

# 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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## Banking Department

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### EMERGENCY RULE MAKING

#### High Cost Home Loans

**I.D. No.** BNK-24-04-00002-E

**Filing No.** 621

**Filing date:** June 1, 2004

**Effective date:** June 3, 2004

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

**Action taken:** Amendment of Part 41 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 6-i and 6-l

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

**Specific reasons underlying the finding of necessity:** Chapter 626 of the Laws of 2002 became effective on April 1, 2003. Provisions of chapter 626, by the enactment of section 6-l of the Banking Law, affect the making of certain home mortgage loans, known as high cost home loans, on after the effective date. Part 41 of Title 3 NYCRR has governed the making of such loans prior to the effective date and is not in conformity with certain provisions of the chapter 626. Also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by chapter 626. The revised Part 41 provides a comprehensive regulatory

scheme under which mortgage lenders and brokers will be able to make high cost home loans.

**Subject:** The making of certain residential mortgage loans, referred to as high cost home loans.

**Purpose:** To conform the provisions of Part 41 of Title 3 NYCRR to various provisions of section 6-l of the Banking Law, and also clarify certain provisions of such section 6-l.

**Substance of emergency rule:** Section 41.1(a) is amended to revise the definition of a lender subject to Part 41.

Section 41.1(b) is amended to revise the definition of an affiliate.

Section 41.1(c) is amended to make technical revisions.

Section 41.1(d) is amended to revise the definition of a bona fide loan discount point.

Section 41.1(e) is amended to revise the definition of a high cost home loan in regard to the points and fees threshold for determining such loans and limiting the exclusion of certain discount points in the computation of points and fees.

Section 41.1(f) is amended to revise the definition of loan amount.

Section 41.1(g) is amended to substitute a definition of “borrower” for “obligor”.

Section 41.1(h) is amended to revise the definition of points and fees.

Section 41.1(j) is amended to make certain technical revisions.

Section 41.2(a) is amended to clarify the exceptions to the prohibition upon accelerating the indebtedness of high cost home loans.

Section 41.2(b) is amended to increase the term of a balloon mortgage payment to fifteen years.

Section 41.2(e) is amended to make certain technical revisions.

Section 41.2(g), relating to modification and deferral fees, is repealed and then added as a new paragraph 2 to section 41.3(d), relating to refinancing of high cost home loans.

Section 41.3(a) is amended by adding a new disclosure requirement and revising the time limits pertaining to an existing disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability; to add certain conditions in order to determine that repayment ability has been “corroborated by independent verification”; and to substitute “borrower(s)” for “obligor(s)” where the term appears in the text.

Section 41.3(c) is amended to revise the percentage of points and fees that may be financed in making a high cost home loan, and to revise the charges that may be excluded from such financed points and fees.

Section 41.3(d) is re-titled and amended to revise the limitations upon points and fees that may be charged by any lender when refinancing high cost home loans and to add a previously repealed paragraph (see revisions to section 41.2(g)) relating to modification of an existing high cost home loan.

Section 41.3(f) is added to prohibit the refinancing of special mortgages, except under certain conditions.

Section 41.3(g) is amended to delete a reference to median family income and to revise certain references.

Section 41.4(a) is amended to revise certain time limits applicable to a disclosure requirement.

Section 41.4(b) is amended to make a technical revision.

Section 41.4(d) is amended to revise certain time limits applicable to a disclosure requirement and to clarify the location of the disclosure upon certain mortgage loan application forms.

Section 41.5(a) is amended to clarify deceptive acts relating to splitting or dividing loan transactions.

Section 41.5(b)(2) is amended to clarify retention of fees by lenders and brokers in relation to unfair, deceptive or unconscionable practices.

Section 41.5(b)(4) is amended to revise the definition of loan flipping, as an unfair or deceptive practice, and to add revised conditions to determine whether a loan has a "net tangible benefit" to the borrower.

Section 41.5(b)(5) is amended to revise the definition of packing to make it consistent with other revisions to Part 41 and to revise certain time limits applicable to a disclosure requirement.

Section 41.5(b)(6) is amended to clarify the standards to determine that recommending or encouraging default of a home loan or other debt is an unfair or deceptive practice.

Section 41.7 is amended to revise the legend that appears on a high cost home loan mortgage.

Section 41.8 is amended to delete VA and FHA mortgage loans from the definition of exempt products.

Section 41.9 is amended to repeal the current provisions relating to correction of errors and to add new provisions.

Section 41.11, relating to prohibiting the financing of single premium insurance, is re-titled and amended to include other insurance premiums or payments for any cancellation or suspension contract or agreement.

**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 August 29, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us or at the department's website: www.banking.state.ny.us

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Banking Law section 14(1) authorizes the Banking Board to adopt regulations not inconsistent with the law. Section 6-i of the Banking Law specifically states that no banking organization, partnership, corporation exempt organization, or other entity (hereafter "lenders") can make a mortgage loan in New York State unless those entities conform to Banking Law requirements pertaining to mortgage bankers (Article 12-D of the Banking Law) and rules and regulations promulgated by the Banking Board. Section 6-l of the Banking Law imposes new requirements upon the making of certain mortgage loans. Part 41 of the rules and regulations of the Banking Board was adopted pursuant to section 6-i of the Banking Law, and prior to approval of chapter 626 of the laws of 2002, which enacted section 6-l. Provisions of section 6-l, which are inconsistent with certain provisions of Part 41, supercede such regulatory provisions, and the Banking Board, in promulgating the amendments to Part 41, makes Part 41 consistent with section 6-l.

##### 2. Legislative objectives:

Part 41 is intended to provide consumer protections by establishing important consumer disclosure requirements and prohibiting contractual terms and practices that are unfair in the making of residential mortgage loans that are offered on a high-cost basis. Section 6-l is intended to have the same objectives. Since Part 41 provides the broad regulatory scheme under which high cost mortgage loans are made, it is necessary that its provisions be in conformity with section 6-l and also, in limited instances, clarify certain provisions of such section in order that lenders and brokers appropriately make high cost loans in conformity with the intended legislative objectives.

##### 3. Needs and benefits:

Part 41 was intended to regulate the making of residential mortgage loans within a certain segment of the mortgage loan market, referred to as the sub-prime, or non-conventional, mortgage loan market. The regulatory scheme defined by Part 41, by requiring certain disclosures and practices to be followed in the making of such loans, sought to prevent occurrences of predatory lending. Predatory lending occurs when the borrower or debtor does not have sufficient income or other financial resources to pay the monthly principal and interest payments or when equity in a residential property is stripped by repeated re-financings, primarily by the charging of excessive points and fees, when the borrower realizes no economic benefit.

Since the Legislature established a number of different standards regarding disclosures and practices in the making of such residential mortgage loans by enactment of section 6-l of the Banking Law, it is necessary that the comparative standards in Part 41 be made consistent with section 6-l.

Further, it is also necessary that certain provisions of section 6-l be clarified by the amendments to Part 41 in order that lenders and brokers

may be in compliance with the requirements section 6-l when making such loans, given that such provisions are not otherwise defined by section 6-l nor has the Legislature provided any other guidance which would clarify the intended meaning of those provisions. The clarifying provisions of the amendments to Part 41 address determining "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower, both of which are critical standards in assessing whether instances of predatory lending have occurred.

##### 4. Costs:

The amendments to Part 41 should impose no additional cost upon mortgage lenders or brokers not otherwise imposed by the enactment of the comparative provisions of section 6-l of the Banking law to which the amendments conform Part 41. The amendments impose no additional cost upon the Banking Department or any other state agency, or any unit of local government.

##### 5. Local government mandates:

The amendments to Part 41 do not impose any requirements or burdens upon any units of local government.

##### 6. Paperwork:

The amendments to Part 41 do not impose any new paperwork requirements.

##### 7. Duplication:

None.

##### 8. Alternatives:

The Banking Department considered whether to forego amending Part 41 or to repeal Part 41 in light of the enactment of section 6-l of the Banking Law, given that section 6-l may be viewed legally as occupying the field of regulation of high cost home loans in the state of New York. It was determined that Part 41 provides a more extensive regulatory scheme than section 6-l for the making of such mortgage loans, and therefore it is appropriate to make the non-conforming provisions of Part 41 consistent with the comparative statutory provisions of section 6-l. In addition, the provisions of section 6-l that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making of such loans by articulating appropriate conditions, which such lenders and brokers must meet in order to be in compliance with certain non-defined statutory standards established by section 6-l.

##### 9. Federal standards:

In the initial promulgation of Part 41, the Banking Department stated the regulations established thresholds that were lower than the thresholds set by the Home Ownership Equity Protection Act (HOEPA). Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-l of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-l refers to certain—but not all—provisions of HOEPA that define points and fees. The amendments would adopt the thresholds and definition established by section 6-l.

##### 10. Compliance schedule:

None. Any modification of existing disclosures or practices by lenders or brokers in regard to any cost home loans made on or after April 1, 2003 are the result of standards established by section 6-l of the Banking Law. Chapter 626, which enacted section 6-l, was approved on October 3, 2002, and brokers and lenders have had sufficient time to familiarize themselves with these standards and subsequently modify their disclosures and practices, if necessary, to comply with the standards of section 6-l. The revise provisions of Part 41 will assist brokers and lenders in complying with the section 6-l requirements.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will impose no adverse reporting, recordkeeping or compliance requirements on small businesses or local governments.

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

A Rural Area Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic impact upon

private entities in rural areas beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic impact upon public entities in rural areas. The proposed amendments will impose no adverse reporting, recordkeeping or compliance requirements private on public entities in rural areas.

**Job Impact Statement**

A Job Impact Statement is not attached because the proposed amendments to Part 41 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41.

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## Department of Civil Service

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### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-07-04-00005-A  
**Filing No.** 615  
**Filing date:** May 28, 2004  
**Effective date:** June 16, 2004

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

**Action taken:** 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 Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-07-04-00005-P, Issue of February 18, 2004.

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

**Text of rule 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-07-04-00006-A  
**Filing No.** 616  
**Filing date:** May 28, 2004  
**Effective date:** June 16, 2004

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

**Action taken:** 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 Executive Department.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-07-04-00006-P, Issue of February 18, 2004.

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

**Text of rule 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-07-04-00007-A  
**Filing No.** 619  
**Filing date:** May 28, 2004  
**Effective date:** June 16, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from the exempt class in the Department of Transportation.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-07-04-00007-P, Issue of February 18, 2004.

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

**Text of rule 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-07-04-00008-A  
**Filing No.** 617  
**Filing date:** May 28, 2004  
**Effective date:** June 16, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Department of Family Assistance.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-07-04-00008-P, Issue of February 18, 2004.

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

**Text of rule 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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-07-04-00009-A  
**Filing No.** 618  
**Filing date:** May 28, 2004  
**Effective date:** June 16, 2004

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

**Action taken:** 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 Family Assistance.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-07-04-00009-P, Issue of February 18, 2004.

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

**Text of rule 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

**Assessment of Public Comment**

The agency received no public comment.

## Education Department

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

#### Nonpublic School Bus Drivers

I.D. No. EDU-24-04-00003-P

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

**Proposed action:** Amendment of section 156.3 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 305(34) and 3624 (not subdivided); and L. 2003, ch. 270

**Subject:** Nonpublic school bus drivers.

**Purpose:** To apply the school bus safety practices instruction and retraining requirements for public school bus drivers to nonpublic school bus drivers.

**Text of proposed rule:** Section 156.3 of the Regulations of the Commissioner of Education is amended, effective September 30, 2004, as follows:

156.3 Safety regulations for school bus drivers, monitors, attendants and pupils.

(a) Definitions. For purposes of this section:

(1) A school bus driver shall mean any person who drives a school bus which is owned, leased or contracted for by a public school district [or a], board of cooperative educational services or *nonpublic school* for the purpose of transporting pupils. However, for the purposes of this section, the following shall not be considered to be school bus drivers:

(i) . . .

(ii) a driver of a suburban intercity coach or transit type bus, transporting pupils on trips other than between home and school, such as field trips, athletic trips, and other special transportation services; [and]

(iii) a parent who transports exclusively his or her own children;

and

(iv) a volunteer driver for a nonpublic school who transports pupils on other than a regularly established route on an occasional basis.

(2) A school bus shall mean every vehicle owned, leased or contracted for by a public school, [or] board of cooperative educational services or *nonpublic school* and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

(3) . . .

(4) . . .

(5) A *nonpublic school* shall mean a private or parochial school offering instruction in any or all grades, pre-kindergarten through twelve.

(b) School bus driver and instructor qualifications. (1) . . .

(2) . . .

(3) Physical fitness. (i) . . .

(ii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, [or a] board of cooperative educational services or a *nonpublic school* shall be examined by a physician or nurse practitioner to the extent authorized by law and consistent with the written practice agreement pursuant to Education Law, section 6902(3), in accordance with the provisions of this subdivision. The physical examination shall be reported immediately on forms prescribed by the commissioner to the chief school officer of the district. The physical examination shall include, as a minimum, those requirements specified on the prescribed physical examination report. The examining physician or nurse practitioner shall require the school bus driver to undergo any diagnostic tests that are necessary to determine whether the driver has the physical and mental ability to operate safely a school transportation conveyance. Each school bus driver shall receive an annual physical examination, and each driver who is to be initially employed shall be examined within four weeks prior to the beginning of service. In no case shall the interval between physical examinations exceed a 13-month period.

