

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Regulation of Budget Planning Activities

I.D. No. BNK-26-04-00002-E

Filing No. 691

Filing date: June 15, 2004

Effective date: June 17, 2004

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

Action taken: Addition of Part 404 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-C, section 587

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

Specific reasons underlying the finding of necessity: Chapter 629 of the laws of 2002, which became effective on April 7, 2003, made substantial changes to the conduct of the business of budget planning in this state. Amendments made to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law necessitated the emergency adoption of Part 402 of the Superintendent's Regulations on that date.

It has come to the attention of the Banking Department that many licensed budget planners utilize third party entities to assist them in distributing the monies of debtors to their creditors. Likewise, many applicants

for a budget planning license have indicated in their application that they intend to conduct their budget planning activities in a similar fashion. This type of "outsourcing", in which an entity other than the licensee which has a contract for budget planning services with a debtor has access to or controls the monies of debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature. The rule is necessary in order to provide protection to debtors when a third party "outsourcer" is used in the process of paying debtor funds to creditors of the debtors. Specifically, if the third party "outsourcer" is another budget planner licensed under Article 12-C of the New York Banking Law, the amount of that licensee's bond or assets placed on deposit, as the case may be, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly distributed to their creditors, must be increased to reflect the additional amount of debtors' funds that it has access to or controls as a result of its "outsourcing" activities. However, if the licensed budget planner which utilizes another licensed budget planner as an "outsourcer" places assets on deposit pursuant to Section 580(4) of the Banking Law in an amount sufficient to cover the debtors' funds that the licensed "outsourcer" has access to or controls, then the licensed "outsourcer" would not be required to obtain a surety bond in a greater amount, or place additional assets on deposit to cover the additional amount of debtors' funds that it has access to or controls, as a result of its outsourcing activities. In such case, the monies of debtors would be fully protected by the original licensee's asset deposit.

If the third party "outsourcer" is not a licensed budget planner in New York State, the issue of the safety of the monies of the debtors becomes more paramount as an entity unregulated by and probably unknown to the Banking Department will have access to or control of the monies of debtors. In such case, unless the licensed budget planner places assets on deposit sufficient to cover the debtors' funds that the non-licensed "outsourcer" has access to or controls, the non-licensed "outsourcer" would be required to place assets on deposit sufficient to protect the monies of the debtors that it has access to or controls as a result of its "outsourcing" activities.

The rule also contains provisions relating to the contractual relationship between the licensed budget planner and the service provider, which give protection to debtors who may be adversely affected if the contract between the licensee and the service provider is terminated.

The primary legislative objective of Chapter 629 is to provide greater consumer protection to New York residents who contract with licensed budget planners for budget planning services. Accordingly, considering the foregoing, emergency adoption of this rule is necessary and appropriate.

Subject: Regulation of budget planning activities conducted by entities licensed under art. 12-C of the Banking Law.

Purpose: Set forth the regulatory requirements and standards of operation for entities licensed under art. 12-C of the Banking Law to conduct the business of budget planning when the licensees use the services of third party entities in making payments of debtor funds to creditors of the debtors.

Text of emergency rule:

PART 404

BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES

(Statutory authority: Banking Law, § 587)

§ 404.1 Definitions.

For purposes of this Part:

(a) The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.

(b) The term "licensee" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individual or entity that has a 10% or more ownership interest in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

§ 404.2 Explanatory note.

Section 580.4 of Article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under Article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to Section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law Section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law Section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law Section 580.4.

§ 404.3 Servicing By a Licensee Service Provider.

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the licensee service provider.

(2) A description of the services to be provided by the licensee service provider.

(3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by

the licensee service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the Superintendent confirming that the Superintendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under Section 404.3(c) of this Part.

(e) Notwithstanding the provisions of Section 404.3(c) of this Part, if a licensee maintains a surety bond and seeks to utilize a licensee service provider, as defined in section 404.1(c) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(f) If the use of an alternate mechanism pursuant to Section 404.3(e) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(g) If a licensee proposes the use of an alternate mechanism to a licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, pursuant to Section 404(3)(e) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.4 Servicing By A Non-Licensee Service Provider.

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the non-licensee service provider.

(2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

(1) The non-licensee service provider gives the Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under Section 404.4(c)(2) of this Part, have been provided to the Superintendent, and the licensee receives written notice from the Superintendent confirming that the Superintendent has received all such information.

(d) Notwithstanding the provisions of Section 404.4(c)(2) of this Part, if a licensee maintains a surety bond and seeks to utilize a non-licensee service provider, as defined in Section 404.1(d) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the non-licensee service provider maintaining assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(e) If the use of an alternate mechanism pursuant to Section 404.4(d) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(f) If a licensee proposes the use of an alternate mechanism to a non-licensee service provider maintaining assets on deposit pursuant to Section 404.4(d) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.5 Termination of Agreements or Contracts.

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) A licensee shall immediately notify the Superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.

§ 404.6 Compliance.

Compliance with this Part shall be required on or before May 18, 2004.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 12, 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., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the Superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

2. Legislative Objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms

set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in such consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of persons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature addressed, among other things, the inherent risks associated with the payment of Debtor funds to creditors when Debtors choose to have such payments made via the services of a licensed budget planner instead of paying their creditors directly. Specifically, as one way of increasing consumer protections for the Debtors who contract with licensed budget planners in order to pay the debts they owe to creditors, Article 12-C was amended to require licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not properly been paid to their creditors.

In addition to the amendments to Article 2-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed New Part 404 sets forth a framework for the regulation of entities licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning, when such licensees use third party entities in distributing the monies of Debtors to creditors. New Part 404 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law, in particular, Section 580(4), by providing protection when third party entities are used in distributing Debtor monies to creditors.

3. Needs and Benefits:

Proposed New Part 404 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. Specifically, when Banking Law Section 580(4) was recently enacted, it placed the requirement upon licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by Debtors that have not been properly paid to their creditors. Since the enactment of the legislation, members of the Banking Department staff have received numerous applications from prospective licensees. Extensive discussions were had at meetings and in telephone conversations with a number of the prospective licensees, as well as with current licensees, regarding the operations of their budget planning businesses. This was

done in order to assess whether the business practices of the budget planning industry conformed to the consumer protections standards set forth in the new laws. The Department learned from many of the prospective and current licensees that with respect to the Debtors that they are in contract with for budget planning services, it is their practice to use third party entities in distributing the Debtors' monies to creditors. The third party entities that they contract with for such services are generally for-profit entities that are not, themselves, licensed to conduct the business of budget planning. However, one current licensee indicated that it uses the services of another New York State licensed budget planner in order to distribute Debtors' monies to creditors. The current and prospective licensees explained that it is necessary for them to use the services of third party entities in this way primarily because they do not have the computerized technology, staffing, and budgetary resources to provide the critical services performed by the third party entities.

