

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.

State Consumer Protection Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Do-Not-Call Registry

I.D. No. CPR-38-03-00005-P

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

Proposed action: This is a consensus rule making to repeal Part 4602 and add a new Part 4602 to Title 21 NYCRR.

Statutory authority: Executive Law, section 553(1)(d); General Business Law, section 399-z; and L. 2003, ch. 124

Subject: Establishment, operation and maintenance of the New York do-not-call registry.

Purpose: To recognize and authorize use of the national do-not-call registry for enforcement purposes, and authorize the transfer of telephone number data to the Federal Trade Commission for inclusion on its national registry.

Text of proposed rule: Sections 4602.1, 4602.2, 4602.3, 4602.4 and 4602.5 are repealed in their entirety and new Section 4602.1 is adopted to read as follows:

§ 4602.1 *Authorization of Transfer of Telephone Numbers to Federal Registry.*

(a) *The Consumer Protection Board is authorized to have the national "Do-Not-Call" registry established, managed and maintained by the Federal Trade Commission pursuant to 16 C.F.R. Section 310.4 (b)(1)(iii)(B)* (herein referred to as the national "Do-Not-Call" registry) serve as the New York State "do not call" registry.*

(b) *Consumer telephone numbers listed on the New York State no telemarketing sales calls statewide registry will be transferred to the Federal Trade Commission for inclusion in its national "Do Not Call" registry as established by 16 C.F.R. Section 310.4(b)(1)(iii)(B).*

(c) *The registry is open to all natural persons who: (1) reside in this state, and (2) have telephone service in this state that receives incoming calls.*

§ 4602.6 "Definitions" is re-numbered to § 4602.2.

**The text of 16 C.F.R. Part 310, which codifies 15 U.S.C 6108, the Telemarketing and Consumer Fraud and Abuse Prevention Act, as amended, appears in the "Federal Register", Vol. 68, No. 19, January 29, 2003. Copies of the Rule are also available for public inspection and photocopying at the New York State Consumer Protection Board, 5 Empire Plaza, Suite 2101, Albany, NY 12223.*

Text of proposed rule and any required statements and analyses may be obtained from: Scott R. Nortz, General Counsel, Consumer Protection Board, Five Empire State Plaza, Corning Tower, Suite 2101, Albany, NY 12223, (518) 486-3934, e-mail: Scott.Nortz@consumer.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

Pursuant to SAPA § 202(1)(b)(i), it is the determination of this agency that no person is likely to object to the proposed amendments to Part 4602 of Title 21 NYCRR, attached hereto, as written.

Job Impact Statement

The Agency hereby makes a finding that the proposed rulemaking will not adversely affect jobs in New York State. This finding is based upon the fact that, currently, the CPB is contracted with an out-of-state company for creation, production and maintenance of the New York State No Telemarketing Sales Calls Registry. Eliminating this contract will not cause New York jobs to be lost, and will in fact save the state over \$1.5 million annually.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensure as a Certified Public Accountant

I.D. No. EDU-38-03-00007-P

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

Proposed action: Amendment of sections 70.3 and 70.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6501 (not subdivided); 6502(1); 6504 (not subdivided); 6507(2)(a) and (3)(a); 6508(2); 7404(1)(4); 7409(1)(a), (b) and (c); and 7409(2) and (4)

Subject: Examination for licensure as a certified public accountant and mandatory continuing education requirements for licensed certified public accountants and public accountants.

Purpose: To establish standards for the examination required for licensure as a certified public accountant, continuing education requirements that licensed certified public accountants and public accountants must meet to be registered to practice in New York State, and requirements for sponsors of the continuing education.

Text of proposed rule: 1. Section 70.3 of the Regulations of the Commissioner of Education is amended, effective December 4, 2003, as follows:

70.3 Licensing examinations.

(a) Content. The examination shall consist of the following [subjects] sections:

(1) financial accounting and reporting;

[(2) . . .]

[(3) . . .]

[(4) . . .]

(2) *business environment and concepts*;

(3) *regulation*; and

(4) *auditing and attestation*.

(b) Passing score. The passing score in each [subject] section shall be 75.0 and shall be reported on a pass/fail basis.

(c) Retention of credit. A candidate shall be subject to the retention of credit requirements of paragraph (1) of this subdivision, unless the candidate passed two or more sections of the paper-and-pencil version of the examination administered prior to December 4, 2003 in which case the candidate shall be subject to the retention of credit requirements of paragraph (2) of this subdivision.

[(1) . . .]

(1) A candidate may take the required sections of the examination individually and in any order. Credit for any section passed shall not be valid for more than eighteen months from the actual date the candidate took that section of the examination. A candidate must pass all four sections of the examination within a rolling eighteen-month period, which begins on the date that a passed section of the examination is taken. A candidate may not retake a failed section of the examination in the same examination window, meaning a two-month period in which the examination is available within a quarter of the year.

(2) Transitional retention period. A candidate who has acquired credit for passing two or more sections of the paper-and-pencil version of the examination administered prior to December 4, 2003 shall be allowed a transitional retention period to obtain a passing score on the remaining sections of the computer-based format of the examination. The transitional retention period shall consist of the three-year period in which the candidate was required to pass all sections of the paper-and-pencil examination, extended to the last day of the month in which the three-year period ends, provided that such period shall terminate before the end of such three-year period as extended, if the candidate has exhausted six opportunities to pass the remaining sections of the licensing examination in whatever format before the end of that period. In that case, the transitional retention period shall terminate on the date the candidate has exhausted the six opportunities. A candidate may not retake a failed section of the examination in the same examination window, meaning a two-month period in which the examination is available within a quarter of the year.

[(2)] (3) A candidate who has been awarded credit for [any subject or subjects of an] passing a section of the licensing examination administered prior to [November 11, 1994 shall receive credit as follows:] December 4, 2003 shall receive credit for the corresponding section of the licensing examination administered after that date, as follows, provided that the candidate has met the retention of credit requirements of this subdivision:

(i) a candidate who has been awarded credit for [accounting theory] *financial accounting and reporting* shall be awarded credit for financial accounting and reporting;

(ii) a candidate who has been awarded credit for [business law shall be awarded credit for] business law and professional responsibilities shall be awarded credit for *business environment and concepts*;

(iii) a candidate who has been awarded credit for [accounting practice shall be awarded credit for] accounting and reporting shall be awarded credit for *regulation*; and

(iv) a candidate who has been awarded credit for auditing shall be awarded credit for [auditing] *auditing and attestation*.

(d) The department shall accept passing scores on the uniform certified public accountant examination, or an examination determined to be comparable in content, as meeting the requirement of the licensing examination, except where the department determines that the administration, scoring, content or other comparable factors concerning such examination have affected the validity and/or integrity of such examination so as to render acceptance of such scores inappropriate. Candidates shall complete their professional study prior to the licensing examination [, except that a candidate who will complete college study within 60 days after the date of the examination may be admitted to the examination with credit for successful completion of the examination or its parts being conditional upon meeting the professional study requirement and subject to the limitations provided in subdivision (c) of this section].

(e) Transfer of examination credit. Candidates who have passed, in another state, [subjects] sections of the licensing examination used by New York State may have their grades transferred upon application, if the requirements of this Part concerning education, and retention of credit for [subjects] sections passed have been met. *A score of 75.0 or higher shall be considered passing for the purposes of transferring grades from another jurisdiction.*

2. Section 70.6 of the Regulations of the Commissioner of Education is amended, effective December 4, 2003, as follows:

70.6 Continuing education.

(a) Applicability of requirement. (1) . . .

(2) Exemptions and adjustments in the requirement. (i) The following licensees are exempt from the continuing education requirement:

(a) licensees whose practice is restricted to services provided for an employer other than a licensee, partnership, [or] professional service corporation [offering or practicing public accountancy], or other entity authorized to practice public accountancy, and who have filed a statement with the department declaring such status;

(b) . . .

(c) . . .

(ii) . . .

(b) Minimum continuing education requirement. (1) . . .

(2) . . .

(3) Licensees reentering public practice shall notify the department and shall document 24 hours of continuing education completed in the 12-month period prior to return to public practice. Following reentry, the licensee shall complete a pro rata portion of the mandated [three-year] yearly requirement for the option selected pursuant to paragraph (1) of this subdivision on the basis of one-half of the number of hours required under the option selected for each full six-month period from the date of reentry to the [next registration date] end of the current reporting year.

(c) Eligible Programs. (1) . . .

(2) . . .

(3) In addition to instruction pursuant to paragraph (2) of this subdivision, the following activities may contribute to meeting the continuing education requirement, provided that the number of [continuing education] contact hours allowed for such activities for any licensee shall not exceed one half of the total number of hours of continuing education claimed [for three-year continuing education requirement] during a triennial registration period:

(i) . . .

(ii) . . .

(4) . . .

(d) Measurement of continuing education study. Continuing education credit shall be granted only for formal programs of learning that meet the requirements set forth in subdivision (c) of this section. *One continuing education credit shall equal one contact hour.* Contact hours shall be measured [in full hours of attendance only] by program length, with a minimum of 50 minutes equaling one contact hour. *Contact hours in one-half hour increments, equal to 25 minutes, shall be permitted after the first continuing education credit has been earned in a given program.* For credit-bearing university or college courses, each semester-hour credit shall equal 15 contact hours and each quarter-hour shall equal 10 contact hours. Self-study programs shall be pretested to determine average completion time. Contact hours for interactive self-study programs shall equal the average completion time. Contact hours for noninteractive self-study programs shall equal one-half the average completion time. Interactive self-study programs shall mean programs designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware, or technology-based systems that provide significant ongoing, interactive feedback to participants regarding the licensees' learning progress. Noninteractive self-study programs shall

mean self-study programs that do not meet such requirements for interactive self-study programs.

(e) Sponsor Approval. (1) . . .

(2) To be approved, each applicant shall submit evidence acceptable to the department that the applicant has and will maintain adequate resources to support all programs and will comply with the following development and presentation standards:

(i) sponsors [should] *shall* state the learning objectives and level of knowledge of the program and state the educational and experience prerequisites for the participants;

(ii) sponsors [should] *shall* assure that program developers are qualified in the subject matter and knowledgeable in instructional design;

(iii) sponsors [should] *shall* assure that program materials are technically accurate, current and sufficient to meet the programs' learning objectives through advance review;

(iv) sponsors [should] *shall* inform participants in advance of the program's learning objectives, prerequisites, level of knowledge, content, *specific field of study*, advance preparation, teaching method, recommended CPE credit, *sponsor identification number*, and relevant administrative policies;

(v) sponsors [should] *shall* select instructors qualified with respect to both program content and teaching methods used; and

(vi) sponsors [should] *shall* provide a means for evaluating the quality of the program and update programs in response to the evaluations.

(3) . . .

(4) . . .

(5) . . .

(f) . . .

(g) . . .

(h) . . .

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.

Section 6501 of the Education Law provides that in order for an applicant to qualify for a professional license, the requirements prescribed in the Article for each particular profession must be met.

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.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law authorizes the State Education Department, assisted by the board for each profession, to establish standards for pre-professional and professional education and licensing examinations as required to implement the Article governing each profession.

Subdivision (2) of section 6508 of the Education Law provides that state boards for the professions, or their licensing committees, shall select or prepare licensing examinations and assist the Department in other licensing matters as prescribed by the Board of Regents.

Paragraph (4) of subdivision (1) of section 7404 of the Education Law provides that a person must pass an examination, satisfactory to the State Board for Public Accountancy and in accordance with the Commissioner's regulations, in order to qualify for a license as a certified public accountant.

Paragraph (a) of subdivision (1) of section 7409 of the Education Law requires licensed certified public accountants and public accountants to complete mandatory continuing education as a condition for registration to

practice in New York State and provides an exception to licensees with a conditional registration certificate.

Paragraph (b) of subdivision (1) of section 7409 of the Education Law allows licensed certified public accountants and public accountants 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 7409 of the Education Law provides an exemption from the continuing education requirement for licensees not engaged in public practice and directs the State Education Department to establish continuing education requirements for licensees reentering the profession.