(iii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or *nonpublic school* shall pass a physical performance test approved by the commissioner, upon recommendation of an advisory group of certified school bus driver instructors, at least once every two years. Additionally, the test shall be administered to any driver following an absence from service of 60 or more consecutive days from his or her

scheduled work duties. In no case shall the interval between physical performance tests exceed 24 months.

(a) . . .

(b) . . .

(c)(1) A school bus driver who is employed by a school district, board of cooperative [education] *educational* services, or contractor as of September 1, 1997 shall have until July 1, 2000 to take and pass the driver physical performance test. All drivers hired by school districts, boards of cooperative [education] *educational* services, or contractors after September 1, 1997 shall be required to pass the driver physical performance test before they may transport pupils.

(2) A school bus driver who is employed by a nonpublic school as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by nonpublic schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils.

(d) School districts, boards of cooperative educational services, nonpublic schools or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of Motor Vehicles (DMV) certified 19A examiners, employed by that carrier, to administer the physical performance test to school bus drivers employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services, *nonpublic school* or transportation contractor. Such certified school bus driver instructor shall instruct the DMV certified 19A examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests administered by the examiner.

(4) . . .

(5) Pre-service, safety training, and refresher training for school bus drivers.

(i) Pre-service. Each school bus driver initially employed by a board of education or transportation contractor subsequent to July 1, 1973, or initially employed by a *nonpublic school* on or after July 1, 2004, shall have received at least two hours of instruction on school bus safety practices. Each driver of a vehicle transporting pupils with disabilities exclusively who is initially employed subsequent to January 1, 1976, or initially employed on or after July 1, 2004 for *nonpublic school bus drivers*, shall have received an additional hour of instruction concerning the special needs of a pupil with a disability.

(ii) (a) During the first year of employment, each driver initially employed by a board of education, board of cooperative educational services or transportation contractor subsequent to July 1, 1973 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability.

(b) During the first year of employment, each school bus driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

(iii) . . .

(iv) . . .

(v) Except as otherwise provided in clauses (a) and (b) of this subparagraph, all training required in this subdivision shall be provided by, or under the direct supervision of a school bus driver instructor certified by the commissioner. To qualify for certification as a school bus driver instructor (SBDI), individuals shall successfully complete a school bus driver instructor training and evaluation course taught by a certified master instructor. The course shall be approved by the commissioner upon the recommendation of the commissioner's school bus driver instructor advisory committee, an advisory group consisting of at least seven certified school bus driver instructors appointed annually for such purpose by the commissioner. Each person who applies for admission to this course shall be currently employed by a public school district, board of cooperative educational services, *nonpublic school* or private contractor who is currently providing pupil transportation services for a public school district,

nonpublic school or board of cooperative educational services. The SBDI course shall include but shall not be limited to the following content areas: planning and making presentations including lesson plans and objectives, school bus accident statistics and interpretation, effective communications, and evaluation. Each such person shall possess a high school diploma or equivalent diploma and shall have completed the basic course of instruction in school bus safety practices. In addition, each such person shall have completed the Advanced New York State School Bus Driver Training Course or a Department of Motor Vehicles approved Point/Insurance Reduction Program. To maintain certification, school bus driver instructors shall be required to attend the annual professional development seminar (PDS) approved by the commissioner upon the recommendation of the SBDI advisory committee, and taught by a certified master instructor. The PDS shall provide refresher training for all SBDIs in presentation skills, lesson planning, school bus safety techniques, requirements and statistics. The PDS shall provide SBDIs with training materials for the upcoming school year safety training campaign, including information which shall be conveyed to all school bus drivers in the next two driver refreshers.

(a) . . .

[(b) Upon application by a board of education, a variance may be granted from the requirements of this paragraph for the 1990-91 school year only, upon a finding by the commissioner that the services of an approved school bus driver instructor are not available to provide the required training.]

(vi) . . .

(6) Character requirement. The driver of a vehicle for the transportation of school children shall be of good moral character and thoroughly reliable. At the time of initial application and at such other times as the superintendent of schools, [or] district superintendent of schools, or nonpublic school chief administrator may determine, each applicant for approval for employment as a school bus driver shall furnish to the superintendent or administrator at least three statements from three different persons who are not related either by blood or marriage to the applicant pertaining to the moral character and to the reliability of the applicant.

(c) School bus monitor and attendant qualifications. (1) . . .

(2) . . .

(3) Physical fitness. (i) . . .

(ii) . . .

(iii) Each school bus monitor or attendant of a school bus owned, leased or contracted for by a school district or board of cooperative educational services shall pass a physical performance test approved by the commissioner at least once every two years. Additionally, the test shall be administered to any monitor or attendant following an absence from service of 60 or more consecutive days from his or her scheduled work duties. In no case shall the interval between physical performance tests exceed 24 months. Individuals employed by a school district, board of cooperative educational services or contractor as a monitor or attendant on July 1, 2003 shall have until July 1, 2004 to take and pass a physical performance test. Individuals hired as a monitor or attendant after July 1, 2003, must take and pass a physical performance test before they may assume their duties.

(a) . . .

(b) . . .

(c) . . .

(4) . . .

(5) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

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

**Data, views or arguments may be submitted to:** James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

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

**Regulatory Impact Statement**

**STATUTORY AUTHORITY:**

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the

laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 305(34), as added by Chapter 270 of the Laws of 2003, authorizes and directs the Commissioner of Education to promulgate regulations which apply school bus safety practices instruction and retraining requirements prescribed pursuant to section 3624 of Education Law, to drivers who operate pupil transportation which is owned, leased or contracted for by private and parochial schools to the same degree as such requirements apply to drivers who operate pupil transportation which is owned, leased or contracted for by public school districts.

Education Law section 3624 empowers the Commissioner to determine and define the qualifications of school bus drivers and to develop the training and testing such drivers shall receive.

**LEGISLATIVE OBJECTIVES:**

The proposed amendment is consistent with the above statutory authority and is necessary to conform the Commissioner's Regulations to the provisions of Education Law section 305(34), as added by Chapter 270 of the Laws of 2003.

**NEEDS AND BENEFITS:**

The proposed amendment is needed to implement the statutory requirements of Chapter 270 of the Laws of 2003. The proposed amendment will help to insure the safety of the 2.3 million students transported on school buses each day in New York State by applying, as required by Chapter 270 of the Laws of 2003, school bus safety practices instruction and retraining requirements prescribed pursuant to Education Law section 3624 to drivers who operate transportation which is owned, leased or contracted for by private and parochial schools to the same extent as such requirements apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

**COSTS:**

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: The proposed amendment is necessary to implement Education Law section 305(34), as added by Chapter 270 of the Laws of 2003, and does not impose any additional costs beyond those inherent in the statute. There will be an incremental additional cost to private and parochial schools that employ their own school bus drivers. Costs will vary for each nonpublic school based upon their individual past practices in training school bus drivers, and the availability of school bus driver instructors (SBDI) on staff or nearby.

The proposed amendment phases in the testing and training requirements for nonpublic school bus drivers to the same degree that the requirements were phased in for public school bus drivers. It is difficult to accurately estimate the anticipated cost of the proposed amendment because we have no data on the number of school bus drivers employed by private and parochial schools. For the purpose of estimating the cost of implementing the proposed amendment the following rates can be used: Physical Performance Test (every 2 years) - \$35, Basic Course of Instruction (once) - \$65, Pre-Service Training Course (once) - \$30, two 2-hour refresher training sessions (annually) - \$40, Medical Exam (annually) - \$30.

An individual employed as a school bus driver for the first time and by a nonpublic school would cost the school approximately \$95 in one-time only training the first year, an additional \$40 annually for refresher training, and \$65 in medical and physical performance testing every 2 years. Assuming an estimated 2,500 school bus drivers employed by nonpublic schools with 5% being new drivers each year, the total statewide cost would be \$195,125 (\$11,875 + 100,000 + 81,250 = \$195,125) or \$77.25 per year per school bus driver.

(d) Costs to the regulating agency for implementation and continued administration of the rule: None.

**LOCAL GOVERNMENT MANDATES:**

None.

The proposed amendment is not applicable to local governments.

**PAPERWORK:**

The proposed amendment conforms the Commissioner's Regulations to Education Law section 305, subdivision 34 as added by Chapter 270 of the Laws of 2003, and does not impose any new reporting or record keeping requirements beyond those imposed by the statutes.

The same reporting and data collection system that is in place for public school bus drivers will be utilized for nonpublic school bus drivers, including forms for the Physical Performance Test, medical exam, and training course completion certificates.

**DUPLICATION:**

The proposed amendment is necessary to implement Education Law section 305, subdivision 34 as amended by Chapter 270 of the Laws of 2003, and will not duplicate any other requirement in State or federal law.

#### ALTERNATIVES:

The proposed amendment conforms to the Commissioner's Regulations to Education Law section 305, subdivision 34, as amended by Chapter 270 of the Laws of 2003. There are no significant alternatives for meeting the statutory requirements and none were considered.

#### FEDERAL STANDARDS:

The proposed amendment relates to State standards for school bus drivers employed by private and parochial schools and does not exceed any minimal Federal standards.

#### COMPLIANCE SCHEDULE:

As required by the statute the training and testing requirements contained in the proposed amendment mirror the existing training and testing requirements for public school bus drivers. The primary impact will be limited to nonpublic schools, excluding daycares, camps and proprietary schools, offering instruction in any or all grades including pre-kindergarten through twelve.

The Department has consulted with the public school community including the Commissioner's School Bus Driver Instructor Advisory Committee to obtain their suggestions and assistance for an efficient and cost effective implementation of the requirements. In addition, the Department has consulted with the New York Association for Pupil Transportation, and the New York School Bus Contractor's Association to obtain their views. Nonpublic school groups and associations have been given the opportunity to review the proposed amendment and raise questions concerning its implementation. The Department has consulted with the public school community including the Commissioner's School Bus Driver Instructor Advisory Committee to obtain their suggestions for an efficient and cost effective implementation of the requirements by nonpublic schools. In addition, the department has consulted with the New York Association for Pupil Transportation, and the New York School Bus Contractor's Association to obtain their suggestions. Nonpublic school groups and associations have been given the opportunity to provide suggestions and raise issues concerning the statutes and the proposed regulations. The Department has in place a 1,000 plus member training corps of school bus driver instructors who are prepared to conduct pre-service training, administer the driver physical performance test, and teach the Basic Course of Instruction to nonpublic school bus drivers. Some have offered to provide initial low cost or no cost training for non-public schools in order to get their bus drivers into compliance as quickly as possible.

Therefore, it is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

#### **Regulatory Flexibility Analysis**

Small Businesses:

#### EFFECT OF RULE:

The proposed amendment applies to all private and parochial schools offering instruction in any or all grades pre-kindergarten through twelve, which employ school bus drivers, including those schools that are operated as for-profit business corporations employing less than 100 employees.

#### COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform to the Commissioner's Regulations to 305(34), as added by Chapter 270 of the Laws of 2003.

All drivers who operate transportation which is owned, leased or contracted for by a nonpublic school shall comply with the school bus safety practices instruction and retraining prescribed pursuant to Education Law section 3624 to the same extent as such requirements shall apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Any person employed by a private or parochial school as a school bus driver on July 1, 2004 or later, shall be at least 21 years of age, be approved for hire by the schools' chief administrative office, and pass an annual medical exam prior to transporting pupils.

All school bus drivers employed by private and parochial schools as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by private and parochial schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils. Once passed, all school bus drivers must complete and pass the driver physical performance test at least once every two years.

All school bus drivers employed by a private or parochial school subsequent to July 1, 2004 shall receive at least 2 hours of pre-service instruction or 3 hours of instruction if they exclusively transport pupils with disabilities. During the first year of employment, each school bus

driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the Commissioner, which shall include 2 hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

The chief school officer of private and parochial schools shall approve in writing the hiring of each school bus driver and shall ensure that they receive all required training and testing.

#### PROFESSIONAL SERVICES:

The proposed amendment proposes no additional professional services requirements on local governments, other than those already required by law.

Small businesses may incur expenses to hire the services of a certified School Bus Driver Instructor (SBDI) to teach the Basic Course of Instruction and administer the Physical Performance Test to school bus drivers. A waiver request may be submitted to permit a DMV certified 19A Examiner to administer the Physical Performance Test.

#### COMPLIANCE COSTS:

The proposed amendment is necessary to implement Chapter 270 of the Laws of 2003 and does not impose any additional costs beyond those inherent in the statute.

The addition of qualifications and standards for school bus drivers employed by a private or parochial school will result in additional incremental cost. Costs will vary for each private or parochial school based upon their individual past practices in training school bus drivers, and the availability of School Bus Driver Instructors on staff or nearby.

The proposed amendment phases in the testing and training requirements for nonpublic school bus drivers to the same degree that the requirements were phased in for public school bus drivers. It is difficult to accurately estimate the anticipated cost of the proposed amendment because we have no data on the number of school bus drivers employed by private and parochial schools. For purposes of estimating the cost of implementing the proposed amendment the following rates can be used: Physical Performance Test (every 2 years) - \$35, Basic Course of Instruction (once) - \$65, Pre-Service Training Course (once) - \$30, and two 2-hour refresher sessions (annually) - \$40, Medical Exam (annually) - \$30.