Nevertheless, this type of "outsourcing" to a third party entity, in which an entity other than the licensee which has a contract for budget planning services with a Debtor, holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's Debtors, or distribute, or is in the chain of distribution of such monies, to the creditors of such Debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature when it put into law the bond/asset deposit requirement as set forth in Section 580(4) of New York's Banking Law.

The rule is proposed in order to accommodate the budget planning industry's operational need to use the third party entities in distributing Debtor funds to creditors. At the same time, the rule provides the consumer protections afforded by the recently enacted budget planning legislation as set forth in Banking Law Section 580(4). In particular, if the licensee uses a third party entity in distributing Debtor funds to creditors, and the licensee elects to place assets on deposit, which assets constitute a trust fund to reimburse payments made by Debtors if not properly paid to their creditors, the rule allows for the use of such a third party entity and places no additional bond/asset deposit requirements on the third party entity. If, on the other hand, the licensee elects to obtain a surety bond rather than place assets on deposit, the licensee may only use a third party entity in distributing Debtor funds if the third party entity places assets on deposit or obtains a surety bond, as the case may be.

Budget Planning is a regulated financial service in New York State. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services. It is the Banking Department's belief that the rule as proposed is necessary. It provides the mechanism by which the budget planning entities that are currently licensed, as well as those seeking to obtain such a license, can continue to operate using the services of third party entities in distributing Debtor funds to creditors. At the same time, the rule satisfies the legislative requirement as set forth in Banking Law Section 580(4) to provide certain protection to Debtors in contract with licensees, in cases where third party entities are used by the licensees in distributing Debtor funds to creditors.

4. Costs:

(a) Costs to State Government:

None.

Any and all additional examination costs that may be incurred by the Banking Department, as a result of the requirements of the rule imposed on the licensees that use third party entities in the distributing Debtor funds to creditors, will be borne by the licensees.

(b) Costs to Local Government:

None.

(c) Costs to Regulated Entities:

The proposed rule allows licensees to use third party entities in distributing Debtor funds to creditors. In summary, Part 404 provides the following. If a licensee elects to maintain assets on deposit and utilizes the services of a third party entity in distributing Debtor funds to creditors, (whether or not the third party entity is, or is not, another budget planner licensed in New York) there is no requirement that the third party entity obtain a surety bond or place assets on deposit with respect to the business of the licensee that it is servicing. If a licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is also a licensed budget planner in New York, the third party entity must either obtain a surety bond or maintain assets on deposit with respect to the business of the licensee that it is servicing. If the licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is not a New York

licensed budget planner, the third party entity must maintain assets on deposit with respect to the business of the licensee that it is servicing.

A licensee is likely to incur no costs if it uses a third party entity in distributing Debtor funds and elects to maintain assets on deposit, rather than a surety bond. The reason being, that a licensee has to purchase a surety bond, whereas, by placing assets on deposit, the licensee does not have to make such a purchase. Moreover, when assets are placed on deposit, the licensee has the ability to earn interest on the deposited funds.

It is possible, however, that in circumstances where a licensee may not have all, or part of, the necessary funds to place on deposit, that it could incur some costs in connection with borrowing funds for its required deposit. The Banking Department is unable to determine what the costs to the licensees would be under those circumstances since the cost of borrowing funds is typically dependent upon factors such as, the amount of the borrowing and the financial condition of the entity doing the borrowing. Therefore, it is not possible to estimate, even in a general way, such borrowing costs. However, should costs be incurred to make the asset deposit, those costs will not outweigh the benefits derived by maintaining the assets on deposit should Debtor funds not be properly paid to creditors.

(d) Costs to the Banking Department for Implementation and Continued Administration of the Rule: The rule requires Banking Department staff to review contracts or agreements that licensees have entered into, or plan to enter into, regarding the licensees use of third party entities in distributing Debtor funds to creditors. This review is done in order to assess compliance with rule to ensure, that where third party entities are involved, the Debtors in contract with the licensees are afforded the consumer protections provided by the bond/asset deposit requirements of Section 580(4) of the New York Banking Law. The Banking Department expects that its costs to implement and administer the rule will be minimal.

5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

The reporting requirements as set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees, in furtherance of the legislative objective to provide more consumer protections for debtors in contract with licensees for budget planning services.

Under the proposed rule, licensed budget planners will have to provide the Banking Department with the following information: a) the name and address of the third party entity used in distributing debtor funds to creditors, b) a description of the services being provided by the third party entity, c) a copy of the agreement or contract entered into with the third party entity, d) information regarding the highest daily amount of Debtor funds that the third party entity will be providing services for under the contract or agreement, and e) information with respect to the termination of any such agreement or contract. All of this information is of the type that licensees using third party entities in distributing Debtor funds will have readily available to provide to the Banking Department.

7. Duplication:

None.

8. Alternatives:

(a) Proposal – As is previously discussed in the Legislative Objective Section contained herein, the recent amendments to Article 12-C, Section 580(4) of New York's Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse payments made by Debtors that have not been properly distributed to creditors.

Since the enactment of the legislation, Banking Department staff met with current and prospective licensees and learned that these businesses require the use of the services provided by third party entities in distributing Debtor funds. The rule was proposed keeping in mind both the legislative intent in enacting the bond/asset deposit requirements to provide increased consumer protection to New York residents in contract with licensees should their payments not be properly distributed to creditors, and the need that current and prospective licensees have in using the services of third party entities in distributing such payments. The rule allows licensees to use the services of third party entities in this way, and also provides the Debtors in contract with the licensee the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature.

(b) Do not propose the rule.

If this alternative were considered, the Banking Department would have to require that licensees not use the services of third party entities in distributing Debtor funds to creditors, in order to provide Debtors the consumer protections afforded under Section 580(4) of the Banking Law.

This alternative is not feasible because, as many current and prospective licensees explained to the Banking Department, they need to use the services of the third party providers in distributing Debtor funds. The need results primarily because they do not have the computerized technology, staffing and budgetary resources to provide the critical services that they perform.