Subdivision (2) of section 7409 of the Education Law provides that a licensed certified public accountant and public accountant must complete mandatory continuing education requirements to be registered to practice in New York State, and establishes the contact hour requirements for such continuing education.

Subdivision (4) of section 7409 of the Education Law defines acceptable formal continuing education as formal programs of learning which contribute to professional practice and which meet standards prescribed in the Regulations of the Commissioner of Education. It also provides that programs must be taken from sponsors approved by the State Education Department, pursuant to the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Commissioner of Education shall promulgate regulations establishing standards for licensing examinations and mandatory continuing education in the profession of public accountancy.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish standards for the examination required for licensure as a certified public accountant, continuing education requirements that licensed certified public accountants and public accountants must meet to be registered to practice in New York State, and requirements for sponsors of the continuing education. Staff of the State Education Department worked with the State Board for Public Accountancy to develop the proposed amendment, and the State Board recommends that the proposed amendment be adopted.

The proposed amendment is needed to conform the New York State licensing examination requirements to national standards for certified public accountancy, and will allow New York State to continue to use the national examination as the licensing examination for certified public accountants. The amendment reflects changes in this national examination, which will be offered in a computer-based format, instead of the current pencil and paper version. The last administration of the paper and pencil version occurred in November 2003, and the new version is scheduled to be offered in April 2004. The paper and pencil test was administered twice per year. The new test will be offered on a daily basis.

The national examination is used for licensure in all states of the union. The continued use of the national examination in New York will benefit New York State licensed certified public accountants because it will permit them to meet the examination requirement for licensure in other States, easing their ability to practice in other States. It will benefit public accounting firms because it will facilitate their hiring certified public accountants who are licensed in multiple states.

The amendment is needed to list the new content sections of the examination, establish a crosswalk between the old test subjects and the new ones, and set forth retention of credit requirements. It also removes a provision that would permit a candidate to take the licensing examination if he or she will complete college study within 60 days after the date of the examination. This provision was established to increase the candidates' opportunity to take the examination. Under the new examination format, this provision is unnecessary because the computer-based examination will be offered on a daily basis, instead of twice per year.

The proposed amendment is also needed to clarify several provisions of the regulation concerning the continuing education requirement for certified public accountants and public accountants. It clarifies language that exempts licensees not practicing public accountancy who are working for firms other than entities that are authorized to practice public accountancy and requires them to file a statement declaring such status. It clarifies the requirement for licensees reentering practice, establishing a requirement for the year of reentry, rather than a three-year requirement, consistent with the statutory requirement which is expressed in annual terms.

In addition, the proposed amendment will require sponsors of continuing education to inform participants in advance of the program's specific field of study and sponsor identification number issued by the State Education Department. This will benefit licensees by providing them with advanced knowledge of the specific subject that will be taught and that the sponsor has the necessary approval by the State Education Department to offer continuing education, and will permit licensees to maintain required documentation.

Finally, the amendment changes the standard for awarding continuing education credit, permitting contact hours to be measured by program length and credit for one-half hour increments. This change was made to be consistent with standards set forth for continuing education programs by the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA).

4. COSTS:

(a) Cost to State government: The regulation will not impose additional costs on the State Education Department or any other State agency.

(b) Cost to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: The proposed amendment will not impose additional costs on any private regulated parties, including licensees and sponsors of continuing education.

(d) Costs to the regulatory agency: As stated in "Costs to State Government," the proposed amendment will not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to examination requirements applicable to candidates for licensure as a certified public accountant, continuing education requirements applicable to licensees, and requirements for sponsors of continuing education to licensees. The amendment does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment imposes a notification requirement on approved sponsors of continuing education to licensees. It requires them to inform participants in advance of the program's specific field of study and sponsor identification number issued by the State Education Department. The amendment will not impose any other paperwork requirement.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State requirements.

8. ALTERNATIVES:

The amendment establishes requirements that conform to national standards. There were no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards established in law for the subject matter of the proposed amendment. The amendment establishes examination requirements and continuing education requirements that are consistent with national standards established by private organizations representing the field of public accountancy.

10. COMPLIANCE SCHEDULE:

Regulated parties will be required to comply with the regulation on its effective date. No additional period of time is necessary to enable regulated parties to comply with the regulation.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment will affect approved sponsors of continuing education to licensed certified public accountants and public accountants. The State Education Department does not know the exact number of the approved sponsors that are small businesses, but estimates that number based upon a survey. There are 733 approved sponsors of continuing education to licensed certified public accountants and public accountants. Of the total, about 75 percent or 550 are small businesses.

2. COMPLIANCE REQUIREMENTS:

The amendment changes a requirement for sponsors of continuing education to licensed certified public accountants and licensed public accountants, including sponsors that are small businesses. It requires these sponsors to inform participants in advance of the program's specific field of study and sponsor identification number issued by the State Education Department. It also changes the standard for awarding continuing education credit, permitting contact hours to be measured by program length and credit in one-half hour increments. The other changes concern requirements affecting individuals, not small businesses (licensure examination and continuing education requirements).

3. PROFESSIONAL SERVICES:

The proposed amendment will not require sponsors of continuing education that are classified as small businesses to hire professional services to comply.

4. COMPLIANCE COSTS:

The amendment will not impose additional costs on sponsors of continuing education, including those that are classified as small businesses.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any technological requirements on regulated parties, including those that are classified as small businesses, and is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The Department believes that the additional notification requirements, applicable to sponsors of continuing education, are reasonable, and that uniform standards should apply, regardless of the size of the organization, in order to help ensure that all licensees obtain this information. The Department also believes that a uniform standard should apply to the measurement of the continuing education study, regardless of the size of the sponsor that offers it, to ensure that candidates are treated fairly and receive adequate coursework.

7. SMALL BUSINESS PARTICIPATION:

The State Board for Public Accountancy, which includes members who have experience in a small business environment, assisted in the development of the proposed amendment. Comments from the State Board were considered during the development of the amendment, and the State Board recommends its approval. Comments on this initiative were solicited from the New York State Society of Public Accountants and the National Conference of CPA Practitioners. These organizations represent public accountants who own or work for small businesses, among others.

(b) Local Governments:

The proposed regulation establishes examination requirements for licensure as a certified public accountant, continuing education requirements for licensed certified public accountants and public accountants, and standards for sponsors of such continuing education. It will not impose any reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on local governments. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis for 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. The amendment will affect applicants for licensure as certified public accountants. Each year about 12,000 applicants take the licensure examination. The Department estimates that of the total, about 696 candidates reside in a rural county of New York State. (This estimate is based upon the percentage of licensed certified public accountants who reside in a rural county of the State, 5.8 percent.) The amendment also affects licensees who must complete continuing education to be registered to practice in this State. At present, about 35,900 individuals are licensed and registered to practice public accountancy in New York State. Of these, 2,070 reported a permanent address of record that is in a rural county of New York State. Finally, the amendment affects sponsors of continuing education to licensed certified public accountants and public accountants. Of the 733 approved sponsors, 33 are located in a rural county of the State.

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

The proposed amendment conforms the regulatory requirements for the New York State licensing examination in public accountancy to national standards. Specifically, the amendment lists the new content sections of the examination, establishes a crosswalk between the old test subjects and the new ones, and sets forth retention of credit requirements. It also removes a provision that would permit a candidate to take the licensing examination if he or she will complete college study within 60 days after the date of the examination.

The proposed amendment clarifies several provisions of the regulation concerning the continuing education requirement for licensed certified public accountants and public accountants. It clarifies language that exempts licensees not practicing public accountancy who are working for firms other than entities that are authorized to practice public accountancy and requires them to file a statement declaring such status. It clarifies the

requirement for licensees reentering practice, establishing a requirement for the year of reentry, rather than a three-year requirement, consistent with the statutory requirement which is expressed in annual terms.

The proposed amendment requires sponsors of continuing education to inform participants in advance of the program's specific field of study and their sponsor identification number issued by the State Education Department. Finally, the amendment changes the standard for awarding continuing education credit, permitting contact hours to be measured by program length and credit in one-half hour increments.

The proposed amendment will not require regulated parties, including those that are located in rural areas of the State, to hire professional services to comply.

3. COSTS:

The amendment will not impose any additional costs on licensees, public accounting firms, or sponsors of continuing professional education, including those that are located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The rule makes no exception for applicants for licensure or licensees who live or work in rural areas, or sponsors of continuing education that are located in rural areas. The Department has determined that uniform examination requirements should apply to help ensure entry-level competency, regardless of the geographic location of the licensure applicant. The Department has also determined that uniform standards for the Department's review of sponsors of continuing education are necessary to ensure quality offerings in all parts of the State. Because of the nature of the proposed amendment, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Board Public Accountancy assisted in the development of the proposed amendment. This Board includes members who live and work in rural areas of New York State. Comments from the State Board were considered during the development of the amendment, and the State Board recommends its approval. Comments on this initiative were also solicited from the New York State Society of Public Accountants and the National Conference of CPA Practitioners. These organizations represent public accountants who live and work in rural areas, among others.

Job Impact Statement

The proposed amendment will establish standards for the examination required for licensure as a certified public accountant, continuing education requirements that certified public accountants and public accountants must meet to be registered to practice in New York State, and notification requirements that sponsors of the continuing education must meet to be approved by the State Education Department. The proposed amendment will have no effect on the number of jobs or the number of employment opportunities available in this field. Because it is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in public accounting or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Statement Assessments and Graduation and Diploma Requirements

I.D. No. EDU-38-03-00008-P

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

Proposed action: Amendment of section 100.5(b) and (d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided), and 3204(3)

Subject: State assessments and graduation and diploma requirements.

Purpose: To revise mathematics requirements and visual arts and/or music, dance or theatre requirements for a Regents diploma.

Text of proposed rule: 1. Subparagraph (v) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 1, 2004, as follows:

(v) Earning a Regents diploma with advanced designation. To earn a Regents diploma with an advanced designation a student must complete, in addition to the requirements for a Regents diploma:

(a) additional Regents examinations in mathematics as determined by the commissioner or approved alternatives pursuant to section 100.2(f) of this Part. Students must pass [either] the two Regents Examinations titled [Math] *Mathematics A* and [Math] *Mathematics B*, or [, until January 2003.] the three Regents examinations titled *Course I*, *Course II*, and *Course III*, or the two Regents examinations titled *Mathematics A and Course III*;

(b) . . .

(c) . . .

2. Paragraph (2) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 1, 2004, as follows:

(2) Visual arts and/or music, dance or theatre. (i) A student may obtain the unit of credit in *art and/or music required pursuant to subparagraph (a)(2)(v) of this section or the unit of credit in visual arts and/or music, dance or theatre required pursuant to subparagraph [(a)(2)(v)] (a)(3)(v) of this section in the following manner:*

(a) by participating in a school's major performing groups, such as band, chorus, orchestra, dance group or theatre group; or

(b) by participating, only in exceptional situations, in an advanced out-of-school art or music activity. Credit for such participation shall be upon recommendation by the student's visual arts, music, dance or theatre teacher, shall be approved by the visual arts, music, dance or theatre department chairperson, if there is one, and by the school principal, and shall be consistent with the goals and objectives of the school's visual arts, music, dance, and/or theatre program.

(ii) A student may receive a unit of credit for participation in such activities if such participation is equivalent to a unit of study, or a student may receive one half unit of credit for such activity equivalent to one half unit of study.

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: James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@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

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State education department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the State learning standards, State assessments and graduation and diploma requirements.

NEEDS AND BENEFITS:

The proposed amendment will revise graduation and diploma requirements to implement policy adopted by the Board of Regents and to help ensure that all students in the State's public schools have the skills, knowledge and understandings they need to succeed in the next century. The proposed changes will clarify the requirements, provide scheduling flexibility to the schools and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation. The mathematics requirements need revision and clarification because present language would not allow students who took Course III after January 2003 to be eligible for a Regents Diploma with Advanced Designation. Course I phased out in January 2002, Course II phased out in January 2003, and Course III will phase out in January 2004.

