

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Civil Service

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

#### Jurisdictional Classification

I.D. No. CVS-17-04-00009-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Department of Mental Hygiene.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading “Office of Alcoholism and Substance Abuse Services,” by adding thereto the position of Investigator.

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

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### Jurisdictional Classification

I.D. No. CVS-17-04-00010-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Lake George Park Commission.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Lake George Park Commission, by adding thereto the position of Administrative Assistance (1).

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

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### Jurisdictional Classification

I.D. No. CVS-17-04-00011-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a title from the non-competitive class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading “Office of Parks, Recreation and Historic Preservation,” by deleting therefrom the title of Park Worker.

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

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-17-04-00012-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class in the Department of Environmental Conservation.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by deleting therefrom the position of Environmental Program Director 3 and by adding thereto the position of Environmental Program Director.

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

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-17-04-00013-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class in the Department of Labor.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the position of Assistant Chief of Security (1) and by adding thereto the position of Workers' Compensation Security Coordinator (1).

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

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

**Department of Correctional  
Services**

**ERRATUM**

A Notice of Adoption, I.D. No. COR-05-04-00001-A pertaining to Inmate Grievance Program, published in the April 14, 2004 issue of the *State Register* did not indicate new material in the text of final rule for section 701.7(a)(1). Corrected text for section 701.7(a)(1) follows:

Paragraph (1) of subdivision (a) of section 701.7 is amended as follows:

(1) Filing the complaint. An inmate must submit a complaint to the Grievance Clerk within 14 calendar days of an alleged occurrence on Inmate Grievance Complaint Form #2131. If this form is not readily available, a complaint may be submitted on plain paper. *The complaint may only be filed at the facility where the inmate is housed even if it pertains to another facility.*

*Note:* Exceptions to this time limit or any appeal time limits may be approved by the IGP supervisor based on mitigating circumstances (e.g., attempts to resolve informally by the inmate, referrals back to the IGP by the courts, etc.). *An inmate may pursue a complaint that an exception to the time limit was denied by filing a separate grievance.*

(i) Content. In addition to the grievant's name, department identification number, housing unit, program assignment, etc., the grievance [must] *should* contain a concise, specific description of the problem and the action requested and indicate what actions the grievant has taken to resolve the complaint, i.e., specific persons/areas contacted and responses received. *The IGP Supervisor shall review the grievance complaint and designate the grievance code and title. If the IGP Supervisor determines that the grievance may be a harassment or discrimination grievance, it shall be processed in accordance with the respective expedited procedure (section 701.11 or 701.12).*

(ii) *The clerk* [Grievances] shall [be] consecutively number[ed] and log[ged] each grievance at the time of receipt.

The Department of State apologizes for any confusion this may have caused.

**Department of Environmental  
Conservation**

**NOTICE OF ADOPTION**

**Underage Drinking**

**I.D. No.** ENV-49-03-00014-A

**Filing No.** 422

**Filing date:** April 12, 2004

**Effective date:** April 28, 2004

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

**Action taken:** Addition of sections 51.6(h) and 190.8(q) to Title 6 NYCRR.

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

**Subject:** Underage drinking.

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

**Text or summary was published** in the notice of proposed rule making, I.D. No. ENV-49-03-00014-P, Issue of December 10, 2003.

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

**Text of rule and any required statements and analyses may be obtained from:** Andrew T. Jacob, Department of Environmental Conser-

vation, 625 Broadway, 8th Fl., Albany, NY 12233-2560, (518) 402-8839, e-mail: atjacob@gw.dec.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Health

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### EMERGENCY RULE MAKING

**Arboviral Infection Reporting**

**I.D. No.** HLT-17-04-00004-E

**Filing No.** 419

**Filing date:** April 8, 2004

**Effective date:** April 8, 2004

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

**Action taken:** Amendment of section 2.1 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 225(4), (5)(a), (h), (i), 206(1)(d) and (e)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** Immediate adoption of this rule is necessary to monitor the magnitude and scope of illness caused by arthropod-borne viruses, and enable timely case reporting and investigation, as well as the implementation of control interventions, as needed.

Arboviral infections are usually transmitted to people by arthropod vectors (primarily mosquitoes and ticks), and include viruses capable of causing symptoms ranging from asymptomatic or mildly symptomatic infection, to encephalitis, coma and death. Current communicable disease reporting requirements specify the reporting of encephalitis and meningitis but do not require the reporting of specific arboviral infections. Arboviral infections are of increasing importance to public health officials as evidenced by the ongoing West Nile virus outbreak.

West Nile virus was introduced to the metropolitan New York City area in 1999. The virus has rapidly dispersed across the United States and now only four states currently remain free of evidence of West Nile virus in various surveillance systems. This untreatable, potentially fatal mosquito-borne virus has affected every county in New York State. Late August through November is the time of year when the virus is most likely to be transmitted from mosquitoes to humans. A significant and further alarming discovery was made in 2002 when public health investigations determined that West Nile virus can be transmitted from person to person through blood transfusion. During the 2002 West Nile virus outbreak in the United States, a total of 23 persons were reported to have acquired West Nile virus infection after receiving blood components.

Because of the possibility of recurrent West Nile virus epidemics, some blood collection agencies across the country now voluntarily screen for the presence of West Nile virus and may identify individuals with asymptomatic or mild West Nile viral infection. Through the end of August 2003, the CDC is aware of over 150 presumptive West Nile virus-viremic blood donors reported from 11 states. Reporting of these viremic donors to State and local health departments will provide critical information about the presence and spread of West Nile virus in the State, and will allow timely implementation of prevention efforts.

In addition to West Nile virus, several arboviruses, such as Eastern equine encephalitis virus, Jamestown Canyon encephalitis virus, LaCrosse encephalitis virus, and Powassan encephalitis virus, have been found in various locations across New York State. Other mosquito-borne arboviruses, such as St. Louis encephalitis virus, have been introduced into New York State as a result of significant dispersal of native United States strains through major geographic expansion of infected mosquito populations that started along the Mississippi River valley. These viruses are currently known to be transmitted to people only through the bite of an infected mosquito and usually cause severe neurological symptoms in symptomatic individuals. Health care providers who suspect arboviral infection in these symptomatic patients can submit serum or cerebrospinal fluid specimens for arboviral laboratory diagnostic tests.

The rule change will enable the New York State Department of Health to identify potential mosquito- and tick-borne virus-associated infections in blood donors and other individuals who may not have encephalitis or meningitis symptoms. Requiring the reporting of these individuals will prevent further serious human infection through the earliest possible recognition of a problem, assist in defining the incidence and clinical spectrum of illness, and instituting recommendations for disease prevention on a timely basis.

**Subject:** Communicable disease—arboviral infection reporting.

**Purpose:** To add arboviral infection to the list of reportable diseases.

**Text of emergency rule:** Subdivision (a) of Section 2.1 is amended to read as follows:

2.1 Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

- Amebiasis
- Anthrax
- Arboviral infection
- Babesiosis
- Botulism
- Brucellosis
- Campylobacteriosis
- Chancroid
- Chlamydia trachomatis infection
- Cholera
- Cryptosporidiosis
- Cyclosporiasis
- Diphtheria
- E. coli 0157:H7 infections
- Ehrlichiosis
- Encephalitis
- Giardiasis
- Glanders
- Gonococcal infection
- Group A Streptococcal invasive disease
- Group B Streptococcal invasive disease
- Hantavirus disease
- Hemolytic uremic syndrome
- Hemophilus influenzae (invasive disease)
- Hepatitis (A; B; C)
- Hospital-associated infections (as defined in section 2.2 of this Part)
- Legionellosis
- Listeriosis
- Lyme disease
- Lymphogranuloma venereum
- Malaria
- Measles
- Melioidosis
- Meningitis
  - Aseptic
  - Hemophilus
  - Meningococcal
  - Other (specify type)
- Meningococemia
- Mumps
- Pertussis (whooping cough)
- Plague
- Poliomyelitis
- Psittacosis
- Q Fever
- Rabies
- Rocky Mountain spotted fever
- Rubella
- Congenital rubella syndrome
- Salmonellosis
- Severe Acute Respiratory Syndrome (SARS)
- Shigellosis
- Smallpox

Staphylococcal enterotoxin B poisoning  
 Streptococcus pneumoniae invasive disease  
 Syphilis, specify stage  
 Tetanus  
 Toxic Shock Syndrome  
 Trichinosis  
 Tuberculosis, current disease (specify site)  
 Tularemia  
 Typhoid  
 Vaccinia disease (as defined in section 2.2 of this Part)  
 Viral hemorrhagic fever  
 [Yellow Fever]  
 Yersiniosis  
 \* \* \*

**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 July 6, 2004.

**Text of emergency 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: regsqna@health.state.ny.us

#### Regulatory Impact Statement

##### Statutory Authority:

Sections 225(4) and 225(5)(a), (h), and (i) of the Public Health Law ("PHL") authorize the Public Health Council to establish and amend State Sanitary Code provisions relating to designation of communicable diseases dangerous to public health and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to "investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health." PHL Section 206(1)(e) permits the commissioner to "obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state." PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection and control of persons and things infected with or exposed to such diseases. PHL Section 2102 requires laboratories to report the results of laboratory examinations disclosing evidence of communicable disease to local or state health officials.

##### Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding arboviral infections to the list of reportable disease. This change will permit enhanced disease monitoring and vector population intervention measures, if necessary, to prevent further transmission.

##### Needs and Benefits:

Arthropod-borne viruses (arboviruses) are transmitted to people primarily by the bite of an infected arthropod, typically by a mosquito or tick. Arboviruses can cause asymptomatic infections or a clinical illness that ranges in severity from a self-limited febrile illness to a severe neurologic illness with high fever, malaise, photophobia, encephalitis, meningitis, coma or death.

Arboviruses have been present in New York State for decades and include Eastern equine encephalitis virus, California encephalitis viruses and Powassan encephalitis virus. Over the past thirty years, other mosquito-borne viruses normally found in other areas of the country or the world, were introduced into New York State and resulted in epidemic illness. Examples are St. Louis encephalitis virus in 1975 and West Nile virus in 1999. Since its introduction in New York State, there have been over 175 human West Nile virus cases with 15 fatalities.

In 2002, public health investigations documented that West Nile virus can be transmitted from person to person via infected blood donations and organ transplants. In response to this new mode of West Nile virus transmission, some blood collection agencies in 2003 voluntarily implemented a West Nile virus-screening program of blood donors. Testing for West Nile virus is not mandatory. If, however, a blood collection agency tests for West Nile virus and the result is positive, the laboratory performing the test is required to report the result to the New York State Department of Health. Due to the increased testing of donors, it is anticipated that individuals with asymptomatic or mild West Nile viral infection will be detected but the number of cases is expected to be low.

For those blood donors testing positive for West Nile virus, the rule change will enable the NYSDOH and local health departments to receive identifying information. Local health department staff will follow-up with the West Nile virus positive donors to counsel them, determine their travel history and evaluate geographic areas of risk.

The rule change will also require the reporting of other arboviral diseases. Existing communicable disease reporting requirements only include the reporting of encephalitis and meningitis. Encephalitis and meningitis are the most severe symptoms associated with a variety of arthropod borne diseases, as well as other communicable diseases. The change will enable the New York State Department of Health (NYSDOH) and local health departments to detect and document diagnosed cases of mosquito and tick-borne viral infections, even those cases that do not progress to encephalitis or meningitis.

It should be understood that these regulations do not mandate testing for arboviral infections, including West Nile virus, but require physicians and laboratories that voluntarily conduct testing to report positive test results to the New York State Department of Health. Requiring the reporting of all arboviral infections will prevent further serious human infection through the earliest possible recognition of a problem and assist in defining the incidence and clinical spectrum of illness and instituting recommendations for disease prevention as early as possible.

In summary, adding arboviral infections to the reportable disease list will permit the NYSDOH to more comprehensively monitor these diseases, and permit case reporting, investigation, and intervention to be made on a timely basis.

##### COSTS:

Arthropod-borne diseases primarily cause encephalitis and/or meningitis symptoms in patients. Encephalitis and meningitis are already included on the communicable disease list in 10 NYCRR Section 2.1. This change will require all arboviral infections to be reported and will clarify the NYSDOH's authority to investigate these cases, including mild or asymptomatic cases. The number of additional cases of arboviral infections that will be reported is expected to be low. It is expected that there will be increased costs related to investigating cases and, potentially, implementing control strategies.

##### Costs to Regulated Parties:

It is imperative to the public health that cases of arboviral infection be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality and to protect the public health.

The costs associated with implementing the reporting of this disease are expected to be minimal as reporting processes and forms already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting communicable disease to public health authorities.

##### Costs to Local and State Governments:

Costs associated with the reporting of arboviral infections are expected to be mitigated because the staff who are involved in reporting this disease at the local and State health departments are the same as those currently involved with reporting of other communicable diseases listed in 10 NYCRR Section 2.1. Arbovirus enhanced surveillance activities are long-standing and ongoing in most local health departments partially as a result of the importation of West Nile virus into the Western hemisphere in 1999. Local health department staffs have been aggressively monitoring and investigating reports of arboviral infection in their jurisdiction.

Additional costs to local or state governments are associated with investigating and implementing control strategies to curtail the spread of arthropod-borne disease. It is expected that the number of additional cases reported as a result of this change will be low. It is not known how this information will influence county control measures. Control efforts include enhanced vector surveillance, vector population reduction measures and implementation of comprehensive educational campaigns. These intensive efforts are critical to minimize spread.

By potentially decreasing the spread of arthropod-borne virus infections, savings may include reducing costs associated with public health control activities, hospitalization, morbidity, treatment and premature death.

##### Costs to the Department of Health:

The New York State Department of Health already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of arboviral infections to the list of communicable diseases should not lead to substantial additional costs for data entry, particularly as the Department adopts systems for electronic submission of case reports.

There are additional costs associated with ongoing arbovirus enhanced surveillance; these activities are long-standing and ongoing. New York State Department of Health has been aggressively monitoring and investigating reports of arboviral infection in New York State.

**Paperwork:**

The existing general communicable disease reporting form (DOH-389) will be revised to include arboviral infections. This form is familiar to and already used by regulated parties.

**Local Government Mandates:**

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports from physicians in attendance on persons with or suspected of being infected with arboviral infection, will be required to immediately forward such reports to the State Health Commissioner and to investigate and monitor the cases reported.

**Duplication:**

There is no duplication of this initiative in existing State or federal law.

**Alternatives:**

No other alternatives are available.

Reporting of cases of specified arboviral infections is of critical importance to public health. There is an urgent need to conduct surveillance, identify human cases in a timely manner, and reduce the potential for further exposure to other individuals.

**Federal Standards:**

This proposed action is consistent with current CDC standards for reporting of vector-borne diseases.

**Compliance Schedule:**

This regulation will be effective upon filing of a Notice of Emergency Adoption with the Secretary of State and made permanent by publication of a Notice of Adoption in the New York State Register.

**Regulatory Flexibility Analysis**

**Effect on Small Business and Local Government:**

There are approximately 6 hospitals, 15 nursing homes and 1,000 clinical laboratories that employ less than 100 people in New York State. There are 397 licensed clinics; information about how many operate as small businesses is not available. There are approximately 70,000 physicians in New York State but it is not known how many can be categorized as small businesses. This regulation will apply to all local health departments.

It is expected that the proposed rule will have minimal impact on small business (hospitals, clinics, nursing homes, physicians, and clinical laboratories) and local government since encephalitis and meningitis symptoms are already reportable. The number of additional cases of arboviral infections that will be reported is estimated to be low. Existing report forms and systems will be used.

**Compliance Requirements:**

Hospitals, clinics, physicians, nursing homes, and clinical laboratories that are small businesses and local governments will utilize revised Department of Health reporting forms which are familiar to them.

**Professional Services:**

No additional professional services will be required since providers are expected to be able to utilize existing staff to report occurrences of arboviral infections.

**Compliance Costs:**

No initial capital costs of compliance are anticipated. Annual compliance costs will depend upon the number of cases of arboviral infections which is expected to be low because existing reporting forms and mechanisms will be used. The reporting of arboviral infections should have a minimal effect on the estimated cost of disease reporting by hospitals. The cost would be less for physicians and other small businesses.

**Minimizing Adverse Impact:**

Adverse impacts have been minimized since familiar forms and existing reporting staff can be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

**Feasibility Assessment:**

Small businesses and local governments will likely find it easy to report conditions due to the availability to them of electronic reporting and tabulation.

**Small Business and Local Government Participation:**

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

**Rural Area Flexibility Analysis**

**Effect on Rural Areas:**

The proposed rule will apply statewide. A rural area is a county of under 200,000 population or an area with a population density of 175 persons or less per square mile. There are 42 rural counties in New York State and all are in Upstate New York. The number of cases that will be reported from rural areas is estimated to be low and have minimal impact on local health units, physicians, hospitals and laboratories that are located in rural areas.

**Compliance Requirements:**

Local health units, hospitals, clinics, physicians and clinical laboratories in rural areas will continue to utilize Department of Health reporting forms that will be revised to include arboviral infections.

**Professional Services:**

No additional professional services will be required. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

**Compliance Costs:**

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

**Minimizing Adverse Impact:**

Adverse impacts have been minimized since familiar forms and existing reporting staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-bb(2) were rejected inconsistent with the purpose of the regulation.

**Rural Area Input:**

The New York State Association of County Health Officers, including representatives of rural counties, has been informed about this change and supports the need for it.