Under these circumstances, the Banking Department believes that if the rule was not proposed, licensed budget planners would have to be prohibited from using third party entities in distributing Debtor funds. This could be severely harmful to the budget planning industry, particularly since, the inability to use the third party entities may prevent the licensees from continuing to operate their businesses. Moreover, the inability to use the third party entities may prevent many prospective licensees from seeking a budget planning license in New York because they may not be able to operate without the services of the third party entities. Accordingly, the proposed rule is needed not only to provide consumer protection to Debtors as mandated by Section 580(4) of the Banking Law, but also to prevent putting certain current licensees out of business, and to enable certain prospective licensees the opportunity to conduct the business of budget planning in New York.

9. Federal Standards:

None.

10. Compliance Schedule:

Compliance with the rule is required on or before June 17, 2004.

Regulatory Flexibility Analysis

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under New York's Not-For-Profit Corporation Law. Under New York's Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York.

No local governments are licensed to conduct the business of budget planning, and all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

When the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law, it established a more rigorous regulatory environment within which entities licensed under New York Law were to engage in the business of budget planning. This was done in order to provide increased consumer protection to New York residents that contract for budget planning services with licensees.

The recent amendments to Article 12-C of the New York Banking Law include the bonding/asset deposit requirements set forth under Section 580(4) of Article 12-C. In particular, Section 580(4) requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

In response to the legislation, members of the Banking Department staff met with and/or had conversations with current and prospective licensees. As is more fully described in the Regulatory Impact Statement, the Banking Department learned that many of the current and prospective licensees require the services of certain third party entities in distributing debtor funds to creditors. Accordingly, the rule was proposed in response to the industry need to use third party entities in this way. The rule is flexible in that it allows licensees to use the services of third party entities, who may be small business, in distributing debtor funds to creditors. At the same time, it provides the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature, to the Debtors in contract with the licensees for budget planning services. The rule ensures that debtors' funds will be protected, as mandated by the statute, irrespective of which entity has control over and/or access to the funds.

Specifically, due to the servicing relationship between the licensee and the third party entities, when a licensee elects to use a third party entity in distributing debtors funds to creditors, under the proposed rule, the licensee can choose to either place assets on deposit, or obtain a surety bond. If the licensee places assets on deposit, there are no bond/asset deposit requirements placed on the third party entity. If the licensee elects to obtain a bond, the third party entity can either place assets on deposit or obtain a surety bond, as the case may be, with respect to the budget planning business of the licensee that it services.

Based on the dialogue that the Banking Department had with current and prospective licensees regarding their need to use third party entities in distributing debtor funds to creditors, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse impact on entities licensed under New York Law to conduct the business of budget planning.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. The legislature mandated under Section 580(4) of the New York Banking Law, that licensees obtain a surety bond or place certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly paid to creditors. In order to provide debtors with the consumer protections afforded under Section 580(4), the proposed rule allows licensees that use third party entities in distributing debtor funds to creditors to either place assets on deposit or obtain a surety bond. If the licensee elects to obtain the surety bond, it must only use the services of a third party entity that also places assets on deposit or obtains a surety bond, as the case may be, in connection with the licensees business that it is servicing. If the licensee elects to place assets on deposit, no bond/asset deposit requirements are placed on the third party entity.

There is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from complying with the rule based on a particular office location. Accordingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to debtors residing in rural areas who enter into contracts with licensees for budget planning services, when such licensees use the services of third party entities in distributing debtors funds to creditors.

Job Impact Statement

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York Banking Law and Article 28-B of New York's General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 580(4) of Article 12-C of the New York Banking Law was recently amended in connection with budget planning in New York State. It requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, to maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

As is explained in the Regulatory Impact Statement, it has come to the attention of the Banking Department that both current and prospective licensees require the services of third party entities in distributing debtors to creditors. The rule has been proposed in order to allow the licensees to continue using such third party entities in the operations of their businesses. At the same time, the rule provides the consumer protections afforded under Section 580(4) to debtors that contract with licensees for budget planning services when the licensees use third party entities in distributing the funds of the debtors to creditors.

Under the rule, if a licensee elects to use a third party entity in distributing debtor funds to creditors, a licensee can choose to either place certain assets on deposit or obtain a surety bond, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly paid to creditors. If a licensee places assets on deposit, there is no bond/asset deposit requirement placed on the third party entity. If a licensee, instead, chooses to obtain a surety bond, the rule requires that the third party entity place certain assets on deposit, or obtain a surety bond, as the case may be, with respect to licensees business that it services.

Accordingly, based on the rule's requirements, it will have no impact on jobs in New York State.

Department of Health

ERRATUM

In a Notice of Emergency Rule Making, I.D. No. HLT-18-04-00013-E pertaining to Nursing Home Pharmacy Regulations published in the May 5, 2004 issue of the *State Register*, text that should have been in italics to denote new material was inadvertently printed in a non-italic type. The corrected text follows:

Subdivisions (g) and (i) of Section 415.18 are amended to read as follows:

Section 415.18 Pharmacy Services.

* * *

(g) Emergency medications. The facility shall ensure the provision of (an) emergency medication kit(s) as follows:

(1) The contents of each kit shall be approved by the medical director, pharmacist and director of nursing.

(2) [Controlled Substances shall be prohibited in emergency kits.] *Limited supplies of controlled substances for use in emergency situations may be stocked in sealed emergency medication kits.*

(i) *Each such kit may contain up to a 24 hour supply of a maximum of ten different controlled substances in unit dose packaging, three of which may be injectable drugs.*

(ii) *Controlled substances contained in emergency medication kits may be administered by authorized personnel pursuant to an order of an authorized practitioner to meet the immediate need of a resident. Such authorized personnel shall include the facility's director of nursing services, registered nurse on duty, licensed practical nurse on duty or the pharmacist or the authorized practitioner supplying such controlled substances.*

(iii) *The facility shall maintain all records of controlled substances furnished or transferred from the pharmacy and the disposition of all controlled substances in emergency kits, as required by article 33 of the Public Health Law and corresponding regulations.*

(3) *For medications other than controlled substances [The] medication contents of each kit shall be limited to injectables except that the kit may also include:*

(i) sublingual nitroglycerine; and

(ii) up to five noninjectable, prepackaged medications not to exceed a 24-hour supply; [which are the same noninjectable, prepackaged medications in all emergency kits throughout the facility.] *The total number of noninjectables may not exceed 25 medications for the entire facility;*

(4) Each kit shall be kept and secured within or near the nurses' station.