The continuation of the visual arts and/or music, dance, or theatre alternatives provide students who enter grade 9 after 2001 course options which previous students have used to satisfy Regents Diploma requirements.

COSTS:

(a) Costs to State government: None. The proposed amendment creates no additional costs.

(b) Costs to local government: None. School districts will incur no additional costs to their programs.

(c) Costs to private regulated parties: None. These proposed amendment does not fiscally impact private parties in any way.

(d) Costs to regulating agency for implementation and continued administration of this rule: These proposed amendment will require no additional costs to the State Education Department as regulating agency.

LOCAL GOVERNMENT MANDATES:

The proposed amendment imposes no additional program, service, duty or responsibility upon local governments, but will ensure that all students have continued opportunities to complete requirements for a high school diploma.

Local school districts interested in offering the mathematics testing option of Mathematics A and Mathematics B or Course I, Course II, Course III or Mathematics A and Course III; credit for band, chorus, orchestra, dance group or theatre group; or credit for an advanced out-of-school art or music activity will implement course and testing requirements consistent with the State's learning standards. Local teachers will maintain student records, provide required instruction and complete assessment procedures.

PAPERWORK:

The proposed amendment creates no additional paperwork for local school districts.

DUPLICATION:

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

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that school districts will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment will revise graduation and diploma requirements for students attending the public schools, consistent with policy adopted by the Board of Regents. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

EFFECT OF RULE:

The proposed rule applies to each school district, charter school and board of cooperative educational services (BOCES) offering high school level curricula in mathematics and/or visual arts with respect to State Assessments and high school graduation and diploma requirements.

COMPLIANCE REQUIREMENTS:

The proposed amendment imposes no additional compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understanding they will need to succeed. The proposed amendment will clarify requirements, provide scheduling flexibility to schools and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation.

The proposed amendment will permit school districts to:

(1) provide options for the high school mathematics assessment requirement for the Regents Diploma with Advanced Designation; and

(2) offer students an opportunity to obtain the unit of credit in visual arts and/or music, dance or theatre required for a Regents diploma by participating in a school's major performing group or in an advanced out-of-school art or music activity.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or new technological requirements on school districts, charter schools or BOCES.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts and boards of cooperative educational services. Where possible, the regulations have incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting the regulatory requirements.

LOCAL GOVERNMENT PARTICIPATION:

The Board of Regents and the State Education Department engaged the educational community (teachers, administrators, members of boards of education, professional organization representatives, community members and others) in drafting of the initial regulations. Members of the educational community were contacted for their input on these proposed amendments. In addition, comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts, charter schools and boards of cooperative educational services in the State, including those located in 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.

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

The proposed amendment imposes no additional compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understanding they will need to succeed. The proposed amendment will clarify requirements, provide scheduling flexibility to schools and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation.

The proposed amendment will permit school districts to:

(1) provide options for the high school mathematics assessment requirement for the Regents Diploma with Advanced Designation; and

(2) offer students an opportunity to obtain the unit of credit in visual arts and/or music, dance or theatre required for a Regents diploma by participating in a school's major performing group or in an advanced out-of-school art or music activity.

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

COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents, and has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts and boards of cooperative educational services in rural areas. Where possible, the regulations have incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting the regulatory requirements. The Regents policy upon which the amended regulations are based applies to all schools. Therefore, it was not possible to establish different compliance and reporting requirements for school districts, charter schools or boards of cooperative educational services in rural areas, or exempt them from the provisions of the proposed amendment.

RURAL AREA PARTICIPATION:

The Board of Regents and the State Education Department engaged the educational community (including teachers, administrators, members of boards of education, community members and others) from rural areas in the drafting of the initial regulations. Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment revises graduation and diploma requirements consistent with policy adopted by the New York State Board of Regents. The assessments and graduation requirements will help ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Driver Education

I.D. No. EDU-38-03-00009-P

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

Proposed action: Addition of section 107.2 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1)-(2), 806-a(2); and L. 2002, ch. 644, section 13

Subject: Driver education.

Purpose: To establish a certification process for driver education courses.

Text of proposed rule: Part 107 of the Regulations of the Commissioner of Education is amended, effective December 4, 2003, by adding section 107.2 as follows:

107.2 Certification of supervised hours in driver education courses pursuant to Education Law section 806-a(2).

The driver education teacher in a driver and traffic safety education course approved by the Commissioner shall, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, certify on a form prescribed by the Commissioner of Motor Vehicles the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driver education teacher.

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: James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 806-a(2), as added by Chapter 644 of the Laws of 2002, requires the Commissioner of Education, upon approval of the Commissioner of Motor Vehicles, to establish by regulation a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes, and is necessary to implement Education Law section 806-a(2), as added by Chapter 644 of the Laws of 2002.

NEEDS AND BENEFITS:

The proposed rule is necessary to implement Education Law section 806-a, as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed rule provides that the driver education teacher in a driver and traffic safety education course approved by the Commissioner shall, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driver education teacher.

COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed rule applies to school districts, boards of cooperative educational services and nonpublic schools that offer driver education courses approved by the Commissioner. The proposed rule is necessary to implement Education Law section 806-a(2), as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. It is anticipated that no costs will result from such certification procedure, which merely requires the driver education teacher, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, to certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of the driver education teacher.

LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to implement Education Law section 806-a, as added by Chapter 644 of the Laws of 2002, which requires the Commissioner to establish a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed rule will not impose any additional program, service, duty or responsibility on local governments beyond the requirements of the statute. The proposed rule merely provides that the driver education teacher in a driver and traffic safety education course approved by the Commissioner shall, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driver education teacher.

PAPERWORK:

The proposed rule provides that the driver education teacher in a driver and traffic safety education course approved by the Commissioner shall, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driver education teacher.

DUPLICATION:

The proposed rule does not duplicate, overlap or conflict with State or federal rules or requirements, and is necessary to implement Education Law section 806-a(2), as added by Chapter 644 of the Laws of 2002.

ALTERNATIVES:

There were no significant alternatives to the proposed rule and none were considered.

FEDERAL STANDARDS:

The proposed rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

COMPLIANCE SCHEDULE:

It is anticipated that driver education teachers can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment establishes a certification process by driver education courses offered by school districts, boards of cooperative educational services and nonpublic schools of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed amendment does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

EFFECT OF RULE:

The proposed rule applies to school districts and boards of cooperative educational services that offer driver education courses approved by the Commissioner of Education. Approximately 316 schools in 54 school districts, 12 boards of cooperative educational services (BOCES) and 153 nonpublic schools offer such programs.

COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to implement Education Law section 806-a, as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed rule provides that the driver education teacher in a driver and traffic safety education course approved by the Commissioner shall, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driver education teacher.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed rule applies to school districts and boards of cooperative educational services that offer driver education courses approved by the Commissioner. The proposed rule is necessary to implement Education Law section 806-a(2), as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. It is anticipated that no costs will result from such certification procedure, which merely requires the driver education teacher, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, to certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of the driver education teacher.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any new technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 806-a, as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed rule does not impose any additional costs or compliance requirements upon school districts, BOCES or nonpublic schools

beyond those imposed by statutory requirements. The proposed rule has been carefully drafted to meet these specific requirements.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule establishes a certification process by driver education courses offered by school districts of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed rule applies to school districts, boards of cooperative educational services and nonpublic schools that offer driver education courses approved by the Commissioner of Education, including those located in 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.

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

The proposed rule is necessary to implement Education Law section 806-a, as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed rule provides that the driver education teacher in a driver and traffic safety education course approved by the Commissioner shall, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driver education teacher. The proposed rule does not impose any additional professional services requirements.

COSTS:

The proposed rule applies to school districts, boards of cooperative educational services and nonpublic schools that offer driver education courses approved by the Commissioner. The proposed rule is necessary to implement Education Law section 806-a(2), as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. It is anticipated that no costs will result from such certification procedure, which merely requires the driver education teacher, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, to certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle while under the immediate supervision of the driver education teacher.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 806-a(2), as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. Since the statute applies to all schools within the State that offer approved driver education programs, it is not possible to establish different compliance and reporting requirements for those schools that are located in rural areas. The proposed rule does not impose any additional costs or compliance requirements upon school districts, BOCES or charter schools beyond those imposed by statutory requirements. The proposed rule has been carefully drafted to meet these specific requirements.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes schools located in rural areas.

Job Impact Statement

The proposed rule establishes a certification process by approved driver education courses offered by school districts, boards of cooperative educational services and nonpublic schools of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and

none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Live Adult Liver Donation and Transplantation

I.D. No. HLT-38-03-00006-P

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

Proposed action: Amendment of section 405.22 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Live adult liver donation and transplantation.

Purpose: To establish minimum standards for live adult liver donation and transplant services at hospitals approved to provide such services.

Substance of proposed rule: The proposed regulations amend section 405.22 of Part 405 of 10 NYCRR to add a new subdivision (l) to set standards for live adult liver transplantation services.

The regulations require any hospital performing live adult liver transplantation to establish an Independent Donor Advocate Team (IDAT) whose main interest is to be centered on the well being of the potential liver donor. The regulations outline the team's composition, characteristics and responsibilities. The main responsibilities are to educate the potential donor on all aspects of live adult liver donation, evaluate the potential donor's medical and psychosocial suitability for donation, and support the potential donor through the entire decision-making and donation process. Upon completing its evaluation, the team is required to provide written recommendations to the donor surgeon regarding the potential donor's suitability for organ donation.

The IDAT is required to structure a process of "informed choice" designed to provide the potential donor with all the information necessary to make an informed decision and emphasize that the decision to donate is not a foregone conclusion. Specific information about the donation process and the medical, psychosocial and financial risks must be provided to the donor. The IDAT must also assess the potential donor's understanding of the procedure and risks, as well as the extent to which the potential donor may feel coerced to donate. A two-week period of reflection is required between the determination by the IDAT and donor surgeon that the potential donor is a suitable candidate for organ donation and the actual signing of the informed consent document. The entire disclosure and consent process must be documented in the donor's medical record.

The regulations establish medical and psychosocial criteria for both the donor and the recipient. Minimum standards and staffing requirements are also established for the members of the surgical teams and anesthesia teams. Requirements for the postoperative period include care levels for the donor, minimum medical and nursing staffing requirements and radiology service requirements.

The post discharge provisions require a follow-up appointment with the donor surgeon and coordination of continuing post-operative care with the donor's primary care physicians. Minimum standards for post-discharge medical testing are established as well as a requirement for psychosocial follow-up as needed. The hospital is also required to attempt to follow donors for their lifetime to monitor the medical and psychosocial effects of donation and to report this data to the Department of Health.

Text of proposed rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsna@health.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

Statutory Authority:

The authority for the promulgation of this regulation is contained in section 2803(2) of the Public Health Law which authorizes the State

Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities.

Legislative Objective:

The legislative objective of Article 28 of the Public Health Law includes the protection of the health of the residents of the State by assuring the safe, efficient provision of the highest quality health services at a reasonable cost. This regulatory amendment furthers this objective by amending rules to establish standards for the safe and effective treatment of potential and actual live adult liver donors. The regulations will ensure that such donors are provided with sufficient and comprehensive information needed to consider the decision to donate, criteria upon which the decision should be based and safe and medically appropriate care throughout the donation, recovery and postrecovery.

Needs and Benefits:

Organ donation and transplantation have saved thousands of lives. However, the supply of usable organs from deceased donors has fallen well short of the demand; 15 people a day die while waiting for a suitable cadaveric organ to become available. Currently, there are more than 80,000 people on waiting lists for organs; more than 8,000 of these are New Yorkers.

In recent years, technology and medical advances have made it possible for live donors to donate a portion of their liver for transplant to individuals who would likely die without such donation. Live kidney donation has been a proven, safe, medical procedure since 1954. These procedures have saved many lives.

