

# RULE MAKING ACTIVITIES

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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.

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## Department of Agriculture and Markets

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

#### National Institute of Standards and Technology Handbook 133

I.D. No. AAM-25-03-00001-P

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

**Proposed action:** This is a consensus rule making to amend section 221.11 of Title 1 NYCRR.

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

**Subject:** National Institute of Standards and Technology (NIST) Handbook 133.

**Purpose:** To incorporate by reference the 2003 edition.

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

221.11 Test procedures, magnitude of permitted variations.

(a) The test procedures for testing packaged commodities shall be those contained in National Institute of Standards and Technology Handbook 133, Fourth Edition, issued [2002]2003, Checking the Net Contents of Packaged Goods, as adopted by the National Conference on Weights and Measures. The document is available from the National Conference on Weights and Measures, 15245 Shady Grove Road, Rockville, MD 20850,

or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Assistant Director of Weights and Measures, [Building 7A, State Campus,] *One Winners Circle*, Albany, NY 12235 or in the office of the Department of State, 41 State Street, Albany, New York 12231.

(b) The magnitude of variations permitted under section 221.10 of this Part shall be those contained in the procedures and tables of National Institute of Standards and Technology Handbook 133, Fourth Edition, issued [2002]2003, Checking the Net Contents of Packaged Goods, as adopted by the National Conference on Weights and Measures.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ross Andersen, Director, Bureau of Weights and Measures, Department of Agriculture and Markets, One Winners Circle, Capital Plaza, Albany, NY 12235, (518) 457-3146, e-mail: Ross.Andersen@agmkt.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

The proposed rule will amend 1 NYCRR section 221.11 to incorporate by reference the 2003 edition of National Institute of Standards and Technology Handbook 133 in place of the 2002 edition, and its supplements, which are presently incorporated by reference. Handbook 133 contains test procedures that are used by state regulatory officials to determine whether the actual weight of a packaged commodity is sufficiently consistent with the declaration of net weight set forth on its label.

The proposed rule is non-controversial. The 2003 edition of Handbook 133 has been adopted or is in use by every state other than New York. Manufacturers of packaged commodities within the State already conform their operations to the provisions of this documents in order to sell such commodities in interstate commerce. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

#### Job Impact Statement

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

The proposed rule will incorporate by reference in 1 NYCRR section 221.11 the 2003 edition of National Institute of Standards and Technology Handbook 133 (henceforth, "Handbook 133 (2003 edition)") which contains test procedures for weights and measures officials to determine whether the net weight declarations on labels of packaged commodities are accurate. The 2002 edition of Handbook 133 is presently incorporated by reference; Handbook 133 (2003 edition) differs substantively from the 2002 edition in that procedures have been modified for determining tare weights on some packages and additional guidance has been provided regarding procedures used to recognize moisture loss. These substantive changes in Handbook 133 (2002 edition) will help ensure that packaged commodities are uniformly evaluated for net contents.

Handbook 133 (2003 edition) has been adopted by or is in use in every state other than New York. The in-state manufacturers of packaged commodities already conform their operations to the provisions of this document in order to sell their products in interstate commerce. The proposed rule will not, therefore, have any adverse impacts upon jobs or employment opportunities.

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

**National Institute of Standards and Technology Handbook 44**

**I.D. No.** AAM-25-03-00002-P

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

**Proposed action:** This is a consensus rule making to amend section 220.2 of Title 1 NYCRR.

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

**Subject:** National Institute of Standards and Technology (NIST) Handbook 44.

**Purpose:** To incorporate by reference the 2003 edition.

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

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [86th] 87th National Conference on Weights and Measures [2001] 2002 as published in the National Institute of Standards and Technology Handbook 44, [2002] 2003 edition. This document is available from [The] the National Conference on Weights and Measures, 15245 Shady Grove Road, Rockville, MD 20850, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Assistant Director of Weights and Measures, Department of Agriculture and Markets, [Capital Plaza,] One Winners Circle, Albany, NY 12235, or in the office of the Department of State, 41 State Street, Albany, NY 12231. However, the Commissioner of Agriculture and Markets may at any time promulgate regulations which differ from any of the provisions of Handbook 44.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ross Andersen, Director, Bureau of Weights and Measures, Department of Agriculture and Markets, One Winners Circle, Capital Plaza, Albany, NY 12235, (518) 457-3146, e-mail: Ross.Andersen@agmkt.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**

The proposed rule will amend 1 NYCRR section 220.2 to incorporate by reference the 2003 edition of National Institute of Standards and Technology Handbook 44 in place of the 2002 edition which is presently incorporated by reference.

The proposed rule is non-controversial. The 2003 edition of Handbook 44 has been adopted or is in use by every state other than New York. Manufacturers of weighing and measuring devices within the State already conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the users of commercial weighing and measuring devices within the State already use devices that conform to the provisions of this document due to its nearly-nation-wide applicability. The proposed rule will not, therefore, have and adverse impact upon regulated businesses and is, therefore, non-controversial.