**Job Impact Statement**

This regulation will not have a substantial adverse impact on jobs and employment opportunities. It adds arboviral infection to the list of diseases that health care providers must report to public health authorities. The staff who will be involved in reporting arboviral infections at the local and State health departments are the same as those currently involved with reporting, monitoring and investigating other communicable diseases. Although it is not possible to predict the extent of arboviral infection outbreaks, the number of additional cases that will be detected, or the degree of additional demands it will place on existing staff, all are expected to be low and the impact on jobs to be minimal if there is any impact at all.

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

**Emergency Ambulance Service Vehicles**

**I.D. No.** HLT-17-04-00002-P

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

**Proposed action:** This is a consensus rule making to amend section 800.26 of Title 10 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. HLT-11-04-00025-P.

**Statutory authority:** Public Health Law, section 3032

**Subject:** Emergency ambulance service vehicles.

**Purpose:** To allow the EMS agencies greater flexibility in the deployment of personnel and vehicles to medical emergencies in the pre-hospital environment.

**Text of proposed rule:** Section 800.26 is amended to read as follow:

Section 800.26 [Emergency] *Equipment requirements for emergency ambulance service vehicles [equipment requirements] other than an ambulance.*

*The governing authority of any ambulance service which, as a part of its response system, utilizes emergency ambulance service vehicles other than an ambulance to bring personnel and equipment to the scene, must have policies in effect for equipment, staffing, individual authorization, dispatch and response criteria, and maintain appropriate insurance coverage. [Any emergency ambulance service vehicle (other than an ambulance) shall be equipped and supplied with:]*

*(a) A waiver of the equipment requirements for emergency ambulance service vehicles may be granted by the Department when the service provides an acceptable plan to the Department demonstrating how appropriate staff, equipment and vehicles will respond to a call for emergency medical assistance. The affected Regional EMS Councils will be solicited for comment on the service's waiver request.*

*(b) Any emergency ambulance service vehicle other than an ambulance shall be equipped and supplied with [(a) Emergency care equipment consisting of:] emergency care equipment consisting of:*

- (1) 12 sterile 4 inches times; 4 inches gauze pads;
- (2) adhesive tape, three rolls assorted sizes;
- (3) six rolls conforming gauge bandage, assorted sizes;
- (4) two universal dressings, minimum 10 [by]inches × 30 inches;
- (5) six [five inches by nine inches] 5 inches × 9 inches (minimum size) sterile dressings or equivalent;
- (6) one pair of bandage shears;
- (7) six triangular bandages;
- (8) sterile normal saline in plastic container (½ [litre]liter minimum) within the manufacturer's expiration date;
- (9) one air occlusive dressing;
- (10) one liquid glucose or equivalent;
- (11) disposable sterile burn sheet;
- (12) sterile *obstetric* [O.B.] kit;
- (13) blood pressure [sphygmomanometers] *sphygmomanometers* cuff in adult and pediatric sizes and stethoscope;
- (14) three rigid extrication collars capable of limiting movement of the cervical spine. These collars shall include small, medium and large adult sizes; and
- (15) carrying case for essential equipment and supplies.

(c) [b]Oxygen and resuscitation equipment consisting of:

- (1) portable oxygen with a minimum 350 liter capacity with pressure gauge, regulator and flow meter medical "D" size or larger. The oxygen cylinder must contain a minimum of 1000 [PSI pressure;] *pounds per square inch*.
- (2) manually operated self-refilling bag valve mask ventilation devices in pediatric and adult sizes with a system capable of operating with oxygen enrichment and clear adult, and clear pediatric size masks with air cushion;
- (3) four *individually wrapped or boxed* oropharyngeal airways in a range of sizes *for pediatric and adult patients* [child through adult individually wrapped or boxed];
- (4) two each: disposable non-rebreather oxygen masks, and disposable nasal cannula individually wrapped;
- (5) portable suction equipment capable, according to the [manufacturers] *manufacturer's* specifications, of producing a vacuum of over 300 m.m. Hg when the suction tube is clamped and including two plastic [Yankauer wide] *large bore rigid* pharyngeal suction tips, individually wrapped; and
- (6) pen light or flashlight.
- (d) [c] A two-way voice communications enabling direct communication with the agency dispatcher and the responding ambulance vehicle on frequencies other than citizens band.
- (e) [d] Safety equipment consisting of:
  - (1) six flares or three U.S. Department of Transportation approved reflective road triangles;
  - (2) one battery lantern in operable condition; and
  - (3) one Underwriters' Laboratory rated five pound ABC fire extinguisher or any extinguisher having a UL rating of 10BC.
- (f) [e] Extrication equipment consisting of:
  - (1) one short backboard or equivalent capable of immobilizing the cervical spine of a [sitting] *seated* patient. The *short* backboard shall have at least two 2["] *inches × 9["] feet* long web straps with fasteners unless straps are affixed to the device; and
  - (2) one blanket.

**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: regsqa@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.

**Consensus Withdrawal Objection Statement**

A previously submitted Notice of Consensus Rulemaking for these amendments was withdrawn by the Department on April 21, 2004 due to a typographical error contained in Section 800.26(f)(1).

**Consensus Rule Making Determination**

**Statutory Authority:**

The authority for promulgating this regulation amendment is contained in Article 30, Section 3032 of the New York State Public Health Law. Article 30 authorizes the State Emergency Medical Services Council (SEMSCO), to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to implement the purposes and provisions of Article 30 of the Public Health Law.

**Basis:**

The proposed amendments conform the State regulation to State law as amended by Chapter 463 of the Laws of 2001. These amendments, not only do not impose any burden on any party, they allow the local EMS an increased flexibility in determining the best and most appropriate emergency response to meet system needs. These amendments do not exceed or expand the statutory requirements, therefore a consensus regulatory adoption is appropriate.

A previously submitted Notice of Consensus Rulemaking for these amendments was withdrawn by the Department on April 21, 2004 due to a typographical error contained in Section 800.26(f)(1).

**Job Impact Statement**

A Job Impact Statement is not included because the nature and purpose of these amendments make it clear that they will not have a substantial adverse impact on jobs and employment opportunities. Currently ambulance services that operate emergency ambulance service vehicles have to meet specific equipment and supply requirements. The proposed amendment will allow the ambulance services develop plans that will allow them to be flexible to configure and assign their vehicles to meet the local EMS personnel, deployment and patient needs.

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

**Veterans' Homes**

**I.D. No.** HLT-17-04-00003-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 Subpart 88-2 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 206

**Subject:** Veterans' homes.

**Purpose:** To include the State veterans' homes in Batavia, St. Albans, and Montrose along with Oxford.

**Text of proposed rule:** Subpart 88-2 of 10 NYCRR is amended to read as follows:

SUBPART 88-2

NEW YORK STATE VETERANS' [HOME] HOMES

Section 88-2.1 of 10 NYCRR is amended to read as follows:

Section 88-2.1 — Applicability. The State *homes* [home] for veterans and their dependents [at Oxford] shall be subject to the rules of this Subpart. [which abrogate Part 201 of Subchapter C, Chapter 1, Title 18 (Social Services) of the Official Compilations of Code, Rules and Regulations of the State of New York].

Section 88-2.2 of 10 NYCRR is amended to read as follows:

Section 88-2.2 Application for admission. (a) Applications for admission to [the] New York State *veterans homes* [Veterans' home at Oxford] shall be made on forms provided by the department, and such applications shall be presented to the board of visitors and accepted, rejected or otherwise acted upon by them according to this Subpart and the provisions of the Public Health Law.

(b) Each application for admission shall furnish a certification of all property of which he or she is possessed and of all sources of income. Following admission, each resident shall be required to furnish further certification as to such facts annually.

(c) Each application for admission shall be accompanied by a report of a recent medical examination and by the certification of a physician designated or approved by the department that the applicant requires either skilled nursing care or health-related care. The medical report shall be reviewed by the medical staff to determine, on the basis of such report, whether the applicant's physical condition appears to be such that he or she requires care in the skilled nursing facility or the health-related facility, as the case may be.

(d) Preference in admissions to those otherwise qualified shall be given to those in the greatest need for the services available at the facility with the preferences established by article 26-A of the Public Health Law; otherwise, so far as practicable, applicants shall be admitted in the order determined by the date of the application.

(e) Residents may be discharged from the facility when the resident's need for care has ended and the Director of the Home can find a setting for the resident where his or her health care and other needs can be met. A resident admitted prior to October 1, 1989 may remain even though his or her condition improves and he or she no longer requires skilled nursing or health-related facility care.

**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: regsqna@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.

**Consensus Rule Making Determination**

Statutory Authority:  
Public Health Law, art. 26-A.  
Basis:

The proposed changes are a technical correction of the regulation to reflect the fact that the State Veterans Homes in Batavia, St. Albans and Montrose are in existence and have operated under the same rules as Oxford for a number of years. Since this is the current ongoing practice and, since there are no current objections to this practice; objection to the rule change is not likely.

