collateral at least 60 minutes [18.90] 20.79
 Crisis at least 30 minutes [54.00] 59.40

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Regular at least 30 minutes [\$53.00] \$58.30
 Brief at least 15 minutes [26.50] 29.15
 Group at least 60 minutes [18.55] 20.41
 Collateral at least 30 minutes [53.00] 58.30
 Group Collateral at least 60 minutes [18.55] 20.41
 Crisis at least 30 minutes [53.00] 58.30

(2) Reimbursement under the medical assistance program for clinic treatment programs operated by providers of services which did not receive State aid under article 41 of the Mental Hygiene Law during fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Regular at least 30 minutes [\$53.00] \$58.30
 Brief at least 15 minutes [26.50] 29.15
 Group at least 60 minutes [18.55] 20.41
 Collateral at least 30 minutes [53.00] 58.30
 Group Collateral at least 60 minutes [18.55] 20.41
 Crisis at least 30 minutes [53.00] 58.30

(3) Reimbursement under the medical assistance program for non-State operated continuing day treatment programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50 [\$12] \$13.20 per service hour
 Service hour 51-80 [\$9.50] \$10.45 per service hour
 Service hour beyond 80 [\$7.00] \$7.70 per service hour

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

(a) Regular, collateral, group collateral and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50 [\$10.80] \$11.88 per service hour
 Service hour 51-80 [\$9.50] \$10.45 per service hour
 Service hour beyond 80 [\$7.00] \$7.70 per service hour

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer,

Office of Mental Health

**EMERGENCY
 RULE MAKING**

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-41-03-00003-E
Filing No. 1280
Filing date: Nov. 20, 2003
Effective date: Nov. 20, 2003

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

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

Specific reasons underlying the finding of necessity: These amendments increase the Medicaid rate schedule associated with outpatient programs consistent with the enacted 2002-2003 State Budget. These changes will avoid a reduction in services that would otherwise take place.

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase the Medicaid rate schedule.

Text of emergency rule: Subdivisions (a), (b), and (c) of Section 588.13 are amended to read as follows:

(a) Reimbursement under the medical assistance program for outpatient programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title which serve adults with a diagnosis of mental illness and children with a diagnosis of emotional disturbance shall be in accordance with the following fee schedule. This section shall not apply to programs licensed by both the Office of Mental Health and Department of Health.

(1) Reimbursement under the medical assistance program for clinic treatment programs operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

(a) Regular, collateral, group collateral and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours for any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50 [\$10.60] \$11.66 per service hour
 Service hour 51-80 [\$9.50] \$10.45 per service hour
 Service hour beyond 80 [\$7.00] \$7.70 per service hour

(4) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [\$60.00] \$66.00
 Half day at least 3 hours [30.00] 33.00
 Brief day at least 1 hour [20.00] 22.00
 Collateral at least 30 minutes [20.00] 22.00
 Home at least 30 minutes [60.00] 66.00
 Crisis at least 30 minutes [60.00] 66.00
 Preadmission - full day at least 5 hours [60.00] 66.00
 Preadmission - half day at least 3 hours [30.00] 33.00

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [\$58.00] \$63.80
 Half day at least 3 hours [29.00] 31.90
 Brief day at least 1 hour [19.30] 21.23
 Collateral at least 30 minutes [19.30] 21.23
 Home at least 30 minutes [58.00] 63.80
 Crisis at least 30 minutes [58.00] 63.80
 Preadmission - full day at least 5 hours [58.00] 63.80
 Preadmission - half day at least 3 hours [29.00] 31.90

(5) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which did not receive State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Full day at least 5 hours [\$58.00] \$63.80
 Half day at least 3 hours [29.00] 31.90
 Brief day at least 1 hour [19.30] 21.23
 Collateral at least 30 minutes [19.30] 21.23
 Home at least 30 minutes [58.00] 63.80
 Crisis at least 30 minutes [58.00] 63.80
 Preadmission - full day at least 5 hours [58.00] 63.80
 Preadmission - half day at least 3 hours [29.00] 31.90

(6) Providers whose reimbursement under the medical assistance program for clinic, continuing day treatment, and/or day treatment has been supplemented in accordance with subdivision (g) of this section will have this additional reimbursement limited in total to an amount established by the commissioner which shall be subject to the availability of appropriations in the Office of Mental Health's budget. Supplemental reimbursement received in excess of this threshold will be recovered in a succeeding year through the medical assistance recovery process authorized pursuant to section 368-c of the Social Services Law.

(b) Reimbursement under the medical assistance program for regular, collateral, group collateral and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be [\$19.59] \$21.55 for each service hour.

(2) For programs located in New York City, the fee shall be [\$25.73] \$28.30 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be [\$21.62] \$23.78 for each service hour.

(4) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be [\$14.82] \$16.30 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be [\$18.37] \$20.21 for each service hour.