**Job Impact Statement**

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

The proposed rule will incorporate by reference in 1 NYCRR section 220.2 the 2003 edition of National Institute of Standards and Technology Handbook 44 (henceforth, "Handbook 44 (2003 edition)") which contains specifications, tolerances and regulations for commercial weighing and measuring devices. The 2002 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2003 edition) differs from the 2002 edition in that it permits the use of certain new technologies in commercial weighing and measuring devices (such as recognizing and setting standards for security systems incorporated into taxi meters), clarifies existing test procedures used by local weights and measures officials and sets forth standards for specific devices (such as establishing, for infrared grain analyzers, tolerances for determining the moisture content in various types of grain). Handbook 44 (2003 edition) has been adopted by or is in use in every state other than New York. The in-State manufacturers and users of weighing and measuring devices already conform their operations to the

provisions of this document in order to sell their products in interstate commerce. The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

**Sanitary Conditions of Shellfish Lands**

**I.D. No.** ENV-14-03-00003-A

**Filing No.** 572

**Filing date:** June 10, 2003

**Effective date:** June 25, 2003

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

**Action taken:** Amendment of sections 41.2 and 41.3 of Title 6 NYCRR.

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

**Subject:** Sanitary condition of shellfish lands.

**Purpose:** To classify shellfish lands as certified or uncertified.

**Text or summary was published** in the notice of proposed rule making, I.D. No. ENV-14-03-00003-P, Issue of April 9, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** Daniel E. Lewis, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0475, e-mail: delewis@gw.dec.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Insurance Department

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### EMERGENCY RULE MAKING

**Construction and Application of Rates; Excess Line Placement Governing Standards**

**I.D. No.** INS-25-03-00005-E

**Filing No.** 571

**Filing date:** June 10, 2003

**Effective date:** June 10, 2003

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

**Action taken:** Addition of sections 160.7 (Regulation 57) and 27.11(d) (Regulation 41) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 2101, 2105, 2118, 2301, 2302, 2304, 3428 and arts. 21 and 23

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

**Specific reasons underlying the finding of necessity:** The federal Terrorism Risk Insurance Act of 2002 (TRIA) went into effect on November 26, 2002. TRIA provides a federal backstop for commercial lines property and casualty insurance covering acts of terrorism and imposes certain obligations on property/casualty insurers and takes other actions to improve the availability and affordability of insurance for losses arising out of certain acts of terrorism.

The Department issued Circular Letter No. 25 (2002) and Supplement No. 1 thereto, to provide guidance for all policies subject to TRIA includ-

ing those issued in the Free Trade Zone pursuant to Insurance Law Article 63 and those issued by excess line insurers.

It has come to the Superintendent's attention that some insurers participating in the Terrorism Insurance Program outlined in TRIA are issuing policies containing cancellation provisions that provide that premiums are fully earned upon policy issuance. This treatment of unearned premiums unjustly enriches such insurers and is contrary to TRIA's goal of making coverage more affordable. Treating premiums as fully earned upon policy issuance violates fundamental insurance premium recognition rules, which generally provide that a policy premium is earned evenly over the entire policy period. In addition, this approach is inconsistent with most rating rules filed and approved by the Department for all lines of business covered by these amendments.

The insurance community is greatly aided by the federal backstop for terrorism losses through TRIA. The benefit of affordable and available insurance coverage for acts of terrorism should be provided to the insurance consumers for whom TRIA was designed. These amendments prohibit the continuation of the inequitable practice of treating premiums as fully earned upon policy issuance, which results in an excessive rate in violation of the rating principles embodied in Article 23 of the Insurance Law. It is essential that these amendments be promulgated on an emergency basis in order to mitigate the damage done to the citizens and business owners of the State of New York. Although excess line insurance is not subject to Article 23, these amendments apply equally to the excess line market in order to ensure availability and affordability of coverage and to maintain a level playing field.

Accordingly, these amendments are being promulgated on an emergency basis for the preservation of the general welfare.

**Subject:** Responsibilities in construction and application of rates and excess line placement governing standards.

**Purpose:** To establish rules to determine the amount of return premium upon cancellation of a policy covering insured loss under the Federal Terrorism Risk Insurance Act of 2002.

**Text of emergency rule:** A new section 160.7 is added to Part 160 to read as follows:

*Section 160.7 Rules to determine the amount of return premium upon cancellation of that part of a policy covering insured loss under the Terrorism Risk Insurance Act.*

(a) *Definition.*

*For the purpose of this section, the term "insured loss" shall have the meaning ascribed in section 102(12) of the federal Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297).*

(b) *Purpose.*

*Some policies that provide coverage for insured loss may provide that the policy premium is fully earned upon policy issuance. Upon policy termination, this provision may unjustly enrich the insurer by allowing it to retain the entire unearned premium. This treatment results in an excessive rate for the period during which coverage was in force. This section establishes the rules to apply when determining the amount of return premium upon policy cancellation for that portion of a policy providing coverage for insured loss.*

(c) *Applicability.*

*(1) This section applies only to the coverage for insured loss in every policy of the types specified in paragraphs (2) and (3) of this subdivision, issued or renewed on or after the effective date of this section, where the premium for such coverage is divisible from the remainder of the policy premium.*

*(2) This section applies to coverage for insured loss under the kinds of insurance that are subject to article 23 of the Insurance Law, except the following kinds of insurance as defined in section 1113(a) of the Insurance Law:*

- (i) surety as defined in section 1113(a)(16)(C), (D), (E), and (F);*
- (ii) credit insurance;*
- (iii) title insurance;*
- (iv) residual value insurance;*
- (v) mortgage guaranty insurance;*
- (vi) credit unemployment insurance;*
- (vii) financial guaranty insurance;*
- (viii) gap insurance; and*
- (ix) prize indemnification insurance.*

*(3) This section also applies to coverage for insured loss under policies written by assessment cooperative property/casualty insurance companies.*

*(d) Requirements for determining the amount of return premium upon policy cancellation for that portion of a policy providing coverage for insured loss.*