**Job Impact Statement**

Nature of impact:

No jobs will be impacted. The proposed rule change is a technical correction that brings the regulation in line with the practice that has been ongoing for a number of years.

Categories and numbers affected:  
No jobs categories will be affected.  
Regions of adverse impact:  
No region will be adversely impacted.  
Minimizing adverse impact:  
There is no adverse impact.

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## Higher Education Services Corporation

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### EMERGENCY RULE MAKING

**World Trade Center Scholarships**

**I.D. No.** ESC-09-04-00002-E  
**Filing No.** 421  
**Filing date:** April 9, 2004  
**Effective date:** April 9, 2004

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

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

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

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

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

**Subject:** World Trade Center memorial scholarships.

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

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

*Section 2201.2 World Trade Center Memorial Scholarships.*

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

(1) *Impact Area:*

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

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

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

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

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ESC-09-04-00002-EP, Issue of March 3, 2004. The emergency rule will expire June 7, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Donna A. Fesel, Senior Attorney, Higher Education Services Corp., Office of Counsel, One Commerce Plaza, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: donna\_fesel@hesc.com

**Regulatory Impact Statement**

Statutory authority:

Education Law sections 652.2, 653.9 and 655.4 authorize the New York State Higher Education Services Corporation, through its Board of Trustees, to promulgate regulations to facilitate the administration of student financial aid programs. Education Law sections 608 and 668-d authorize the World Trade Center Memorial Scholarships (WTC Scholarship).

Legislative objectives:

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

Needs and benefits:

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

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

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

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

Costs:

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

b. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule. It is anticipated that there will be no costs for the implementation of, or contin-

uing compliance with, this rule, with the exception of programmatic administration costs. As this rule merely implements an existing State financial aid program, it does not result in any costs not already mandated by statute.

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal standards:

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

Compliance schedule:

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

#### **Regulatory Flexibility Analysis**

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

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

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

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

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

#### **Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency

Adoption and Proposed Rule Making, dated February 17, 2004, seeking to add a new section 2201.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

#### **Assessment of Public Comment**

The agency received no public comment.

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

### **Federal Family Education Loan Program**

**I.D. No.** ESC-17-04-00015-P

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

**Proposed action:** Amendment of section 2101.2 of Title 8 NYCRR. This rule is proposed pursuant to SAPA, § 207(3), Review of Existing Rules.

**Statutory authority:** Education Law, sections 652.2, 653.9, 655.4 and 680.2

**Subject:** Simplification of the administration of the Federal Family Education Loan Program in New York.

**Purpose:** To replace the existing "one lender rule" with a rule modeled on the Federal Family Education Loan (FFEL) Program's one lender, one guarantor concept, which promotes simplification of the student lending process for borrowers.

**Text of proposed rule:** Section 2101.2 of Title 8 of the New York Code, Rules and Regulations is repealed. A new section 2101.2 of 8 NYCRR is to read as follows:

*Section 2101.2 Simplification of lending process for borrowers.*

*(a) All loans treated as one*

*To the extent practicable, and with the cooperation of the borrower, lenders shall treat all FFEL Program loans made to a borrower as one loan and shall submit one bill to the borrower for the repayment of all such loans for the monthly or other similar period of repayment. Any deferments on such loan will be considered a deferment on the total amount of all such loans.*

*(b) One lender, one guaranty agency*

*To the extent practicable, and with the cooperation of the borrower, the Corporation shall ensure that a borrower only have one lender, one holder, one guaranty agency, and one servicer with which to make contact.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Donna A. Fesel, Senior Attorney, Higher Education Services Corp., Office of Counsel, One Commerce Plaza, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 486-6192, e-mail: donna\_fesel@hesc.com

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

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

#### **Reasoned Justification for Modification of the Rule**

This statement is being submitted pursuant to subdivision (3) of section 207 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making, seeking to add a new section 2101.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 2102.2 of Title 8 of the NYCRR (New York's One Lender Rule) was promulgated to avoid Federal Family Education Loan (FFEL) borrower confusion by ensuring that at repayment a borrower had one lender and one payment schedule. At the time of promulgation, such a rule was necessary: most lenders held and serviced their own loan portfolios, consolidation loans (which convert multiple loans into one loan with one monthly payment) did not exist, and loan processing required the signing of multiple promissory notes throughout a student's education. While the goal of one point of contact for FFEL borrowers in repayment remains an important one, due to processing changes in the FFEL arena, changes in HESC processing, and an important change in federal law (promulgation of 20 USC § 1092(c)), New York's One Lender Rule is outmoded. This proposed rule making will delete outmoded One Lender Rule language and procedures, and insert language conforming to 20 USC § 1092(c).

No comments were received by HESC in response to the listing of this rule in HESC's Regulatory Agenda published in the *New York State Register* on January 2, 2002.

### **Regulatory Impact Statement**

#### Statutory authority:

Education Law § 652.2(c) charges HESC with the responsibility for supporting the federal government's administration of the federal student aid programs established under Title IV of the Higher Education Act of 1965, as amended. Education Law § 653.9 authorizes HESC Board of Trustees (the Board) to promulgate rules and regulations to carry out the purposes of HESC. Education Law § 655.4 authorizes the President of HESC, subject to approval by the Board, to propose rules and regulations relating to federal student aid programs. Education Law § 680.1 authorizes HESC to guarantee student loans. Education Law § 680.2 authorizes the Board to adopt rules governing loans guaranteed by HESC. 20 USC § 1092c, enacted by the federal government in 1992, requires, to the extent practicable and with the cooperation of the borrower, that lenders treat all of a borrower's FFELP loans as one loan and that a borrower have one lender, guarantor, holder or servicer with which to make contact. This regulatory proposal was approved by HESC's Board, comprised of individuals representing parties affected by the proposed rule; schools, lenders and students.

#### Legislative objectives:

This rule making activity furthers the Legislature's objective that HESC fulfill administrative and guarantee functions for the Family Federal Education Loan (FFEL) Program in New York State.

#### Needs and benefits:

The purpose of the proposed rule is to replace New York's existing "One Lender Rule" with a rule conforming to 20 USC § 1092c. 20 USC § 1092c requires, "to the extent practicable and with the cooperation of the borrower," that lenders treat all of a borrower's FFELP loans as one loan, and that borrowers have one lender, guarantor, holder or servicer with which to make contact.

New York's One Lender Rule was promulgated in 1977 to prevent inadvertent student loan defaults resulting from the confusion of borrowers having multiple lenders. Specifically, borrowers could have lost track of which loans were issued by which lender resulting in borrowers beginning repayment only to learn that they had other loans held by different lenders for which they failed to begin repayment. This could have resulted in lenders filing default claims with HESC for loans not being paid, which in turn would trigger HESC's obligations as a guaranty agency. The potential for such defaults would be avoided by eliminating the possibility for such borrower confusion. New York's One Lender Rule was intended to ensure that a borrower had only one lender and one payment schedule when the time for repayment arrived. In addition to preventing borrower confusion, these procedures were necessary at the time in part because most lenders held and serviced their own loan portfolios. Also, consolidation loans (which in effect convert multiple loans into one loan with one monthly payment) did not then exist.

New York's current One Lender Rule imposes requirements which are not otherwise imposed by state statute and which are out of step with Federal law adopted after its promulgation. Its elimination is required because, in its present form, its provisions are no longer necessary and are inconsistent with many of the practices and procedures presently used by HESC to administer the FFEL Program.

The FFEL program now offers a consolidation loan program, which results in a single payment schedule for a borrower. In 1999, the FFEL Program implemented a Master Promissory Note (MPN) whereby a student signs one promissory note with a single lender under which multiple loans may be made for a period of ten years. This process encourages the use of one lender. Additionally, lender policies, standards and enhanced processes are now designed to provide the borrower with a single point of contact and payment. Furthermore, in April of 2002, a process was implemented allowing borrowers to sign the MPN electronically on HESC's Website. Increased electronic processing of student loans, together with the elimination of the paper forms necessitated by the One Lender Rule will foster more efficient administration.

The benefits of the proposed rule also include the phasing out of the one lender rule waiver process, required for students and institutions, by which a borrower may change his or her lender of record recognized by HESC. Typically, HESC learns of a borrower's desire to change lenders when documentation is received identifying a new lender for which HESC is requested to issue a loan guarantee. HESC's current business practice, however, is to permit such new loan guarantees to be issued only to the existing "lender of record," which would be an earlier lender for which a

loan guarantee was issued. Therefore, because the new lender desired by the borrower is not the "lender of record", a borrower wishing to change lenders must sign a Borrower's Request For Exception To One Lender Rule, setting forth his or her reason for changing lenders. HESC must then approve the request and change the borrower's lender of record on all of its systems. Only then will the new loan guarantee be issued to the newly designated "lender of record." This process can delay the prompt issuance of loan guarantees to the lender desired by the borrower.