* * *

(i) Verbal orders. All medications administered to residents shall be ordered in writing by a legally authorized practitioner unless unusual circumstances justify a verbal order, in which case the verbal order shall be given to a licensed nurse, or to a licensed pharmacist, immediately reduced to writing, authenticated by the nurse or registered pharmacist and countersigned by the prescriber within 48 hours. In the event a verbal order is not signed by the prescriber or a *legally* designated alternate [physician] *practitioner* within 48 hours, the order shall be terminated and the facility shall ensure that the resident's medication needs are promptly evaluated by the medical director or another legally authorized prescribing practitioner.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Animals in Health Care Facilities

I.D. No. HLT-26-04-00003-P

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

Proposed action: Amendment of sections 405.24 and 415.29 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803 and 2803-h

Subject: Animals in health care facilities.

Purpose: To bring current standards for accessing service animals into compliance with the Americans with Disabilities Act and update additional standards for animals, consistent with law.

Text of proposed rule: Section 405.24(h)(1) is amended to read as follows:

(h) Animals. [No birds, turtles, dogs, cats or other animals] *Animals*, exclusive of those required for laboratory purposes, shall *only* be allowed in a hospital [except] *in the following instances:*

(1) [guide dogs or] *service dogs or other service animals which have been individually trained to do work or perform tasks for the benefit of an individual with a disability [that accompany the sightless, hearing impaired or otherwise physically impaired] when[:] the presence of such animal will not pose a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation and is not medically contraindicated. However, if the safe operation of the hospital would be jeopardized, a service animal need not be allowed to enter. A finding by appropriate medical personnel at the hospital that the presence or use of a service animal would pose a significant health risk in certain designated areas of a hospital may serve as a basis for excluding service animals in those areas.*

[(i) the presence of such dog in a particular area is not medically contraindicated, or

(ii) the presence of such dog does not conflict with or imperil infection control efforts;]

* * *

Section 405.24(h)(2)(iv) is amended to read as follows:

(iv) the well-being of the participating animal is considered *and maintained;*

Section 415.29(l) is amended to read as follows:

(l) Animals. (1) [No birds, turtles, dogs, cats or other animals] *Animals*, exclusive of those required for laboratory purposes, shall *not* be allowed in a nursing home, except in a nursing home [pet] *animal visitation or animal-assisted therapy program* as permitted in paragraphs (2) and (3) of this subdivision. [Guide dogs] *Also, service dogs and other service animals which have been individually trained to do work or perform tasks for the benefit of an individual with a disability may accompany [sightless] such persons [.] when the presence of such animals will not pose a significant risk to the health and safety of others that cannot be eliminated by reasonable accommodation and is not medically contraindicated. However, if the safe operation of the facility would be jeopardized, a service animal need not be allowed to enter. A finding by appropriate medical personnel at the facility that the presence or use of a service animal would pose a significant health risk in certain designated area of a nursing home may serve as a basis for excluding service animals in those areas.*

(2) A nursing home may board [one dog or one cat] *animals as part of an animal-assisted therapy program, provided that:*

(i) the health, safety, welfare and rights of all residents on the unit are assured;

(ii) a staff member has been designated to be responsible for the care and management of the animal *or animals and has had appropriate training for such responsibilities;*

(iii) the animal [is] *or animals are* free from disease and [has] *have* received all immunizations as recommended by a licensed veterinarian; [and]

(iv) the animal *or animals* shall not be allowed in laundry, utensil storage or food preparation areas[.]; *and*

(v) *the well-being of the participating animal or animals is considered and maintained.*

(3) [Pet] *Animal* visitations are permitted in a nursing home provided that:

(i) the visit is prescheduled and approved by the facility;

(ii) the animal shall not be allowed in laundry, utensil storage or food preparation areas; and

(iii) the animal will at all times be accompanied by a person familiar with and capable of controlling the animal's behavior.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. Such Law also requires that state standards be no less stringent than federal requirements. Additional statutory authority is found in Public Health Law 2803-h which gives nursing homes the option to board animals and gives the Commissioner the authority to adopt rules and regulations necessary to implement such programs.

Legislative Objectives:

The legislative objective of Article 28 of the Public Health Law includes the protection of the health of the residents of the State by assuring the efficient provision of health services of the highest quality at a reasonable cost. This regulatory amendment furthers this objective by amending rules governing animals in health care facilities to bring such rules into conformity with the federal Americans With Disabilities Act and PHL 2803-h while ensuring that the safety of patients and residents is not jeopardized. It also brings greater conformity of safety requirements between hospital standards in Part 405 and nursing home standards in Part 415.

Needs and Benefits:

Standards for animals in hospitals are contained in section 405.24(h) and similar standards for animals in nursing homes are contained in section 415.29(l) of Department regulations. Additional standards for animals in health facilities are found in the federal Americans with Disabilities Act (ADA) which covers access for service animals (such as guide dogs) accompanying disabled persons.

Additional recent legislation has established additional standards for animal-assisted therapy programs in nursing homes. This regulatory initiative is intended to further clarify Department standards concerning the ADA animal-assisted therapy programs in nursing homes and to bring greater consistency to hospital and nursing home standards, where feasible.

The proposed regulatory amendment has been drafted to be consistent with the ADA and state legislation. One big issue in this area is safety of operations. The safety issue is addressed by implementing in both hospital and nursing home regulations a requirement that the presence of such animals not pose a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation and is not medically contraindicated. If health or safety concerns exist, the facility must work with the individual to mitigate the risk and attempt to provide the accommodation. This is intended to assure that facilities do not arbitrarily use the issue of health and safety to exclude animals which would not present health or safety risks if such reasonable accommodations are made. Also, a finding by appropriate medical personnel at a hospital or nursing home that the presence of a service animal would pose a significant risk in certain designated areas of a hospital may serve as a basis for excluding service animals in those areas.

Also, we recognize that service animals permitted into facilities by current regulations generally have undergone some formal training that can give hospitals and nursing homes reasonable assurance that their behavior in such settings will not be disruptive. To prevent such disruption, we have included the ADA requirement that service animals be "individually trained to do work or perform tasks for the benefit of an individual with a disability."

- Both hospital and nursing home regulations establish standards for animal-assisted therapy (referred to as "pet therapy" in PHL 2803-h for nursing homes) and animal visitation programs in nursing homes. Hospital standards in this area were established in 1997 and no changes are proposed except a strengthening of protection for the well-being of the participating animal. However, PHL 2803-h was recently updated to permit more than one animal per nursing home for such programs and this regulatory initiative will update nursing home regulations to reflect such change. Standards for animal-assisted therapy program at nursing homes will also be amended to ensure that the well-being of affected animals is considered and maintained, consistent with the amended hospital standard.

In summary, the goal of this regulatory action is twofold:

- To clarify Department regulations concerning the ADA; and
- To bring nursing home standards for animal-assisted therapy programs into conformity with PHL 2803-h.