*(1) A policy premium may not be considered fully earned upon policy issuance. However, this prohibition does not apply to audit premiums or other premium adjustments determined after the policy period has expired.*

*(2) Every policy shall be subject to a rating rule that provides for a return of unearned premium in the event of cancellation of the policy before the policy expiration date.*

*(3) Policies cancelled by the insurer. The unearned premium for a policy cancelled by the insurer shall be calculated on a daily pro rata basis even if the reason for cancellation is nonpayment of premium.*

*(4) Policies cancelled by the insured.*

*(i) Except as otherwise provided in this paragraph, the unearned premium for a policy cancelled by the insured shall be calculated on a daily pro rata basis.*

*(ii) In recognition of certain fixed administrative and processing costs, a short rate method of calculating the return premium may be used in which the return premium is .90 or greater of the daily pro rata unearned premium.*

*(iii) If the policy is for a specific event or a particular project, or if the nature of the exposure is seasonal or otherwise not evenly distributed over the policy term, an alternative method may be used to determine an appropriate return premium, where such method appropriately reflects the distribution of the exposure.*

*(e) Requirements for financed premiums.*

*Notwithstanding any other provision of this section, in regard to an insurance contract the premium for which is advanced under a premium finance agreement, an insurer shall comply with section 3428(d) of the Insurance Law.*

A new subdivision (d) is added to section 27.11 of Part 27 to read as follows:

*(d) No excess line broker shall procure a policy of insurance under this Part from an unauthorized insurer unless the insurer has agreed to comply with the provisions of section 160.7 of Part 160 of this Title.*

**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 September 7, 2003.

**Text of emergency rule and any required statements and analyses may be obtained from:** Joanna Rose, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: jrose@ins.state.ny.us

**Regulatory Impact Statement**

1. Statutory authority: Sections 201, 301, 2301, 2302, 2303, 2304, 3428 and Article 23 of the Insurance Law (Regulation No. 57), and Sections 201, 301, 2101, 2105, 2118 and Article 21 of the Insurance Law (Regulation No. 41). Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Article 23 governs rating standards for property/casualty insurers. Section 3428 governs return of premiums in connection with financed policies. Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Sections 2105 and 2118 specifically apply to excess line brokers.

2. Legislative objectives: Article 23 of the Insurance Law provides that insurance rates shall not be excessive. A rating rule that provides that a policy premium is fully earned upon policy issuance results in an excessive rate when a policy does not run its full term. In order to assure a level playing field, these amendments are also applicable to insurance placed in the excess line market by making the standards applicable for policies placed by an excess line broker.

3. Needs and benefits: Some insurers participating in the Terrorism Insurance Program outlined in the Terrorism Risk Insurance Act of 2002 (TRIA) have issued insurance policies containing cancellation provisions that provide that premiums are fully earned upon policy issuance. This treatment of unearned premiums unjustly enriches such insurers and is contrary to TRIA's goal of making coverage more affordable. Treating premiums as fully earned upon policy issuance violates fundamental insurance premium recognition rules, which generally provide that a policy premium is earned evenly over the entire policy period. In addition, this approach is inconsistent with rating rules filed and approved by the Department for the types of insurance business covered by these amendments.

The insurance community is greatly aided by the federal backstop for terrorism losses through TRIA. The benefit of affordable and available

insurance coverage for acts of terrorism should be provided to the insurance consumers for whom TRIA was designed. These amendments prohibit the continuation of the inequitable practice of treating premiums as fully earned upon policy issuance, which results in an excessive rate in violation of the rating principles embodied in Article 23 of the Insurance Law. It is essential that these amendments be promulgated on an emergency basis in order to mitigate the damage done to the citizens and business owners of the State of New York. Although excess line insurance is not subject to Article 23, these amendments apply equally to the excess line market in order to ensure availability and affordability of coverage and to maintain a level playing field.

4. **Costs:** These amendments impose no compliance costs on state or local governments. The costs incurred by the Insurance Department are the costs to review the new policy forms and rate revisions of authorized insurers and the costs to monitor compliance for policies that are not subject to filing with the Department, such as policies of special risk insurance (Free Trade Zone) and those policies issued in the excess line market.

Compliance costs should be minimal for regulated parties, since most, if not all, insurers that are subject to rate filing requirements already comply. Those few insurers that presently treat premiums as fully earned upon policy issuance will have to modify their rating rules to comply and to avoid charging an excessive rate. Cost to excess line brokers to implement these amendments will be insignificant since it is expected that the Excess Line Association of New York (ELANY), as part of its duties in providing information to brokers regarding insurer compliance with the excess line laws, will inform the brokers whether the insurer has agreed to return premium in accordance with these regulations.

5. **Local government mandates:** These amendments do not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. **Paperwork:** There is no additional paperwork required as a result of these amendments.

7. **Duplication:** These amendment will not duplicate any existing state or federal rule.

8. **Alternatives:** The alternative of not promulgating these amendments was rejected because it would result in unjust enrichment of those insurers that treat premiums as fully earned upon policy issuance. Another alternative considered was to make these amendments applicable only to authorized insurers; however, this would result in an unlevel playing field between authorized insurers and excess line insurers. Another alternative considered was to make these amendments applicable to all coverages provided under the property/casualty lines of business to which these amendments apply; however, that was considered unnecessary because the problems the Superintendent is presently aware of were considered to be most acute with regard to the coverage for "insured loss" as defined in the TRIA.

9. **Federal standards:** There are no minimum standards of the federal government for the same or similar subject areas.