The waiver process is a written procedure and takes the time required to have the necessary forms mailed to and signed by the borrower, then returned to HESC, followed by HESC's changing of the borrower's lender of record and ultimate issuance of the new loan guarantee. It is a time consuming process which is not necessary and which is not required by Federal law governing the One Lender Rule concept. Its elimination will benefit borrowers, schools and lenders, since the prompt and efficient issuance of loan guarantees to the desired lender will be assured and a borrower's monetary obligation to the school he attends will be paid without unnecessary delay. The elimination of the waiver process will result in the elimination of costs with the use of paper forms, correspondence, envelopes and postage. The elimination of New York's current One Lender Rule, and its attendant waiver process, will also result in the immediate recognition by HESC of the borrower's desire to change lenders and the consequent changing of the borrower's lender of record on HESC's systems resulting in the more efficient operation of HESC's FFEL loan guaranty processes.

#### Costs:

a. The proposed rule making will have no cost impact on regulated parties.

b. There would be no cost impact on local governments, HESC, or the State.

c. The information and methodology upon which this cost analysis is based: Regulated parties and HESC are presently required to comply with the requirements of federal statute 20 USC 1092c upon which the proposed rule is modeled. The proposed rule contains no requirements other than those in 20 USC 1092c. Therefore, HESC anticipates that adoption of the proposed rule will not result in additional costs. The elimination of the waiver process, will result in elimination of costs to all concerned associated with the use of paper forms, correspondence, envelopes and postage. The elimination of the One Lender Rule's attendant waiver process will result in HESC's immediate recognition of the borrower's desire to change lenders and the consequent changing of the borrower's lender of record on HESC's systems, resulting in the more efficient operation of HESC's FFEL loan guaranty processes.

#### Local government mandates:

There would be no new programs, services, duties or responsibilities imposed by this rule making activity upon any county, city, town, village, school district, fire district or other special district. Local governments, including those that currently sponsor community colleges, will benefit by the elimination of costs and administrative burdens associated with the One Lender Rule's waiver process.

#### Paperwork:

There will be no new reporting requirements or paperwork resulting from this proposed rule making activity. As noted above, the elimination of the waiver process will result in the elimination of costs associated with the use of paper forms, correspondence, envelopes and postage. The elimination of the One Lender Rule's attendant waiver process will result in HESC's immediate recognition of the borrower's desire to change lenders and the consequent changing of the borrower's lender of record on HESC's systems resulting in the more efficient operation of HESC's FFEL loan guaranty processes.

#### Duplication:

There are no relevant rules, statutes or other legal requirements which conflict with the terms of this proposed rule. Those regulated by this proposed rule, schools, students, lenders, providers of financial aid and servicers, will not be adversely impacted. The proposed rule is modeled on the requirements of Federal statute 20 USC 1092c, enacted in 1992, subsequent to the 1977 promulgation of New York's One Lender Rule regulation. The proposed rule will benefit those regulated by eliminating costs and administrative burdens associated with the One Lender Rule's waiver process. The adoption of the proposed rule simply conforms New York's regulatory requirements to existing federal law.

#### Alternatives:

Consideration was given to repealing the One Lender Rule without enacting a successor rule. This approach was rejected in favor of replacing the One Lender Rule with new language mirroring 20 USC § 1092c be-

cause although New York's stricter One Lender Rule will no longer exist, a one lender, one guarantor concept remains in federal law. Additionally, HESC's position is that New York should continue to have regulations providing for a "one lender, one guarantor" approach consistent with New York state objectives should the Federal government abandon the approach or enact non-preemptive legislation inconsistent with New York law.

#### Federal standards:

The proposed changes to HESC's One Lender Rule will not exceed any minimum standards of the federal government for the same or similar subject areas. The proposed rule will be consistent with the governing federal statute, 20 USC 1092c, enacted by the federal government in 1992.

#### Compliance schedule:

Current practices and procedures followed by those to be regulated by the proposed rule, and employed by HESC in administering the FFEL program, namely, the use of the paper and electronic Master Promissory Note and consolidation loan programs, are aligned with the governing federal statute, 20 USC 1092c. Therefore, the regulated parties will be able to achieve compliance with this rule upon its adoption. The adoption of the proposed rule will eliminate the current One Lender Rule and its attendant waiver process, and thus will serve to further align current industry practices and procedures with the intent and direction of 20 USC 1092c.

#### Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2101.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas as it simply seeks to simplify HESC's administration of the Federal Family Education Loan Program.

#### Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2101.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas as it simply seeks to simplify HESC's administration of the Federal Family Education Loan Program.

#### Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2101.2 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any impact on jobs or employment opportunities. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas as it simply seeks to simplify HESC's administration of the Federal Family Education Loan Program.

**Proposed action:** This is a consensus rule making to amend section 73.3 of Title 12 NYCRR.

**Statutory authority:** Public Officers Law, art 6; and Labor Law, section 101

**Subject:** Procedures for public access to records.

**Purpose:** To delete obsolete language concerning a mandatory request form, clarifying that requests will be processed at the IBA's principal office, in Albany, and requiring that requester's provide proof of ID and complete a notice of appearance form.

**Text of proposed rule:** § 73.3 Requests for records.

(a) Requests for payroll information made by bona fide members of the news media upon a form (AC-375) prescribed by the Comptroller of the State of New York shall be referred to Counsel to the Board at the board's Albany office.

(b) Requests for all other information should be made [on a proper application form supplied by the board.] *in writing*.

(c) Persons appearing in person to request access to records will be required to [complete a proper application form.] *produce photo identification and complete the prescribed forms*.

(d) Requests made orally [or in a form other than authorized by this Part] will not be entertained.

(e)(1) Requests by mail will be processed at the [location where received] *board's Albany offices*, either by mail or by intradepartmental routing.

(2) Such requests will be processed if the requester and material sought are sufficiently identified to make compliance practicable. In the absence of such identification, the board may send to the requester a [proper application form for completion] *request for more information* in order that the request may be filled.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail: uscjb@labor.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 the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth the procedures to be used in requesting records from the board. The amendment updates the written procedures to be used by persons requesting F.O.I.L. access to board records, by deleting obsolete language concerning a mandatory request form, clarifying that requests will be processed at the board's principal office, in Albany, and requiring that requester's provide proof of ID and complete a notice of appearance form.

It is the board's determination that amending this rule to update the procedures to be used by persons requesting FOIL access to board records will assist all parties with the administrative process, making the process more efficient. This finding is based on the fact that the proposed rule making simplifies the procedures to be used by persons requesting F.O.I.L. access to IBA records, and that no person is likely to object to this proposal.

#### Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making updates the procedures to be used by persons requesting F.O.I.L. access to IBA records. It is apparent from the nature and purposes of the amendment that it will not have an impact on jobs and/or employment opportunities. Because this technical amendment does not change the text nor substantively revise existing provisions governing F.O.I.L. procedures, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

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## Industrial Board of Appeals

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

#### Procedures for Public Access to Records

I.D. No. IBA-17-04-00006-P

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

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

#### Public Access to Records

I.D. No. IBA-17-04-00007-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 73.2(d) of Title 12 NYCRR.

**Statutory authority:** Public Officers Law, art. 6; and Labor Law, section 101

**Subject:** Public access to records.

**Purpose:** To update or clarify the location where the IBA provides access for F.O.I.L. requests.

**Text of proposed rule:** § 73.2 Location and hours for public access; designation of records access and fiscal officers.

(d) Requests for information will be [received] *considered* and inspections *will be* permitted between the hours of 10 a.m. and 3 p.m., at [board offices] *the board's Albany offices* on all days when such offices are open for business.

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail: uscjgb@labor.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 the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth the times and location where the board will consider F.O.I.L. requests, and where inspections of board records will take place. This amendment will clarify the physical location where the board provides access for F.O.I.L. purposes, by clarifying that the location where the IBA provides access for F.O.I.L. requests is at its principal office, in Albany, New York. This is the only location where the board maintains a complete set of records.

It is the board's determination that amending this rule will clarify that the board considers F.O.I.L. requests, and provides allows inspections of its records, at the location where the records are stored. It is the board's determination that this will make the administrative process more efficient and effective, and that no person is likely to object to this proposal.

**Job Impact Statement**

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making updates the procedures to be used by persons requesting F.O.I.L. access to IBA records. It is apparent from the nature and purposes of the amendment that it will not have an impact on jobs and/or employment opportunities. Because this technical amendment does not change the text nor substantively revise existing provisions governing F.O.I.L. procedures, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

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

**Subject Matter List**

**I.D. No.** IBA-17-04-00008-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 73.6 of Title 12 NYCRR.

**Statutory authority:** Public Officers Law, art. 6; Labor Law, section 101

**Subject:** Subject matter list.

**Purpose:** To delete language concerning maintaining a copy of the board's subject matter list in an office other than the board's principal office, in Albany.