An individual employed as a school bus driver for the first time and by a private or parochial school would cost the school approximately \$95 in one-time only training the first year, an additional \$40 annually for refresher training, and \$65 in medical (every year instead of every 2 years) and physical performance testing every 2 years. Assuming an estimated 2,500 school bus drivers employed by private and parochial schools with 5% being new drivers each year, the total statewide cost would be \$195,125 (\$11,875 + 100,000 + 81,250 = \$195,124) or \$77.25 per year per school bus driver.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The proposed amendment does not impose any new technological requirements on small businesses. Economic feasibility is addressed above under Compliance Costs.

#### MINIMIZING ADVERSE ECONOMIC IMPACT:

The proposed amendment phases in the testing and training requirements for school bus drivers employed by private and parochial schools to the same degree that the requirements were phased in for public school bus drivers. Also, the training and testing requirements contained in the proposed amendment mirror the existing training and testing requirements for school bus drivers. Nothing additional was proposed in the proposed amendment that was not already required of public school bus drivers.

#### SMALL BUSINESS PARTICIPATION:

Staff from the State Education Department have consulted with the public school community, including the Commissioner's School Bus Driver Instructor Advisory Committee and the New York Association for Pupil Transportation to obtain their suggestions and assistance for an efficient and cost effective implementation of the requirements. In addition, the Department has consulted with members of the Commissioner's Advisory Council of Nonpublic Schools in order to provide small businesses with an opportunity to participate in the rule making process. The associations have made suggestions and raised important issues concerning the testing and training requirements for private and parochial school bus drivers. Their suggestions and concerns have been taken into account and incorporated into the final proposal. State Education Department staff also met with members of the Commissioner's School Bus Driver Instructor Advisory Committee, and members of the New York Association for Pupil Transportation. The advisory committee and the associations have

made suggestions and raised important issues concerning the testing and training requirements for private and parochial school bus drivers. Their suggestions and concerns have been taken into account and incorporated into the final proposal.

#### Local Governments:

The proposed amendment is applicable to drivers who operate transportation which is owned, leased or contracted for by nonpublic schools, and does not impose any reporting, recordkeeping or other compliance requirements on school districts, boards of cooperative educational services or other local governments. Because it is evident from the nature of the proposed amendment that it does not affect local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

#### Rural Area Flexibility Analysis

##### TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all private and parochial schools offering instruction in any or all grades pre-kindergarten through twelve, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to 305(34), as added by Chapter 270 of the Laws of 2003.

All drivers who operate transportation which is owned, leased or contracted for by a nonpublic school shall comply with the school bus safety practices instruction and retraining prescribed pursuant to Education Law section 3624 to the same extent as such requirements shall apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Any person employed by a private or parochial school as a school bus driver on July 1, 2004 or later, shall be at least 21 years of age, be approved for hire by the schools chief administrative office, and pass an annual medical exam prior to transporting pupils.

All school bus drivers employed by private and parochial schools as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by private and parochial schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils. Once passed, all school bus drivers must complete and pass the driver physical performance test at least once every two years.

All school bus drivers employed by a private or parochial school subsequent to July 1, 2004 shall receive at least 2 hours of pre-service instruction or 3 hours of instruction if they exclusively transport pupils with disabilities. During the first year of employment, each school bus driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the Commissioner, which shall include 2 hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

The chief school officer of private and parochial schools shall approve in writing the hiring of each school bus driver and shall ensure that they receive all required training and testing.

The proposed amendment proposes no additional professional services requirements on local governments, other than those already required by law.

Small businesses may incur expenses to hire the services of a certified School Bus Driver Instructor (SBDI) to teach the Basic Course of Instruction and administer the Physical Performance Test to school bus drivers. A waiver request may be submitted to permit a DMV certified 19A Examiner to administer the Physical Performance Test.

#### COSTS:

The proposed amendment is necessary to implement Chapter 270 of the Laws of 2003 and does not impose any additional costs beyond those inherent in the statute.

There should be no additional costs to rural school districts as a result of the proposed changes. The addition of qualifications and standards for nonpublic school bus drivers will not result in any increase in State Aid for pupil transportation. The amendment applies only to school bus drivers employed by private and parochial schools. Costs will vary for each

nonpublic school based upon their individual past practices in training school bus drivers, and the availability of school bus driver instructors (SBDI) on staff or nearby.

The proposed amendment phases in the testing and training requirements for nonpublic school bus drivers to the same degree that the requirements were phased in for public school bus drivers. It is difficult to accurately estimate the anticipated cost of the proposed amendment because no true data is available on the number of school bus drivers employed by private and parochial schools. For purposes of estimating the cost of implementing the proposed amendment the following rates can be used: physical performance test (every 2 years) - \$35, Basic Course of Instruction (once) - \$65, Pre-Service Training Course (once) - \$30, and two 2-hour refresher training sessions (annually) - \$40, Medical Exam (annually) - \$30. Thus an individual employed as a school bus driver for the first time and by a nonpublic school would cost the school \$95 in one-time only training the first year, an additional \$40 annually for refresher training, and \$65 in medical and physical performance testing every 2 years. Assuming an estimated 2,500 school bus drivers employed by nonpublic schools with 5% of new drivers each year the total statewide cost would be \$195,125 (\$11,875 + 100,000 + 81,250 = \$195,125) or \$77.25 per school bus driver.

#### MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of Education Law section 305(34), as added by Chapter 270 of the Laws of 2003, and does not have any impact on school districts, boards of cooperative education services (BOCES) or private pupil transportation contractors. The statute authorizes and directs the Commissioner of Education to promulgate regulations which apply school bus safety practices instruction and retraining requirements prescribed pursuant to section 3624 of Education Law, to drivers who operate pupil transportation which is owned, leased or contracted for by private and parochial schools to the same degree as such requirements apply to drivers who operate pupil transportation which is owned, leased or contracted for by public school districts. Since the statute requires uniform standards applicable to all nonpublic schools in the State, it was not possible to prescribe a lesser standard or exempt nonpublic schools located in rural areas.

The training and testing requirements contained in the proposed amendment mirror the existing training and testing requirements for public school bus drivers. The primary impact will be to nonpublic schools offering instruction in any or all grades pre-kindergarten through twelve.

#### RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided for review and comment to the Department's Rural Advisory Committee, whose memberships include schools located in rural areas. In addition, the Department has consulted with the public school community including the Commissioner's School Bus Driver Instructor Advisory Committee to obtain their suggestions for an efficient and cost effective implementation of the requirements for nonpublic schools. The Department has also consulted with the New York Association for Pupil Transportation, and the New York School Bus Contractor's Association to obtain their suggestions. Nonpublic school groups and associations have been given the opportunity to provide suggestions and raise issues concerning the statutes and the proposed regulations. The Department has in place a 1,000 plus member training corps of school bus driver instructors who are prepared to conduct pre-service training, administer the driver physical performance test, and teach the Basic Course of Instruction to nonpublic school bus drivers. Some have offered to provide initial low cost or no cost training for nonpublic schools in order to get their bus drivers into compliance as quickly as possible.

#### Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 270 of the Laws of 2003, relating to the qualifications, testing and training requirements for nonpublic school bus drivers. The proposed amendment prescribes requirements for those individuals who are already employed, or who seek to become employed by a nonpublic school as a school bus driver; but it will not affect the number of jobs or employment opportunities available in this occupation. Because it is evident from the nature of the rule that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

**Operation of Radiographic Equipment by an Unlicensed Person in a Podiatrist's Office**

**I.D. No.** EDU-24-04-00004-P

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

**Proposed action:** Addition of sections 65.6 and 65.7 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 210 (not subdivided); 212(3); 6504 (not subdivided); 6507(2)(a); 7001(1) and (2); and 7006(4); and Public Health Law, section 3515(4)(d)

**Subject:** Operation of radiographic equipment by an unlicensed person under the direct supervision of a licensed podiatrist.

**Purpose:** To implement section 7006(4) of the Education Law, which permits an unlicensed assistant providing supportive services to a licensed podiatrist to X-ray a patient's foot, while under the direct supervision of the licensed podiatrist, provided that the unlicensed assistant has completed an acceptable course of study.

**Text of proposed rule:** 1. Section 65.6 of the Regulations of the Commissioner of Education is added, effective September 30, 2004, as follows:

65.6 Operation by an unlicensed person of radiographic equipment for foot radiography.

(a) In accordance with section 7006(4) of the Education Law, an unlicensed person providing supportive services to a licensed podiatrist, incidental to and concurrent with such podiatrist personally performing a service or procedure, may operate radiographic equipment under the direct supervision of a licensed podiatrist, as defined in subdivision (b) of this section, for the sole purpose of foot radiography, provided that the following requirements are met:

(1) the type of radiographic equipment that is operated by the unlicensed person is the type of radiographic equipment approved by the New York State Department of Health for use by such an unlicensed person; and

(2) the unlicensed person has successfully completed a course of study of at least eight clock hours of in-person instruction, approved by the department pursuant to section 65.7 of this Part, prior to such operation of the radiographic equipment.

(b) For purposes of this section, under the direct supervision of a licensed podiatrist means: supervision of radiographic procedures based on instructions given by a licensed podiatrist in the course of a procedure who remains in the podiatry office where the radiographic services are being performed, personally diagnoses the condition to be treated, personally authorizes the procedures and determines that the radiographic exposure of the foot should be made and the part or parts of the patient's foot which shall be exposed; and before dismissal of the patient, evaluates the services performed by the unlicensed assistant.

(c) The supervising licensed podiatrist shall retain a copy of the certificate of completion, verifying that the unlicensed person has successfully completed a course of study approved by the department pursuant to section 65.7 of this Part, for a period of 22 years after the unlicensed person last provided radiographic services under the direct supervision of the licensed podiatrist.

(d) The supervising licensed podiatrist shall be professionally responsible for ensuring that, prior to permitting an unlicensed person to operate radiographic equipment for the purpose of foot radiography, all of the requirements of this section have been met and that adequate safety protections are in place, consistent with the use of the radiographic equipment by an unlicensed person and the training obtained by the unlicensed person to perform radiographs of the foot.

(e) Nothing in this section shall be construed to permit an unlicensed person to receive exposed and processed radiographs for the purpose of performing diagnostic interpretation or to practice podiatry, as such practice is defined in section 7001 of the Education Law.

2. Section 65.7 of the Regulations of the Commissioner of Education is added, effective September 30, 2004, as follows:

65.7 Course of study required for the operation by an unlicensed person of radiographic equipment for foot radiography.

(a) Purpose. The purpose of this section is to set forth standards for a course of study required to be completed by unlicensed persons before such unlicensed persons may operate radiographic equipment for the sole purpose of foot radiography, while under the direct supervision of a licensed podiatrist, in accordance with the requirements of section

7006(4) of the Education Law and section 65.6 of this Part, and to establish requirements for providers of such a course of study.

(b) Approval of course of study. To be approved by the department for purposes of section 7006(4) of the Education Law and section 65.6 of this Part, the course of study shall meet the requirements of this section and be approved by the department pursuant to the procedures of this section.

(c) Standards for the course of study.

(1) Providers. The course of study shall be offered by degree-granting institutions that offer registered programs in the health professions or equivalent programs, hospitals or health facilities regulated pursuant to Article 28 of the Public Health Law, professional associations representing the health professions, or other entities that have as a purpose the provision of education or training on health care subjects to health professionals.

(2) Admission requirements.

(i) Candidates for admission to the course of study shall meet the following requirements:

(a) be at least 18 years of age;

(b) hold at least a high school diploma or its equivalent; and

(c) be of good moral character.

(ii) All candidates for admission shall be required to submit a formal written application.

(3) Course of study.

(i) The course of study shall contain at least eight clock hours of in-person instruction.

(ii) The instruction shall include the following content areas:

(a) basic radiation safety for the patient and the operator, and infection control techniques;

(b) positioning the patient for a podiatric radiograph;

(c) production of the radiograph; and

(d) developing radiographs.

(iii) The course of study shall require the candidate to train on and operate radiographic equipment on nonhuman models. Such operation must be under the direct in-person observation and supervision of a licensed podiatrist who shall ensure the safe operation of the equipment. The equipment must be approved by the New York State Department of Health for use by an unlicensed person while under the direct supervision of a licensed podiatrist.

(iv) The course of study shall require the unlicensed person to demonstrate competency in the operation of radiographic equipment for the purpose of foot radiography through successful completion of a practical examination using such equipment on nonhuman models and a written examination. Such practical examination must be under the direct in-person observation and supervision of a licensed podiatrist who shall ensure the safe and competent operation of the radiographic equipment.

(v) The provider shall prepare in written form and make use of a detailed curriculum, which describes learning objectives and competencies achieved by the course of study.

(4) Instructors. The course of study shall be taught by instructors who have demonstrated by training, education, and experience their competence to teach the course content prescribed in paragraph (3) of this subdivision.

(5) Facilities and equipment. The course of study shall be supported by adequate facilities, equipment, and other physical resources, including but not limited to, the type of radiographic equipment approved by the Department of Health for use by unlicensed persons while under the direct supervision of a licensed podiatrist. The provider must conform to all applicable statutes, rules and regulations relating to radiation safety standards.

(d) Responsibilities of providers of the course of study.

(1) A provider of the course of study shall execute a certification of completion for each person successfully completing the course of study.

(2) Within 21 calendar days of the completion of course of study, the provider shall transmit a certification of completion to the person successfully completing the course of study for that person's use in documenting such completion.