(c) Reimbursement under the medical assistance program for on-site and off-site visits for all intensive psychiatric rehabilitation treatment programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at [\$21.11] \$23.22 for each service hour.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. OMH-41-03-00003-EP, Issue of October 15, 2003. The emergency rule will expire January 18, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Regulatory Impact Statement

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

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the provision of services for persons with mental illness.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and benefits: These amendments increase the medicaid rates associated with outpatient treatment programs consistent with the enacted 2002-2003 state budget. These changes will support continuation of these services at current levels.

4. Costs:

a) Costs of regulated parties: There are no costs to providers associated with these amendments.

b) Costs to State and Local government and the agency: Implementation of these amendments has been budgeted to cost New York State \$6,200,000 annually, and appropriations were first included in the 2002-2003 enacted state budget and are now included in the base. Implementation of these amendments is estimated to cost local governments a state-wide total of \$5,723,000 annually. This is the estimated cost of the respective state and local share of medicaid.

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

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

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

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative was rejected as inconsistent with statutory requirements of the enacted budget.

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

10. Compliance schedule: These regulatory amendments will be effective upon their adoption, and shall be deemed to have been effective on and after December 1, 2002.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increase associated with this rule is required by state statute, the enacted state budget for state fiscal year 2002-2003.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increase associated with this rule is required by state statute, the enacted state budget for state fiscal year 2002-2003.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Outpatient Programs

I.D. No. OMH-26-03-00008-A

Filing No. 1283

Filing date: Nov. 24, 2003

Effective date: Dec. 10, 2003

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

Action taken: Amendment of Parts 592 and 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 41.13(3), 41.15(a) and 43.02(a); Social Services Law, sections 364(3) and 364-a(1); L. 2001, ch. 54; and L. 2002, ch. 54

Subject: Comprehensive outpatient programs and medical assistance payment for outpatient programs.

Purpose: To allow for the conversion of the net deficit financing for intensive psychiatric rehabilitation treatment (IPRT) programs and partial hospitalization programs and allow for adjustments in the comprehensive outpatient programs (COPS) rates and increase the community support program unit of service ceiling.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. OMH-26-03-00008-EP, Issue of July 2, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

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

Dealer Document Fee

I.D. No. MTV-49-03-00015-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 77 and 78 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415(9)(d)

Subject: Dealer document fee.

Purpose: To increase the fee a dealer may charge a customer for processing registration and title paperwork.

Text of proposed rule: Subdivisions (c) and (d) of section 77.8 are amended to read as follows:

(c) Such a dealer may charge a person who purchases a vehicle from such dealer a fee for assisting in securing a registration and/or certificate of title for such vehicle provided the dealer actually performs the service of filing the application for title and/or registration with the Commissioner of Motor Vehicles or his issuing agent. The fee charged by the dealer may not exceed [\$20] \$45. Such fee does not include the fee required to be paid to the Department of Motor Vehicles for issuance of the registration or for issuance of a certificate of title, nor shall such fee include the fee charged for the motor vehicle inspection of the vehicle.

(d) If a fee is charged by the dealer for assisting in securing a registration and/or title, the dealer shall print the following statement and asterisked statement on all copies of the invoice or bill of sale in a type size not smaller than the type size used for other charges on such document:

“Dealer’s optional fee for processing application for registration and/or certificate of title. *THIS IS NOT A DMV FEE.* *\$_____”

The asterisk and the following language shall be printed below the above statement:

*The *optional* dealer application processing fee is not a New York State or Department of Motor Vehicles fee. Unless a lien is being recorded or the dealer issued number plates, you may [avoid this fee by submitting] *submit* your own application for registration and/or certificate of title to any motor vehicle issuing office.

Paragraph (2) of subdivision (c) of section 78.19 is amended to read as follows:

(2) Such a dealer may charge a person who purchases a vehicle from such dealer a fee for assisting in securing a registration and/or certificate of title for such vehicle, provided the dealer actually performs the service of filing the application for title and/or registration with the Commissioner of Motor Vehicles or his issuing agent. The fee charged by the dealer may not exceed [\$20] \$45. Such fee does not include the fee required to be paid to the Department of Motor Vehicles for issuance of the registration or for issuance of a certificate of title, nor shall such fee include the fee charged for the motor vehicle inspection of the vehicle.

Subdivision (d) of section 78.19 is amended to read as follows:

(d) If a fee is charged by the dealer for assisting in securing a registration and/or title or securing special or distinctive plates, the dealer shall print the following statement and asterisked statement on all copies of the invoice or bill of sale in a type size not smaller than the type size used for other charges on such document:

“Dealer’s optional fee for processing application for registration and/or certificate of title, and for securing special or distinctive plates (if applicable). *THIS IS NOT A DMV FEE.* *\$_____”

The asterisk and the following language shall be printed below the above statement:

*The *optional* dealer registration or title application processing fee ([20.00] \$45.00 maximum) and special plate processing fee (\$5.00 maximum) are not New York State or Department of Motor Vehicles fees. Unless a lien is being recorded or the dealer issued number plates, you may [avoid these fees by submitting] *submit* your own application for registration and/or certificate of title or for a special or distinctive plate to any motor vehicle issuing office.