**Text of proposed rule:** § 73.6 Industrial Board of Appeals subject matter list.

The Industrial Board of Appeals shall maintain a subject matter list of records required to be disclosed by article 6 of the Public Officers Law, and such subject matter list shall be located in the offices of the Industrial Board of Appeals in Albany [and New York City].

**Text of proposed rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire

State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12223, (518) 474-4785, e-mail: uscjgb@labor.state.ny.us

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

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

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

**Consensus Rule Making Determination**

Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The proposed rule sets forth that the board will maintain a maintain a subject matter list of records required to be disclosed by article 6 of the Public Officers law, in the board's principal office, in Albany New York, and eliminates the current requirement that the board also maintain a duplicate copy of the list in another office.

It is the board's determination that by amending this rule to eliminate the requirement of maintaining a duplicate copy of the list in an office other than the board's principal office, the administrative process will be both simpler and more efficient, will help clarify that requests for access to the board's records will be processed in the board's Albany office, and that no person is likely to object to this proposal.

**Job Impact Statement**

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making deletes a provision for maintaining a second copy of the board's subject matter list in an office other than the board's principal office in Albany. It is apparent from the nature and purposes of the amendment that it will not have an impact on jobs and/or employment opportunities. Because this technical amendment does not change the text nor substantively revise existing provisions governing F.O.I.L. procedures, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

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**Department of Labor**

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

**Proof of Citizenship and Residence in Connection with the Employment of Persons Upon Public Works**

**I.D. No.** LAB-17-04-00005-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 225 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 222

**Subject:** Proof of citizenship and residence in connection with the employment of persons upon public works.

**Purpose:** To repeal an obsolete rule.

**Text of proposed rule:** PART 225 Proof required of applicants for employment. Repealed.

**Text of proposed rule and any required statements and analyses may be obtained from:** Diane Wallace Wehner, Legal Assistant II, Department of Labor, Counsel's Office, Rm. 509, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380

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

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

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

**Consensus Rule Making Determination**

The proposed rule making is not expected to generate objection from any person because it repeals Part 225 of Title 12 NYCRR, which should have

been repealed on June 1, 1982, at the time Section 222 of the Labor Law was repealed. In addition, no enforcement of Part 225, has been conducted by the Department of Labor since Labor Law Section 222 was repealed.

**Job Impact Statement**

The proposed action does not affect jobs and employment opportunities but simply repeals Part 225, which should have been repealed when Section 222 of the Labor Law was repealed on June 1, 1982.

## Department of Motor Vehicles

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

**Orleans County Motor Vehicle Use Tax**

**I.D. No.** MTV-17-04-00017-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 add section 29.12(aa) to Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Orleans County motor vehicle use tax.

**Purpose:** To impose the tax.

**Text of proposed rule:** Section 29.12 is amended by adding a new subdivision (aa) to read as follows:

*(aa) Orleans County. The Orleans County Legislature adopted Local Law No. 5 on December 5, 2003, to establish an Orleans County Motor Vehicle Use Tax. The Chairwoman of the Orleans County Legislature entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after July 1, 2004 and upon the renewal of registrations expiring on and after September 1, 2004. The County Treasurer of Orleans County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Orleans County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Orleans County, except for vehicles with agricultural plates, agricultural tractor plates or when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

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

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

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

**Consensus Rule Making Determination**

This proposed regulation would create a new 15 NYCRR Part 29.12(aa) to provide for the collection of an Orleans County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On December 5, 2003, the Orleans County Legislature enacted a local law requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue

to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Orleans County local law. The merits of the tax may have been debated before the Orleans County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

**Job Impact Statement**

A Job Impact Statement is not submitted with this rule making, because it will not have any impact on job creation or development in New York State.

## Public Service Commission

### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-39-99-00006-W	September 29, 1999
PSC-32-01-00016-W	August 8, 2001
PSC-26-02-00016-W	June 26, 2002
PSC-04-03-00012-W	January 29, 2003
PSC-34-03-00012-W	August 27, 2003
PSC-34-03-00013-W	August 27, 2003
PSC-35-03-00010-W	September 3, 2003
PSC-35-03-00011-W	September 3, 2003
PSC-35-03-00012-W	September 3, 2003
PSC-39-03-00016-W	October 1, 2003
PSC-46-03-00010-W	November 19, 2003
PSC-46-03-00011-W	November 19, 2003
PSC-46-03-00014-W	November 19, 2003
PSC-02-04-00006-W	January 14, 2004

### NOTICE OF ADOPTION

**Certificate of Environmental Compatibility and Public Need by Flat Rock Wind Power, LLC**

**I.D. No.** PSC-16-03-00038-A

**Filing date:** April 12, 2004

**Effective date:** April 12, 2004

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

**Action taken:** The commission, on April 8, 2004, adopted an order in Case 03-T-0515 granting Flat Rock Wind Power, LLC (Flat Wind) a certificate of certain environmental compatibility and public need.

**Statutory authority:** Public Service Law, section 122

**Subject:** Filing requirements in art. VII proceedings.

**Purpose:** To waive certain filing requirements.

**Substance of final rule:** The Commission approved a request by Flat Rock Wind Power, LLC for waivers of 16 NYCRR § 86.3(a)(1)(i) and § 86.5(b)(4)-(7) in its application for a Certificate of Environmental Compatibility and Public Need to construct a 230 kilovolt electric transmission line in the Towns of Martinsburg and Watson, Lewis County, subject to the terms and conditions set forth in the Order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-T-0515SA1)

**NOTICE OF ADOPTION**

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

**I.D. No.** PSC-49-03-00007-A

**Filing date:** April 7, 2004

**Effective date:** April 7, 2004

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

**Action taken:** The commission, on March 16, 2004, adopted an order in Case 03-E-1578 approving with modifications a joint proposal of Niagara Mohawk Power Corporation (Niagara Mohawk) and National Grid Communications, Inc.

**Statutory authority:** Public Service Law, section 119-a

**Subject:** Pole attachment rate for certain wireless attachments to distribution poles.

**Purpose:** To approve attachments that are designed to fill gaps in existing wireless service coverage areas.

**Substance of final rule:** The Commission granted with modifications a joint petition of Niagara Mohawk Power Corporation (Niagara Mohawk) and National Grid Communications, Inc. approving the rates, terms and conditions for potential attachments and installations of antennas and related equipment for wireless communications on Niagara Mohawk's distribution facilities, subject to the terms and conditions of the Order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1578SA1)

**NOTICE OF ADOPTION**

**Bill Credits by Consolidated Edison Company of New York**

**I.D. No.** PSC-04-04-00014-A

**Filing date:** April 9, 2004

**Effective date:** April 9, 2004

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

**Action taken:** The commission, on April 8, 2004, adopted an order in Case 96-E-0897, allowing Consolidated Edison Company of New York, Inc. (Con Edison) to continue to Retail Access Program at the Phase 6 through Phase 7 level and denying Con Edison's request for advance approval to recover costs associated with the bill credits.

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

**Subject:** Retail Access Program.

**Purpose:** To encourage the migration of electric customers to energy service companies.

**Substance of final rule:** The Commission approved Consolidated Edison Company of New York, Inc.'s (Con Edison) request to continue retail access bill credits at the Phase 6 through Phase 7 level and denied Con Edison's request for advance approval to recover costs associated with the retail access bill credits, 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. (96-E-0897SA34)

**NOTICE OF ADOPTION**

**New York Independent System Operator (NYISO) Procedures by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-05-04-00006-A

**Filing date:** April 8, 2004

**Effective date:** April 8, 2004

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

**Action taken:** The commission, on April 8, 2004, adopted an order in Case 04-E-0028, approving various changes to Central Hudson Gas & Electric Corporation's tariff schedule, P.S.C. No. 15—Electricity.

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

**Subject:** Tariff filing.

**Purpose:** To incorporate references to the New York Independent System Operator and its established procedures for the security of the integrated power systems of the transmission owners.

**Substance of final rule:** The Commission allowed Central Hudson Gas & Electric Corporation to update its electric tariff schedule by replacing references to the "New York Power Pool" and "Senior Pool Dispatcher" with "New York Independent System Operator (NYISO)" and "NYISO Shift Supervisor".

**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. (04-E-0028SA1)

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

**Interconnection of Networks between Sprint Communications Company L.P. and Taconic Telephone Corporation**

**I.D. No.** PSC-17-04-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Sprint Communications Company L.P. and Taconic Telephone Corporation for approval of a mutual traffic exchange agreement executed on March 15, 2004.