The availability and quality of an organ obtained from a live adult liver donor combined with the continuing shortage of recoverable organs from deceased donors has propelled an extensive effort to promote live adult liver donor organ transplantation. However, recent events, including a well-publicized death of a donor, have raised serious questions regarding the safety of the live adult liver donation procedure, particularly for the donor. Although the well being of the donor should be a primary consideration of any live donor organ transplantation, the donor's needs and rights have not always received sufficient attention. These proposed regulations will establish mandatory enforceable standards that will recognize the rights and obligations of both potential donors and recipients and ensure donors receive the highest quality of care.

Competing interests arise in live organ donation that are unique. These include the interests of the donor, the needs of the recipient and society for tissues or organs for transplantation, the interests of the next of kin of both the donor and recipient, and the interests of the transplant center. As a result of the concerns raised by these competing interests and the recent death of a donor, the Commissioner of Health requested the New York State Transplant Council establish a New York State Committee on Quality Improvement in Living Liver Donation to review the care and management of living liver donors in New York State. This Committee was established under the auspices of the New York State Transplant Council, New York's 21-member advisory body appointed by the Governor and the State Legislature to advise the Commissioner of Health on issues related to organ and tissue donation and transplantation.

Members of the Committee included several nationally recognized transplant physicians with expertise in live adult liver transplantation, an organ procurement organization representative, a liver transplant recipient, a liver donor, a representative of the New York State Nurses Association, a social worker, a psychiatrist with live donor transplant experience, an ethicist and representatives from each of the five liver transplant programs in New York State. Two federal government representatives served in an *ex officio* capacity since this issue is being examined by other states and the federal government.

The Committee met in June, August, October, and November 2002 to review existing requirements and develop new guidelines and protocols in accordance with State and federal laws concerning donor and recipient selection, informed consent, preoperative evaluation, and intraoperative and postoperative care of live adult liver donors.

The Committee developed recommendations, which the New York State Transplant Council unanimously endorsed at its meeting on December 19, 2002. At that time, the Commissioner indicated that the key components of the recommendations would be adopted as regulations to ensure that hospitals performing such transplants complied with these new mandatory standards.

Some innovative features of the guidelines are being incorporated in the proposed regulations. Among them is a requirement that hospitals

performing such surgery must establish Independent Donor Advocate Teams to ensure that potential donors have all the information necessary to exercise "informed choice," and that such potential donors are screened to determine whether there are medical or non-medical reasons to rule out the potential donor. The team's main responsibilities are to support the potential donor. Its role begins with the donor evaluation process and continues through donation, the postoperative period to discharge and post discharge. Team members will complement the surgical team, ensuring that the needs of the donor are fulfilled in a prompt manner and in accordance with best medical practice.

Another feature is the establishment of minimum standards for the availability of surgeons and anesthesia staff during and following surgery and minimum staffing ratios for medical and nursing staff during the recovery period. The Committee on Quality Improvement in Living Liver donations unanimously agreed that these staffing requirements are necessary to ensure the health and safety of the donor to the fullest extent possible. Transplant centers will also be required to collect and report information to the Department regarding the medical and psychosocial status of donors during the donation process and long-term. This data will be made available to the Department of Health to assist in determining the impact of this procedure on donors. Due to the current lack of information on the long-term effects of live liver donation, the Committee regarded collection of this data as essential. This data will assist clinicians, as well as potential donors, in determining the long-term risks of undertaking live liver donation and identifying potential areas for improvement in the donation process. Overall, the recommendations are expected to serve as a model for the nation.

Costs:

Cost for the Implementation and Continuing Compliance with this Regulation to Regulated Entities:

Currently there are five hospitals (Westchester Medical Center, New York Presbyterian Hospital, Mt. Sinai Medical Center, New York University Hospital and Strong Memorial Hospital) statewide that are performing liver transplantation and all five facilities had representatives on the Committee on Quality Improvement in Living Liver Donation who voted in favor of the standards contained in this proposal. The Department of Health is not aware of any additional hospitals considering adding this service.

Hospitals that have chosen to perform liver transplantation surgery using live donors and choose to continue such surgery under the new regulations would only face increased costs for compliance if they were not already in substantial compliance with the new requirements. The Department canvassed the five affected hospitals to ascertain the current level of compliance and/or potential additional costs. Although the Department was unable to obtain complete information, those responding indicated they are currently meeting most, if not all, of the standards recommended by the Committee on Quality Improvement in Living Liver Donation; the same standards as those enunciated in the proposed regulations. Two facilities indicated they were augmenting existing staff to comply with the post operative care staffing requirements. However, since costs will vary depending on the extent of current compliance and salaries of any needed additional staff at each of the facilities, and at least one facility has reported current full compliance, actual cost per hospital or per discharge cannot be calculated. Additionally, since the recent death of a donor was attributed to inadequate post operative care and the Committee, including the representatives of the five affected facilities, voted unanimously in favor of these standards, it is highly unlikely these facilities would not comply with the proposed requirements independent of any regulation. To fail to do so would subject such facilities to extensive potential liability costs far exceeding any potential costs of compliance.

Any additional costs associated with developing the Independent Donor Advocate Teams, surgical coverage or data collection and submission are expected to be minimal as the functions can be provided by existing surgical and support staff, and those facilities responding to the Department's inquiry have reported current compliance with these requirements.

Costs to State and Local Government:

This action will not result in additional costs to State or local government.

Costs to the Department of Health:

There will be no additional costs to the Department of Health. Monitoring for compliance will be incorporated into the existing surveillance programs.

Local Government Mandates:

This regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

Hospitals, through their new Independent Donor Advocate Teams, will have to provide potential donors with additional written material to assist them in understanding the organ donation and consent process, including potential medical, psychological and financial implications. Hospitals will also be required to document the entire disclosure and consent process and maintain such documentation in the donor's medical record. In some areas, hospital written policies and procedures may require updating. The requirements for a written discharge plan contain elements that exceed discharge plans for some other hospital patients. There is a requirement for a written summary of the donor's condition to be provided to the donor or his or her representative upon discharge. Also, there is a requirement that hospitals attempt to collect and submit medical and psychosocial data on donors during the donation process and long-term to determine if there are any long-term health issues associated with the donation. Although facilities may choose to use paper during the compilation of this information, the department expects that most of the data will be recorded and submitted electronically.

Duplication:

This regulation does not duplicate any other state or federal law or regulations.

Alternatives:

The Department considered eschewing regulatory change while relying on the newly released guidelines to establish a standard of care for live adult liver donors. The Department rejected that option because it recognized serious flaws in the current treatment of live adult liver donors and determined that legally enforceable standards were necessary to address such flaws. The Department also sought to impress upon hospitals the gravity with which the Department views the need for uniformly high standards of care and safety for donors.

The Department considered adopting the current guideline document "in toto" via an incorporation by reference. The Department rejected this option primarily because there are certain elements of the guidelines which, while appropriate in an advisory document, do not fit well as an enforceable requirement.

The Department also considered including the committee's recommendation that the Independent Donor Advocate Team have "veto power" over any proposed donation. However, the Department received several comments from members of the State Hospital Planning and Review Council and other interested parties expressing concern over a "third party" interfering with the normal physician-patient decision-making process. As a result, the Department has replaced this provision with an express requirement that the donor surgeon consider the reports and recommendation issued by the Independent Donor Advocate Team, and if a physician decides to proceed with a donation notwithstanding an adverse recommendation of the Independent Donor Advocate Team, document the reasons for doing so in the donor's medical chart. This change was discussed with several interested members of the committee, the Transplant Council and the State Council who all agreed that this substitution retains the intent of the committee of ensuring that the Independent Donor Advocate Team's recommendation is given the weight required to protect the interests of the donor, while adequately addressing the concerns raised by the original "veto" provision.

Several other recommendations contained in the committee's report concerning specific donor or recipient exclusion criteria were modified to reflect the potential changes in standards as this procedure is refined and to recognize that special circumstances may warrant proceeding with a donation despite the existence of some conditions which would be considered "exclusionary criteria" in most circumstances. Instead, hospitals are required to develop exclusion criteria and conduct case-by-case psychiatric and social evaluations that thoroughly consider the exclusionary criteria as well as any other psychosocial concerns.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed rule will become effective upon filing of a Notice of Adoption with the Secretary of State. The five hospitals performing liver transplant participated in the development of, and are thoroughly familiar with the guidelines. These facilities are also aware of the Department's plans to proceed with the development of regulations using the standards

set forth in the guidelines, and therefore, are expected to be able to comply with the regulations immediately upon adoption.

Regulatory Flexibility Analysis

Pursuant to section 202-b of the State Administrative Act, a regulatory flexibility analysis for small businesses and local government is not required. None of the five hospitals currently performing liver transplants (New York Presbyterian Hospital, Mt. Sinai Medical Center, New York University Hospital, Strong Memorial Hospital and Westchester Medical Center) are small business or are operated by local governments. Nor are any hospitals classified as small businesses or operated by local governments likely to seek approval for liver transplantation programs in the foreseeable future. The proposed rule will not impose an adverse economic impact on the hospitals which are small businesses or are operated by local governments in New York State and will not impose any additional record-keeping, reporting and other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. This regulatory action affects five major hospitals that do not function in rural areas. In view of the nature of live liver transplantation, it is unlikely that any rural hospitals will seek to provide this service in the foreseeable future.

The proposed rule will not impose an adverse economic impact on hospitals located in rural areas in New York State and will not impose any additional recordkeeping, reporting, or other compliance requirements on them.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment opportunities. If there is any impact at all, it will relate to the minimum staffing requirements and result in additional, not fewer, staff.

- 9d. Insurance Plan Name or Program Name (if appropriate)
- 10a. Is Patient's Condition Related to Employment?
- 10b. Is Patient's Condition Related to Auto Accident?
- 10c. Is Patient's Condition Related to Other Accident?
- 11. Insured's Policy, Group or FECA Number if provided on ID Card
- 11d. Is There Another Health Benefit Plan?
- 12. Patient's or Authorized Person's Signature (Can be completed by writing "signature on file" where appropriate)
- 13. Insured's or Authorized Person's Signature (if appropriate)
- 17. Name of Referring Physician or Other Source (if appropriate)
- 17a. I.D. Number of Referring Physician (if appropriate)
- 18. Hospitalization Dates Related to Current Services (if appropriate)
- 21. Diagnosis or Nature of Illness or Injury
- 24A. Dates of Service
- 24B. Place of Service
- 24D. Procedures, Services, or Supplies
- 24E. Diagnosis Code
- 24F. \$ Charges
- 24G. Days or Units (for DME) (if appropriate)
- 25. Federal Tax I.D. Number
- 28. Total Charge
- 29. Amount Paid (if appropriate)
- 30. Balance Due
- 31. Signature of Physician or Supplier Including Degrees or Credentials (if not already on file)
- 33. Physician's, Supplier's Billing Name, Address, Zip Code & Phone #, Personal Identifying Number of the particular practitioner rendering the care plus, if practicing in a group, the Identifying Number of the group as well.

For items listed above with the notation "(if appropriate)" the generic nature of the standard claim form produces some instances when the information is not relevant in a particular instance. In those cases the insurer shall not insist upon completion of that item if the information is not relevant to the situation of that particular practitioner or patient or the information will not be used by the insurer. If an item is not applicable at all it should be left blank rather than inserting a notation that it is not applicable.

(b) The list set forth in subdivision (a) of this section shall apply to all claims submitted on paper subject to this section, regardless of whether the policy form is health insurance issued by an insurer pursuant to Articles 32, 42 or 43 of the Insurance Law or coverage issued by an entity with a certificate of authority issued pursuant to Article 44 of the Public Health Law. Nothing in this Part shall prohibit an insurer or entity with a certificate of authority issued pursuant to Article 44 of the Public Health Law from electing to accept some or all claims with less information than the complete list above.

(c) For the purposes of this section, the term "submitted on paper" shall include claims submitted via non-electronic format, such as mail and facsimile.