(3) The provider shall retain in its files for not less than six years from the date of the conclusion of each session of the course of study: a copy of the certification of completion for students who successfully completed the course of study; a record of the dates of the course of study; the written applications submitted by all students who were admitted to the course of study; attendance in the course of study; the written curriculum for the course of study; instructors who taught the course of study; exami-

nation results; and such other matters as determined by the department to confirm participation in the course of study.

(4) In the event that the provider discontinues offering the course of study, upon such discontinuance, all records retained pursuant to paragraph (3) of this subdivision shall be transferred to the department.

(e) Application for approval of course of study.

(1) Providers seeking approval of a course of study pursuant to this section shall submit to the department an application on forms prescribed by the department and a fee of \$500 for the review of such course of study and the issuance of a permit from the department to become an approved provider.

(2) The department shall review the information contained in such application and may request and review additional information and may conduct site visits to ensure compliance with the requirements of this section.

(f) Term of approval of course of study.

(1) The course of study shall be approved for a period of six years, except that the approved status of such course of study may be terminated during this term by the department in accordance with subdivision (g) of this section.

(2) At the expiration of said term, a provider may reapply to the department for approval of the course of study by following the requirements of subdivision (e) of this section, including payment of a required fee of \$500, for the renewal of the permit from the department to be an approved provider for an additional six-year term.

(g) Review of course of study.

(1) The department may review the course of study during the term of approval to ensure compliance with the requirements of this section and may request information from a provider and may conduct site visits, pursuant to such review.

(2) A determination by the department that the course of study offered by a provider is inadequate, incomplete, or otherwise unsatisfactory pursuant to standards set forth in this section shall result in the denial or termination of the approved status of the course of study.

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

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

### Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department to determine and set fees in regulation for certifications and permits, not otherwise provided.

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

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

Subdivisions (1) and (2) of section 7001 of the Education Law define the practice of the profession of podiatry.

Subdivision (4) of section 7006 of the Education Law authorizes an unlicensed person to provide supportive services to a podiatrist, including operating radiographic equipment under direct supervision for the sole purpose of foot radiography, provided that such person completes a course of study acceptable to the New York State Education Department in consultation with the New York State Department of Health.

Paragraph (d) of subdivision (4) of section 3515 of the Public Health Law requires the Department of Health to establish the type of radiographic equipment that an unlicensed person under the direct supervision of a licensed podiatrist may use.

#### 2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will establish requirements to implement the statutory authorization that enables an unlicensed person providing supportive services to a licensed podiatrist to operate radiographic equipment under the direct supervision of the licensed podiatrist.

#### 3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to implement section 7006(4) of the Education Law, which permits an unlicensed assistant providing supportive services to a licensed podiatrist to x-ray a patient's foot, while under the direct supervision of the licensed podiatrist, provided the unlicensed assistant has completed an acceptable course of study.

The regulation is needed to define the supervision required by the licensed podiatrist when an unlicensed assistant is operating the radiographic equipment. The regulation defines the phrase "under the direct supervision of a licensed podiatrist."

Education Law section 7006(4) requires the unlicensed person to complete a course of study that is acceptable to the State Education Department and requires the State Education Department to consult with the Department of Health regarding the course of study. The regulation is needed to establish the requirements for the course of study, including course content and the information and material necessary for the approval of that course of study. The State Education Department's staff worked with the State Board for Podiatry to develop this regulation and consulted with the New York State Department of Health, as well as the New York State Podiatric Medical Association and the New York State College of Podiatric Medicine.

#### 4. COSTS:

(a) Costs to State government. The proposed regulation establishes an approval process for providers of courses of study that unlicensed persons must complete successfully before they may operate radiographic equipment under the direct supervision of a licensed podiatrist. The State Education Department expects that existing staff and resources of the Department will be used to administer the approval process.

(b) Cost to local government. There are no costs to local government attributable to the proposed regulation.

(c) Cost to private regulated parties. Education Law section 7006(4) requires the State Education Department to prescribe an acceptable course of study that must be completed successfully by an unlicensed person who wishes to use x-ray equipment while under the direct supervision of a licensed podiatrist. The regulation specifies requirements that these providers must meet, including necessary radiographic equipment. The Department expects that the providers will have access to such equipment because they will be hospitals, or colleges of podiatry, or professional associations working with colleges of podiatry, and therefore acquiring this equipment this will not be a cost.

An approved provider that develops a course of study will incur costs for the development of instructional materials and administrative procedures. Also, an approved provider will incur costs for administrative and instructional staff to offer the program. The Department expects that these operational costs will be recouped through fees that the approved sponsors will charge students.

The regulation imposes a direct cost on providers, a fee of \$500, to cover the cost of reviewing the providers' course of study. The fee covers a six-year term. It must be paid upon initial application and upon application to renew the permit to be an approved provider.

(d) Cost to the regulatory agency. As stated above in Costs to State government, existing staff and resources of the State Education Department will be employed to administer the requirements of the proposed regulation.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements statutory requirements relating to the practice of podiatry and the approval of providers of a course of study to unlicensed podiatry assistants. The amendment does not impose any program, service, duty, or responsibly upon local governments.

#### 6. PAPERWORK:

The amendment requires a licensed podiatrist who uses an unlicensed assistant to perform radiographic services while under the direct supervision of the podiatrist to maintain a copy of the certificate of completion confirming that the unlicensed assistant completed an acceptable course of study in the operation of such equipment. The licensed podiatrist must maintain that certificate for 22 years after the unlicensed person last provided radiographic services under the direct supervision of the licensed podiatrist.

The amendment requires entities that want to offer a course of study in the operation of radiographic equipment to submit an application to the

State Education Department. Approved providers must maintain in the files for not less than six years from the date of the conclusion of each session: a copy of the certification of completion for students who successfully completed the course of study; a record of the dates of the course of study; the written applications submitted by all students who were admitted to the course of study; attendance in the course of study; the written curriculum for the course of study; instructors who taught the course of study; examination results; and such other matter as determined by the department to confirm participation in the course of study.

Approved providers also must transmit, within 21 calendar days of the completion of the course of study, a certification of completion to the person completing successfully the course of study for that person's use in documenting such completion.

#### 7. DUPLICATION:

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

#### 8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered.

#### 9. FEDERAL STANDARDS:

There are no Federal standards for the course of study at issue or for the supervision of the unlicensed assistant providing supportive services to the licensed podiatrist.

#### 10. COMPLIANCE SCHEDULE:

The proposed regulation implements and clarifies statutory requirements. Applicants must comply with the regulation on its effective date. No additional period of time is necessary to enable regulated parties to comply.

#### **Regulatory Flexibility Analysis**

The proposed regulation establishes practice requirements for licensees (licensed podiatrists) and requirements for providers of a course of study that unlicensed assistants must complete successfully before they may operate the radiographic equipment under the direct supervision of licensed podiatrist. The State Education Department expects that all such providers will be hospitals, nonprofit professional associations representing the podiatry profession, and colleges of podiatry, none of which are small businesses or local governments. The regulation will not impose any reporting, recordkeeping, or other compliance requirements, or any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed regulation that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

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

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed regulation will affect all licensed podiatrists in New York State who wish to use unlicensed persons to operate radiographic equipment while under the podiatrist's direct supervision. It will also affect all providers of courses of study that these unlicensed assistants must complete successfully in order to provide the radiographic support services.

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

The purpose of the proposed regulation is to implement section 7006(4) of the Education Law, which permits an unlicensed assistant providing supportive services to a licensed podiatrist to x-ray a patient's foot, while under the direct supervision of the licensed podiatrist, provided the unlicensed assistant has completed an acceptable course of study.

The regulation defines the supervision required by the licensed podiatrist when an unlicensed assistant is operating the radiographic equipment. The regulation defines the phrase "under the direct supervision of a licensed podiatrist."

Education Law section 7006(4) requires the unlicensed person to complete a course of study, acceptable to the State Education Department in consultation with the Department of Health. The regulation establishes the requirements for the course of study, including: types of providers, admission requirements, content requirements, facilities and equipment, responsibilities of providers, and the approval procedures.

The amendment requires a licensed podiatrist who uses an unlicensed assistant to perform radiographic services while under the direct supervision of the podiatrist to maintain a copy of the certificate of completion confirming that the unlicensed assistant completed an acceptable course of

study in the operation of such equipment. The licensed podiatrist must maintain that certificate for 22 years after the unlicensed person last provided radiographic services under the direct supervision of the licensed podiatrist.

The amendment requires providers that wish to offer a course of study in the operation of radiographic equipment, including those located in rural areas of the State, to submit an application to the State Education Department. Approved providers must maintain in its files for not less than six years from the date of the conclusion of each session of a course of study: a copy of the certification of completion for students who successfully completed the course of study; a record of the dates of the course of study; the written applications submitted by all students who were admitted to the course of study; attendance in the course of study; the written curriculum for the course of study; instructors who taught the course of study; examination results; and such other matter as determined by the department to confirm participation in the course of study.

Approved providers also must transmit, within 21 calendar days of the completion of the course of study, a certification of completion to the person successfully completing the course of study for that person's use in documenting such completion.

The proposed regulation will not require regulated parties to hire professional services in order to comply.

#### 3. COSTS:

Education Law section 7006(4) requires the State Education Department to prescribe an acceptable course of study that must be completed successfully by an unlicensed person who wishes to use x-ray equipment while under the direct supervision of a licensed podiatrist. The regulation specifies requirements that these providers must meet, including necessary radiographic equipment. The Department expects that the providers will have access to such equipment because they will be hospitals, or colleges of podiatry, or professional associations working with colleges of podiatry, and therefore acquiring this equipment this will not be a cost.

An approved provider that develops a course of study will incur costs for the development of instructional materials and administrative procedures. Also, an approved provider will incur costs for administrative and instructional staff to offer the program. The Department expects that these operational costs will be recouped through fees that the approved sponsors will charge students.

The regulation imposes a direct cost on providers, a fee of \$500, to cover the cost of reviewing the providers' course of study. The fee covers a six-year term. It must be paid upon initial application and upon application to renew the permit to be an approved provider.

#### 4. MINIMIZING ADVERSE IMPACT:

The amendment establishes requirements for the supervision of unlicensed persons providing radiographic services for a licensed podiatrist, and requirements for course of study that must be completed successfully by unlicensed assistants before they may perform radiographic services under the direct supervision of a licensed podiatrist. The Department has determined that the proposed requirements should apply to all licensed podiatrists who wish to use unlicensed persons to provide radiographic services and all courses of study in this field, regardless of their geographic location, to help ensure in all parts of the State the safe practice of podiatry and the quality of the courses of study. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

#### 5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing all parties having an interest in the practice of podiatry. Included in this group were the State Board for Podiatry and a professional association representing the podiatry profession. These groups have members who live or work in rural areas. The State Education Department also consulted with the New York State Department of Health. Each organization has been provided notice of the proposed rule making and an opportunity to comment.

#### **Job Impact Statement**

The purpose of the proposed regulation is to implement section 7006(4) of the Education Law, which permits an unlicensed assistant providing supportive services to a licensed podiatrist to x-ray a patient's foot, while under the direct supervision of the licensed podiatrist, provided the unlicensed assistant has completed an acceptable course of study.

The regulation by its nature will have either no impact or a positive impact on the number of jobs or employment opportunities for unlicensed persons providing supportive services for licensed podiatrists. The regulation will enable these unlicensed persons to perform an additional task under the direct supervision of a licensed podiatrist. As a result, the State

Education Department expects that some additional hiring of unlicensed assistants will take place, causing a small increase in the number of jobs in this field.

Because it is evident from the nature of the proposed regulation that it will have either no impact on the number of jobs or employment opportunities for unlicensed assistants working for podiatrists, or only a positive impact, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Supplementary Certificate in the Classroom Teaching Service

**I.D. No.** EDU-24-04-00005-P

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

**Proposed action:** Repeal of section 80-2.11 and addition of sections 80-5.18 and 80-5.19 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3001(2), 3004(1); 3006(1)(b); 3009(1) and 3010 (not subdivided)

**Subject:** Creation of a supplementary certificate in the classroom teaching service and relocation of the requirements for teachers of adult, community and continuing education.

**Purpose:** To establish a new teaching certificate, the supplementary certificate; enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers; and relocate existing requirements for teachers of adult, community and continuing education to another section of commissioner's regulations.

**Text of proposed rule:** 1. Section 80-2.11 or the Regulations of the Commissioner of Education is repealed, effective September 30, 2004.

2. Section 80-5.18 of the Regulations of the Commissioner of Education is added, effective September 30, 2004, as follows:

*80-5.18 Supplementary certificate.*

(a) *Purpose.* The purpose of the supplementary certificate is to authorize a teacher who is currently certified in a title in the classroom teaching service to teach in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers, while the teacher is engaged in collegiate study to complete requirements necessary to qualify for the new certificate.

(b) *Limitations.* The supplementary certificate shall be valid for three years from its effective date and shall not be renewable. The supplementary certificate shall be limited to employment with an employing entity.

(c) *Requirements.* To be eligible for a supplementary certificate, a candidate shall meet the requirements in each of the following paragraphs:

(1) *Application.* The candidate shall apply for the supplementary certificate by September 1, 2009, and upon application qualify for the certificate, in a certificate title in the classroom teacher service for which there is a demonstrated shortage of certified teachers as determined by the department.