Costs:

Costs for the Implementation and Continuing Compliance with this Regulation to Regulated Entity:

There should be no additional costs to hospitals or nursing homes. Such facilities are covered by the ADA and the codification of existing federal requirements should not require any change of behavior. Nursing homes have also been complying with PHL 2803-h so the incorporation into regulation of recent amendments to Section 2803-h will not necessitate any change in behavior.

Costs to State and Local Government:

This action will not result in additional costs to State or local government. (See "Costs for Regulated Entities" Above.)

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

These proposed amendments do not affect any paperwork required to be completed by any parties.

Duplication:

This regulation clarifies existing applicable State and federal law and does not duplicate any other state or federal law or regulations.

Alternatives:

No alternative was appropriate. Department regulations needed to be clarified to reflect conformance with the ADA and recent amendments to Section 2803-h of the Public Health Law.

Federal Requirements:

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

Compliance Schedule:

The proposed rule will become effective upon publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Pursuant to section 202-b of the State Administrative Act, a regulatory flexibility analysis is not required. The proposed rule will not impose an adverse economic impact on the hospitals or nursing homes that are small businesses in New York State, will not impose a negative impact on local governments and will not impose any additional recordkeeping, reporting and other compliance requirements.

The proposed rule simply clarifies Departmental regulations to demonstrate consistency with the ADA and to further clarify standards associated with animal-assisted therapy programs under Section 2803-h of the Public Health Law.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required.

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

The proposed rule simply clarifies Department regulations to demonstrate consistency with the ADA and to further clarify standards associated with animal-assisted therapy programs under Section 2803-h of the Public Health Law.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment opportunities.

The proposed rule simply clarifies Department regulations to demonstrate consistency with the ADA and to further clarify standards associated with animal-assisted therapy programs under Section 2803-h of the Public Health Law.

Higher Education Services Corporation

NOTICE OF ADOPTION

Federal Family Education Loan Program

I.D. No. ESC-17-04-00015-A

Filing No. 692

Filing date: June 15, 2004

Effective date: June 30, 2004

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

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

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

Subject: Simplification of the administration of the Federal Family Education Loan (FFEL) Program in New York.

Purpose: To replace the existing "one lender rule" with a rule modeled on the FFEL Program's one lender-one guarantor concept, which promotes simplification of the student lending process for borrowers.

Text or summary was published in the notice of proposed rule making, I.D. No. ESC-17-04-00015-P, Issue of April 28, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Donna Fesel, Office of Counsel, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: Donna_Fesel@hesc.com

Assessment of Public Comment

The agency received no public comment.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-26-04-00001-E

Filing No. 690

Filing date: June 10, 2004

Effective date: June 10, 2004

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

Action taken: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2 and 362-5.3 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327

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

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program's commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After several years of operation, we have

determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce Healthy New York premium rates by adjusting the stop loss reimbursement corridors to enable more uninsured businesses and individuals to afford health insurance; lessen complexity in eligibility determination; eliminate the well-child copayment; create a second benefit package; establish clear rules with respect to determining employment eligibility; clarify employer contribution requirements for part-time workers, qualify Healthy NY as coverage eligible for a Federal tax credit - generally improving the Healthy New York Program based upon feedback of affected parties.

Text of emergency rule: Section 362-2.5 shall be revised to read as follows:

§ 362-2.5 Annual recertification of eligibility.

(a) Health maintenance organizations and participating insurers shall [annually provide qualifying small employers and qualifying individuals with at least 30 days advance notice of their obligation, pursuant to section 4326(i) of the Insurance Law, to submit a recertification of continued eligibility], at least 90 days prior to the annual renewal date[.], [In conjunction with such notice, health maintenance organizations and participating insurers shall] provide any forms necessary for recertification.

(b) Health maintenance organizations and participating insurers shall annually collect certifications of continued eligibility for the Healthy New York Program [and necessary supporting documentation] and shall be responsible for examination of such certifications [and supporting documentation] to verify that small employers and individuals participating in the program continue to meet eligibility requirements and continue to comply with the terms of the program. Health maintenance organizations and participating insurers shall determine whether the small employer and individual participants continue to meet the requirements for participation in the Healthy New York Program and shall provide written notice of such determination within two weeks of receipt of the annual recertification.

(c) The failure of an employer or individual to provide written certification demonstrating continued eligibility and continued compliance with the terms of the Healthy New York Program shall be a basis for nonrenewal of a qualifying health insurance contract.

(d) [If a given small employer or individual participant fails to provide a recertification 90 days in advance of the annual renewal date, the health maintenance organization or participating insurer shall immediately provide such participant with a written reminder of the obligation to recertify. Such reminder notice shall notify the participant that coverage will be non-renewed if the participant fails to provide a recertification at least 60 days in advance of the annual renewal date.

(e) Health maintenance organizations and participating insurers shall provide no less than 45 days written notice to the contract holder and any covered employees of a nonrenewal[pursuant to subdivision (d) of this section]. Such notice of nonrenewal or termination shall set forth the basis for the nonrenewal and include a description of any applicable conversion rights. Such notice shall also include a description of other coverage options available for purchase from the health maintenance organization or participating insurer.

(f) Healthy New York Program enrollees who have transferred into the program from other public programs pursuant to section 4326(p) of the Insurance Law shall not be required to demonstrate satisfaction of the eligibility requirements set forth in section 4326(c) of the Insurance Law at the time of annual recertification.

A new Section 362-2.7 is added to read as follows:

§ 362-2.7 Healthy New York benefit adjustments.

(a) Beginning June 1, 2003, there shall be no copayment applied to preventive and primary health care services for routine well child visits and necessary immunizations.

(b) Beginning June 1, 2003, health plans shall offer an additional Healthy New York benefit package at a reduced premium rate. Such additional benefit package shall contain all of the benefits set forth in section 4326(d)(1) through (13) of the Insurance Law. The prescription drug benefit set forth in Section 4326(d)(14) shall not be included in the additional benefit package. Qualifying small employers and qualifying

individuals shall have the option of choosing among the benefit packages. Qualifying small employers must elect to provide the same benefit package to all of their employees participating in Healthy New York. Once enrolled in the program, any change in the selection of benefit package may occur at the time of annual recertification only.

(c) Individuals who are eligible for a federal tax credit under the federal Trade Adjustment Act of 2002, who have 3 months or more of creditable coverage shall be deemed to have sufficient creditable coverage to satisfy the 12-month pre-existing condition waiting period in full.