In addition to disclosing the application fee, the dealer shall disclose to the purchaser of the vehicle the annual fees to be assessed by the Department for the cost of the plate.

It shall be a violation of this section for any dealer to represent in any manner that the optional dealer registration or title processing fee is a fee required or imposed by the Department of Motor Vehicles. This shall include, but not be limited to, representations made in dealer documents, paperwork, signs, or advertising, or by any employee or representative of the dealer.

Text of proposed rule and any required statements and analyses may be obtained from: Michele Welch, Legal Bureau, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law authorizes the Commissioner to promulgate regulations which regulate and control the exercise of the powers of the Department of Motor Vehicles. VTL section 415(9)(d) provides that the Department may take action against a dealer who fails to comply with the rules and regulations of the Commissioner for the enforcement of Article 16 or with any provision of the VTL applicable thereto. Thus, under such section, the Department may promulgate rules regulating dealer activities and procedures.

2. Legislative objectives: The Legislature enacted Article 16 of the Vehicle and Traffic Law, Registration of Dealers and Transporters, to both protect consumers from fraudulent business practices and to assist the dealers in the sale of motor vehicles. Implicit in VTL section 415(9)(d) is

the authority of the Commissioner to promulgate regulations governing the sale of motor vehicles.

This proposal accords with the legislative objective of assisting dealers in the sale of motor vehicles by permitting an increase in the fee dealers may charge customers for processing registration and title documents. Since the fee was increased to \$20 dollars in 1991, dealer costs have increased substantially. This proposal also accords with the legislative objective of protecting consumers by placing a cap on the fee that dealers may charge. In addition, the proposal makes it clear that it shall be a violation for a dealer to represent in any manner that this fee is a DMV fee, furthering the consumer protection function of Article 16.

3. Needs and benefits: This proposed regulation is necessary primarily to assist the dealer industry to meet the increasing cost of processing DMV registrations and titles. Since 1972 the Department has allowed the industry to impose a discretionary fee to cover the cost of processing registration and title work. This is known as the "dealer document fee." If a vehicle is bought with a lien attached, the dealer must process the registration and title paperwork. If there is no lien, the consumer may process the paperwork at a DMV Office.

A dealer is not required to charge the document fee. However, most dealers have chosen to charge the fee due to the cost of doing business. In 1972, the fee was a maximum of \$10. This was increased to a maximum of \$20 in 1991. During the past twelve years dealer costs have increased, as has inflation. Dealer related statutes and regulations have become more abundant and complex. As the law and procedures evolve, titling and registration processing has become more involved, with some transactions requiring particularized, detailed attention. It is estimated that there are about 15 documents associated with each motor vehicle sale, and that at least six employees are involved in a motor vehicle sale, including the salesperson, the finance and insurance manager, the billing clerk, the sales manager, the accounts payable clerk and the accounts receivable clerk. In addition, in the recently enacted State budget, the fee for the MV-50, the Certificate of Sale, increased from one dollar to five dollars. This cost is born by the dealer. Thus, it is clear that the cost to dealers has substantially increased since 1991, justifying an increase in the dealer document fee. In light of this substantial cost to dealers, this proposal increases the dealer document fee to a maximum charge of \$45.

Finally, this proposal would benefit consumers by making it clear that it is a violation of law for any dealer to represent in any manner that this document fee is a DMV imposed fee. In addition, the regulation places a cap on the document fee so that consumers do not pay exorbitant costs.

4. Costs: a. To regulated parties: There would be no cost to regulated parties, the 1,934 new car dealers and 10,697 used car dealers in New York State. Dealers sold about 2,500,000 vehicles in the past year. Assuming the maximum document fee of \$45 was charged, such dealers would have collected an additional \$62,500,000.

Consumers of motor vehicles will assume the costs noted above.

b. Costs to the agency: There shall be no cost to the agency. Since this is not a DMV fee, there are no changes required to DMV forms or systems.

c. Source: DMV's Office of Vehicle Safety and the Office of Dealer Partnering. Additional information was supplied by the Greater New York Automobile Dealer's Association.

5. Local government mandates: There are no local government mandates associated with this proposal.

6. Paperwork: There are no new reporting or paperwork requirements associated with this proposal. Dealers shall be required to revise their forms that list the dealer document fee. Until such revisions are made, they may continue to use their current stock and simply write or type in the new document fee.

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

8. Alternative: The Department considered various document fee increase proposals. This proposal represents a reasonable increase to meet industry needs without imposing an undue burden on consumers. A no action alternative was considered, but it was rejected in light of the economic and fiscal needs of the industry.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government.