10. **Compliance schedule:** All insurers and excess line brokers must comply with these amendments in connection with policies issued or renewed after the amendments are filed with the Secretary of State.

#### **Regulatory Flexibility Analysis**

1. **Effect of rule:** With respect to local governments, these amendments will have no adverse economic impact on local governments and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that these amendments are directed at insurance companies and excess line brokers, none of which are local governments.

With respect to insurers, the Insurance Department has reviewed the filed Reports on Examination and Annual Statements of authorized property/casualty insurers and the Annual Statements of excess line insurers subject to these amendments and believes that none of them come within the definition of small business contained in section 102(8) of the State Administrative Procedure Act, because there are none which are both independently owned and have under 100 employees.

With respect to excess line brokers, as of February 24, 2003 there were 608 excess line brokers licensed to do business in New York. Most excess line brokers are small businesses within the definition of the State Administrative Procedure Act. The amendments prohibit an excess line broker

from procuring policies of insurance from unauthorized insurers that have not agreed to comply with the provisions of 11 NYCRR 160.7 (Regulation No. 57) as added herein.

2. **Compliance requirements:** The only compliance requirement is that an excess line broker is prohibited from procuring policies of insurance from unauthorized insurers that have not agreed to comply with the provisions of 11 NYCRR 160.7 (Regulation No. 57) as added herein.

3. **Professional services:** No additional professional services will be needed to comply with these amendments.

4. **Compliance costs:** Cost to excess line brokers to implement these amendments will be insignificant since it is expected that the Excess Line Association of New York (ELANY), as part of its duties in providing information to brokers regarding insurer compliance with the excess line laws, will inform the brokers whether the insurer has agreed to return premium in accordance with these regulations.

5. **Economic and technological feasibility:** Excess line brokers will encounter no economic or technological barriers in complying with these amendments.

6. **Minimizing adverse impact:** By making a level playing field between authorized insurers and excess line insurers, excess line brokers will be able to better serve their customers in regard to the coverage for insured loss under TRIA. Regardless of which market the customer is placed in, the customer will be treated equitably as a result of these amendments.

7. **Small business participation:** Commercial insureds and producers have complained to the Department about the inequitable practices addressed by these amendments.

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

1. **Types and estimated numbers of rural areas:** This amendment applies to property/casualty insurers and excess line brokers doing business in New York State. The insurers do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. **Reporting, recordkeeping and other compliance requirements, and professional services:** These amendments do not impose any new reporting, recordkeeping or other compliance requirements on regulated parties, and do not give rise to the need for any additional professional services.

3. **Costs:** Compliance costs should be minimal for regulated parties, since most, if not all, insurers that are subject to rate filing requirements already comply with these amendments. Those few insurers that presently treat premiums as fully earned upon policy issuance will have to modify their rating rules to comply and to avoid charging an excessive rate. Cost to excess line brokers to implement these amendments will be insignificant since it is expected that the Excess Line Association of New York (ELANY), as part of its duties in providing information to brokers regarding insurer compliance with the excess line laws, will inform the brokers whether the insurer has agreed to return premium in accordance with these regulations.

4. **Minimizing adverse impact:** These amendments apply uniformly to property/casualty insurers and excess line brokers that do business in both rural and nonrural areas of New York State. The amendments does not impose any additional burden on persons located in rural areas, and the Insurance Department does not believe that the amendments will have any adverse impact on rural areas. In fact, these amendments should benefit insureds throughout New York State.

5. **Rural area participation:** Commercial insureds and producers have complained to the Department about the inequitable practices addressed by these amendments.

#### **Job Impact Statement**

The proposed amendments should have no adverse impact on jobs or economic opportunities in New York State. The amendments establish rules for property/casualty insurers for determining the amount of return premium upon policy cancellation. Authorized insurers already comply with these rules on property/casualty lines of business for which rate filings are made pursuant to Article 23. These amendments specifically provide that the rules for determining the amount of return premium also apply to policies covering "insured loss" as defined in the Terrorism Risk Insurance Act of 2002. Compliance with these requirements will have no adverse impact on jobs or economic opportunities in New York State.

## Office of Mental Retardation and Developmental Disabilities

### NOTICE OF ADOPTION

#### Rate Setting in Intermediate Care Facilities

**I.D. No.** MRD-16-03-00026-A

**Filing No.** 573

**Filing date:** June 10, 2003

**Effective date:** June 25, 2003

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

**Action taken:** Repeal of section 681.11 and amendment of section 681.14 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09 and 43.02

**Subject:** Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DD).

**Purpose:** To repeal obsolete provisions and consolidated all applicable ICF/DD rate setting provisions.

**Text of final rule:** • Title line for section 681.11 is deleted and subdivisions 681.11(a)-(d) are deleted in their entirety.

- Title line of section 681.14 is amended as follows:

681.14 Rate setting for intermediate care facilities for persons with developmental disabilities (ICF/DD).

[This section supersedes subdivisions 681.11(a)-(d) of this Part effective January 1, 2003 for Region II and III facilities. This section supersedes subdivisions 681.11(a)-(d) of this Part effective July 1, 2003 for Region I facilities.]

- Current subdivisions 681.14(e)-(h) are deleted and the existing text of subdivisions 681.11(e)-(i) in effect as of July 1, 2003 are renumbered and moved to 681.14(e)-(i).

Note: Adoption of this rulemaking constitutes repeal of section 681.11.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in the instruction to renumber subdivisions of section 681.11.