Section 362-3.2 shall be revised to read as follows:

§ 362-3.2 Small employer participation (other than individual proprietors).

(a) Qualifying small employers must have fifty or fewer eligible employees.

(b) Qualifying small employers must offer coverage to all employees, as defined in this part, who are earning annual wages of \$30,000 or less (adjusted annually as per section 4326(c)(1)(F) of the Insurance Law).

(c) Qualifying small employers must offer coverage to all persons who are considered to be eligible employees for the purpose of determining the employer's eligibility to purchase a qualifying group health insurance contract.

(d) Qualifying small employers may, but shall not be required to, offer coverage to part-time workers who work less than the required number of work hours to qualify as employees. However, if part-time workers are included as eligible employees for the purpose of meeting the eligibility requirements set forth in section 4326(c)(1)(B)(iii) of the Insurance Law, then the coverage must be offered to part-time workers.

(e) At least thirty percent of eligible employees must earn annual wages of \$30,000 or less (adjusted annually as per section 4326(c)(1)(F) of the Insurance Law).

(f) At least fifty percent of eligible employees must participate in group health insurance coverage through the Healthy New York Program.

(g) At least one eligible employee earning annual wages of \$30,000 or less (adjusted annually as per section 4326(c)(1)(F) of the Insurance Law) must participate in group health insurance coverage through the Healthy New York Program.

(h) On behalf of participating employees, qualifying small employers must contribute at least fifty percent of the premium for the qualifying group health insurance contract. *Qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf of part-time workers.*

(i) An employer's place of business must be located within New York State in order to be eligible to purchase a qualifying group health insurance contract.

(j) Qualifying small employers shall in no case include employers who have provided group health insurance covering their employees during the 12-month period preceding the date of application. Small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage (insured or self-insured) on behalf of their employees and contributed *more than a de-minimus amount* towards the cost of coverage on behalf of their employees. *De-minimus contributions are those that do not exceed an average of \$50 per employee per month, and shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.*

(k) Mid-year fluctuations in group size, wage levels and employee participation shall not serve as a basis for termination of a qualifying group health insurance contract.

(l) Qualifying group health insurance contracts shall be subject to all applicable continuation and conversion rights including those described in sections 3216(c)(5), 3221(m), 4304(e), 4304(h), 4305(d) and 4305(e) of the Insurance Law. A member covered under a qualifying group health insurance contract who elects to exercise a statutory conversion right shall be provided with the option of converting directly to a qualifying individual health insurance contract if such member satisfies the eligibility criteria set forth in section 4326(c)(3)(A)(ii)-(iv) of the Insurance Law.

(m) Upon initial application [and at the time of annual re-certification], health maintenance organizations and participating insurers shall collect and examine certifications of eligibility and any supporting documentation to determine eligibility for a qualifying group health insurance contract and compliance with the terms of the Healthy New York Program.

(n) Qualifying group health insurance contracts shall include a provision providing for a 30 day grace period for payment of premiums.

(o) Qualifying small employers may, in their discretion, impose waiting periods which newly hired workers must satisfy in advance of ob-

taining coverage under the small employer's qualifying group health insurance contract. However, the waiting period shall not exceed 45 days from the date of hire and it must be the same for all newly hired workers.

Section 362-4.1 shall be revised to read as follows:

§ 362-4.1 Definitions applicable to working uninsured individuals and individual proprietors.

(a) Employed person shall mean, for purposes of determining eligibility for qualifying individual health insurance contracts, any person [currently] employed [(on a full-time or part-time basis)] *either currently or within the past 12 months for which monetary compensation was received [and currently receiving monetary compensation and any person engaged in episodic employment].*

(b) [Episodic employment shall mean employment for some portion of at least 20 of the 52 weeks immediately preceding the date of application or recertification.

(c)] Individual proprietor shall mean an individual proprietor who is the sole owner and employee of a business and shall include, but not be limited to, independent contractors and other self-employed persons.

Section 362-4.2 shall be revised to read as follows:

§ 362-4.2 Working uninsured individuals and individual proprietor participation.

(a) Qualifying individuals shall in no case include individuals who have health insurance in force or who would be eligible to obtain health insurance under an employer provided group health benefits plan. Qualifying small employers shall in no case include individual proprietors who have health insurance in force or who would be eligible to obtain health insurance under an employer provided group health benefits plan.

(b) An applicant would be considered eligible for an employer provided group health benefits plan if they are eligible to participate in an employer sponsored health benefit plan (insured or self-insured) and the employer contributes toward the cost of the plan or the payment of the premium.

(c) A working uninsured individual or individual proprietor applicant shall not be denied eligibility for the Healthy New York Program on the basis that their employer provides coverage if the applicant is precluded from participation in the employer sponsored health benefits plan due to conditions of eligibility which are based upon conditions pertaining to employment, as defined in section 52.18(f) of this Title.

(d) A working uninsured individual or an individual proprietor shall be eligible for the Healthy New York Program without regard to the existence of health insurance coverage during the 12-month period preceding application if such health insurance coverage terminated due to one of the events listed in section 4326(c)(3)(C) of the Insurance Law, provided that the applicant has not obtained other health insurance coverage subsequent to such termination.

(e) A working uninsured individual or an individual proprietor shall be eligible for the Healthy New York Program without regard to the existence of health insurance coverage during the 12-month period preceding application if such health insurance coverage terminated due to reaching the age of dependency under such prior coverage, provided that the applicant has not obtained other health insurance coverage subsequent to such termination.

(f) Mid-year fluctuations in household income or employment status shall not serve as a basis for termination of a qualifying health insurance contract.

(g) Working uninsured individuals and individual proprietors must be residents of New York State in order to qualify to purchase a qualifying health insurance contract. Documentation of New York State residency must be provided at initial application [and in conjunction with annual recertification].

(h) Qualifying health insurance contracts shall be subject to all applicable conversion rights including those described in sections 3216(c)(5), 3221(m), 4304(e) and 4305(d) of the Insurance Law. A member covered under a qualifying health insurance contract who elects to exercise a statutory conversion right shall be provided with the option of converting directly to a qualifying individual health insurance contract if such member satisfies the eligibility criteria set forth in section 4326(c)(3)(ii)-(iv) of the Insurance Law.

(i) Upon initial application, [and at the time of annual recertification,] health maintenance organizations and participating insurers shall collect and examine documentation sufficient to demonstrate eligibility for a qualifying health insurance contract and compliance with the terms of the Healthy New York Program. Appropriate forms of documentation shall, at a minimum, include:

(1) proof of residency;

- (2) proof of employment status; and
- (3) proof of income.