(2) *Certification.* The candidate shall hold a valid provisional, initial, permanent, or professional certificate in a title in the classroom teaching service identified in Subparts 80- 2 or 80-3 of this Part.

(3) The candidate shall agree to be enrolled in collegiate study leading to an initial or professional certificate in the certificate title sought, beginning no later than with the first semester following employment under the supplementary certificate.

(4) *Education.*

(i) The candidate shall hold the minimum degree required for an initial certificate in the certificate title sought.

(ii) The candidate shall have completed coursework as prescribed in this subparagraph. The candidate shall have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course submitted to meet the coursework requirements of this subparagraph.

(a) For candidates seeking a certificate, other than one of the certificates for the instruction of students with disabilities, a certificate for the instruction of the deaf and hard of hearing, a certificate for the instruction of the blind or visually impaired, a certificate for the instruction of literacy, or a certificate for teaching English to speakers of other

languages, the candidate shall have completed twelve semester hours of study in the content core required for the initial certificate in the certificate title sought, as prescribed in section 80-3.7 of this Part.

(b) For candidates seeking one of the certificates for the instruction of students with disabilities, the candidate shall have completed nine semester hours of study in the instruction of students with disabilities, as prescribed in the pedagogical core required for the initial certificate in the certificate title sought, set forth in section 80-3.7 of this Part.

(c) For candidates seeking a certificate for the instruction of students who are deaf and hard of hearing, the candidate shall have completed nine semester hours in the instruction of the deaf and hard of hearing, as prescribed in the pedagogical core for the initial certificate in this certificate title, set forth in section 80-3.7 of this Part.

(d) For candidates seeking a certificate for the instruction of the blind or visually impaired, the candidate shall have completed nine semester hours in the instruction of the blind or visually impaired as prescribed in the pedagogical core for the initial certificate in this certificate title, set forth in section 80-3.7 of this Part.

(e) For candidates seeking one of the certificates for the instruction of literacy, the candidate shall have completed nine semester hours of study in literacy education, as prescribed in the pedagogical core required for the initial certificate in the certificate title sought, set forth in section 80-3.7 of this Part.

(f) For candidates seeking a certificate for teaching English to speakers of other languages, the candidate shall have completed six semester hours of coursework in methods of second language teaching in the elementary and secondary grades and six semester hours in teaching literacy skills, as prescribed in the pedagogical core for the initial certificate in this certificate title, set forth in section 80-3.7 of this Part.

(5) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(i) the employing entity wants to employ the candidate in a teaching position for which the candidate would need the supplementary certificate to qualify; and

(ii) the employing entity will make it a condition of employment under the supplementary certificate that the candidate will be enrolled in collegiate study leading to an initial or professional certificate in the certificate title sought, beginning no later than with the first semester following employment under the supplementary certificate.

(6) *Examination.* The candidate shall submit evidence of having achieved a satisfactory level of performance on the Content Specialty Test in the area of the certificate title sought, if available.

3. Section 80-5.19 of the Regulations of the Commissioner of Education is added, effective September 30, 2004, as follows:

*80-5.19 Teachers of adult, community and continuing education.*

(a) A person teaching an avocational subject shall have three years of preparation and/or experience in the subject which the individual is employed to teach. When no such prepared and/or experienced person is available after extensive recruitment, an individual with less preparation and/or experience may be employed upon a finding by the chief school officer that such individual has sufficient preparation and/or experience to teach the subject.

(b) A person teaching an occupational education subject for which no high school credit is granted and for which there is no appropriate teaching certificate shall have three years of preparation and/or experience in the subject which the individual is employed to teach. When no such prepared and/or experienced person is available after extensive recruitment, an individual with less preparation and/or experience may be employed upon a finding by the chief school officer that such individual has sufficient preparation and/or experience to teach the subject.

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

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

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

**Regulatory Impact Statement****1. STATUTORY AUTHORITY:**

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

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

**2. LEGISLATIVE OBJECTIVES:**

The proposed amendment will carry out the objectives of the above referenced statutes by establishing a new teaching certificate, to enable a teacher certified in one classroom teaching title to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers, while the teacher completes the remaining course requirements necessary to qualify for a new certificate title in the shortage area. The amendment also relocates existing requirements for teachers of adult, community and continuing education to another Subpart of Commissioner's regulations.

**3. NEEDS AND BENEFITS:**

The purpose of the proposed amendment is to establish a new teaching certificate, the supplementary certificate, to enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers; and to relocate existing requirements for teachers of adult, community and continuing education to another section of Commissioner's regulations.

The proposed amendment is needed to facilitate the State's ability to address persistent shortages of certified teachers in certain subject matter areas, including but not limited to mathematics, the sciences, bilingual education, and special education, and in certain geographic areas of the State. The amendment creates a practical mechanism for certified teachers in areas of oversupply to earn additional certificates in areas of need. The amendment prescribes clearly defined standards to ensure the quality of the education and experience of teachers certified by this route. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools.

The supplementary certificate will be valid for three years from its effective date and will not be renewable. This certificate will be limited to employment with an employing entity. The option to obtain the supplementary certificate will expire on September 1, 2009.

The amendment is also needed to relocate the existing requirements for teachers of adult, community and continuing education to a more appropriate section of the Regulations of the Commissioner of Education. The amendment moves these requirements from section 80-2.11 to section 80-5.19 in a Subpart that deals with specialized credentials.

**4. COSTS:**

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose additional costs on regulated parties. It will provide a route for certified teachers in areas of oversupply to earn additional certification in areas of need. The application fee of \$100 for certification is established in section 3006 of the Education Law.

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

**5. LOCAL GOVERNMENT MANDATES:**

The amendment will provide New York State school districts and BOCES a pool of candidates, not otherwise available, from which to draw teachers in a certificate title for which there is a demonstrated shortage of certified teachers. School districts and BOCES that wish to employ a teacher under the supplementary certificate must certify to the State Education Department that the district wants to employ the candidate in a teaching position for which the candidate would need the supplementary certificate to qualify, and that the district will make it a condition of employment that the candidate will be enrolled in collegiate study leading to an initial or professional certificate in the certificate title of the supplementary certificate.

**6. PAPERWORK:**

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification, as prescribed by this regulation, will be required to make written application with the State Education Department and provide all evidence of having met the requirements for the certificate sought. For the new supplementary certificate, the candidate will have to agree to be enrolled in collegiate study leading to an initial or professional certificate in the certificate title sought, document certification in the classroom teaching service and meeting prescribed education and examination requirements, and submit a statement from the employing school district or BOCES certifying to a number of facts.

**7. DUPLICATION:**

The amendment does not duplicate other existing State or Federal requirements.

**8. ALTERNATIVES:**

No alternative proposals were considered.

**9. FEDERAL STANDARDS:**

There are no Federal standards that deal with the subject matter of this amendment.

**10. COMPLIANCE SCHEDULE:**

Regulated parties must comply with the proposed amendment on its effective date. The new supplementary certificate provides candidates for teaching certificates an additional avenue to certification. The amendment also moves existing requirements for teachers of adult, community and continuing education to another section of Commissioner's regulations, without making any changes to those requirements. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

**Regulatory Flexibility Analysis****(a) Small Businesses:**

The proposed amendment establishes requirements for teaching certificates in the classroom teaching service that would qualify an individual to teach in the public schools of New York State. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

**(b) Local Governments:****1. Effect of the rule:**

The proposed amendment affects all school districts and BOCES in the State that wish to hire a teacher for employment under a supplementary certificate.

**2. Compliance requirements:**

The purpose of the proposed amendment is to establish a new teaching certificate, the supplementary certificate, to enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for

which there is a demonstrated shortage of certified teachers; and to relocate existing requirements for teachers of adult, community and continuing education to another section of Commissioner's regulations.

The amendment will provide New York State school districts and BOCES a pool of candidates, not otherwise available, from which to draw teachers in a certificate title for which there is a demonstrated shortage of certified teachers. School districts and BOCES that wish to employ a teacher under the supplementary certificate must certify to the State Education Department that the district wants to employ the candidate in a teaching position for which the candidate would need the supplementary certificate to qualify, and that the district will make it a condition of employment that the candidate will be enrolled in collegiate study leading to an initial or professional certificate in the certificate title of the supplementary certificate.

### 3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply.

### 4. Compliance costs:

There is no compliance cost for school districts or BOCES that exercise the option of employing a teacher under a supplementary certificate. However, the candidate must pay an application fee of \$100 for the supplementary certificate.

### 5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

### 6. Minimizing adverse impact:

The amendment establishes requirements for teacher certification. It only applies to those school districts and BOCES that wish to hire a teacher under a supplementary certificate. It will not impose costs on local governments. The State Education Department has determined that uniform requirements for the supplementary certificate are necessary to ensure the quality of the State's teaching workforce.

### 7. Local government participation:

Comments of the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES. Comments were also solicited from State's District Superintendents, representing BOCES and school districts across the State, and the City School District of the City of New York.

## **Rural Area Flexibility Analysis**

### 1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates for teaching certification in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The proposed amendment establishes requirements regarding the application for and issuance of a supplementary certificate authorizing a teacher certified in one classroom teaching title to teach in a different title in the classroom teaching service for up to three years while the teacher completes the remaining course requirements for certification in a new certificate title. The amendment establishes clearly defined standards to ensure the qualifications of teachers certified by this route, including the holding of a certificate in a title in the classroom teaching service, having achieved the minimum degree required for the initial certificate in the new certificate title, completing specified coursework requirements in the content core or pedagogical core of the certificate title sought with a C in any such undergraduate course and a B- in any such graduate course, and achieving a satisfactory level of performance on the Content Specialty Test in the area of the certificate sought, if available. In addition, the candidate must agree to be enrolled in collegiate study leading to an initial or professional certificate in the certificate title sought, beginning no later than with the first semester following employment under the supplementary certificate.

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking teaching certification, including those seeking additional certification through this new route, will be required to make written application with the State Education Department. For the new supplementary certificate, candidates will have to document certification in the classroom teaching service, and that they have met the above-referenced education and examination requirements. In addition, candidates must submit a certification to the State Education Department from the employing school district that the district wants to employ the candidate in a teaching position for which the candidate would need the supplementary certificate to qualify, and that the district will make it a condition of employment that the candidate will be enrolled in collegiate study leading to an initial or professional certificate in the certificate title of the supplementary certificate.

The proposed amendment restates the existing requirements for teachers of adult, community and continuing education in a more appropriate Subpart of the Commissioner's regulations that deals with specialized credentials. It does not change these requirements.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply, other than educational services needed to complete college coursework for the supplementary certificate.

### 3. Costs:

The amendment will not impose costs on regulated parties. The application fee of \$100 for certification is established in section 3006 of the Education Law.

### 4. Minimizing adverse impact:

The amendment establishes requirements for teacher certification. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

### 5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES. Comments were solicited from the State's District Superintendents, representing BOCES and school districts across the State. Comments were also solicited from every postsecondary institution in the State that offers teacher education programs, including those located in rural areas on the State.

## **Job Impact Statement**

The proposed amendment establishes requirements regarding the application for and issuance of a supplementary certificate authorizing a teacher certified in one classroom teaching title to teach in a different title in the classroom teaching service for up to three years while the teacher completes the remaining course requirements necessary to qualify for certification in a new certificate title.

The proposed change is needed to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools and BOCES. This proposal is intended to increase the supply of teachers in certificate titles for which there is a shortage of certified teachers by increasing the pool of individuals qualified for such teaching positions in the State's public schools. However, it will have no effect on the number of jobs or the number of employment opportunities available in public school teaching. In addition, the amendment relocates the existing requirements for teachers of adult, community and continuing education. The amendment makes no change in these requirements, and will have no effect on the number of jobs or the number of employment opportunities in this field.

Because it is evident from the nature of the rule that it will have no impact on the number of jobs and number employment opportunities in teaching or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

## Office of Mental Retardation and Developmental Disabilities

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

#### Health Care Decisions Act for Persons with Mental Retardation

I.D. No. MRD-24-04-00011-EP

Filing No. 626

Filing date: June 1, 2004

Effective date: June 1, 2004

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

**Action taken:** Amendment of section 633.10 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07 and 13.09; and Surrogate's Court Procedure Act, section 1750-b

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

**Specific reasons underlying the finding of necessity:** The Health Care Decisions Act for Persons with Mental Retardation establishes a specific process that can only occur "in accordance with regulations" promulgated by the commissioner of OMRDD. These regulations are necessary to fully implement the safeguarding processes of the new law to ensure that in accordance with the new law, appropriate health care decisions can be made for persons with mental retardation who are terminally ill or have other extremely serious medical conditions.

**Subject:** Regulations to implement the Health Care Decisions Act for Persons with Mental Retardation.

**Purpose:** To establish specific processes which are made subject to regulations of the commissioner of OMRDD.

**Text of emergency/proposed rule:** ● A new paragraph (7) is added to 14 NYCRR 633.10(a) to read as follows:

(7) Provisions relevant to implementation of the Health Care Decisions Act for Persons with Mental Retardation.

(i) Parties involved in decisions to withdraw or withhold life-sustaining treatment.