Insurance Department

ERRATUM

The incorrect text was published in a Notice of Emergency Rule Making, I.D. No. INS-35-03-00001-E, issue of September 3, 2003. The affected citations are in section 230.1(a)(24F), (33) and (b). The correct text follows:

A new Part 230 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 178) is adopted to read as follows:

Section 230.1. Claim Submission Guidelines. A claim for payment of medical services submitted on paper shall not be returned on the basis that it is incomplete if, when it is received by the insurer or entity with a certificate of authority issued pursuant to Article 44 of the Public Health Law, it contains accurate responses to each and every one of the data elements listed below, except as otherwise provided below. Nothing in this regulation shall prohibit an insurer from requesting specific additional information distinct from information on the claim form, which is needed to determine liability or make the payment, or from determining that the claim is not payable due to other reasons.

(a) In the case of a medical claim submitted on the national standard form known as a CMS 1500 the claim shall contain at least the items in the following fields of the claim form, except as otherwise provided below:

- 1a. Insured's I.D. Number
- 2. Patient's Name
- 3. Patient's Date of Birth and Gender
- 4. Insured's Name (Last Name, First Name)
- 5. Patient's Address
- 9. Other Insured's Name (if appropriate)
- 9a. Other Insured's Policy or Group Number (if appropriate)
- 9b. Other Insured's Date of Birth and Gender (if appropriate)
- 9c. Employer's Name or School Name (if appropriate)

**EMERGENCY
RULE MAKING**

Rules Governing Individual and Group Accident and Health Insurance Reserves

I.D. No. INS-38-03-00004-E
Filing No. 987
Filing date: Sept. 8, 2003
Effective date: Sept. 8, 2003

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

Action taken: Repeal of Part 94 and addition of new Part 94 (Regulation 56) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217 and 4517

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

Specific reasons underlying the finding of necessity: Regulation No. 56 was originally effective August 18, 1971 in its present form and has not been substantively amended since that time. In the intervening 31 years, the National Association of Insurance Commissioners has adopted new reserving tables for individual and group disability income insurance policies, popularly referred to as the Commissioners' Disability Tables ("CDT"). The current CDT was adopted in 1986 and is used widely across the country as the standard for holding reserves for individual and group disability insurance policies. It reflects both modern morbidity and claims experience and the judgement of actuaries and regulators who are knowledgeable about the current state of the disability insurance market.

However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, e.g., 11 NYCRR Part 94.1(a)(4)(iii)(A)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the more recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to consumers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standards will help to ensure that such insurers remain financially capable of paying claims as they come due.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on December 31, 2002. The filing date for the September 30, 2003 quarterly statement is November 15, 2003. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

Subject: Rules governing individual and group accident and health insurance reserves.

Purpose: To prescribe rules and regulations for valuation of minimum individual and group accident and health insurance reserves including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

Substance of emergency rule: The following is a summary of the substance of the rule:

Section 94.1 lists the main purposes of the regulation including implementation of sections 4217(d), 4517(d) and 4517(f) of the Insurance Law and prescribing rules for valuing certain accident and health benefits in the life insurance policies.

Section 94.2 is the applicability section. This section applies to both individual policies and group certificates. The regulation applies to all life insurers, fraternal benefit societies, and accredited reinsurers doing business in the State of New York. It applies to all statutory financial statements filed after its effective date.

Section 94.3 is the definitions section.

Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

Section 94.5 sets forth the general requirements and minimum standards for unearned premium reserves.

Section 94.6 sets forth the general requirements and minimum standards for contract reserves.

Section 94.7 concerns increases to, or credits against reserves carried, arising from reinsurance agreements.

Section 94.8 prescribes the methodology of adequately calculating the reserves for waiver of premium benefit on accident and health policies.

Section 94.9 provides that a company shall maintain adequate reserves for all individual and group accident and health insurance policies that reflect a sound value being placed on its liabilities under those policies.

Section 94.10 provides the specific standards for morbidity, interest and mortality.

Section 94.11 allows for a three-year period for grading into the higher reserves beginning with year-end 2003 for insurers for which higher reserves are required because of this Part.

Section 94.12 establishes the severability provision of the regulation.

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 December 6, 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:

The superintendent's authority for the adoption of Regulation No. 56 (11 NYCRR 94) is derived from sections 201, 301, 1304, 1308, 4217, and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(d) provides that reserves for all individual and group accident and health policies shall reflect a sound value placed on the liabilities of such policies and permits the superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for these types of policies.

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the superintendent to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers licensed to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the current regulation, absent the emergency regulation, provides no guidance related to certain coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

Additionally, the current regulation, absent the emergency regulation, requires higher reserves than necessary for certain individual accident and health insurance policies. This emergency regulation, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance

Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

The only significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this emergency regulation, which would result in different reserve requirements for those life insurers licensed in New York.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

The regulation applies to financial statements commencing with December 31, 2002, which must be filed by March 1, 2003. Where the requirements of this regulation produce reserves higher than those calculated at year-end 2001, insurers may hold reserves at such lower level prior to year-end 2003. Beginning with year-end 2003, the regulation allows a four year grade-in period for the holding of higher reserves. Insurers must be in full compliance with this Part by year-end 2006. This allows insurers subject to the regulation ample time to achieve full compliance, since this regulation has been adopted on an emergency basis since December 31, 2002.

Regulatory Flexibility Analysis

1. Small Businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurance companies licensed to do business in New York State, none of which fall within the definition of "small business" as found in Section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The regulation establishes reserve requirements for individual and group accident and health policies and establishes standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are

domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with member companies of the Life Insurance Council of New York (LICONY). A copy of the draft was distributed to LICONY in November, 2002. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 2003 issue of the *State Register*.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting reserves for insurers. Most insurers will be able to reduce reserves and a few may need to increase reserves but this is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

NOTICE OF ADOPTION

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-26-03-00003-A

Filing No. 985

Filing date: Sept. 5, 2003

Effective date: Sept. 24, 2003

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

Action taken: Amendment of sections 83.2 and 83.4; and repeal of section 83.5 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c(12), and 4408-a; and L. 2002, ch. 599

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update a citation; make a technical amendment and delete an obsolete provision.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-26-03-00003-P, 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: Teresa Marchon, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Standards of Records Retention by Insurance Companies**I.D. No.** INS-26-03-00006-A**Filing No.** 984**Filing date:** Sept. 5, 2003**Effective date:** Sept. 24, 2003

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

Action taken: Amendment of section 243.1(a) (Regulation 152) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 309, 310 and 2344

Subject: Standards of records retention by insurance companies.

Purpose: To correct obsolete language and references in the definition of "insurer," in order to reflect current statutory provisions.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-26-03-00006-P, 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: Teresa Marchon, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Uniform Classification and Reporting of Real Estate Operations of Domestic Insurers**I.D. No.** INS-27-03-00001-A**Filing No.** 986**Filing date:** Sept. 5, 2003**Effective date:** Sept. 24, 2003

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

Action taken: Repeal of Part 76 (Regulation 28) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Uniform classification and reporting of real estate operations of domestic insurers.

Purpose: To repeal an obsolete regulation.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-27-03-00001-P, Issue of July 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: Teresa Marchon, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: tmarchon@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Viatical Settlements****I.D. No.** INS-38-03-00001-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 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 of proposed rule: Section 380.6(g)(1) of Part 380 is amended to read as follows:

(1) set forth a prominently displayed notice to read as follows:

"Receipt of payment pursuant to a viatical settlement may affect eligibility for public assistance programs such as medical assistance (Medicaid), [aid to families with dependent children] *the family assistance program*, supplementary social security income, and AIDS drug assistance programs and may be taxable. Prior to applying for a viatical settlement, policyowners should consult with the appropriate social services agency concerning how receipt will affect the eligibility of the recipient and the recipient's spouse or dependents, and with a qualified tax advisor."

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

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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 agency has determined that no person is likely to object to the rule as written since the only change being made is 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 that is required to be included in an application for a viatical settlement contract. The amendment is being made to conform with the wording in a statutory amendment set forth in Section 108 of Part B of Chapter 436 of the Laws of 1997.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment merely removes an obsolete term in a notice and substitutes a new term in its place, to conform with the wording in a statutory amendment enacted in 1997.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Address Updates****I.D. No.** INS-38-03-00002-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 Parts 62 (Regulations 21 and 96) and 68 (Regulation 83) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

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

Purpose: To update obsolete references.

Text of proposed rule: Section 62-5.2(b) of Part 62 is amended to read as follows:

(b) The agency designated by the Mayor of the City of New York is the Bureau of Fire Investigation of the New York City Fire Department. All required information should be sent to that agency, located at: [250 Livingston Street, 8th floor] *9 Metrotech*, 8th floor Brooklyn, NY 11201

Attention: Deputy Chief Fire Marshall

Insurance Reporting Section

Section 68.8(a)(1) of Part 68 is amended to read as follows:

(1) Complaints about:

(i) Physicians and physicians' assistants.

(a) Services rendered in New York City:

Supervising investigator

Office of Professional Medical Conduct

New York State Department of Health

[8 East 40th Street - Third floor] *5 Penn Plaza*

New York, NY [10016] *10001*

(b) Services rendered in remainder of State:

Director

Office of Professional Medical Conduct

New York State Department of Health

[Tower Building

Empire State Plaza

Albany, NY 12237]

433 River Street, Suite 303

Troy, NY 12180-2299

(ii) Hospitals.
 Deputy Director
 Division of Health Care Financing
 New York State Office of Health Systems Management
 Corning Tower [Building, Room 960]
 Empire State Plaza
 Albany, NY 12237

(iii) Other health providers.
 Director
 Office of Professional Discipline
 [37th Floor]
 New York State Education Department
 [622 Third Avenue] 475 Park Avenue South
 New York, NY [10017] 10016

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

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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 agency has determined that no person is likely to object to the rule as written. The amendment to Part 62 updates the address of the Bureau of Fire Investigation of the New York City Fire Department.

The amendment to Regulation No. 83 updates the addresses of certain units of the State Department of Health and the Education Department.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendments remove obsolete references to addresses of certain city and state agencies and insert the current correct addresses.

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

Loss Portfolio Transfers

I.D. No. INS-38-03-00003-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 112.1, 112.5 and 112.6 (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 and update obsolete references.

Text of proposed rule: Section 112.1 of Part 112 is amended to read as follows:

§ 112.1 Applicability.

(a) This Part shall apply to all loss portfolio transfers [executed or] with an effective date of December 31, 2000 or prior, entered into by every insurer subject to article 41, 61, 62 or 66 of the Insurance Law, that is authorized or accredited to insure or reinsure any of the basic kinds of insurance specified in section 4101 of the Insurance Law.

(b) All loss portfolio transfers with an effective date on or after January 1, 2001 shall, in accordance with section 83.3(c) of Regulation 172 (Part 83 of this Title), be governed by the accounting practices and procedures set forth in Statement of Statutory Accounting Principles (SSAP) 62, and shall also be subject to the provisions of section 112.5(j) and section 112.6(k) of this Part.

Section 112.5(j) is amended to read as follows:

(j) If the transferee is not an authorized insurer or an accredited reinsurer in New York, a Letter of Credit acceptable under the terms of [Circular Letter No. 19 (1983)] Regulation 133 (Part 79 of this Title) must be furnished, or funds must be held by the transferrer in a manner consistent with Regulation 114 (Part 126 of this Title) and section 1301(a)(14) of the Insurance Law, in the amount of the remaining obligations of the transferee to the transferrer under the agreement.

Section 112.6(a), (h), (i), and (j) are amended to read as follows:

(a) The transferrer and transferee must report on line [18] 23, page three, the total amount of all loss portfolio transfers as a write-in item identified as "loss portfolio transfer," recorded as an offset liability by the transferrer and as an additional liability by the transferee.

(h) The transferrer shall report the amount of the gain from the transaction as a write-in item, "loss portfolio transfer - gain," to be reflected on page four, line [12] 14, as a part of other income, in the underwriting and investment exhibit.