10. Compliance: Immediate.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this proposed rule because it will have no adverse impact on small businesses or local governments. This proposal permits dealers to increase the dealer document fee charged to customers for the processing of registration and title transactions. Dealers will collect

the increased document fee to cover their increased business costs. Thus, the proposal benefits dealers and will have no adverse impact.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because it will have no adverse or disproportionate impact on rural areas of the State. This rule concerns an increase in the dealer document fee charged to consumers for the processing of registration and title documents.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because it will have no adverse impact on job creation and development in New York State. This proposal concerns an increase in the dealer document fee collected by dealers upon the sale of a motor vehicle.

Power Authority of the State of New York

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

Rates for the Sale of Power and Energy for the Village of Watkins Glen

I.D. No. PAS-49-03-00013-P

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

Proposed action: Amendment of rates for the Village of Watkins Glen.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Text of proposed rule:

VILLAGE OF WATKINS GLEN
Proposed Monthly Rates

	Proposed Rates ¹
Residential S.C. 1	
Customer Charge	\$2.00
Energy Charge, per kWh	\$0.3888
Small Commercial S.C. 2	
Customer Charge	\$3.00
Energy Charge, per kWh	\$0.4493
Commercial S.C. 3	
Demand Charge, per kW	\$5.50
Energy Charge, per kWh	\$0.2998
Large Commercial S.C. 4	
Demand Charge, per kW	\$5.50
Energy Charge, per kWh	\$0.4881
Industrial S.C. 5	
Demand Charge, per kW	\$7.50
Energy Charge, per kWh	\$0.1562
Security Outdoor Lighting S.C. 6	
(Charge per lamp, per month)	
175 Mercury Vapor	\$5.11
400 Mercury Vapor	\$11.17
250 High Pressure Sodium	\$8.14
Street Lighting S.C. 7	
Facilities Charge, per lamp, per month	\$5.00
Energy Charge, per kWh, per month	\$0.0931

¹ Purchased Power Adjustment reflected in proposed rates.

Text of proposed rule and any required statements and analyses may be obtained from: Angela Graves, 123 Main St., 15th Fl., White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission

EMERGENCY RULE MAKING

Issuance of Tax-Exempt Debt by KeySpan Generation, LLC

I.D. No. PSC-49-03-00003-EA

Filing date: Nov. 21, 2003

Effective date: Nov. 21, 2003

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

Action taken: The commission, on Nov. 21, 2003, adopted an order in Case 03-E-1273, authorizing KeySpan Generation, LLC to issue tax-exempt debt.

Statutory authority: Public Service Law, section 69

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

Specific reasons underlying the finding of necessity: Immediate approval of the tax-exempt financing will avoid disruption of the electric system and enable KeySpan to operate effectively in a competitive environment.

Subject: Issuance of tax-exempt debt.

Purpose: To promote the efficient development of wholesale electric markets.

Substance of emergency rule: The Commission adopted as an emergency permanent rule a request by KeySpan Generation, LLC (KeySpan) to issue up to \$150,000,000 of tax-exempt debt to enable KeySpan to operate more effectively in competitive wholesale electric markets, subject to the terms and conditions set forth in the Order.

The agency adopted the provisions of this emergency rule as a permanent rule, pursuant to section 202(6)(c) of the State Administrative Procedure Act because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

Text of emergency rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-E-1373SA1)

EMERGENCY RULE MAKING

Merchant Function Backout Credit by The Brooklyn Union Gas Company (BUG) d/b/a KeySpan Energy Delivery New York (KeySpan)

I.D. No. PSC-49-03-00017-EA

Filing date: Nov. 25, 2003

Effective date: Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 99-G-1469 approving revisions to The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York's tariff schedule, P.S.C. No. 12—Gas.

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

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

Specific reasons underlying the finding of necessity: Immediate action is necessary to allow customers to receive the benefits of the merchant function backout credit and transition balancing account without interruption.

Subject: Merchant function backout credit and transition balancing account.

Purpose: To continue without interruption.

Substance of emergency rule: The Commission authorized The Brooklyn Union Gas Company (BUG) d/b/a KeySpan Energy Delivery New York (KeySpan) to modify its Schedule for Gas Service—P.S.C. No. 12, allowing BUG and KeySpan to continue its Merchant Function Backout Credit and Transition Balancing Account through May 31, 2005.

The agency adopted the provisions of this emergency rule as a permanent rule, pursuant to section 202(6)(c) of the State Administrative Procedure Act because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

Text of emergency rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(99-G-1469SA8)

EMERGENCY RULE MAKING

Schedule for Gas Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-49-03-00018-EA

Filing date: Nov. 25, 2003

Effective date: Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 99-G-1469 approving revisions to KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island's schedule for gas service—P.S.C. No. 1.

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

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

Specific reasons underlying the finding of necessity: Immediate action is necessary to allow customers to receive the benefits of the merchant function backout credit and transition balancing account without interruption.