(a) Pursuant to § 1750-b of the surrogate's court procedure act (SCPA), in addition to parties specified by the statute, parties may seek the approval of the commissioner to be authorized to perform the following duties:

(1) serve as the attending physician to confirm, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if the consultant lacks specified additional qualifications); or

(2) serve as a consulting physician or psychologist regarding confirmation, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if the attending physician lacks specified additional qualifications); or

(3) serve as the attending physician to determine that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if the consultant lacks specified additional qualifications); or

(4) serve as a consulting physician or psychologist regarding a determination that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if the attending physician lacks specified additional qualifications).

(b) In order to obtain the approval of the commissioner, physicians and licensed psychologists shall either possess specialized training in the provision of services to persons with mental retardation or have at least three years experience in the provision of such services. The commissioner may disapprove physicians or psychologists whose qualifications do not include sufficient training or experience in the determination of capacity or incapacity of persons with mental retardation. The commissioner may also disapprove physicians who have been found guilty of

medical misconduct by the Board for Professional Medical Conduct, and psychologists who have been subject to a disciplinary action by the Board of Regents for professional misconduct. The commissioner may suspend the approval process during the pendency of an investigation and proceedings related to alleged medical misconduct or professional misconduct, if he or she becomes aware of such investigation or proceedings.

(ii) Upon receipt of notification of a decision to withdraw or withhold life-sustaining treatment in accordance with § 1750-b(4)(e)(ii) of the surrogate's court procedure act (SCPA), the chief executive officer (see § 633.99) of the agency (see § 633.99) shall confirm that the person's condition meets all of the criteria set forth in SCPA § 1750-b(4)(a) and (b). In the event that the chief executive officer is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA § 1750-b(5) and (6).

(iii) For purposes of communicating the notification required by § 1750-b(4)(e)(iii) of the surrogate's court procedure act (SCPA), the commissioner (see § 633.99) designates the directors of each of the DDSOs (see § 633.99) to receive such notification from an attending physician. In any such case, the DDSO director shall confirm that the person's condition meets all of the criteria set forth in SCPA § 1750-b(4)(a) and (b). In the event that the director is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA § 1750-b(5) and (6).

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 29, 2004.

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

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

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

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

#### Regulatory Impact Statement

##### 1. Statutory authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09.

c. OMRDD's authority under the New York State Surrogate's Court Procedure Act Section 1750-b to promulgate regulations to implement the statutory provisions.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in Section 1750-b of the New York State Surrogate's Court Procedure Act, which provide for regulations of the Commissioner of OMRDD as a prerequisite to implement specific aspects of safeguarding processes established by the law.

3. Needs and benefits: The Health Care Decisions Act for Persons with Mental Retardation (Chapter 500 of the Laws of 2002), which added a new § 1750-b to the Surrogate's Court Procedure Act, establishes procedures whereby health care decisions involving life-sustaining treatment may be made for persons with mental retardation by guardians appointed pursuant to section 1750 of the Surrogate's Court Procedure Act.

The law is intended to be applicable during a health care crisis so that appropriate health care decisions can be made to avoid needless pain and suffering.

Specific processes in the law are explicitly made subject to regulations of the Commissioner of OMRDD. According to Chapter 500, OMRDD may promulgate regulations to establish a process for OMRDD approval of physicians and psychologists. Only OMRDD-approved clinicians and

other clinicians meeting specifications in the statute can perform functions required by the law, such as serving as a consultant to confirm the person's lack of capacity to make health care decisions (if the attending physician is not an OMRDD-approved clinician or does not meet specifications). The law provides that in order for approval to be granted by OMRDD, physicians or psychologists must possess specialized training or three years experience in providing services to persons with mental retardation. The proposed regulations closely track the statutory language. In addition, the proposal specifies that applicants may be disapproved if they have insufficient training or experience in the determination of capacity, or if they have been found guilty of medical misconduct or have been subject to a disciplinary action for professional misconduct.

The regulations also include additional delineation of the responsibility of OMRDD and agencies operating OMRDD-certified residences when they receive notification of health care decisions that involve the withdrawal or withholding of life-sustaining treatment.

OMRDD has filed this emergency rule making effective June 1, 2004 and intends that the present text will supersede similar regulations were previously adopted on an emergency basis. The emergency regulations are necessary because without them, it may be difficult or impossible to implement the safeguarding provisions of the law in some situations. If the protections required by the law cannot be implemented because qualified physicians or psychologists are not available, desperate health care emergencies may continue to be unrelieved and pain and suffering may be needlessly prolonged.

The regulations are being adopted as an emergency rulemaking for the preservation of the public health. If OMRDD did not adopt these regulations as an emergency rule, there would be a period of time during which some physicians and psychologists would not be able to provide the services required by law to protect the person, and pain and suffering may be needlessly prolonged. It is therefore important to promulgate the new regulations on an emergency basis.

4. Costs:

a. Costs to the Agency and to the State and its local governments: There are no additional costs associated with this new regulation.

There will be no costs to local governments as a result of the proposed amendments. Local governments do not play a role in either implementation of the new regulation or the new law.

OMRDD will incur no additional costs associated with processing applications from physicians and psychologists and, from confirming that a person's condition meets the criteria of the law when notice is received of the intention to implement a decision to withdraw or withhold life-sustaining treatment. No additional personnel will be required to perform these limited new functions.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs of any significance associated with implementation and continued compliance with the rule.

Physicians and psychologists who meet the qualifications will need to apply to OMRDD for approval. The time and paperwork involved in the application process is limited.

In addition, residential agencies which receive notices pursuant to the law are required by the regulation to confirm that the person's condition meets all of the relevant criteria. Since notifications will occur only in rare circumstances, and the amount of time available for compliance is restricted (as implementation of the decision to withdraw life-sustaining treatment may occur 48 hours after notification), required compliance activities are expected to be limited and are expected to be performed by existing personnel.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Physicians and psychologists who meet the qualifications and seek OMRDD approval will need to provide documentation of their qualifications to OMRDD. Otherwise, no new paperwork is required of any party.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements. However, the regulations reiterate some provisions of § 1750-b of the Surrogate's Court Procedure Act, as necessary to provide a context for the regulatory concepts.

8. Alternatives: OMRDD had considered not filing regulations. However, OMRDD believes that it is crucial to take this step and to adopt the regulations on an emergency basis so as to continue to expand the pool of qualified physicians and psychologists that may be available to provide the services necessary to implement the new law and to provide guidance

regarding the responsibility of residential providers who receive notification of decisions to withdraw or withhold life-sustaining treatment.

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

10. Compliance schedule: This amendment is adopted effective June 1, 2004, and it shall supersede similar amendments previously adopted on an emergency basis (I.D. No. MRD-13-04-00003-E) which were adopted effective March 12, 2004. OMRDD has concurrently filed the rule as a Notice of Proposed Rule Making so that it can be adopted on a permanent basis within the time frames mandated by the State Administrative Procedure Act.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted because the amendments will not impose any adverse economic impact or significant reporting, recordkeeping or other compliance requirements on small businesses or local governments. This is because the amendments only establish the minimum regulations necessary to implement specific provisions of Chapter 500 of the Laws of 2002, or section 1750-b of the Surrogate's Court Procedure Act. As discussed more thoroughly in the Regulatory Impact Statement, the process contemplated by the law and these emergency regulations is so limited, and is expected to be invoked so rarely, that it will not impose a burden on OMRDD or its regulated small business provider agencies. Neither the law nor the regulations involve local government participation. Since the emergency regulations very closely track the language of this provision of section 1750-b of the Surrogate's Court Procedure Act, any compliance activities associated with the rule will be the absolute minimum, consistent with the legislation.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not being submitted because the amendments will not impose any adverse economic impact or significant reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This is because the amendments only establish the minimum regulations necessary to implement specific provisions of Chapter 500 of the Laws of 2002, or section 1750-b of the Surrogate's Court Procedure Act. As discussed more thoroughly in the Regulatory Impact Statement, the process contemplated by the law and these emergency regulations is so limited, and is expected to be invoked so rarely, that it will not impose a burden on any party, public or private. It should be noted that clinicians wishing to participate in the process established by the law and these amendments do so voluntarily. Further, neither the law nor the regulations disadvantage any party to this process because of its geographic situation (rural or urban).

**Job Impact Statement**

A Job Impact Statement is not being submitted because it is evident from the subject matter of the amendments that the rule will have no impact on jobs or employment opportunities. This is because the amendments only establish the minimum regulations necessary to implement specific provisions of Chapter 500 of the Laws of 2002, or section 1750-b of the Surrogate's Court Procedure Act. As discussed more thoroughly in the Regulatory Impact Statement, the process contemplated by the law and these emergency regulations is so limited, and is expected to be invoked so rarely, that it is reasonable to expect that it will not affect jobs or employment opportunities in New York State.

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## Division of Parole

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### NOTICE OF ADOPTION

**Parole Revocation Process**

**I.D. No.** PAR-07-04-00003-A

**Filing No.** 627

**Filing date:** June 1, 2004

**Effective date:** July 12, 2004

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

**Action taken:** Amendment of sections 8002.6(a),(c) and (d); 8004.3(a)-(e), (g) and (h); 8005.20(c)(1)-(4), (6), (d), (g) and (h) of Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 259(2) and 259-(c)(11)

**Subject:** Redefining a time assessment; the process for declaring and canceling the delinquency of parole violators; final parole revocation determinations; and the process for re-releasing adjudicated parole violators.

**Purpose:** To make the process by which parole, conditional release and post-release supervision is revoked more expedient and efficient. In addition, the proposed rule changes will enhance the process by which adjudicated parole violators are re-released to supervision after completing the time assessments imposed by administrative law judges after the completion of final revocation hearings.

**Substance of final rule:** On January 23, 2003, the New York State Board of Parole promulgated new rules governing the parole revocation process and the process to be utilized for effecting the re-release of individuals whose release status was revoked after a final revocation hearing conducted pursuant to section 259-i(3) of the Executive Law. On February 18, 2004, there was published in the New York State Register the Parole Board's Notice of Proposed Rule Making. Set forth below is a summary of the rules that have been adopted by the Board of Parole, including the technical changes made as a result of comments received during the 45-day comment period, and the manner in which these rules will affect the practices of the Parole Board. Through this rule making, the Board of Parole has:

1) amended 9 NYCRR § 8004.3(a) so as to confer upon the Division's Supervising Parole Officers, i.e., Area Supervisors, the authority to declare an alleged violator delinquent;

2) amended 9 NYCRR § 8004.3(e) to confer upon the Parole Board's Administrative Law Judges the authority to cancel a declaration of delinquency prior to taking testimony at a final revocation hearing. This authority may be exercised in all cases except for those "Category 1" cases where the alleged violator is under supervision for an Article 125 offense (homicide), a sex offense (Article 130 offenses, Penal Law § 255.25 & Article 263 offenses), or an Article 135 offense (kidnapping and related offenses);

3) amended 9 NYCRR §§ 8005.20(c), (d), (g) and (h) to confer upon the Parole Board's Administrative Law Judges the authority to render final decisions in all revocation cases except for those "Category 1" cases where the adjudicated violator is under supervision for an Article 125 offense (homicide), a sex offense (Article 130 offenses, Penal Law § 255.25 & Article 263 offenses), or an Article 135 offense (kidnapping and related offenses), such decisions include the imposition of a time assessment, a determination to revoke and restore the violator to parole supervision, or the violator's placement into a program that serves as an alternative to incarceration;

4) amended 9 NYCRR § 8005.20(c)(2) so as to allow for a revoke & restore disposition to the Willard Drug Treatment Campus when misdemeanor charges are pending against the adjudicated violator. This rule will make the Willard program available to violators who are currently ineligible for this type of disposition only by reason of a pending misdemeanor charge; and

5) amended 9 NYCRR § 8002.6 to change the parole violator re-release procedure. By this proposal, adjudicated violators will be re-released upon expiration of the time assessment unless significant information related to the violator's incarceration authorizes the Board to conduct a parole violator reappearance interview. This rule will apply to violators whose time assessments expire in either State or local custody.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 8005.20(c)(1)(iv) and (d).

**Text of rule and any required statements and analyses may be obtained from:** Terrence X. Tracy, Counsel, Division of Parole, 97 Central Ave., Albany, NY 12206, (518) 473-5671, e-mail: tracy@parole.state.ny.us

#### **Regulatory Impact Statement**

The technical changes that have been made to the last published rule, the full text of which was published on the Division of Parole's website, www.parole.state.ny.us, do not necessitate a revision of the Regulatory Impact Statement that was previously published. The prior publication indicated that the Board of Parole would retain its authority to impose final dispositions over certain "category 1" parole violators, and referenced those serving sentences for Penal Law Article 135 offenses as being within that group. Because the technical changes to the text of this rule making are consistent with and reflect the substance of the previously published Regulatory Impact Statement, a revision thereof is not necessitated.

#### **Regulatory Flexibility Analysis**

The technical changes that have been made to the last published rule, the full text of which was published on the Division of Parole's website, www.parole.state.ny.us, do not necessitate a revision of the Regulatory

Flexibility Analysis for Small Business and Local Governments that was previously published. The technical changes to the text of this rule making will have no adverse impact upon small businesses or local governments, and will not impose any reporting, recordkeeping or other compliance requirements upon small businesses or local governments.

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

The technical changes that have been made to the last published rule, the full text of which was published on the Division of Parole's website, www.parole.state.ny.us, do not necessitate a revision of the Rural Area Flexibility Analysis that was previously published. The technical changes to the text of this rule will have no adverse impact upon rural areas, nor do the rule changes impose any reporting, recordkeeping or other compliance requirements upon rural areas.