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Acting Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

#### Regulatory Impact Statement

A Revised Regulatory Impact Statement for this rule is not being submitted because the nonsubstantive change made in the Notice of Adoption does not necessitate any revision to the previously published RIS. The nonsubstantive change corrects an oversight in the instruction to renumber subdivisions of section 681.11 as 681.14. The Notice of Proposed Rulemaking erroneously indicated renumbering of subdivisions 681.11(e)-(h) to 681.14(e)-(h). The rule should have indicated the renumbering of subdivisions 681.11(e)-(i) to 681.14(e)-(i). This correction does not in any way invalidate the information provided in the RIS originally published with the proposed rule making.

#### Regulatory Flexibility Analysis

A Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted for this rule because neither the originally proposed rule nor the nonsubstantive changes made in this adoption will impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This rulemaking repeals obsolete section 681.11 and renumbers the existing text of applicable ICF/DD rate setting provisions to section 681.14. The nonsubstantive change corrects an oversight in the instruction to renumber subdivisions of section 681.11 as 681.14. The

Notice of Proposed Rulemaking erroneously indicated renumbering of subdivisions 681.11(e)-(h) to 681.14(e)-(h). The rule should have indicated the renumbering of subdivisions 681.11(e)-(i) to 681.14(e)-(i). Because neither the originally proposed technical amendments nor the nonsubstantive change in the Notice of Adoption changes the text nor substantively revises existing provisions governing rate setting in ICF/DD facilities, the rule making will have no impacts on small businesses or local governments.

#### Rural Area Flexibility Analysis

A Revised Rural Area Flexibility Analysis for these amendments is not submitted because neither the originally proposed amendments nor the nonsubstantive change made in the adoption will impose any adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. This rulemaking repeals obsolete section 681.11 and renumbers the existing text of applicable ICF/DD rate setting provisions to section 681.14. The nonsubstantive change corrects an oversight in the instruction to renumber subdivisions of section 681.11 as 681.14. The Notice of Proposed Rulemaking erroneously indicated renumbering of subdivisions 681.11(e)-(h) to 681.14(e)-(h). The rule should have indicated the renumbering of subdivisions 681.11(e)-(i) to 681.14(e)-(i). Because neither the originally proposed technical amendments nor the nonsubstantive change in the Notice of Adoption changes the text nor substantively revises existing provisions governing rate setting in ICF/DD facilities, the rule making will have no impact on rural areas or public or private entities in rural areas.

#### Job Impact Statement

A Revised Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have an impact on jobs and/or employment opportunities. This finding is based on the fact that the proposed rule making and the nonsubstantive change made to the proposal only repeals obsolete regulations and renumbers the existing text of applicable ICF/DD rate setting provisions to section 681.14. Because these technical amendments do not change the text nor substantively revise existing provisions governing rate setting in ICF/DD facilities, it is reasonable to expect that the rule will not have a substantial adverse impact on jobs and employment opportunities.

#### Assessment of Public Comment

The agency received no public comment.

## Department of Motor Vehicles

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

#### Uninsured Operation and Accident

**I.D. No.** MTV-25-03-00004-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 section 35.4(a) and (b) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 318(9)(c)(3) and (14) and 319(5)

**Subject:** Civil penalties for uninsured operation and uninsured accident.

**Purpose:** To increase civil penalties from \$500 to \$750 for operating without insurance and uninsured accident.

**Text of proposed rule:** Subdivisions (a) and (b) of Part 35.4 are amended to read as follows:

a) Uninsured operation. Upon receipt of evidence that a motor vehicle has been operated upon the public highways without insurance coverage but with no evidence that an accident occurred, the registration and/or driver's license or privilege of the registrant and/or operator (driver) shall be revoked. One year after compliance with the revocation order or orders and upon payment of a [\$500] \$750 civil penalty for each applicable offense as required by Section 319(5) of the Vehicle & Traffic Law, a request for restoration shall be considered. Such request for restoration shall be submitted to a DMV issuing office or DMV's central office. A \$500 civil penalty is required if the violation occurred prior to May 15,

2003. A \$300 civil penalty is required if the violation occurred prior to May 1, 1989. If the request for restoration is approved, a clearance notice shall be issued and an application for driver's license shall be forwarded to the Department's Driver Improvement Bureau for final approval.

b) Uninsured accident. Upon the receipt of evidence that a motor vehicle has been involved in an accident while insurance coverage was not in effect, the registration and/or driver's license or driving privilege of the registrant and/or operator (driver) shall be revoked. One year after compliance with the revocation order or orders and upon payment of the [\$500] \$750 civil penalty for each applicable offense as required by Section 319(5) of the Vehicle & Traffic Law and submission of Affirmation Under Sections 318(9) and 318(11) of the New York Vehicle & Traffic Law, form FS-15, a request for restoration shall be considered. A \$500 civil penalty is required if the accident occurred prior to May 15, 2003. A \$300 civil penalty is required if the [violation] accident occurred prior to May 1, 1989. Such request shall be submitted to the Insurance Services Bureau in the Central Office of the Department. If the request for restoration is approved, a clearance notice shall be issued and an application for driver's license shall be forwarded to the Department's Driver Improvement Bureau for final approval.

**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.

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

The recently enacted State Budget for Fiscal Year 2003-04, amended Vehicle and Traffic Law section 319(5) to raise the civil penalty accompanying a conviction for operating without insurance from \$500 to \$750. VTL section 318(9)(c)(3) also requires the collection of this increased penalty upon a finding of an uninsured accident. The fine increases apply to violations/incidents occurring on or after May 15, 2003.