Subject: Merchant function backout credit and transition balancing account.

Purpose: To allow the account to continue without interruption.

Substance of emergency rule: The Commission authorized the modifications to KeySpan Gas East Corporation's, d/b/a KeySpan Energy Delivery Long Island's Schedule for Gas Service—P.S.C. 1, allowing its Merchant Function Backout Credit and Transition Balancing Account to continue through May 31, 2005.

The agency adopted the provisions of this emergency rule as a permanent rule, pursuant to section 202(6)(c) of the State Administrative Procedure Act because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

Text of emergency rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(99-G-1469SA7)

NOTICE OF ADOPTION

Retail Access Phase 3 by Consolidated Edison Company of New York, Inc.**I.D. No.** PSC-36-00-00033-A**Filing date:** Nov. 25, 2003**Effective date:** Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 00-E-1208 directing Consolidated Edison Company of New York, Inc. (Con Edison) to modify its plans for electric restructuring.

Statutory authority: Public Service Law, section 66

Subject: Delivery rates and charges.

Purpose: To help establish and develop a competitive electric market.

Substance of final rule: The Commission directed Consolidated Edison Company of New York, Inc. (Con Edison) to modify its electric rates and the operation of the Monthly Adjustment Clause and adopted Staff's electric rate structure proposal, which would equalize delivery rates for Con Edison and decrease electric rates in Westchester County, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(00-E-1208SA1)

NOTICE OF ADOPTION

Uniform Business Practices**I.D. No.** PSC-08-02-00017-A**Filing date:** Nov. 21, 2003**Effective date:** Nov. 21, 2003

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

Action taken: The commission, on Oct. 22, 2003, adopted an order in Case 98-M-1343 amending sections of the uniform business practices.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Uniform business practices.

Purpose: To establish more efficient and productive retail access transactions.

Substance of final rule: The Commission authorized revisions to the Uniform Business Practices to improve the application process of ESCO eligibility to enter supply markets, to establish more efficient procedures for discontinuance, when authorized, of an ESCO's participation in a retail access program, to reduce the level of security deposits provided by ESCOs to distribution utilities, and to strengthen the dispute resolution process, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(98-M-1343SA10)

NOTICE OF ADOPTION

Calculation of Franchise Fees by Cablevision Systems Long Island Corp.**I.D. No.** PSC-28-03-00018-A**Filing date:** Nov. 21, 2003**Effective date:** Nov. 21, 2003

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

Action taken: The commission, on Oct. 22, 2003, adopted an order in Case 97-V-0391 granting Cablevision Systems Long Island Corp. a waiver of 9 NYCRR section 595.1(o)(2) pertaining to the calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 9 NYCRR section 595.1(o)(2)

Purpose: To exclude the amount of franchise fees collected in the Village of Valley Stream from inclusion in calculation of gross receipts.

Substance of final rule: The Commission approved Cablevision Systems Long Island Corp.'s request for a waiver of 9 NYCRR, Section 595.1(o)(2) to allow the exclusion of franchise fees collected in the Village of Valley Stream from inclusion in the company's calculation of gross receipts, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(97-V-0391SA1)

NOTICE OF ADOPTION

Calculation of Franchise Fees by Cablevision Systems Westchester Corp.**I.D. No.** PSC-28-03-00019-A**Filing date:** Nov. 21, 2003**Effective date:** Nov. 21, 2003

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

Action taken: The commission, on Oct. 22, 2003, adopted an order in Case 01-V-1299 granting Cablevision Systems Westchester Corp. a waiver of 9 NYCRR section 595.1(o)(2) pertaining to the calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To exclude the amount of franchise fees collected in the Town of Lewisboro from inclusion in calculation of gross receipts.

Substance of final rule: The commission approved Cablevision Systems Westchester Corp.'s request for a waiver of 9 NYCRR, Section 595.1(o)(2) to allow the exclusion of franchise fees collected in the Town of Lewisboro from inclusion in the company's calculation of gross receipts, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(01-V-1299SA1)

NOTICE OF ADOPTION

Manner of Calculation of Franchise Fees by Cablevision Systems Westchester Corp.

I.D. No. PSC-28-03-00020-A
Filing date: Nov. 21, 2003
Effective date: Nov. 21, 2003

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

Action taken: The commission, on Oct. 22, 2003, adopted an order in Case 01-V-1299 granting Cablevision Systems Westchester Corp. a waiver of 9 NYCRR section 595.1(o)(2) pertaining to the calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 9 NYCRR section 595.1(o)(2).