#### **Job Impact Statement**

The technical changes that have been made to the last published rule, the full text of which was published on the Division of Parole's website, www.parole.state.ny.us, do not necessitate a revision of the Job Impact Statement that was previously published. The technical changes to the text of this rule will have no adverse impact on jobs or employment opportunities, nor do such technical changes impose any reporting, recordkeeping or other compliance requirements upon employers.

**Assessment of Public Comment** In response to the Notice of Proposed Rule Making published in the February 18, 2004 edition of the New York State Register, the New York State Board of Parole received four comments.

The first comment was submitted on behalf of the New York State Public Employees Federation, Parole Division 236 ("PEF, Parole Division 236"). Presented in this comment are objections to the manner in which the proposed rule making has been promulgated pursuant to the State Administrative Procedures Act (SAPA). PEF, Parole Division 236 asserts: it was improper not to publish the full text of the proposed rule making in the New York State Register; that the address of the website where the public could access the full text of the proposed rule making was not provided in the Notice of Proposed Rule Making; and, the Notice of the Proposed Rule Making did not state when the 45-day comment period commenced.

Pursuant to the filing requirements of the Secretary of State, text of proposed rule making that exceeds 2000 words in length is no longer published in the New York State Register. Instead, where as here, the proposed rule making exceeds 2000 words, the entity promulgating such rules is to file with the Secretary of State a summary of the proposed rule and the same is published as part of the Notice of Proposed Rule Making. From a review of the Notice of Proposed Rule Making that was published in the February 18, 2004 edition of the New York State Register, the Board of Parole complied with this requirement.

As for the concern that the Board of Parole did not publish the address of the website where the text of the proposed rule making could be accessed, the aforementioned Notice of Proposed Rule Making stated "[t]he full text is posted at the following State website: www.parole.state.ny.us". Accordingly, the Board of Parole provided sufficient information to enable interested parties with the ability to gain access to the full text of its proposed rule making. In addition, the public was informed by the Notice of Proposed Rule Making that the full text of the proposed rule making could be obtained from "Terrence X. Tracy, Counsel, Division of Parole, 97 Central Avenue, Albany, New York 12206, (518) 473-5671, e-mail tracy@parole.state.ny.us".

As for the concern that the Board of Parole failed to state when the 45-day comment period commenced, the aforementioned Notice of Proposed Rule Making stated that public comment would be received until 45 days after publication of the notice. Upon the foregoing, the comments of PEF, Parole Division 236 addressed to the Parole Board's compliance with SAPA provide no basis for setting aside the Notice of Proposed Rule Making that was previously published.

As for the comments submitted by PEF, Parole Division 236 addressed to the substance of the proposed rule making, it expresses concern that the proposed rules usurp the power of the Parole Board. Since the proposed rule making was promulgated by the Board on January 23, 2004, it cannot be said that it has usurped its own power. Regarding the concern that the proposed rule making will prevent staff from properly preparing cases for presentation at preliminary and final revocation hearings, there is nothing set forth within the letter submitted by PEF, Parole Division 236 to support this concern. In addition, this concern does not recognize the Parole Board's existing regulations that allow for an adjournment of hearings upon a party's showing of good cause for such adjournment. Finally, the concern that no explanation has been provided as to why the proposed rule

making is needed, this concern has been addressed through the previously published Regulatory Impact Statement which provides such information.

The second comment received by the Board of Parole came from an inmate currently in the custody of the New York State Department of Correctional Services. The inmate requested and was provided with a copy of the text of the proposed rule and expressed concerns about the substance of the proposed rule. In connection with the inmate's concern about the release of individuals from State or local custody, the Board's proposed rule making will only impact the re-release of adjudicated parole violators who have completed their time assessments imposed after a final revocation hearing. As outlined in the published Regulatory Impact Statement, Executive Law § 259-i(3)(f)(x) authorizes the Board to waive the requirement that a violator make a personal appearance before the Board when he or she is suitability for re-release. Accordingly, this provision of the Executive Law allows for the re-release of adjudicated violators to parole supervision as soon as they are legally eligible, *i.e.*, their successful completion of a time assessment. By redefining a "time assessment", the proposed rule change will enhance the Board's ability to ensure that appropriate violators are re-released to supervision in a manner consonant with Executive Law § 259-i(3)(f)(x).

As for the inmate's concern about the entities that were previously notified of this proposed rule making, the Board received input from the Parole Revocation Defense Unit of the Legal Aid Society of New York, the New York State Department of Correctional Services, the New York City Department of Correction and the New York State Sheriffs' Association.

With respect to the concern that releasees facing a possible revocation of their release status be afforded the due process required by section 259-i(3) of the Executive Law, the Parole Board's proposed rule making does not seek to alter or diminish the rights that an alleged violator currently possesses when he or she is subject to the Division's administrative revocation process. Alleged violators will still retain: the right to receive notice of the alleged violations; notice of when and where their preliminary and final revocation hearings will be conducted; the right to counsel; the rights of cross examination and confrontation; the right to call witnesses; the right to a timely decision following completion of the final hearing; and, the right to pursue an administrative appeal from an adverse decision with representation from assigned counsel if indigent.

In promulgating this proposed rule making, the Parole Board seeks to impart a greater degree of certainty and finality with regard to the decisions of its Administrative Law Judges who preside over final revocation hearings. Accordingly, except for releasees serving sentences for a felony offense under Articles 125, 130, 135 or 263 of the Penal Law, or section 255.25 thereof, the Administrative Law Judges will be able to render a final decision. This final decision making authority will include a determination that the alleged violator be restored immediately to parole supervision, a disposition that previously was non-final and required final review by the Parole Board.

The third comment received by the Board came from the Parole Board's Chief Administrative Law Judge. In his letter, he noted that the proposed rule making warranted technical changes to avoid confusion. He noted that by the proposed rule making, the Board of Parole made clear that except for cases where the alleged violator is serving a sentence for a felony offense under Articles 125, 130, 135 or 263 of the Penal Law or section 255.25 thereof, *i.e.*, category 1 cases, the Administrative Law Judge is to have the authority to impose a final decision after completion of the final revocation hearing. However, the proposed rule making failed to make clear the manner in which Article 135 offenders were to be treated. The Chief Administrative Law Judge is correct that the recommended technical changes will prevent confusion for alleged violators and their counsel, Division of Parole staff who prosecute such cases and the Administrative Law Judges who preside over such matters. Accordingly, such changes have been made and are being published herewith as part of the Parole Board's Notice of Adoption.

Finally, the Board of Parole was provided with comments from Parole Revocation Unit of the Legal Aid Society of New York. The first concern addresses the Parole Board's deferral of a violator's re-release when he or she is the subject of an inmate misbehavior report. The Parole Board's current and proposed practice, as demonstrated by both the existing regulations and proposed rule making, reflect its belief that it is prudent to hold the parole violator's re-release in abeyance pending the disposition of charges alleging inmate misconduct.

As for the concern addressed to that portion of the proposed rule making that authorizes a deferral of a violator's re-release when the Parole Board receives any information indicating that such person may not be suitable for re-release, it should be noted that the Board's current regula-

tions contain this same provision. In addition, the existing regulations and proposed rule making merely authorize the Parole Board to conduct a personal interview with the parole violator. The purpose of this interview is to evaluate the veracity of the information and its import in assessing the violator's suitability for re-release to the community.

As for the concern addressed to the Parole Board's ability to defer its re-release decision when a violator has experienced a significant change in his or her emotional/mental state, the Board's current regulations contain this same provision. Again, the existing regulations and proposed rule making authorize the Board to conduct a personal interview with the parole violator. The purpose of this interview is to assess the violator's ability to function safely within the community and have meaningful access to a continuum of mental health services that are consistent with effective parole supervision.

With respect to the concern that the Division of Parole take measures to ensure there is no conflict of interest by Supervision Parole Officers, *i.e.*, Area Supervisors, who declare alleged violators delinquent, the Division will not have such individuals act as signatories to the violation of release reports that they review.

As for the concern that the proposed rule making does not define what constitutes absconding, the Parole Board has not sought to address this issue by this proposed rule making.

Regarding the perceived rigidity in the application of the guidelines for category 1 violators, this is not an aspect of the parole revocation process that the Parole Board sought to address by its proposed rule making. With respect to category 2 violators, there is no legitimate reason for excepting certain individuals from the program offered at the Willard Drug Treatment Campus because misdemeanor charges against them are pending at the time of the final revocation hearing, particularly when similarly situated violators who have achieved completion of their misdemeanor cases by the time of their final hearing are restored to the Willard program. The proposed rule making will obviate any incentive that may exist for allowing misdemeanor charges to remain pending to gain an exemption from the Willard program.

Regarding a violator's medical ineligibility for participation in the Willard program, the Division and Board are guided by the medical criteria established by the Department of Correctional Services, as Willard is a drug treatment campus operated by the Department. See Correction Law § 2(20); Criminal Procedure Law § 410.91. Prior to their placement in this program, all adjudicated violators are taken from local jails to one of the Department's reception centers where they are screened for suitability in this program. In instances where a violator is deemed medically unsuitable for this program, such violator is identified and an alternative disposition is crafted by one of the Parole Board's Administrative Law Judges.

As for category 3 violators, the Division makes every effort to prosecute such cases in the most expedient manner. The Division will continue to collect and exchange pertinent information in a timely manner.

Finally, the proposed rule making is perceived as being sufficiently clear for providing the Administrative Law Judges with final decision making authority to direct the placement of a violator in an alternative to incarceration program without the consent of the Division.

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## Public Service Commission

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

#### Transfer of Ownership Interests by Equus Power I, L.P.

**ID. No.** PSC-24-04-00001-EP

**Filing date:** May 26, 2004

**Effective date:** May 26, 2004

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

**Action taken:** The commission, on May 26, 2004, adopted an order in Case 04-E-0651 approving the request of Equus Power I, L.P. to transfer its ownership interests to HD Freeport, LLC (HD Freeport).

**Statutory authority:** Public Service Law, section 70

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

**Specific reasons underlying the finding of necessity:** Immediate approval of the transfer is necessary, so the financing and construction of the electric generating facility can proceed to accommodate the growing peak demand in the Long Island load pocket. A delay in the completion of the project would likely result in power shortages causing failures in electric system supply and reliability, jeopardizing public health and safety.

**Subject:** Transfer of ownership interests.

**Purpose:** To meet the peak demand for electricity on Long Island this summer.

**Substance of emergency/proposed rule:** The Commission approved on an emergency basis the request of Equus Power I, L.P. for the transfer of ownership interests in it from its former partners Equus Power, Inc., GPR-Equus, LLC, Rocky Sembritzky and Frank Giacalone to HD Freepport, LLC., subject to the terms and conditions set forth in the order.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire August 23, 2004.

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

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

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

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

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

(04-E-0651SA1)

## NOTICE OF ADOPTION

### Electric Meter Testing and Reporting Requirements

**I.D. No.** PSC-29-03-00006-A

**Filing No.** 620

**Filing date:** May 28, 2004

**Effective date:** May 28, 2004

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

**Action taken:** Amendment of Part 92 of Title 16 NYCRR.

**Statutory authority:** Public Service Law, section 67(4)

**Subject:** Electric metering testing and reporting requirements.

**Purpose:** To streamline requirements for electric metering testing and promote and encourage competitive metering.

**Substance of final rule:** The Commission adopted the proposed revisions to Part 92 of 16 NYCRR to streamline the testing and maintenance for electric metering requirements to acknowledge the advances in metering technologies.

**Final rule compared with proposed rule:** Nosubstantive changes were made in sections 92.1(b), (c), 92.2(b), (k), 92.8(a), 92.9(a) and 92.10(c).

**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.

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not attached because the revisions made to the original published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact

#### Assessment of Public Comment

Comments on the proposed rules were filed jointly by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (the Utilities), and by The National Energy Marketers Association (NEMA).

The Utilities note that changes to Part 92 are primarily intended to extend the Commission's regulatory oversight to non-utility entities offer-

ing metering services in New York and, since the utilities in New York have always had to comply with 16 NYCRR Part 92, the regulations should waive further certification of their existing facilities.

The Utilities suggested several clarifying changes to the proposed Part 92. First, the Utilities suggest that the dated reference to the Operating Manual found in 92.1(b), *i.e.*, (March 14, 2003) should be deleted as repeated changes to Part 92 may be necessary each time the Operating Manual is revised. In 92.1(c), the Utilities question the definition of the term Meter Service Provider (MSP), stating it is overly broad. The Utilities point out that the definition found in 92.2(a) and (b) drop the requirement that meter testing facilities and meter standardizing laboratories be operated by utilities, but still provides for such facilities to be certified. They suggest that Part 92 provide the standards for certification and the Operating Manual contain the process and application form for certification. The Utilities contend that the reference to traceability to the National Institute of Standards and Technology (NIST) should instead refer to "traceability to the standards maintained by the NIST." The Utilities suggest that the phrase in 92.2(d) which states "through a series of calibrations" is extraneous to the understanding of the process of traceability and should be deleted. The Utilities state that 92.2(k) should be reworded to read, "The New York Independent System Operator (ISO) is a New York not-for-profit corporation providing operating control." The Utilities claim that the wording in 92.9(a) and (b) is ambiguous because 92.9(a) states that complaint tests must be done on site "where possible." The Utilities suggest that the phrase "where possible" from 92.9(a) should be deleted. The Utilities contend that section 92.10(c) is awkward and should be re-worded to be more consistent with the definition of MSP. Finally, the Utilities state that section 92.11(c) refers to data validation and estimation functions performed on computer systems in connection with creating customer bills and that these functions are irrelevant to meter testing.