This is a consensus rulemaking because the Legislature has enacted the fee increase into law. This regulation merely reflects the mandate of the Legislature and imposes fines that are required by statute.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this consensus rulemaking because it will have no impact on job development in the State. This rule concerns the civil penalty for operating without insurance and uninsured accidents.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### **Use of Facilities for Telecommunication Purposes by Dominion Telecom, Inc.**

**I.D. No.** PSC-41-02-00012-A

**Filing date:** June 5, 2003

**Effective date:** June 5, 2003

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

**Action taken:** The commission, on May 21, 2003, adopted an order in Case 02-M-1072, denying in part Dominion Telecom, Inc.'s complaint against certain terms and provisions of Consolidated Edison Company of New York, Inc.'s (Con Edison) Rider K and Rider X tariffs.

**Statutory authority:** Public Service Law, sections 5(b) and (c), 65, 66, 70 and 119-a

**Subject:** Modifications of Con Edison's tariffs.

**Purpose:** To consider Dominion Telecom, Inc.'s complaint against Con Edison's tariffs concerning pole attachments and the use of ducts, conduits and rights-of-way.

**Substance of final rule:** The Commission denied for the most part Dominion Telecom, Inc.'s (Dominion) complaint against the terms and provisions of Consolidated Edison Company of New York, Inc.'s (Con Edison) Rider X telecommunications access tariff and Rider K pole attachment tariff. The Commission granted Dominion's request for certain changes to the insurance and indemnification provisions of Rider K and X and the rate of return used in Rider X and directed Con Edison to revise its tariffs accordingly, 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-M-1072SA1)

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### **Security Deposit Requirements by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-25-03-00006-P

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

**Proposed action:** The commission is considering whether to accept, reject or modify, in whole or in part a proposal by Niagara Mohawk Power Corporation (Niagara Mohawk) to assess a security deposit as a condition of service to certain applicants for residential gas and/or electric service.

**Statutory authority:** Public Service Law, section 36

**Subject:** Niagara Mohawk's practices regarding security deposit requirements for residential customers of utility services.

**Purpose:** To permit Niagara Mohawk to assess a security deposit as a condition of service to certain customers.

**Public hearing(s) will be held at:** 1:00 p.m. and 7:00 p.m., July 16, 2003 at Bethlehem Town Hall, 445 Delaware Ave., Delmar, NY

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Interpreter Service:** Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Substance of proposed rule:** New York State Public Service Commission is considering whether to accept, reject or modify, in whole or in part, a proposal by Niagara Mohawk Power Corporation, made pursuant to Public Service Law Section 36 and the Commission's Rules and Regulations Section 11.12(e), to assess a security deposit as a condition of service to certain residential applicants for gas and/or electric service.

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

**Data, views or argument may be submitted to:** Janet H. Deixler, 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-M-0772SA1)

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

#### **Intercarrier Telephone Service Quality Standards and Metrics**

**I.D. No.** PSC-25-03-00007-P

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

**Proposed action:** Revision to carrier-to-carrier service quality guidelines.

**Statutory authority:** Public Service Law, section 492(2)

**Subject:** Intercarrier telephone service quality standards and metrics.

**Purpose:** To consider the action, revision and deletion of certain standards and measures of intercarrier telephone service quality performance.

**Substance of proposed rule:** The Commission is considering the addition, revision and deletion of certain standards and measures of intercarrier telephone service quality performance. Specifically, the Carrier Working Group, and industry group in which the Staffs of the Department of Public Service and Department of Law participate, will be making recommendations which modify and clarify the existing guidelines documents for Verizon New York Inc. (Verizon) and Frontier Telephone of Rochester. Many of the changes recommended are derived by consensus of the Carrier Working Group. Changes to the existing guidelines impact operations support system functions, including preordering, ordering, provisioning, maintenance, network performance and billing. The Commission will consider revising billing measurements, statistical procedures for evaluation of reported results and measurement definitions. For Verizon, the group will be recommending guideline administrative changes and modifications to reporting for: missed appointments, projects requiring special handling; and, maintenance retail comparisons.

**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 argument may be submitted to:** Janet H. Deixler, 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.

(97-C-0139SA17)

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

**Mandatory Hourly Pricing by Central Hudson Gas and Electric Corporation, et al.**

**I.D. No.** PSC-25-03-00008-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 implementation of mandatory hourly-pricing for electric commodity service in the service territories of Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, and Orange and Rockland Utilities, Inc.

**Statutory authority:** Public Service Law, sections 2(13), 5, 65, 66(1), (2), (12) and 66-c

**Subject:** Mandatory hourly-pricing for electric commodity service.

**Purpose:** To consider the implementation of mandatory hourly-pricing for electric commodity service.

**Substance of proposed rule:** On April 30, 2003, the Public Service Commission instituted a proceeding to examine whether it should impose expedited implementation of mandatory hourly pricing for commodity service in New York State. The proceeding will evaluate the need for changes to the utilities' real time pricing tariffs to more effectively reduce demand and peak period pricing and to encourage conservation, and the specific changes, if any, that should be made. It is anticipated that any changes determined to be necessary would be implemented via tariff filings by the major electric utilities. The Commission is also considering issues related to the possible implementation of mandatory real-time pricing.