Purpose: To exclude the amount of franchise fees collected in the Town of Mount Kisco from inclusion in calculation of gross receipts

Substance of final rule: The Commission approved Cablevision Systems Westchester Corp.'s request for a waiver of 9 NYCRR, Section 595.1(o)(2) to allow the exclusion of franchise fees collected in the Town of Mount Kisco from inclusion in the company's calculation of gross receipts, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (02-V-1066SA1)

NOTICE OF ADOPTION

Sale of Standby Service to Customers with On-Site Generation by Niagara Mohawk Power Corporation

I.D. No. PSC-31-03-00009-A
Filing date: Nov. 25, 2003
Effective date: Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1016, approving amendments to Niagara Mohawk Power Corporation's (Niagara Mohawk) tariff schedule, P.S.C. No. 207—Electricity.

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

Subject: Revisions to Service Classification No. 7.

Purpose: To harmonize Niagara Mohawk's standby service tariff with the New York Independent System Operator's tariff for station power service to transmission-level wholesale generators.

Substance of final rule: The Commission approved amendments to Niagara Mohawk Power Corporation's S.C. No. 7 tariff for the provision of standby electric service to customers that are wholesale generators taking service at the transmission level, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-1016SA1)

NOTICE OF ADOPTION

Competitive Transition Charges by Niagara Mohawk Power Corporation

I.D. No. PSC-34-03-00017-A
Filing date: Nov. 25, 2003
Effective date: Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, approved in Case 01-M-0075 the amendments to Niagara Mohawk Power Corporation's (Niagara Mohawk) tariff schedules, P.S.C. Nos. 207 and 214—Electricity.

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

Subject: Revisions to the rate plan.

Purpose: To comply with the requirements.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's compliance filing to update market price forecast and reset the competitive transition charges in retail delivery rates, pursuant to Commission Opinion No. 01-6, issued December 3, 2001.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (01-M-0075SA18)

NOTICE OF ADOPTION

Restructuring by Corning Natural Gas Company

I.D. No. PSC-35-03-00018-A
Filing date: Nov. 25, 2003
Effective date: Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 02-G-0003, revising Corning Natural Gas Corporation's (Corning) proposed terms for small-use gas transportation customers.

Statutory authority: Public Service Law, sections 65, 66(12) and 72

Subject: Modifications to gas practices.

Purpose: To ensure the restructuring of operations is compatible with the competitive market.

Substance of final rule: The Commission approved in part the Joint Proposal by Corning Natural Gas Corporation (Corning) and modified Corning's proposed terms for small-use gas transportation customers, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (02-G-0003SA3)

NOTICE OF ADOPTION

Metering by Central Hudson Gas and Electric Corporation**I.D. No.** PSC-37-03-00013-A**Filing date:** Nov. 25, 2003**Effective date:** Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1207, approving revisions to Central Hudson Gas and Electric Corporation's (Central Hudson) tariff schedule, P.S.C. No. 15—Electricity.

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

Subject: Tariff amendments.

Purpose: To eliminate special metering provisions.

Substance of final rule: The Commission authorized Central Hudson Gas & Electric Corporation to eliminate Special Provisions 2.1 and 2.2 contained in Service Classification No. 2 because customers are no longer billed under these provisions.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-1207SA1)

NOTICE OF ADOPTION

Change in Ownership by KeySpan-Port Jefferson Energy Center, LLC and KeySpan Generation, LLC**I.D. No.** PSC-37-03-00014-A**Filing date:** Nov. 21, 2003**Effective date:** Nov. 21, 2003

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

Action taken: The commission, on Nov. 21, 2003, adopted an order in Case 03-E-1212 approving the transfer of ownership of the electric generation assets of KeySpan-Port Jefferson Energy Center, LLC to KeySpan Generation, LLC.

Statutory authority: Public Service Law, section 70

Subject: Transfer of electric generation assets.

Purpose: To obtain certain advantages and benefits under the 1986 United States Internal Revenue Code.

Substance of final rule: The Commission authorized the transfer of the lightly regulated electric generation assets of KeySpan-Port Jefferson Energy Center, LLC to KeySpan Generation, LLC, which is also a lightly regulated company, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-1212SA1)

NOTICE OF ADOPTION

Change in Ownership by KeySpan-Glenwood Energy Center, LLC and KeySpan Generation, LLC**I.D. No.** PSC-37-03-00015-A**Filing date:** Nov. 21, 2003**Effective date:** Nov. 21, 2003

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

Action taken: The commission, on Nov. 21, 2003, adopted an order in Case 03-E-1213 approving the transfer of ownership of the electric generation assets of KeySpan-Glenwood Energy Center, LLC to KeySpan Generation, LLC.

Statutory authority: Public Service Law, section 70

Subject: Transfer of electric generation assets.

Purpose: To obtain certain advantages and benefits under the 1986 United States Internal Revenue Code.

Substance of final rule: The Commission authorized the transfer of the lightly regulated electric generation assets of KeySpan-Glenwood Energy Center, LLC to KeySpan Generation, LLC, which is also a lightly regulated company, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-1213SA1)

NOTICE OF ADOPTION

Meter Recovery Charge by Consolidated Edison Company of New York, Inc.**I.D. No.** PSC-38-03-00015-A**Filing date:** Nov. 25, 2003**Effective date:** Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1261 approving revisions to Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff schedule, P.S.C. No. 9—Electricity.