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

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

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

**Substance of proposed rule:** Sprint Communications Company L.P. and Taconic Telephone Corporation have reached a negotiated agreement whereby Sprint Communications Company L.P. and Taconic Telephone Corporation will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(04-C-0447SA1)

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

**Submetering of Electricity by Albanese Development Corporation  
I.D. No. PSC-17-04-00019-P**

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

**Proposed action:** The Public Service Commission is considering a request filed by Albanese Development Corporation to submeter electricity at Site 18B, North End Ave., Battery Park, New York, NY.

**Statutory authority:** Public Service Law, sections 65(1), 66(1)-(5), (12) and (14)

**Subject:** Submetering of electricity for new master metered residential rental units owned or operated by private or government entities.

**Purpose:** To permit electric submetering at Site 18B, North End Ave., Battery Park, New York, NY.

**Substance of proposed rule:** The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private or government entities according to established guidelines. The Owner at Site 18B, North End Avenue, Battery Park, New York, New York, Albanese Development Corporation, has submitted a proposal to master meter and submeter this new residential complex that is undergoing construction. The total electric building usage for this complex will be master metered and each residential unit will be individually submetered.

The submetering plan set forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at Site 18B, North End Avenue, Battery Park, New York, New York.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(01-E-0819SA1)

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

**Automated Meter Recording Equipment Requirements by Central Hudson Gas & Electric Corporation**

**I.D. No. PSC-17-04-00020-P**

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulation contained in its schedule for gas service—P.S.C. No. 12.

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

**Subject:** Automated meter recording equipment requirements.

**Purpose:** To incorporate automated meter recording equipment requirements under Service Classification No. 8—interruptible gas sales and

Service Classification No. 9—interruptible transportation service and modify the current automated meter recording equipment requirements under Service Classification No. 11—firm transportation—core.

**Substance of proposed rule:** Central Hudson Gas & Electric Corporation proposes to incorporate automated meter recording equipment requirements under its S.C. No. 8—Interruptible Gas Sales and its S.C. No. 9—Interruptible Transportation Service. The company also proposes to modify the current automated meter recording equipment requirements under S.C. No. 11—Firm Transportation—Core.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(04-G-0463SA1)

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**Office of Temporary and  
Disability Assistance**

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

**Temporary Absences**

**I.D. No. TDA-17-04-00001-P**

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

**Proposed action:** Amendment of section 349.4(a) and repeal of section 352.3(c) of Title 18 NYCRR.

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

**Subject:** Temporary absences.

**Purpose:** To make it easier for social services districts to determine which public assistance recipients, who are temporarily absent from the district of residence, continue to be eligible for assistance.

**Text of proposed rule:** Subdivision (a) of section 349.4 is amended to read as follows:

Section 349.4. Temporary absence.

(a) [Federally aided programs other than MA] *Public assistance.* (1) Definition of temporary absence. For the purpose of administration of [the federally aided] *public assistance* programs, except the program of medical assistance, temporary absence shall mean any absence from the [district administering the grant] *public assistance household*, during which the applicant or recipient:

- (i) does not leave the United States;
- (ii) does not evidence intent to establish residence elsewhere; and
- (iii) complies with this subdivision and other provisions of this

Title.

(2) [Continuation] *Determination* of grant during temporary absence. The social services district's decision to [continue] *provide* a grant during temporary absence as defined in paragraph (1) of this subdivision shall be based upon consideration of the following factors:

[i] General requirements.

(a) (i) Evidence of intent to return to the [district of administration] *public assistance household* when the purposes of his or her absence have been accomplished. If such temporary absence extends beyond a six-month period, the absent person shall submit affirmative evidence satisfactory to the district of administration of his or her continuing intention to return to the [district] *public assistance household*, and that he or she is prevented from returning to the [district] *public assistance household*

because of illness or other good cause. If a recipient fails to comply with this requirement, he *or she* shall be deemed ineligible for a continuance of his *or her* grant.

[(b)] (ii) Continuing financial need for a grant in the same or a different amount.

[(c)] (iii) Continuing contact with the recipient by the district through correspondence or through use of the services of another social services agency located within or without the State.

[(ii) Additional requirements. In addition to subparagraph (i) of this paragraph, the social services district shall consider the following factors when making a determination to continue a grant in the Aid to Dependent Children program. Evidence that the status of the parents has not changed so as to constitute ineligibility, that the child or minor continues to live with the parent or other specified relative, and that the welfare of the child or minor continues to be safeguarded, shall be obtained. Reconsideration of the welfare of the child or minor shall be made within 30 days of the date the agency is informed of the temporary absence, and thereafter at least once in three months.]

(3) Nothing in this subdivision shall limit the continuing responsibility of a social services district for payment of costs of care provided in another social services district in New York State.

Subdivision (c) of section 352.3 is repealed.

**Text of proposed 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

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganizes the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 131-a(1) of the SSL provides that social services officials must, in accordance with the regulations of the Office, provide public assistance to needy persons who are eligible therefor.

Sections 158 and 349 of the SSL set forth the eligibility requirements for the Safety Net Assistance program and the Family Assistance program.

Section 355(3) of the SSL provides that the Office must promulgate regulations necessary for the carrying out of the provisions of law concerning eligibility for Family Assistance.

##### 2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that public assistance benefits could be provided to those individuals determined eligible for such assistance.

##### 3. Needs and Benefits:

The proposed amendments will make it easier for social services districts to determine which public assistance recipients, who are temporarily absent from the public assistance household, continue to be eligible for assistance.

Currently, section 349.4 of 18 NYCRR establishes criteria for determining whether a person who is in receipt of federally-aided assistance, such as Family Assistance, is temporarily absent from the public assistance household but remains eligible to continue to receive such assistance. Section 352.30(a) of 18 NYCRR provides that public assistance can be provided to a household that includes persons who are temporarily absent from the household and the amount of such assistance provided to the household is not reduced as a result of the absent members. This provision is not limited to public assistance that is federally aided but includes all public assistance, regardless of the source of funds. The deletion of the reference to "federally-aided assistance" in section 349.4 of 18 NYCRR will make it clear to social services districts that individuals who are

temporarily absent from the public assistance household are eligible to receive such assistance, regardless of the source of the assistance.

Section 352.3(c) of 18 NYCRR contains provisions concerning the length of time an allowance for household expenses can be provided when the recipient of such assistance is temporarily out of their home because they are receiving care in a medical institution. This section only authorizes the payment of shelter expenses and no other assistance and applies to recipients who are temporarily absent from their home. This section and the provisions of 18 NYCRR 349.4 and 352.30(a) have caused confusion in the social services districts when deciding which section should be applied when determining whether a public assistance recipient should continue to receive assistance while temporarily absent from their home and the amount of assistance. The repeal of 18 NYCRR 352.3(c), along with the amendments to 18 NYCRR 349.4, will eliminate this confusion and allow all public assistance recipients who are temporarily absent from their homes to be treated the same.

##### 4. Costs:

Payments to public assistance recipients who are temporarily absent from the public assistance household are limited to the standard of need. There is no limit on the amount of the shelter allowance that can be provided to recipients of safety net assistance who are temporarily absent from the public assistance household because they are receiving care in a medical facility. Although there are no reliable statistics regarding the number of cases or the amount of payments made to cases involving temporary absences from the public assistance household, it is expected that the proposed amendments will result in a reduction in the number of errors made by social services districts in determining the amount of assistance that will be provided to recipients who are temporarily absent from the public assistance household. In addition, social services districts will save money on administrative costs since the proposed amendments will reduce the amount of time it takes for a worker to determine the amount of assistance that should be provided to a public assistance recipient who is temporarily outside the public assistance household.

##### 5. Local Government Mandates:

Social services districts will have to apply the requirements established by the proposed regulations when determining the amount of assistance to which a recipient who is temporarily outside the public assistance household is entitled.

##### 6. Paperwork:

No new forms or reporting requirements are anticipated as a result of the proposed amendments.

##### 7. Duplication:

The proposed amendments do not duplicate State or federal requirements.

##### 8. Alternatives:

The only alternative would be to retain the current regulations. This alternative was rejected since the proposed regulations clarify existing policy and reduce the confusion experienced by social services districts when determining the amount of assistance that should be provided to public assistance recipients who are temporarily absent from the public assistance household.

##### 9. Federal Standards:

The proposed amendments do not exceed federal minimum standards for the same subject.

##### 10. Compliance Schedule:

Social services districts will be able to implement the proposed amendments when they become effective.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of rule:

The proposed amendments will not affect small businesses but will have an impact on the 58 social services districts in the State.

##### 2. Compliance requirements:

The proposed amendments would require social services districts to use the criteria contained in 18 NYCRR 349.4 when determining whether a person who is temporarily absent from the public assistance household continues to be eligible to receive public assistance.

##### 3. Professional services:

No new professional services will be required in order for social services districts to comply with the proposed amendments.