**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 argument may be submitted to:** Janet H. Deixler, 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-0641SA1)

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

**Rates by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-25-03-00009-P

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

**Proposed action:** To consider changes in the manner of regulating Orange and Rockland Utilities, Inc.,

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

**Subject:** Electric rates.

**Purpose:** To consider the appropriate regulation of electric rates and service.

**Substance of proposed rule:** The Commission will consider whether to adopt or modify the current regulatory plan envisioned in the existing Joint Proposal for Orange and Rockland Utilities, Inc. The Commission may take other action related to Orange and Rockland's electric rates.

**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 argument may be submitted to:** Janet H. Deixler, 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-0797SA1)

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

**Regulation of National Fuel Gas Distribution Corporation**

**I.D. No.** PSC-25-03-00010-P

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

**Proposed action:** Consideration of a regulatory approach for National Fuel Gas Distribution Corporation.

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

**Subject:** Regulation of National Fuel Gas Distribution Corporation.

**Purpose:** To consider changes in the manner in which the commission regulates.

**Substance of proposed rule:** The Commission will consider whether to adopt, modify, or take action otherwise related to a Joint Proposal dated January 18, 2002, that established a regulatory regime for the National Fuel Gas Distribution Corporation. The Commission action may adopt the same or similar terms as contained in that Joint Proposal, as well as resolve other related issues.

**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 argument may be submitted to:** Janet H. Deixler, 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.  
(00-G-1858SA4)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Sublease of Real Property by The Brooklyn Union Gas Company and ANB Sportswear, Inc.**

**I.D. No.** PSC-25-03-00011-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 a petition filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) and ANB Sportswear, Inc. (ANB) for: (1) authority under section 70 of the Public Service Law to sublease a building leased by KeySpan to ANB; (2) approval of the proposed accounting and rate treatment for the transaction; and (3) related relief.

**Statutory authority:** Public Service Law, sections 5(b) and (c), 65(1), 66(1), (2), (5), (8), (9), (10), (11), (12) and 70

**Subject:** Sublease of real property, accounting and rate treatment for the transaction, and related matters.

**Purpose:** To consider the proposed sublease of a building, accounting and rate treatment associated with the sale, and related matters.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the sublease of a building located in Brooklyn, New York, leased by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) to ANB Sportswear, Inc. (ANB). KeySpan asserts that the building is not needed for its utility operations, and that the transaction would allow ANB to use the building as a thrift store. The Commission is also considering KeySpan's proposed accounting and rate treatment for the transaction, and other related issues.

**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 argument may be submitted to:** Janet H. Deixler, 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-0793SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Gas Meters and Accessories by KeySpan Energy Delivery**

**I.D. No.** PSC-25-03-00012-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, reject, or modify in whole or in part, an application by KeySpan Energy Delivery for the approval of the Tulsa Gas Technologies (TGT) compressed natural gas dispenser accuracy prover.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of types of gas meters and accessories.

**Purpose:** To approve the Tulsa Gas Technologies compressed natural gas dispenser accuracy prover to be utilized in New York State.

**Substance of proposed rule:** The Public Service Commission will consider whether to grant a request filed by KeySpan Energy Delivery, to approve the TGT Compressed Natural Gas Dispenser Accuracy Prover, for use in calibrating meters used for dispensing compressed natural gas to public vehicles in New York State.

**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 argument may be submitted to:** Janet H. Deixler, 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-0796SA1)

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**Department of State**

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**NOTICE OF CONTINUATION  
NO HEARING(S) SCHEDULED****Fire Safety Standards for Cigarettes**

**I.D. No.** DOS-53-02-00018-C

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

**The notice of proposed rule making,** I.D. No. DOS-53-02-00018-P was published in the *State Register* on December 31, 2002.

**Subject:** Fire safety standards for cigarettes.

**Purpose:** To set fire safety standards for cigarettes which will insure that such cigarettes meet performance standards which limit the risk that such cigarettes will ignite upholstered furniture, mattresses, or other household furnishings.

**Substance of rule:** The rule sets standards that cigarettes must meet before they may be offered for sale in New York State. The rule sets forth general requirements, definitions, a required test method, a performance standard, requirements concerning test data, certification requirements, requirements concerning notification of certification, and requirements concerning the marking of cigarette packaging.

**Changes to rule:** No substantive changes.

**Expiration date:** December 31, 2003.

**Text of proposed rule and changes, if any, may be obtained from:** John Mueller, Chief, Fire Prevention Bureau, Office of Fire Prevention and Control, Department of State, 41 State St., Albany, NY 12231, (518) 474-6746

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

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**State University of New York**

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**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Traffic and Parking Regulations at SUNY Plattsburgh**

**I.D. No.** SUN-25-03-00003-P

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

**Proposed action:** Amendment of sections 565.2(j), 565.4(e) and 565.7(c)(3) of Title 8 NYCRR.

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

**Subject:** Traffic and parking regulations of the State University of New York College at Plattsburgh.

**Purpose:** To add to and redesignate approved campus parking spaces, add to the designation of prohibited parking areas, and increase the length of time in which to appeal a violation of campus parking regulations from 72 hours to two weeks.

**Text of proposed rule:** Subdivision (j) of section 565.2 is amended to read as follows:

§ 565.2 General.

(j) [No parking is permitted where curbs are painted yellow.] *Parking is not permitted at curbs painted yellow, on a road surface painted yellow, or on the grass/lawn areas.*

Subdivision (e) of section 565.4 is amended to read as follows:

§ 565.4 Parking areas.