(i) The transferee shall report the total additional obligations from the transferrer as a write-in item, "loss portfolio transfer - loss," on page four, line [12] 14, in the underwriting and investment exhibit.

(j) Any subsequent change in the initial incurred loss and loss adjustment expense reserves transferred shall be reported and identified as "loss portfolio transfer," on page four, line [12] 14, in other income, so as to recognize the "gain" or "loss" on the transfer, and shall be included in the write-in item on line [18] 23, and in the loss portfolio transfer account, on page three.

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

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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 agency has determined that no person is likely to object to the rule as written. The rule removes an obsolete reference to a circular letter issued in 1983 which was subsequently superseded by Regulation No. 133 (Part 79). The amendment therefore substitutes a reference to Regulation No. 133. Further, the amendment updates obsolete references to certain page and line numbers in annual and interim statements filed in New York, pertaining to loss portfolio transfers.

The amendment also adds a reference to Regulation No. 172 (Part 83), which was promulgated effective January 1, 2001 and which contains provisions pertaining to the same subject matter.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State. The amendment removes an obsolete reference and coordinates in an organized manner the applicable provisions of other existing regulations pertaining to the same subject matter. The amendment also updates obsolete references to certain page and line numbers in annual and interim statements filed in New York, pertaining to loss portfolio transfers.

Public Service Commission

NOTICE OF ADOPTION

Major Rate Increase by Plattsburgh Municipal Lighting Department

I.D. No. PSC-10-03-00004-A

Filing date: Sept. 3, 2003

Effective date: Sept. 3, 2003

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

Action taken: The commission, on Aug. 20, 2003, adopted an order in Case 02-E-1418, allowing Plattsburgh Municipal Lighting Department (Plattsburgh) to revise its tariff schedule, P.S.C. No. 1—Electricity.

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

Subject: Tariff amendments.

Purpose: To approve an increase in Plattsburgh's electric rates.

Substance of final rule: The Commission authorized Plattsburgh Municipal Lighting Department (Plattsburgh) to implement a \$1.2 million (8.1%) rate increase beginning November 1, 2003 and directed Plattsburgh to file tariff amendments by no later than October 28, 2003 to become effective

on November 1, 2003, 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-E-1418SA1)

NOTICE OF ADOPTION

Memorandum of Agreement between Niagara Mohawk Power Corporation and the Department of Public Service Staff

I.D. No. PSC-20-03-00018-A

Filing date: Sept. 4, 2003

Effective date: Sept. 4, 2003

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

Action taken: The commission, on July 23, 2003, approved in Case 01-M-0075 a memorandum of agreement between Niagara Mohawk Power Corporation (Niagara Mohawk) and the Department of Public Service staff regarding staff audit adjustments to appendix E deferral and related pension/other post employment benefits (OPEB) funding issues.

Statutory authority: Public Service Law, sections 65 and 66(9)

Subject: Memorandum of agreement.

Purpose: To allow Niagara Mohawk to modify its merger rate plan.

Substance of final rule: The Commission authorized the modifications to Niagara Mohawk Power Corporation's (Niagara Mohawk) Merger Rate Plan which will strengthen Niagara Mohawk's pension and benefit plans, 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-M-0075SA15)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

FCC's Triennial Review Order

I.D. No. PSC-38-03-00010-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 will consider the impacts of the recent Federal Communication Commission's triennial review order, which addresses new wholesale market rules and standards governing competition in the local telecommunications market.

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

Subject: Impacts of the FCC's triennial review order.

Purpose: To undertake a review of specific requirements and take steps that may be warranted as a result of the FCC's triennial review order.

Substance of proposed rule: The Commission will consider the impacts of the recent Federal Communications Commission's Triennial Review Order which implements new wholesale market rules governing competition in the local telecommunications market and sets standards concerning which elements the incumbent local exchange telephone companies must make available to competitors at cost based rates.

Pursuant to the provisions of the FCC's Triennial Review Order, the Commission will perform granular analyses of the extent, if any, of impair-

ment that parties may face in the absence of individual Unbundled Network Elements. To the extent that the Commission does not find impairment, it may limit the extent to which such elements are required to be made available. The Commission may also require other actions be taken to reduce impairment or to transition to new rules.

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. Brillling, 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-0821SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

FCC's Triennial Review Order

I.D. No. PSC-38-03-00011-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 will consider the impacts of the recent Federal Communication Commission's triennial review order, which addresses new wholesale market rules and standards governing competition in the local telecommunications market.

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

Subject: Impacts of the FCC's triennial review order.

Purpose: To undertake a review of specific requirements and take steps that may be warranted as a result of the FCC's triennial review order.

Substance of proposed rule: The Commission will consider the impacts of the recent Federal Communications Commission's Triennial Review Order which implements new wholesale market rules governing competition in the local telecommunications market and sets standards concerning which elements the incumbent local exchange telephone companies must make available to competitors at cost based rates.

Pursuant to the provisions of the FCC's Triennial Review Order, the Commission will perform granular analyses of the extent, if any, of impairment that parties may face in the absence of individual Unbundled Network Elements. To the extent that the Commission does not find impairment, it may limit the extent to which such elements are required to be made available. The Commission may also require other actions be taken to reduce impairment or to transition to new rules.

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. Brillling, 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-0821SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

FCC's Triennial Review Order

I.D. No. PSC-38-03-00012-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 will consider the impacts of the recent Federal Communication Commission's triennial review

order, which addresses new wholesale market rules and standards governing competition in the local telecommunications market.

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

Subject: Impacts of the FCC's triennial review order.

Purpose: To undertake a review of specific requirements and take steps that may be warranted as a result of the FCC's triennial review order.

Substance of proposed rule: The Commission will consider the impacts of the recent Federal Communications Commission's Triennial Review Order which implements new wholesale market rules governing competition in the local telecommunications market and sets standards concerning which elements the incumbent local exchange telephone companies must make available to competitors at cost based rates.

Pursuant to the provisions of the FCC's Triennial Review Order, the Commission will perform granular analyses of the extent, if any, of impairment that parties may face in the absence of individual Unbundled Network Elements. To the extent that the Commission does not find impairment, it may limit the extent to which such elements are required to be made available. The Commission may also require other actions be taken to reduce impairment or to transition to new rules.

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. Brillling, 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-0821SA4)

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

Request for Approval of Utility Billing Meters by Electro Industries

I.D. No. PSC-38-03-00013-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 request filed by Electro Industries for the approval of the Nexus Models 1260/1262/1270/1272 socket and switchboard high performance utility billing meters.

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

Subject: Approval of new types of electricity meters, transformers, and auxiliary devices.

Purpose: To permit electric utilities and other entities to use the Electro Industries' Nexus Models 1260/1262/1270/1272 utility billing meters.

Substance of proposed rule: The Commission will consider a request from Electro Industries/Gauge Tech for the approval and use of the Nexus Models 1260/1262/1270/1272 Socket and Switchboard High Performance Utility Billing Meters for revenue billing in New York State. The Nexus meters are extremely accurate revenue grade electricity metering and monitoring devices intended for use with industrial customers, on utility tie lines, and at power generation points.

The Nexus electronic meters offer a wide range of advanced power quality features as well as very precise energy consumption and demand measurement. These Web ready meters are designed to meet the present and future needs of the deregulated markets. The Nexus meters support multiple communication ports using open protocols and are easily upgradeable with optional I/O modules. The Nexus meters are available in multiple ANSI Form designations.

The Electro Industries Nexus meter design conforms to all applicable ANSI C12 standards; its performance conforms to the accuracy requirements set forth in ANSI C12.20 1998 - Codes for Electricity Metering, 0.2 accuracy class.

In accordance with 16 NYCRR Part 93, Electro Industries has indicated that Niagara Mohawk Power Corporation has submitted a letter of intent to use the Nexus models 1260/1262/1270/1272 utility billing meters in its high end metering applications.

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. Brillling, 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-1131SA1)

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

Request for Approval of Encompass kV2c Line of Electronic Meters by General Electric Company

I.D. No. PSC-38-03-00014-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 request filed by General Electric Company for the approval of the Encompass kV2c line of electronic meters.

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

Subject: Approval of new types of electricity meters, transformers, and auxiliary devices.

Purpose: To permit electric utilities and other entities to use the General Electric Company's Encompass kV2c line of electronic meters.

Substance of proposed rule: The Commission will consider a request from General Electric Company for the approval and use of the Encompass kV2c line of electronic meters for revenue billing in New York State. The GE Encompass kV2c electronic meters are high accuracy revenue grade electricity metering devices intended for today's deregulated electric markets. In accordance with 16 NYCRR Part 93, General Electric Company has indicated that Central Hudson Gas and Electric has submitted a letter of intent to use the GE kV2c line of electronic meters in its customer billing metering applications.

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. Brillling, 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-1144SA1)

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

Meter Recovery Charge by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-38-03-00015-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, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules, and regulations contained in its tariff schedule, P.S.C. No. 9—Electricity to become effective December 1, 2003.

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

Subject: Meter recovery charge.

Purpose: To modify tariff language regarding the meter recovery charge and to establish a charge whenever a marshal is employed to recover a meter.

Substance of proposed rule: On August 29, 2003, Consolidated Edison Company of New York, Inc. (the company) made a tariff filing to modify tariff language with regard to its Meter Recovery Charge and to establish a charge whenever a marshal is employed to recover a meter, to become effective December 1, 2003. The company proposes to replace text stating the Meter Recovery Charge amounts in the tariff with text stating that the Meter Recovery Charge equals fees paid by the company to apply for a court order to recover a meter plus fees established by law and paid to a marshal to execute a court order. The company also proposes to charge the customer whenever a marshal receives and enters an order.

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. Brillling, 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-1261SA1)

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

Special Monthly Assessment by Bristol Water Works Corporation

I.D. No. PSC-38-03-00016-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, a request filed by Bristol Water Works Corporation for a special monthly assessment of approximately \$4,606 to support a three-year bank loan.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Special monthly assessment of approximately \$4,606.

Purpose: To approve Surcharge Statement No. 3 to P.S.C. No. 3—Water, containing a special monthly assessment of approximately \$4,606 to support an annual debt service on a \$156,500 bank loan.

Substance of proposed rule: On August 19, 2003, Bristol Water Works Corporation filed Surcharge Statement No. 3, P.S.C. No. 3—Water, related to capital improvements, to become effective January 1, 2004, containing a special monthly assessment of approximately \$4,606 to support an annual debt service on a \$156,500 three year bank loan. The loan will be used to make improvements to its water treatment pump, piping, and water storage tank. The surcharge will be adjusted to reflect a variable interest rate. The following monthly surcharges are proposed for 36 months: restaurant \$138.00, hotel \$460.00, sewer plant \$230.00, and residential customers \$14.50. The company serves an area known as Bristol Harbour Village, Town of South Bristol, Ontario County. The Commission may approve or reject, in whole or in part, or modify, the company'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. Brillling, 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-1172SA1)

**Department of Taxation and
Finance**

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

Sales on Indian Reservations

I.D. No. TAF-38-03-00017-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 74.1(c), 74.4(a) and (b), 76.1(a)(1), 76.1(b)(1), 77.1(a)(1), 77.1(b)(3), 89.1, 412.1(f), 414.1(c)(2), 415.1(c)(2), 416.5(a); addition of sections 76.1(d)(3), 76.6, 414.1(a)(5), 414.1(d)(3), 414.6, 531.6(g) and (h), 561.17(d), 562.2, 564.1(d), and Parts 431 and 451; reletter section 531.6; and repeal section 561.1(f) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 284-e (not subdivided); 289-f (not subdivided); 301-a, subd. (1); 315 (not subdivided); 471-e (not subdivided); 475 (not subdivided); 1112 (not subdivided); 1142, subds. (1), (8), (11) and (12); 1210, subd. (m); and 1250 (not subdivided)

Subject: Sales on Indian reservations.

Purpose: To implement the collection of excise taxes and sales and compensating use taxes on retail sales made to non-Indians on New York State Indian reservations, pursuant to the legislative mandates in L. 2003, chs. 62 (part T3) and 63 (part Z).