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

Subject: Meter recovery charges.

Purpose: To establish a charge when a marshal is employed to recover a meter.

Substance of final rule: The Commission authorized Consolidated Edison Company of New York, Inc. (Con Edison) to bill customers for the actual cost Con Edison pays to apply for a court order to recover a meter and to bill customers for the actual amount it pays for Marshal service.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(03-E-1261SA1)

NOTICE OF ADOPTION

Issuance of Securities by NRG Energy, Inc. and NRG Northeast Generating, LLC

I.D. No. PSC-40-03-00012-A
Filing date: Nov. 25, 2003
Effective date: Nov. 25, 2003

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

Action taken: The commission, on Nov. 25, 2003, adopted an order in Case 03-E-1298, allowing NRG Energy, Inc. and NRG Northeast Generating LLC to issue securities.

Statutory authority: Public Service Law, section 69

Subject: Issuance of corporate debt.

Purpose: To strengthen petitioners' ability to conduct business and operate their generation assets.

Substance of final rule: The Commission granted NRG Energy, Inc. and NRG Northeast Generating LLC a financing package of up to \$3.3 billion to allow for the recapitalization of petitioners upon their emergence from bankruptcy, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1298SA1)

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

Interconnection of Networks between Cellco Partnership d/b/a Verizon Wireless and the Signatory Independent Local Exchange Carrier

I.D. No. PSC-49-03-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Cellco Partnership d/b/a Verizon Wireless and the Signatory Independent Local Exchange Carrier Operating in New York State for approval of an interconnection agreement executed on Nov. 10, 2003.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Cellco Partnership d/b/a Verizon Wireless and the Signatory Independent Local Exchange Carrier Operating in New York State have reached a negotiated agreement whereby Cellco Partnership d/b/a Verizon Wireless and the Signatory Independent Local Exchange Carrier Operating in New York State will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations terms and conditions under which the parties will interconnect their networks lasting until November 10, 2004, or as extended.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-C-1643SA1)

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

Distributed Antenna Systems by Niagara Mohawk Power Corporation and National Grid Communications, Inc.

I.D. No. PSC-49-03-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Niagara Mohawk Power Corporation (Niagara Mohawk) and National Grid Communications, Inc. (National Grid) for approval of pole attachment rates, terms and conditions for distributed antenna system attachments to Niagara Mohawk's distribution poles.

Statutory authority: Public Service Law, section 119-a

Subject: Distributed antenna systems.

Purpose: To consider rates, terms and conditions.

Substance of proposed rule: The Commission is considering whether to approve or reject in whole or in part, a petition filed by Niagara Mohawk Power corporation (Niagara Mohawk) and National Grid Communications, Inc. (National Grid) for approval of pole attachment rates, terms and conditions for Distributed Antenna System attachments to Niagara Mohawk's distribution poles.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1578SA1)

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

Recovery of Certain Costs Related to Phase 5 of the Retail Access Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-49-03-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition or Consolidated Edison Company of New York, Inc. (Con Edison) for recovery of certain costs related to the operation of Phase 5 of the Retail Access Program, which it believes were unavoidable.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's Retail Access Program, Phase 5—recovery of program costs.

Purpose: To avoid certain costs related to Phase 5 of the Retail Access Program and whether recovery for such costs shall be granted.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Consolidated Edison Company of New York, Inc. (Con Edison) for recovery of certain costs related to the operation of Phase 5 of the Retail Access Program, which it believes were unavoidable.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-E-1584SA1)

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

Transmission and Distribution of Gas by the Northeast Gas Association

I.D. No. PSC-49-03-00009-P

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

Proposed action: The Northeast Gas Association has petitioned for a waiver of certain requirements of the commission's rules and regulation, 16 NYCRR Part 255—Transmission and Distribution of Gas. The commission may approve, deny or modify the waiver with or without public hearing.

Statutory authority: Public Service Law, section 66(2)

Subject: Transmission and distribution of gas

Purpose: To grant the waiver of certain requirements.

Substance of proposed rule: The New York State (NYS) members of the Northeast Gas Association (NGA) are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Corning Natural Gas Corporation, National Fuel Gas Distribution Corporation, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, St. Lawrence Gas Company and Keyspan Energy Corporation's. NGA, on behalf of its NYS member companies, seeks a waiver of the requirements of 16 NYCRR 255.755, 756, and 757 which prescribe requirements for protection against damage and/or replacement of small diameter (8" or less) cast iron pipe that is exposed and undermined by third party excavations, or impacted by parallel third party excavations.