##### 4. Compliance costs:

The proposed regulations will not result in any compliance costs for the social services districts but should result in unspecified savings because the regulations will reduce the confusion faced by the districts when determining whether a recipient remains eligible for assistance while temporarily absent from the public assistance household.

## 5. Economic and technological feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed amendments.

## 6. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts.

## 7. Small business and local government participation:

Several social services districts throughout the State have been informed of the provisions of the proposed regulations and support them.

**Rural Area Flexibility Analysis**

## 1. Effect of rule:

The proposed amendments will affect the 44 rural social services districts in the State.

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

The proposed regulations would not impose and new reporting or recordkeeping requirements on social services districts in rural areas. The proposed regulations would require social services districts in rural areas to use the criteria in 18 NYCRR 349.4 when determining whether a person who is temporarily absent from the public assistance household continues to be eligible to receive public assistance.

## 3. Costs:

The proposed amendments will not result in any capital costs for social services districts in rural areas nor will the amendments result in any compliance costs for such districts.

## 4. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts in rural areas.

## 5. Rural area participation:

Some social services districts in rural areas have been informed of the proposed changes and no adverse comment have been received.

**Job Impact Statement**

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Exemption of Earned Income**

**I.D. No.** TDA-17-04-00016-P

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

**Proposed action:** Amendment of section 352.20(a) and (b) of Title 18 NYCRR.

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

**Subject:** Exemption of earned income.

**Purpose:** To implement L. 2002, ch. 246, concerning the exemption of the earned income of full-time and part-time students when determining eligibility for public assistance.

**Text of proposed rule:** Subdivisions (a) and (b) of section 352.20 are amended to read as follows

(a) All of the earned income of a dependent child in receipt of Family Assistance (FA) or Safety Net Assistance (SNA), who is a full-time or part-time student [or part-time student not employed full time], is exempt and must be disregarded as income or resources in determining eligibility or degree of need. For the purpose of this subdivision:

(1) [school attendance] *full-time student* means attending a school, college or university or a course of vocational or technical training designed to fit a person for gainful employment or participation in the Jobs Corps under the Job Training Partnership Act; and

(2) part-time [school attendance] *student* means attending a school, college or university or a course of vocational or technical training designed to fit a person for gainful employment or participation in the Jobs Corps under the Job Training Partnership Act [schedule] equal to at least one half of a full-time curriculum as determined by the educational authority [; and].

(3) full-time employment shall not include any work that is not considered to be full-time employment by industry-wide standards or any work between school semesters, including during summer vacation.]

(b) All of the earned income of an FA or SNA dependent child who is a full-time student shall be exempt and disregarded for purposes of the gross income test(s) contained in section 352.18 of this Part and in determining eligibility and degree of need. [This exemption shall be limited to six months in a calendar year.]

**Text of proposed 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

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

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

**Regulatory Impact Statement**

## 1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganizes the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 131-a(1) of the SSL provides that social services officials must, in accordance with the regulations of the Office, provide public assistance to needy persons who are eligible therefore.

Section 131-a(8)(a)(i), (iii) and (iii) of the SSL provides that all of the earned income of a dependent child receiving public assistance for whom an application for such assistance has been made who is a full time or part time student attending a school, college or university or a course of vocational or technical training designed to fit him or her for gainful employment is exempt in determining eligibility for public assistance.

Sections 158 and 349 of the SSL set forth the eligibility requirements for the Safety Net Assistance program and the Family Assistance program.

Section 355(3) of the SSL provides that the Office must promulgate regulations necessary for the carrying out of the provisions of law concerning eligibility for Family Assistance.

## 2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that public assistance benefits could be provided to those individuals determined eligible for such assistance.

## 3. Needs and Benefits:

Chapter 246 of the Laws of 2002 amended section 131-a(8) and (10) of the SSL to provide that all of the income earned by a dependent child receiving public assistance or for whom an application for such assistance has been made, who is a full time student or part time student attending a school, college or university or a course of vocational or technical training designed to fit him or her for gainful employment is exempt when determining eligibility for public assistance. The purpose of the Chapter Law is to enable teenagers who are working toward a college education to have their income exempt when determining eligibility for public assistance. The change would encourage public assistance recipients to seek employment and end the need for public assistance.

The proposed amendments implement Chapter 246 of the Laws of 2002.

## 4. Costs:

The expected fiscal impact of the proposed amendments is expected to be minimal, since the estimated total number of cases with student earnings is less than 300 Statewide. It is estimated that the maximum amount of student income that will be disregarded annually as a result of the proposed amendments is approximately \$400,000 per year. This is a relatively small amount given the overall size of the public assistance programs and because most students are in Family Assistance or Safety Net Assistance cases that have exceeded the five year limit.

## 5. Local Government Mandates:

The proposed amendments will require public assistance eligibility workers to apply the provisions of the amendments to student income. The districts have been informed of the enactment of Chapter 246 of the Laws of 2002.

## 6. Paperwork:

No new forms or reporting requirements are anticipated as a result of the proposed amendments.

7. Duplication:

The proposed amendments do not duplicate State or federal requirements.

8. Alternatives:

The only alternative to the proposed amendments is not to amend 18 NYCRR 352.20(c). This alternative is unacceptable since it would be contrary to the provisions of Chapter 246 of the Laws of 2002.

9. Federal Standards:

The proposed amendments do not exceed federal minimum standards for the same subject.

10. Compliance Schedule:

Social services districts will be able to implement the proposed amendments when they become effective.

**Regulatory Flexibility Analysis**

1. Effect of rule:

The proposed amendments will not affect small businesses but will have an impact on the 58 social services districts in the State.

2. Compliance requirements:

The proposed amendments would require public assistance eligibility workers to exempt the earned income of part time and full time students when determining their eligibility for public assistance.

3. Professional services:

No new professional services will be required in order for social services districts to comply with the proposed amendments.

4. Compliance costs:

The proposed amendments will not require the social services districts to incur any initial capital costs. The districts will not be required to incur any costs for continuing compliance with the proposed amendments.

5. Economic and technological feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed amendments.

6. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts.

7. Small business and local government participation:

Social services districts throughout the State have been informed of the proposed changes and no objections to the changes have been expressed.

**Rural Area Flexibility Analysis**

1. Type and estimated numbers of rural areas:

The proposed regulations will affect the 44 rural social services districts in the State.

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

The proposed amendments would require public assistance eligibility workers in rural social services districts to exempt the earned income of full time and part time students when determining eligibility for public assistance.

No new professional services will be imposed on the social services districts in rural areas in order for those districts to comply with the proposed amendments.

3. Costs:

The proposed amendments will not have a significant fiscal impact on social services districts in rural areas.

4. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

Social services districts in rural areas have been informed of the proposed amendments and have no objections to them.

**Job Impact Statement**

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.

**Workers' Compensation Board**

**EMERGENCY  
RULE MAKING**

**Filing Written Reports of Independent Medical Examinations (IMEs)**

**I.D. No.** WCB-17-04-00014-E

**Filing No.** 423

**Filing date:** April 12, 2004

**Effective date:** April 12, 2004

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

**Action taken:** Amendment of section 300.2(d)(11) of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117 and 137  
**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** Recent decisions issued by board panels have interpreted the current regulation as requiring reports of independent medical examinations (IMEs) be received by the board within 10 calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the board is not open on legal holidays, Saturdays and Sundays, and that U.S. Post Offices are not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is precluded and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the board, workers' compensation insurance carrier/self-insured employer, claimant's treating provider and representative, and the claimant it is not possible to send the report by facsimile or electronic means. The recent decisions have greatly, negatively impact the professionals who conduct IMEs, the IME entities, insurance carriers and self-insured employers. When untimely reports are precluded, the insurance carriers and self-insured employers are prevented from adequately defending their position. Accordingly, emergency adoption of this rule is necessary.

**Subject:** Filing written reports of independent medical examinations (IMEs).

**Purpose:** To amend the time for filing.

**Text of emergency rule:** Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. A written report is filed *with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

**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 July 10, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Cheryl M. Wood, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 473-8626, e-mail: officeofgeneralcounsel@wcb.state.ny.us

**Regulatory Impact Statement**

1. Statutory Authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations.

Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

#### 2. Legislative Objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

#### 3. Needs and Benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

#### 4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 5. Local Government Mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

#### 6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

#### 8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

#### 9. Federal Standards:

There are no federal standards applicable to this proposed rule.

#### 10. Compliance Schedule:

It is expected that the affected parties will be able to comply with this change immediately.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that are self-insured will also be affected by the proposed rule. These small businesses will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the

exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

Self-insured municipal employers, self-insured non-municipal employers, independent medical examiners, and entities that derive income from independent medical examinations will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a not-for-profit association of independent medical examination firms and practitioners across the State.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a not-for-profit association of independent medical examination firms and practitioners across the State.

**Job Impact Statement**

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.