Substance of proposed rule: Chapters 62 (Part T3) and 63 (Part Z) of the Laws of 2003 require the Commissioner of Taxation and Finance to promulgate rules and regulations necessary to implement the collection of excise taxes and sales and compensating use taxes on retail sales made to non-Indians on New York State Indian reservations. The legislation covers sales of all taxable property and services – including, but not limited to, cigarettes, tobacco products, gasoline, and diesel motor fuel. This proposed rule fulfills this legislative mandate.

Section 1 of the rule conforms section 74.1(c) of the cigarette tax regulations to new section 76.6, as added by Section 6 of the rule, by stating that no tax will be imposed under article 20 of the Tax Law on cigarettes sold to Indian nations or tribes, qualified Indians purchasing cigarettes on their qualified reservations, and reservation cigarette sellers located on qualified reservations, under the circumstances set forth in such new section 76.6.

Section 2 amends section 74.4(a) to reflect the law that a licensed cigarette agent may sell cigarettes within this State for purposes of resale only if the agent is also a licensed wholesale dealer and may sell at retail only if the agent is also a registered retail dealer. Subdivisions (a) and (b) of section 74.4 are amended by Section 2 to provide that nothing in such subdivisions will prohibit agents and wholesale dealers, respectively, from selling stamped packages of cigarettes to an Indian nation or tribe or to a reservation cigarette seller on a qualified reservation, as such terms are defined by new section 76.6, when such cigarettes are to be delivered or brought onto the reservation for sale or resale.

Section 3 conforms section 76.1(a)(1) to new section 76.6 by providing that the tax is not required to be paid on cigarettes sold to Indian nations or tribes, qualified Indians purchasing cigarettes on their qualified reservations, and reservation cigarette sellers located on qualified reservations, under the circumstances set forth in such new section 76.6.

Section 4 amends section 76.1(b)(1) to include a reference to Part 76 to indicate that cigarettes upon which the tax has been paid may be sold for exempt purposes as provided in such Part.

Section 5 adds a new paragraph (3) to subdivision (d) of section 76.1 to reference new section 76.6 of the regulations for documentation requirements applicable to exempt sales of cigarettes on qualified reservations.

Section 6 adds a new section 76.6 to the regulations to address sales of cigarettes on Indian reservations. Section 76.6(a) sets out the following general provisions, in part:

“Qualified Indians . . . may purchase cigarettes for such qualified Indians' own use . . . exempt from cigarette tax on their . . . qualified reservations. However, . . . Indians purchasing cigarettes off their reservations or on another nation's or tribe's reservation, and non-Indians making cigarette purchases on an Indian reservation are not exempt from paying . . .

. tax when purchasing cigarettes within this state. Accordingly, all cigarettes sold on an Indian reservation to non-members of the nation or tribe or to non-Indians will be taxed, and evidence of such tax will be by means of an affixed cigarette tax stamp.

“In order to ensure an adequate quantity of cigarettes . . . which may be purchased by qualified Indians exempt from . . . tax, the Department of Taxation and Finance will provide Indian nations and tribes within this state with Indian tax exemption coupons A reservation cigarette seller will be able to present such . . . coupons to a wholesale dealer licensed under article 20 of the Tax Law in order to purchase stamped cigarettes exempt from . . . tax. Qualified Indians may purchase cigarettes from a reservation cigarette seller exempt from . . . tax even though such cigarettes will have an affixed cigarette tax stamp.”

New section 76.6(b) defines “Indian nation or tribe,” “qualified Indian,” “qualified reservation,” and “reservation cigarette seller.” A “reservation cigarette seller” is “an Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells cigarettes within the boundaries of a qualified reservation.”

New section 76.6(c) provides that Indian tax exemption coupons will be provided quarterly to the recognized governing body of each nation or tribe. It is anticipated that the nations or tribes will retain the amount of coupons that they will need to purchase tax-free cigarettes for official nation or tribal use and will distribute the remaining coupons to reservation cigarette sellers on the nations’ or tribes’ qualified reservations so that such sellers can redeem such coupons in order to purchase and provide tax-free cigarettes for the use or consumption by members of the nation or tribe. The amount of coupons will be based upon the probable demand of the qualified Indians on such nation’s or tribe’s qualified reservation plus the amount needed for official use. Probable demand will be determined by reference to, among other data, the United States average consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected nation or tribe. The department will take into consideration any evidence submitted by a nation’s or tribe’s recognized governing body relating to probable demand. New subdivision (c) also sets forth the basic information that will be contained in the Indian tax exemption coupons.

New section 76.6(d) describes tax exempt purchases. An Indian nation or tribe may purchase cigarettes for its own official use and (under specified circumstances) a reservation cigarette seller may purchase cigarettes for resale on its reservation from a licensed wholesale dealer without payment of the cigarette tax to the extent that they provide the wholesale dealer with Indian tax exemption coupons. A qualified Indian may purchase cigarettes for his or her own use without payment of the cigarette tax, provided that the Indian makes such purchase on his or her qualified reservation. A wholesale dealer shall not collect the cigarette tax from a purchaser to the extent the purchaser gives the wholesale dealer Indian tax exemption coupons entitling the purchaser to make the purchases exempt from the tax.

New section 76.6(e) provides that a licensed wholesale dealer who has Indian tax exemption coupons may file a claim for refund with respect to any cigarette tax previously paid on cigarettes sold without tax because of the acceptance of such coupons.

New section 76.6(f) provides that if any Indian nation or tribe enters into an agreement with New York State regarding the sale and distribution of cigarettes on the nation’s or tribe’s reservation, the terms of the agreement take precedence over the provisions of the proposed rule.

Section 7 amends section 77.1(a)(1) to include within the scope of the refund provisions, packages of cigarettes that are sold to Indian nations, tribes, and reservation cigarette sellers as set forth in section 76.6 of the regulations.

Section 8 amends section 77.1(b)(3) to except the cigarettes mentioned in Section 7 from the provisions that the cigarette tax stamps affixed to their packages must be obliterated or otherwise made void.

Section 9 amends section 89.1 of the tobacco products tax regulations to provide that when taxable tobacco products have been purchased on or from a qualified reservation, as defined in section 76.6 of the regulations, the purchaser is not relieved of his or her liability to pay the tobacco products tax due, and must file a tobacco products use tax return with the Department of Taxation and Finance, together with a remittance of the tax due, within 24 hours.

Section 10 amends section 412.1(f) of the motor fuel tax regulations to provide that a seller of motor fuel is relieved of the requirement to pass through the motor fuel tax if it receives from the purchaser Indian tax exemption coupons as set forth in new section 414.6 of the regulations, as added by Section 14 of the rule.

Section 11 adds a new paragraph (5) to subdivision (a) of section 414.1 to provide that Indian nations or tribes, qualified Indians, and reservation motor fuel sellers located on qualified reservations, as these terms are defined by section 414.6, may purchase motor fuel upon which the seller has not passed through the motor fuel tax imposed pursuant to article 12-A of the Tax Law.

Section 12 amends section 414.1(c)(2) to include among the qualifying purchases of motor fuel upon which a seller has not passed through the motor fuel tax, purchases described in new section 414.6. This section is also amended to include, as proof of the exemption, the Indian tax exemption coupons prescribed in section 414.6.

Section 13 adds a new paragraph (3) to subdivision (d) of section 414.1 to reference the documentation requirements for exempt sales of motor fuel on qualified reservations set out in new section 414.6.

Section 14 adds a new section 414.6 to address sales of motor fuel on Indian reservations. The provisions of this section parallel the cigarette tax provisions in new section 76.6 of the regulations, as added by Section 6 of the rule, but pertain to the tax imposed on motor fuel under article 12-A of the Tax Law. The sections also differ in that there are no tax stamps applicable to motor fuel and a “distributor” (rather than a “wholesaler”) registered under article 12-A of the Tax Law who has Indian tax exemption coupons may file claims for refunds or credits with respect any motor fuel tax previously paid, assumed, or passed through to it on motor fuel it sold without passing through the tax because it accepted Indian tax exemption coupons from its purchaser. A distributor must also report motor fuel sold to an Indian nation or tribe or a reservation motor fuel seller in its monthly return and may deduct the quantity so sold in arriving at the net taxable gallonage to the extent the fuel was sold without passing through to such purchasers the tax.

Section 15 amends section 415.1(c)(2) to allow a distributor selling motor fuel to an Indian nation or tribe or to a reservation motor fuel seller without passing through the motor fuel tax to apply for a refund of the tax on these sales on a weekly basis.

Section 16 amends section 416.5(a) to exclude from the civil penalty imposed by section 289-b(1)(e) of the Tax Law a reservation motor fuel seller having in its custody, possession, or under its control any motor fuel that it has purchased in accordance with new section 414.6.

Section 17 adds a new Part 431 to the diesel motor fuel tax regulations to address sales of diesel motor fuel on Indian reservations which is for use in a motor vehicle. The provisions of this Part parallel the motor fuel tax provisions of Sections 14, 15, and 16 of the rule, but pertain to the diesel motor fuel tax imposed under article 12-A of the Tax Law.

Section 18 adds a new Part 451 to the petroleum business tax regulations to address sales of motor fuel and diesel motor fuel on Indian reservations and the taxes imposed under article 13-A of the Tax Law. New section 451.1 incorporates the provisions of new sections 414.6 and 431.1 of the regulations in furtherance of the joint administration of the taxes imposed by articles 12-A and 13-A of the Tax Law.

Section 19 reletters subdivision (g) of section 531.6 of the sales and use tax regulations to be subdivision (i) and adds new subdivisions (g) and (h). New subdivision (g) provides that when taxable property or services have been purchased on or from a qualified reservation, as defined in section 76.6 of the regulations, the purchaser is not relieved of his or her liability to pay the tax due, and such tax must be paid directly to the Department of Taxation and Finance. New subdivision (h) provides that sales and use taxes may be reported and paid with such personal income tax forms or other tax forms as the Commissioner deems appropriate. Purchasers are advised to check the forms and instructions to see which may be applicable to their circumstances. New subdivision (h) is based on Chapter 62 (Part R3) of the Laws of 2003.

Section 20 repeals obsolete subdivision (f) of section 561.1 of the regulations.

Section 21 adds a new subdivision (d) to section 561.17 to incorporate the provisions of new section 414.6 of the regulations concerning sales of motor fuel on qualified Indian reservations into the joint administration provisions concerning the prepayment of sales tax imposed on such fuel pursuant to section 1102 of the Tax Law.

Section 22 adds a new section 562.2 to reference the joint administration provisions of section 1142(11) of the Tax Law and section 561.17 of the regulations and to incorporate the provisions of new section 431.1 of the regulations concerning sales of diesel motor fuel on qualified Indian reservations into such joint administrative provisions concerning the prepayment of sales tax imposed on such fuel pursuant to section 1102 of the Tax Law.

Section 23 adds a new subdivision (d) to section 564.1 to incorporate the provisions of new sections 76.6 and 76.7 of the regulation concerning sales of cigarettes on qualified Indian reservations into the joint administration provisions concerning the prepayment of sales tax imposed on cigarettes pursuant to section 1103 of the Tax Law.

Section 24 provides that it will take effect on the date that the Notice of Adoption is published in the State Register and will apply to periods commencing on or after December 1, 2003.

Text of proposed rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, First; 284-e (not subdivided); 289-f (not subdivided); 301-a(1); 315 (not subdivided); 471-e (not subdivided); 475 (not subdivided); 1112 (not subdivided); 1142(1), (8), (11), and (12); 1210(m); and 1250 (not subdivided). Section 171, First provides general authority for the Commissioner of Taxation and Finance to make reasonable rules and regulations that are consistent with law and that may be necessary for the exercise of the Commissioner's powers and the performance of his duties under the Tax Law. Sections 284-e, 301-a(1), 471-e, 1112, and 1210(m) require the Commissioner to promulgate rules and regulations necessary to implement the collection of excise taxes and State and local sales and compensating use taxes on retail sales made to non-Indians on New York State Indian reservations. The remaining provisions of Law provide authority for rules and regulations that are appropriate to carry out and jointly administer the New York State and local taxes imposed by and pursuant to the authority of Articles 12-A, 13-A, 20, 28, and 29 of the Tax Law.