(e) Areas designated in these regulations as parking areas shall be restricted to parking by college faculty, staff and students between the hours of 6 a.m. and 5 p.m., Monday through Friday, *with the exception of parking lot #27. The restricted hours for parking lot #27 shall be between the hours of 8 a.m. and 5 p.m., Monday through Friday.* During the hours when lots are not specifically restricted, they shall be used by people on college-related business. Emergencies, such as snow conditions, can result in the closing of any lot.

APPROVED PARKING AREAS

RESTRICTED TO FACULTY AND STAFF:

- [C]2 Hawkins Hall (*section closest to Cornelia Street and west*)
- [D]4 Redcay Hall Lot and 133 Court Street Lot
- [6]23 Sibley Hall Front Lot
- [10]20 Sibley Hall Side Lot
- [N]24 Service Building Front Lot (at all times)
- [Q]26 Service Building South Lot (at all times)
- [3]15 Memorial Hall Lot (rear lower level)
- [E]5 Hudson Hall Lot (south)
- [H] [Yokum Hall Lot]
- [M]25 Algonquin Dining Hall Lot
- [R]28 C.V. Hall Lot
- [11]29 Field House (behind Field House)
- 6 Hudson Hall Lot (*west*)
- 7 *One Half of Draper Avenue Lot (section closest to Feinberg Library)*
- 11 *One Half of Kehoe Lot (section closest to Broad Street)*
- 16 *Saranac Hall and Health Center Building Lots*
- 22 *Sibley (Rear)*

VISITORS LOT (CLOSED TO FACULTY, STAFF AND STUDENTS):

- [Visitors] Kehoe Building (*front of building*)
- 10
- 9 *Yokum Lot*
- 17 *First Row of Saranac Hall Lot*

RESTRICTED LOTS (OFF-CAMPUS STUDENTS[, FACULTY AND STAFF]):

- [G] 8 *One Half of Draper Avenue Lot (section closest to Broad Street)*
- [F] [Hudson Hall Lot (*west*)]
- [B] 3 Hawkins Hall Lot (*north/Draper Avenue*)
- [8] [Tower Drive Roadway Parking Spaces]
- 1 *President's Lot*
- 12 *One Half of Kehoe Lot (section closest to Myers)*
- 27 *Banks Hall Lot (Sanborn Park Avenue Lot)*
- 21 *Sibley Hall New Lot (section closest to Angell Drive)*

RESTRICTED TO ON-CAMPUS STUDENTS:

- [2] 14 Harrington Hall Lot
- [1] 13 Macdonough Hall Lots (*east, [and] front, and rear*)
- [7] 18 Resident Hall River Lot (*Towers Roadway*), *New Lot (Wilson Tennis Courts), and Tower Drive Parking Spaces*
- [L] [Sanborn/Park Avenue Lot]
- 19 *Sibley Hall New Lot (section closest to residence halls)*

[RESTRICTED TO FACULTY, STAFF AND COMMUTING STUDENTS:]

- [3A] [Memorial Field Lot]

- [4] [Saranac Dining Hall Lot (between Saranac and Memorial Halls)]
- [5] [Health Center Lot]
- [9] [Sibley (Rear)]
- [J] [Kehoe]
- [D1] [133 Court Street Lot]
- [RESTRICTED TO FACULTY, STAFF AND VISITORS:]
- [A] [President's Lot]

Subdivision (c)(3) of section 565.7 is amended to read as follows:  
 § 565.7 Penalties and procedures; violations of campus traffic and parking regulations.

(c) A complaint regarding any violation of a campus rule shall be in writing, reciting the time and place of the violation and the title, number or substance of the applicable rule.

(1) The complaint must be subscribed by the officer witnessing the violation and attached to the vehicle involved.

(2) The complaint shall indicate the amount of the fine assessable for the violation, and advise that if the person charged does not dispute the violation, fines will be paid in the Bursar's Office within a 72-hour period (not to include Saturdays and Sundays).

(3) The complaint shall recite that a hearing may be requested by registering either orally or in writing within [(72 hours not to include Saturdays and Sundays)] *two weeks* an intention to appeal, and within two weeks actually appealing either orally or in writing, to the chairman of the traffic and parking appeals board, and such an appeal will preclude the payment of fine within [72 hours] *two weeks*. Failure to request a hearing within two weeks or failure to appear at the time fixed for the hearing mandates that the violation will stand. Forms for appealing complaint tickets may be picked up in the University Police Department in the Health Services Building.

**Text of proposed rule and any required statements and analyses may be obtained from:** Carolyn J. Pasley, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: pasleycj@sysadm.suny.edu

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

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

**Regulatory Impact Statement**

1. Statutory authority: Education Law § 360(1)
2. Legislative objectives: To provide for safety and convenience of students, faculty, employees and visitors within and upon the property, roads, streets and highways under the supervision and control of the State University through the regulation of vehicular and pedestrian traffic and parking.
3. Needs and benefits: Amendments related to parking and parking areas will allow the State University to better regulate and enforce rules for vehicular traffic and parking. The proposed increase in the number of approved parking spaces, the redesignation of parking areas, and the increase in the length of time in which an appeal of a violation of the parking and traffic regulations may be made will benefit all students, faculty, staff and visitors by alleviating parking shortages on campus and by giving individuals more time in which to appeal when they have been ticketed for a parking or traffic violation.
4. Costs: None.
5. Local government mandates: None.
6. Paperwork: None.
7. Duplication: None.
8. Alternatives: There are no viable alternatives.
9. Federal standards: There are no related Federal standards.
10. Compliance schedule: The campus will notify those affected as soon as the rule is effective. Compliance should be immediate.

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on

public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Plattsburgh.

***Job Impact Statement***

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