(j) Qualifying health insurance contracts shall include a provision providing for a 30 day grace period for payment of premiums.

(k) *In order to purchase a qualifying individual health insurance contract, applicants must be employed persons. Applicants for qualifying individual health insurance contracts may also meet this employment requirement by demonstrating that their spouse (residing in their household) is an employed person.*

Section 362-4.3 is hereby amended to read as follows:

§ 362-4.3 Verification of net household income.

(a) To qualify for coverage under the Healthy New York Program, individual proprietors and working uninsured individuals must satisfy the household income criteria set forth in sections 4326(c)(1)(A)(ii) and (3)(A)(iii) of the Insurance Law. For the purpose of determining household income eligibility, household members shall include the applicant, the applicant's legal spouse if residing in the household and any children eligible for coverage under the policy. Income received by the applicant and the applicant's legal spouse residing in the household shall be counted.

(b) Income shall include, but shall not be limited to, the following:

- (1) monetary compensation for services including wages, salary, commissions, overtime compensation, fees or tips;
- (2) net income from farm and nonfarm self-employment;
- (3) social security payments or benefits;
- (4) dividends, interest on savings or bonds, regular income from estates or trusts, or net rental income;
- (5) unemployment compensation;
- (6) government, civilian employee or military retirement or pension or veteran's payments;
- (7) private pension or annuity;
- (8) alimony[or child support payments received];
- (9) regular contributions from persons not living in the household;
- (10) net royalties; and
- (11) such other income as determined by the superintendent.

(c) Income shall not include public assistance; SSI; foster care payments; capital gains; any assets drawn down as withdrawals from a bank; receipts from the sale of property; or payments for compensation for injury. Also excluded are noncash benefits, such as employee fringe benefits, food or housing received in lieu of wages, and receipts from Federal noncash benefit programs.

(d) Health maintenance organizations and participating insurers shall collect such documentation as is necessary and sufficient to initially[, and annually thereafter,] verify that the household income requirements of the Healthy New York Program have been satisfied. Such documentation may include, but not be limited to one or more of the following:

- (1) [annual] income tax returns and, if not prohibited by Federal law for purposes of income verification, the social security account number;
- (2) paycheck stubs;
- (3) written documentation of income from all employers; or
- (4) other documentation of income (earned or unearned) as determined by the superintendent to be acceptable, provided however, such documentation shall set forth the source of such income.

Section 362-5.1 is hereby amended to read as follows:

§ 362-5.1 Definitions applicable to the Direct Payment Market Stop Loss Relief program and state funded stop loss relief for the Healthy New York Program.

(a) Capitation payments means contractually based prepayments made to a health care provider, on a per member per month or a percentage of premium basis, in exchange for health care services to be rendered, referred or otherwise arranged by such provider.

(b) Claims corridor means:

- (1) for the direct payment stop loss fund and the direct payment out-of-plan stop loss fund, claims paid on behalf of a covered member in a given calendar year in excess of \$20,000 and less than \$100,000;
- (2) for calendar years 2001 and 2002, for the small employer stop loss fund and the qualifying individual stop loss fund, claims paid on behalf of a covered member in a given calendar year in excess of \$30,000 and less than \$100,000[.];
- (3) beginning in calendar year 2003, for the small employer stop loss fund and the qualifying individual stop loss fund, claims paid on behalf of a covered member in excess of \$5,000 and less than \$75,000.

(c) Claims paid means claims paid by a health maintenance organization on behalf of a covered member pursuant to an individual enrollee direct payment contract issued pursuant to section 4321 of the Insurance Law or an individual enrollee out-of-plan direct payment contract issued

pursuant to section 4322 of the Insurance Law. Claims paid shall also mean those claims paid by a health maintenance organization or participating insurer pursuant to a qualifying health insurance contract issued pursuant to section 4326 of the Insurance Law. Claims paid shall be determined by the date of payment rather than the date of service or date the claim was incurred.

(d) Claims threshold means the aggregate amount that a health maintenance organization or participating insurer must pay out as claims paid before reaching the applicable claims corridor and before becoming eligible for reimbursement on behalf of a covered member in a given calendar year. [For the direct payment stop loss fund and the direct payment out-of-plan stop loss fund, the claims threshold is \$20,000. For the small employer stop loss fund and the qualifying individual stop loss fund, the claims threshold is \$30,000.]

(e) Direct payment out-of-plan stop loss fund means the fund established pursuant to section 4322-a(a) of the Insurance Law which is available to reimburse health maintenance organizations for certain claims paid during a calendar year on behalf of members covered under individual enrollee out-of-plan direct payment contracts issued pursuant to section 4322 of the Insurance Law.

(f) Direct payment stop loss fund means the fund established pursuant to section 4321-a(a) of the Insurance Law which is available to reimburse health maintenance organizations for certain claims paid during a calendar year on behalf of members covered under individual enrollee direct payment contracts issued pursuant to section 4321 of the Insurance Law.

(g) Health maintenance organization shall mean an organization (or line of business of an article 43 corporation) which has received a certificate of authority to operate as a health maintenance organization from the Commissioner of Health pursuant to article 44 of the Public Health Law, or, an article 43 corporation which is qualified within the meaning of section 1310(c) of title XIII of the Public Health Service Act.

(h) Individual enrollee direct payment contract means a contract written pursuant to section 4321 of the Insurance Law.

(i) Individual enrollee out-of-plan direct payment contract means a contract written pursuant to section 4322 of the Insurance Law.

(j) Qualifying individual stop loss fund means the fund established pursuant to section 4327(a) of the Insurance Law which is available to reimburse health maintenance organizations and participating insurers for certain claims paid during a calendar year on behalf of members covered under a qualifying individual health insurance contract issued pursuant to section 4326 of the Insurance Law.

(k) Small employer stop loss fund means the fund established pursuant to section 4327(a) of the Insurance Law which is available to reimburse health maintenance organizations for certain claims paid during a calendar year on behalf of members covered under a qualifying group health insurance contract issued pursuant to section 4326 of the Insurance Law.

Section 362-5.2 is hereby amended to read as follows:

§ 362-5.2 Eligibility of claims paid for reimbursement from the stop loss funds.

(a) For each contract eligible for reimbursement from a given stop loss fund, health maintenance organizations and participating insurers shall record and aggregate claims paid on a per member basis. Reimbursement from the applicable stop loss fund shall be calculated based on such per member aggregates.