The intent of the waiver is to allow use of cured-in-place (CIP) liners for 6" and 8" cast iron mains as an alternative to replacement of the affected pipe. CIP technology involves insertion, into the cast iron pipe, of a woven polyester fabric impregnated with epoxy adhesives. The CIP lined pipe forms a new leak-proof composite-pipe structure. Use of this technology would be considered as an alternate method of protection and would eliminate the need for pipe replacement under certain conditions. NGA-funded research conducted by Cornell University confirmed that CIP liners effectively seal existing and future leaks along the pipe and significantly reduce the risk of leakage even in cracked-pipe situations.

As further justification for the waiver, NGA states that in addition to improvement of system safety by reducing the potential for leaks on cast iron pipe impacted by third party excavations, CIP liner installation can be completed in a more timely manner than pipe replacement, and eliminate the need for extensive street openings, thus resulting in overall construction cost savings and less disruption to residents, pedestrians, and vehicular traffic.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-G-1507SA1)

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

Request for Accounting Authorization by Corning Natural Gas Corporation

I.D. No. PSC-49-03-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Corning Natural Gas Corporation for permission to defer the incremental short term interest expense and incremental uncollectible account expense for the fiscal year ended Sept. 30, 2003.

Statutory authority: Public Service Law, section 66-9

Subject: Request for accounting authorization c.9218.

Purpose: To defer an item of expense beyond the end of the year in which it was incurred.

Substance of proposed rule: The Public Service Commission will review a request from Corning Natural Gas Corporation for the deferral of incremental interest expense on short term debt and incremental uncollectible account expense incurred in the fiscal year ended September 30, 2003. The Commission may approve, reject or modify, in whole or in part, the relief requested by Corning Natural Gas Corporation.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-G-1571SA1)

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

Transfer of Certain Cable System Facilities by RCN Telecom Services, Inc.

I.D. No. PSC-49-03-00011-P

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

Proposed action: Transfer of certain cable system facilities by RCN Telecom Services, Inc.

Statutory authority: Public Service Law, section 222

Subject: Certain cable system facilities, franchises and State certificates of confirmation.

Purpose: To approve the transfer.

Substance of proposed rule: The Public Service Commission is reviewing a joint petition submitted by RCN Telecom Service, Inc. and Carmel Cable Television, Inc. requesting approval to transfer certain cable system facilities, franchises and State certificates of confirmation currently held by RCN Telecom Services, Inc. to Carmel Cable Television, Inc. The subject cable system operates in the Towns of Beekman and Pawling, and the Village of Pawling in Dutchess County; the Towns of Carmel, Kent, Patterson, Putnam Valley, and Southeast, and the Village of Brewster, in Putnam County; and the Town of Somers in Westchester County.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-V-1473SA1)

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

Electronic Filing of Tariff Schedule by Somers Chase Water Works Corporation

I.D. No. PSC-49-03-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, Somers Chase Water Works Corporation (a company owned by the Somers Chase Homeowners Association) initial tariff schedule, P.S.C. No. 1—Water, to become effective April 1, 2004.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule—electronic filing.

Purpose: To approve the rates, charges, rules and regulations under which the company will operate.

Substance of proposed rule: On November 12, 2003, Somers Chase Water Works Corporation (Somers Chase or the company), a company owned by the Somers Chase Homeowners Association, filed an electronic initial tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate to become effective on April 1, 2004. Somers Chase is at full development with 97 customers and is located in Kenilworth Subdivision, Town of Somers, Westchester County. The company proposes a metered rate for quarterly usage of \$2.39 per thousand gallons for usage of up to 600 gallons per day multiplied by the number of days in each quarter and a rate of \$23.96 per thousand gallons for all quarterly use above. There is also a quarterly service charge of \$81.80. The tariff defines when a bill will be considered delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge will appear on all written notices of discontinuation of service. In addition, future rate changes will be agreed upon by the members of the association. The company's tariff will be available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the file room - Tariffs). The Commission may approve, modify or reject, in whole or in part, Somers Chase's request.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillong, Acting Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-W-1606SA1)

**Office of Temporary and
Disability Assistance**

NOTICE OF ADOPTION

Veterans' Assistance Benefits

I.D. No. TDA-35-03-00007-A

Filing No. 1288

Filing date: Nov. 25, 2003

Effective date: Dec. 10, 2003

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

Action taken: Amendment of sections 351.8(c)(2) and 352.22(ab) and addition of section 352.22(ac) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 355(3)

Subject: Determination of need for public assistance and the disregard of certain veterans' assistance benefits when determining eligibility for public assistance.

Purpose: To delete an obsolete provision of regulations and implement Federal requirements.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-35-03-00007-P, Issue of September 3, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

Assessment of Public Comment

During the public comment period for the proposed regulations concerning the determination of need for public assistance benefits and the disregard of certain veterans' assistance benefits when determining eligibility for public assistance, the Office of Temporary and Disability Assistance received comments from one social services district and a State agency. The comments were supportive and no changes have been made to the proposed regulations.