NEMA submitted alternatives for the Commission to consider before extending Part 92 to competitive Meter Service Providers (MSP). First, NEMA suggests that it is unnecessary to extend Part 92 to competitive providers because 16 NYCRR Part 93 regarding meter approvals is sufficient to ensure that meters installed on customer premises meet certain minimum standards. Second, NEMA states that the Commission can assure that meters are accurate by performing spot checks on meters to make sure they are providing accurate readings. Last, NEMA states that if a customer has reason to suspect that his or her meter is not accurate, the customer can request that the meter be tested. NEMA also recommends that there be anti-abuse provisions for frivolous use of the complaint process. NEMA was also critical of what it called the two step certification process which it states requires both Commission and individual utility certification of a meter. NEMA states that back out credits should properly reflect the allocated and embedded costs of complying with the new meter testing and reporting requirements. NEMA points out that the Commission should allow meter testing facilities to be competitively outsourced. NEMA further suggests that although it may be cost prohibitive for a single MSP to maintain a meter test facility, another entity with the proper equipment and personnel could effectively provide these services to a large number of MSPs, effectively opening competition in another market.

Regarding Applicability of Part 92 to all meter service providers, meter accuracy is important for all customers in New York, including customers served by competitive metering providers and local distribution companies. Therefore, we believe that all meter service providers should comply with the requirements of Part 92. The Commission will continue to depend on a variety of methods to ensure the accuracy of the electric meter population in the state including meter testing and certification of utility meter testing facilities, as suggested by NEMA. Therefore, we reject NEMA's comments regarding the extension of Part 92 to competitive meter service providers. The waiver requested by the utilities is also unnecessary as the Commission's policy on certification of test facilities has not changed.

NEMA's claim that a two step meter certification process exists in New York State is incorrect. The Commission certifies meters to be used throughout the state for billing. The utilities have the discretion to use any Commission certified meter.

In regard to the costs of complying with meter testing and reporting requirements, NEMA states that back out credits should properly reflect the allocated and embedded costs of complying with the new meter testing and reporting requirements. The level of utility back-out credits are being considered in a separate proceeding pending before the Commission in Case 00-M-0504.

Regarding competitive meter test facilities. Staff agrees with NEMA and has already begun the process of certifying independent meter test facilities for use as out-source meter test facilities.

With regards to the Utilities suggestion that the dated reference to the Operating Manual be deleted, the New York State Department of State rules require specifically referenced documents be incorporated by reference, thus inclusion of specific dates can not be avoided.

Regarding the term Meter Service Provider (MSP), the Utilities contend that it be revised to refer only to those entities eligible to be an MSP as defined by the *Practices and Procedures for the Provision of Electric Metering in a Competitive Environment (Manual)*.<sup>1</sup> We believe that the modification recommended by the Utilities clarifies the definition of meter service provider in the regulations.

Regarding the Utilities suggestion that point that standards for certification of competitive meter testing facilities and meter standardizing laboratories be provides, we find that comprehensive certification standards and processes are outlined in the Operating Manual. Regarding the utilities comment that the reference to traceability to the National Institute of Standards and Technology (NIST) should instead refer to "traceability to the standards maintained by the NIST", we agree that the traceability provision in 92.2(b) should be revised to reflect the Utilities comments.

Regarding the Utilities suggestion that the phrase in 92.2(d) which states "through a series of calibrations" is extraneous, we disagree and find that the definition is consistent with industry standards as identified by the American National Standards Institute. Regarding the Utilities proposed changes to the reference to the ISO, we agree with this clarification. In the second sentence of the provision in 92.8(a), the Utilities contend that the description of "indeterminate" should not include the final phrase "of the meter." We agree with this clarification.

Regarding the Utilities claim that the wording in 92.9(a) and (b) is ambiguous and the term "where possible" should be deleted, we agree. Regarding the Utilities suggestion that section 92.10(c) is awkward and should be re-worded to be more consistent with the definition of MSP, we agree.

Regarding the Utilities statement that section 92.11(c) refers to data validation and estimation functions which are irrelevant to meter testing, we disagree with the Utilities' as the specific provision is intended to verify the functionality and compatibility of an integral part of a complete metering system.  
(02-E-0255SA1)

**NOTICE OF ADOPTION**

**Initial Tariff Schedule by Great Expectations, LLC**

**I.D. No.** PSC-29-03-00008-A  
**Filing date:** May 28, 2004  
**Effective date:** May 28, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 03-W-0941, allowing Great Expectations, LLC's initial tariff schedule, P.S.C. No. 1 — Water to become effective May 29, 2004.

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

**Subject:** Initial tariff schedule.

**Purpose:** To set forth the rates, charges, rules and regulations under which Great Expectations, LLC will operate.

**Substance of final rule:** The Commission approved Great Expectations, LLC's initial tariff schedule with modifications to the rates, rate structure (a service charge with no water allowance and a charge for all water use) and the rate of return incentive statement, 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.

<sup>1</sup>Case 94-E-0952, Order Issued and Effective May 29, 2001.

(03-W-0941SA1)

**NOTICE OF ADOPTION**

**Transfer and Leaseback of Certain Building Facilities and Associated Realty by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-47-03-00025-A  
**Filing date:** June 1, 2004  
**Effective date:** June 1, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 03-M-1572 approving with conditions, Niagara Mohawk Power Corporation and Iskalo Development Corporation's request to transfer property.

**Statutory authority:** Public Service Law, sections 69 and 70

**Subject:** Transfer and leaseback of certain facilities and property.

**Purpose:** To authorize the transfer and leaseback of certain building facilities and associated realty.

**Substance of final rule:** The Commission approved a joint petition by Niagara Mohawk Power Corporation (Niagara Mohawk) and Iskalo Development Corporation authorizing the transfer of Niagara Mohawk's Buffalo Electric Building, underlying land and a nearby parking lot to Iskalo Development Corporation, 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-M-1572SA1)

**NOTICE OF ADOPTION**

**Low-Income Energy Affordability Program by the New York State Energy Research and Development Authority (NYSERDA)**

**I.D. No.** PSC-07-04-00018-A  
**Filing date:** May 26, 2004  
**Effective date:** May 26, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 94-E-0952, approving and modifying New York State Energy Research and Development Authority's (NYSERDA) plan for a Low-Income Energy Affordability Program (LEAP).

**Statutory authority:** Public Service Law, sections 5(2) and 66(1)

**Subject:** Low-Income Energy Affordability Program (LEAP).

**Purpose:** To allow Niagara Mohawk Power Corporation and New York State Electric & Gas Corporation to transfer certain low-income energy programs and associated system benefits charge funding to NYSERDA.

**Substance of final rule:** The Commission approved the Low Income Energy Affordability Program proposed by New York State Energy Research and Development Authority, with the stipulation that total utility administration costs are set at \$180,000 annually, with Niagara Mohawk Power Corporation and the New York State Electric and Gas Corporation each allocated \$90,000 per year, 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. (94-E-0952SA34)

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

**Intercarrier Telephone Service Quality Standards and Metrics**

**I.D. No.** PSC-24-04-00006-P

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

**Proposed action:** The commission is considering modifications to existing intercarrier telephone service quality measures and standards.

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

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

**Purpose:** To review recommendations from the Carrier Working Group to incorporate appropriate modifications to the existing intercarrier telephone service quality measures and standards.

**Substance of proposed rule:** The Commission is considering the addition, revision and deletion of certain standards and measures of intercarrier telephone service quality performance. Specifically, the Carrier Working Group, an industry group in which the Staffs of the Department of Public Service and the Department of Law participate, will be making recommendations which modify and clarify the existing guideline documents for Verizon New York Inc. (Verizon) and Frontier Telephone of Rochester. Many of the recommended changes, including guideline administrative changes, are derived by consensus of the Carrier Working Group. Other changes to the existing guidelines may impact the measurement of performance for operations support system (OSS) functions, including pre-ordering, ordering, provisioning, maintenance, network performance and billing. Among the specific revisions being considered here is response time for the OSS maintenance interface (for electronic bonding) and the impact on the guidelines with regard to Verizon no longer being obligated to maintain a Separate Data Affiliate.

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

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

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

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

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

(97-C-0139SA20)

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

**Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and Development Authority of the North Country**

**I.D. No.** PSC-24-04-00007-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and Development Authority of the North Country for approval of an interconnection 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:** Citizens Telecommunications Company of New York, Inc. and Development Authority of the North Country have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Development Authority of the North Country will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

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

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

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

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

(04-C-0551SA1)

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

**Initial Tariff Schedule by National Aqueous Corporation**

**I.D. No.** PSC-24-04-00008-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, National Aqueous Corporation's initial tariff schedule, P.S.C. No. 1—Water, to become effective Oct. 1, 2004.

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

**Subject:** Initial tariff schedule—electronic tariff.

**Purpose:** To set forth the rates, charges, rules and regulations under which National Aqueous Corporation will operate.

**Substance of proposed rule:** On May 19, 2004, National Aqueous Corporation (National Aqueous or the company), filed an electronic initial tariff schedule, P.S.C. No. 1—Water, which sets forth the rates, charges, rules and regulations under which the company will operate to become effective October 1, 2004. In 1999 National Aqueous acquired the assets of the water system of Relaxmor Cottages, Inc., and in compliance with the Commission Order in C. 99-W-0826 filed an adoption supplement adopting Relaxmor Cottages, Inc.'s tariff schedule as its current tariff schedule. National Aqueous has 55 customers, and is located in the development of Melody Lake Estates in the Town of Thompson, Sullivan County. The proposed tariff contains the current flat rate of \$52.60 per quarter, per customer, or \$210 annually; however, the company has also filed for a rate increase and the establishment of a \$20,000 escrow account to become effective January 1, 2005. The rate increase is noticed and described in Case Number 04-W-0641SA2. National Aqueous' proposed updated electronic tariff differs from the current tariff. The definition of bill delinquency changes from 30 days to 23 days, the new tariff contains a late payment charge of 1-½ percent per month, and a returned check charge (equal to the bank charge plus a handling fee of \$5.00 (not to exceed the maximum allowed by section 5-328 of the General Obligations Law). There is also a modification to the written notice of discontinuance of service provision stating that it contain information required by 16 NYCRR Section 533.3. In addition, there is a change in the restoration of service charge from \$10 at all times to \$50 during normal business hours (8:00 a.m. to 4:00 p.m., Monday through Friday), \$75 outside of normal business hours Monday through Friday and \$100 on weekends or public holidays. National Aqueous' tariff is available on the Commission's Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us))—located under Commission Documents—Tariffs.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0641SA1)

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

**Water Rates and Charges by National Aqueous Corporation**

**I.D. No.** PSC-24-04-00009-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by National Aqueous Corporation to make various changes in rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water, to become effective Jan. 1, 2005.

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

**Subject:** Water rates and charges.

**Purpose:** To approve an increase of annual revenues by \$17,176 or 136 percent and establish an escrow account (Statement No. 1) with a funding level of \$20,000.

**Substance of proposed rule:** On May 19, 2004, National Aqueous Corporation (National Aqueous or the company), filed to become effective January 1, 2005, Leaf 12, Revision 1 and Escrow Account Statement No. 1, to its tariff schedule, P.S.C. No. 1—Water. The company currently provides flat rate water service to 55 customers in Sullivan County, in a development known as Melody Lake Estates in the Town of Thompson. The proposed filing would increase rates by 136% and annual revenues by \$17,176. In addition the company is proposing to establish an escrow account (Statement No. 1) to cover the cost of extraordinary repairs, emergency maintenance and major improvements with a funding level of \$20,000 (customers would be billed \$50 per quarter). The company has also filed to update its tariff to an electronic version. The electronic filing is noticed and described in Case Number 04-W-0641SA1. The average residential customer’s annual bill is about \$210 (\$52.60 per quarter, per customer), and under the company’s proposal would increase to about \$540 (\$135 per quarter, per customer). National Aqueous’ proposed tariff amendments are available on the Commission’s Home Page on the World Wide Web ([www.dps.state.ny.us](http://www.dps.state.ny.us))—located under the Commission Documents—Tariffs.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0641SA2)

**Office of Temporary and Disability Assistance**

**NOTICE OF ADOPTION**

**Budgets for Public Assistance Cases**

**I.D. No.** TDA-13-04-00018-A

**Filing No.** 614

**Filing date:** May 27, 2004

**Effective date:** June 16, 2004

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

**Action taken:** Repeal of section 352.32(c) of Title 18 NYCRR.

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

**Subject:** Budget for public assistance cases.

**Purpose:** To repeal the regulatory provision that requires caseworkers to date and sign the original budget and each successive budget revision with initials; and indicate the effective period of the budget.

**Text or summary was published** in the notice of proposed rule making, I.D. No. TDA-13-04-00018-P, Issue of March 31, 2004.

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

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

**Assessment of Public Comment**

During the public comment period for the regulation repealing the provision that requires caseworkers to date and sign the original budget and each successive budget, the Office of Temporary and Disability Assistance received a supportive comment from one social services district. No other comments were received and no changes have been made to the regulation since it was published in the *State Register*.