2. Legislative objectives: The rule is being proposed pursuant to such authority. Moreover, Chapters 62 (Part T3) and 63 (Part Z) of the Laws of 2003 mandate that the Commissioner adopt rules and regulations to effectuate the collection of taxes on retail sales made to non-Indians on Indian reservations in this State. The rule fulfills this legislative objective.

3. Needs and benefits: Chapters 63 (Part T3) and 63 (Part Z) of the Laws of 2003 mandate that the Commissioner adopt rules and regulations to effectuate the collection of taxes on retail sales made to non-Indians on Indian reservations in this State. The adoption of this regulation will satisfy that requirement. The rule will benefit Indian nations and tribes and their members by providing an Indian tax exemption coupon system to ensure that adequate quantities of tax-free cigarettes, motor fuel, and diesel motor fuel are available to them for official nation or tribal use and for their members' own use or consumption.

This coupon system was developed to respect the sovereignty of the Indian nations and tribes within their reservations. Such sovereignty is protected and preserved by federal law and policies and subject to congressional defeasance. Consistent with such federal law and policies, sales on a qualified reservation to a non-Indian are subject to the taxes.

This rule will benefit off-reservation retailers (e.g., convenience stores and gasoline stations) located near qualified reservations by creating a level playing field for sales to non-Indians.

The rule also fulfills the legislative requirement set forth above by reminding non-Indian consumers of their obligation to report and pay the tobacco products tax on the use of tobacco products that were purchased on or from a qualified reservation. Non-Indian consumers are also reminded of their obligation to report and pay the State and local sales or compensating use tax on purchases of tangible personal property or services on qualified reservations. The rule highlights a new mechanism available to certain purchasers for reporting and paying the sales or use tax; such taxes may be paid on an individual's personal income tax return.

4. Costs: (i) Costs to regulated parties. There are no tax liability costs to regulated parties, including cigarette agents and wholesalers and fuel distributors associated with the implementation of, and continued compliance with this rule. There are also no tax liability costs to the Indian nations and tribes or to their members. The tax liability impact of this rule is borne by the non-Indian consumers of cigarettes, motor fuel, diesel motor fuel and other property and services purchased on or from qualified reservations. This tax liability of non-Indian consumers is a feature of current law and has been for some time. The estimated tax collection impact on non-Indian consumers as a result of the mechanisms set forth in this rule is a \$20

million increase in the fiscal year ending 3/31/04 and a \$64.5 million increase in the fiscal year ending 3/31/05.

The estimated tax collection impact of this rule was derived using information sources available to the Department of Taxation and Finance such as tax return information, supplier reports, and other secondary sources (e.g., Bureau of the Census, Centers for Disease Control). The Department has no direct knowledge of the volumes or types of products sold on qualified reservations. The estimates also involve behavioral assumptions by Department staff as to likely responses by non-Indian consumers to price increases on qualified reservations (e.g., shifting from reservation to non-reservation markets - both in New York State and out-of-state).

There are, however, administrative costs to regulated parties associated with this rule. The Department will supply the nations and tribes with the coupons described in paragraph 3 of this statement - Needs and benefits. It is anticipated that the nations and tribes will distribute the coupons to reservation cigarette sellers, reservation motor fuel sellers, and reservation diesel motor fuel sellers, as the case may be. It is estimated that the nations and tribes, and such reservation sellers will incur minimal costs with respect to the distribution and safeguarding of the coupons.

Reservation cigarette sellers and nations and tribes will give the coupons to a licensed wholesale dealer to obtain cigarettes affixed with cigarette tax stamps without payment of the cigarette or prepaid sales taxes. (It is estimated that 20 wholesalers make sales that are delivered to Indian reservations.) The wholesaler will file a claim for refund of such taxes. It is estimated that the cost of filing a claim for refund is \$320. This cost should decrease as wholesalers become familiar with the coupon system. The frequency of filing refund claims will vary with each wholesaler depending on the volume of such sales. Assuming a monthly filing of refund claims, it is estimated that the maximum total annual recordkeeping cost for all wholesalers is \$76,800. These wholesale dealers also will incur a minimal cost to safeguard the coupons. Assuming a .84 % annual interest rate, it is estimated that the total annual financial cost to outlay the associated cigarette and prepaid sales taxes is approximately \$8,000 for the wholesalers.

Reservation motor fuel sellers and reservation diesel motor fuel sellers will give coupons to a registered distributor to purchase motor fuel and diesel motor fuel without payment of the excise or prepaid sales taxes. The distributor may file a claim for credit of the taxes on their monthly tax returns or a claim for refund of such taxes. It is anticipated that distributors will choose to claim a credit on their monthly tax returns. However, if a distributor files a claim for refund, it is estimated that the cost of filing such claim is \$320; the cost will decrease as distributors become familiar with the coupon system. The filing frequency will vary with each distributor depending on the volume of sales to Indians. It is estimated that the costs of recordkeeping and safeguarding the coupons, and the cost to outlay the excise and prepaid sales taxes, where applicable, is insignificant since it is anticipated that most distributors will claim credits on their tax returns.

The estimated administrative costs to the regulated parties were derived using information sources available to the Department such as tax return information and supplier reports. The Department has no direct knowledge of the volumes or types of products sold on qualified reservations.

(ii) Costs to the State and its local governments including this agency:

It is anticipated that New York State and its local governments that impose the excise and state and local sales and use taxes will experience increases in revenues associated with the implementation of and continued administration of this rule that are estimated to be \$18 million and \$2 million, respectively, in the fiscal year ending 3/31/04, and \$57 million and \$7.5 million, respectively, in the fiscal year ending 3/31/05.

See (i) of this paragraph for the methodology used to estimate these increases in revenue.

Also, there will be costs to the Department for the implementation and continued administration of this rule. It is estimated that the total cost to the Department in the fiscal year ending 3/31/04 will be \$67,400. This includes the purchase of the coupons, mailing costs for the coupons, personnel service costs, costs for revisions to existing tax forms, and the printing and mailing costs for the documents needed to notify the regulated parties of the mechanisms set forth in this rule. Such costs are \$19,000, \$400, \$41,000, \$2,000, and \$5,000, respectively.

For subsequent fiscal years, the estimated annual cost to the Department for administering this rule is \$112,800, which is comprised of \$37,000 for Indian tax exemption coupons, \$800 in mailing costs for the coupons, and \$75,000 for personnel services.

5. Local government mandates: None.

6. Paperwork: This rule will impose additional reporting and paperwork requirements on regulated parties. The Indian nations and tribes, and reservation retail sellers will need to track and safeguard the Indian tax exemption coupons. In the event the coupons that are issued do not meet the demands of a nation and tribes or their members, such nations and tribes must submit evidence to obtain additional coupons. These activities may require additional, but minimal, reporting and paperwork.

Cigarette agents and wholesalers, and fuel distributors will either claim credits on their tax returns or file refund claims for the prepaid taxes on cigarettes and fuel purchased with Indian tax exemption coupons. They too will need to track and safeguard the coupons - an activity likely to require additional but minimal paperwork.

7. Duplication: This rule does not result in duplication of other rules or procedures.

8. Alternatives: The proposal of a rule similar to Indian regulations previously enacted and repealed was considered but rejected. The prior regulations required retail businesses located on a qualified reservation to register with the Department in order to make sales to qualified Indians without collecting the excise and sales taxes. It also included substantial recordkeeping requirements for such businesses. This alternative was not selected because it is considered to be unnecessarily cumbersome for the Indian nations and tribes.

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

10. Compliance schedule: This rule applies to tax periods commencing on or after December 1, 2003, as mandated by Chapters 62 (Part T3) and 63 (Part Z) of the Laws of 2003. Indian tax exemption coupons are to be provided to the Indian nations and tribes on a quarterly basis. The quantity of coupons is based upon the probable demand for cigarettes, motor fuel, and diesel motor fuel, as the case may be, of the qualified Indians on such nations' or tribes' qualified reservation plus the amount needed for official nation or tribal use. The coupons for the quarter beginning December 1, 2003, will be provided to the nations and tribes immediately following the adoption of this rule. This will allow the nations and tribes a sufficient amount of time to distribute the coupons to the reservation sellers located on their qualified reservations so that such sellers may purchase tax-free cigarettes, motor fuel, and diesel motor for resale to the Indian nations and tribes and their members. Indian tax exemption coupons for subsequent quarters will be provided to the nations or tribes about 14 days prior to the first day of the quarter.

Regulatory Flexibility Analysis

1. Effect of rule: The rule does not distinguish between different types and sizes of regulated parties because the law does not make any such distinctions. The effects of the rule for small businesses are described in paragraphs 3, 4, and 6 of the Regulatory Impact Statement. It is anticipated that local governments will experience increases in revenues associated with the implementation of and continued administration of the rule that are estimated to be \$2 million in the fiscal year ending 3/31/04, and \$7.5 million in the fiscal year ending 3/31/05.

2. Compliance requirements: See paragraphs 3, 4, and 6 of the Regulatory Impact Statement for compliance requirements to small businesses.

3. Professional services: No professional services are necessary in order to comply with the rule. Some small businesses may choose to utilize professional services in order to comply with the rule; however, it is likely that such businesses already utilize professionals to perform these types of services.

4. Compliance costs: See paragraph 4 of the Regulatory Impact Statement for compliance costs to small businesses. There are no compliance costs to local governments as a result of the rule.

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

6. Minimizing adverse impact: The rule will benefit off-reservation retailers (e.g., convenience stores and gasoline stations) which are small businesses located near qualified reservations by creating a level playing field for sales to non-Indians. Local governments will experience no adverse impact as a result of this rule.

7. Small business and local government participation: The following organizations were notified that the Department was in the process of developing this rule: the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors; the Small

Business Council of the New York State Business Council; and the Retail Council of New York State.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas. The rule and the underlying provisions of law do not distinguish between regulated parties located in rural, suburban, or metropolitan areas of this New York State, but apply universally to the collection of excise taxes and sales and compensating use taxes on retail sales made to non-Indians on Indian reservations located throughout this State. The rule does not impose dissimilar reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. To the extent that any Indian reservations are considered rural in nature, the information included in the Regulatory Impact Statement and other statements that are submitted with this rule apply.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. In fact, by aiming to level the economic landscape between off reservation retailers (i.e., convenience stores and gasoline stations) and Indian reservation retailers, the proposed rule should help off reservation retailers compete more effectively for consumer sales.

The purpose of these amendments is to implement the collection of excise taxes and sales and compensating use taxes on retail sales made to non-Indians on New York State Indian reservations, pursuant to the legislative mandates in Chapters 62 (Part T3) and 63 (Part Z) of the Laws of 2003. These amendments fulfill the legislative mandates to implement the collection of such taxes on sales of all retail items – including but not limited to, cigarettes, tobacco products, gasoline, and diesel motor fuel – by amending the Cigarette and Tobacco Products Tax Regulations, the Motor Fuel and Diesel Motor Fuel Tax Regulations, the Petroleum Business Tax Regulations, and the Sales and Use Tax Regulations.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Eligibility for Safety Net Assistance

I.D. No. TDA-19-03-00009-A

Filing No. 988

Filing date: Sept. 9, 2003

Effective date: Sept. 24, 2003

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

Action taken: Amendment of section 352.20(c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 131-a(1), (8)(a)(iii), 158, 349 and 355(3)

Subject: Eligibility for safety net assistance.

Purpose: To allow for the percentage earned income disregard to be provided to all safety net assistance cases that would be eligible for family assistance except for the imposition of the 60-month State limit on the receipt of family assistance.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-19-03-00009, Issue of May 14, 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 regulations concerning eligibility for Safety Net Assistance, the Office received supportive comments from one social services district. No other comments were received and no changes were made to the regulation since it was published in the *State Register*.