(b) Health maintenance organizations and participating insurers shall be eligible for reimbursement of 90 percent of claims paid within the applicable claims corridor on behalf of each member covered under an individual enrollee direct payment contract, an individual enrollee out-of-plan direct payment contract, a qualifying group health insurance contract and a qualifying individual health insurance contract.

(c) Health maintenance organizations and participating insurers shall not be entitled to any reimbursement on behalf of a covered member if the claims paid on behalf of that member in a given calendar year do not, in the aggregate, reach the applicable claims threshold. Additionally, claims paid on behalf of a covered member which exceed [\$100,000] the claims corridor in a given calendar year shall not be eligible for reimbursement from the stop loss funds.

(d) Claims paid within a calendar year shall be determined by the date of payment rather than the date of service or date the claim was incurred. No health maintenance organization or participating insurer shall delay or defer payment of a claim solely for the purpose of causing the date of payment to fall into a subsequent calendar year.

(e) Claims paid shall not include interest paid out by a health maintenance organization or participating insurer pursuant to subsection (c) of section 3224-a(c) of the Insurance Law.

(f) Claims paid which are not submitted for reimbursement prior to April first of the calendar year following the year in which they are paid shall not be eligible for reimbursement from the stop loss funds and shall not be credited as paid claims in any year for the purpose of determining whether the claims threshold has been reached. If the superintendent determines that the claims data submitted in conjunction with a reimbursement request is insufficient to make a reimbursement determination, the superintendent or the stop loss fund administrator shall make a request for clarification of the data or for the submission of additional data. Health maintenance organizations and participating insurers shall comply with all such requests within 15 business days. If a health maintenance organization or participating insurer fails to comply with such a request from the superintendent or the stop loss fund administrator within 15 business days, the superintendent may in his discretion deem any affected claims ineligible for reimbursement.

(g) For individual enrollee direct payment contracts and individual enrollee out-of-plan direct payment contracts, claims paid shall not include claims paid prior to January 1, 2000. For qualifying group health insurance contracts and qualifying individual health insurance contracts, claims paid shall not include claims paid prior to January 1, 2001.

(h) Claims paid shall include capitation payments which can be directly attributed to securing the services of a given provider or provider group on behalf of a member covered under an individual enrollee direct payment contract or an individual enrollee out-of-plan direct payment contract.

(i) Claims paid may include regional covered lives assessments paid pursuant to section 2807-t of the Public Health Law or percentage surcharges paid pursuant to section 2807-j or section 2807-s of the Public Health Law, but shall not include amounts paid in satisfaction of 24 percent surcharge requirement set forth in section 2807-j2(b)(i)(B) of the Public Health Law. Health maintenance organizations and participating insurers which include the covered lives assessments shall convert the family covered lives assessment into a per member assessment component in order to be included with claims expenses attributable to any one member.

(j) If a health maintenance organization writes the out-of-network portion of their individual enrollee out-of-plan direct payment contract through an affiliate insurer, then the claims paid by that insurer may be credited in determining whether the health maintenance organization is eligible for reimbursement from the stop loss fund on behalf of the covered member.

Section 362-5.3 is hereby amended to read as follows:

§ 362-5.3 Rating of products eligible for claims reimbursements.

(a) The premium rates established for individual enrollee direct payment contracts, individual enrollee out-of-plan direct payment contracts, qualifying group health insurance contracts and qualifying individual health insurance contracts must recognize the availability of reimbursement from the applicable stop loss fund.

(b) Reimbursement from the applicable stop loss fund shall reduce claims expenses for the purposes of calculating loss ratios, premium rates and premium rate adjustments and for the purposes of determining compliance with section 4308 of the Insurance Law and sections 52.40 through 52.45 of this Title.

(c) Initial rate submissions and rate adjustment applications submitted for individual enrollee direct payment contracts, individual enrollee out-of-plan direct payment contracts, qualifying group health insurance contracts and qualifying individual health insurance contracts shall contain such information as may be needed in order to assist the superintendent in determining the anticipated premium rate impact of the availability of reimbursement from the stop loss funds.

(d) Estimates of anticipated receipts from the stop loss funds may be calculated based upon available enrollment data and such other data as may be deemed appropriate by the superintendent.

(e) Healthy New York qualifying group health insurance contracts and qualifying individual health insurance contracts shall be treated as small group products for the purpose of applying loss ratio standards.

(f) *Health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.*

(g) *No later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 7, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5257, e-mail: emangan@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce an second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the appli-

capability of certain documentation requirements in connection with the re-certification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. De-minimus contributions are those that do not exceed an average of \$50 per employee per month. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York.

4. **Costs:** The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

5. **Local government mandates:** This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. **Paperwork:** This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees.

7. **Duplication:** There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. **Alternatives:** Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income

eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. **Federal standards:** The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. **Compliance schedule:** This rule making will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. **Effect of rule:** The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. **Compliance requirements:** Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. **Professional services:** The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. **Compliance costs:** The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the

program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule making process.

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Assets by Steven Silverman

I.D. No. PSC-24-03-00009-A

Filing date: June 14, 2004

Effective date: June 14, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 03-W-0763 approving the transfer of the water system assets of Steven Silverman (formerly the White Lake Water Company, Inc.) to the Bethel Water Company, Inc.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water supply assets.

Purpose: To transfer water supply assets to the Bethel Water Company, Inc.

Substance of final rule: The Commission approved the transfer of the water works assets of Mr. Steve Silverman (formerly the White Lake Water Company, Inc.) to the Bethel Water Company, Inc., 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-W-0763SA1)

NOTICE OF ADOPTION

Water Rates and Charges by Somerdel Water-Works Corp.

I.D. No. PSC-31-03-00013-A

Filing date: June 10, 2004

Effective date: June 10, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 03-W-1002 approving revisions to Somerdel Water-Works Corp.'s (Somerdel) tariff schedule, P.S.C. No. 1—Water.

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

Subject: Tariff filing.

Purpose: To increase annual revenues.

Substance of final rule: The Commission authorized an increase in Somerdel Waterworks Corp.'s annual revenues by \$44,862 or 40.3% and directed the company to file a consecutively numbered supplement, on not less than one day's notice, to become effective on June 15, 2004, 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-W-1002SA1)

NOTICE OF ADOPTION

Consumer Protections for Residential Customers**I.D. No.** PSC-06-04-00012-A**Filing No.** 693**Filing date:** June 9, 2004**Effective date:** June 30, 2004

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

Action taken: Amendment of Parts 11 and 12 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 30-53; 4(1), 66 and 80(1)

Subject: Revisions to the home energy fair practices rules.

Purpose: To implement ch. 686's amendments to Public Service Law art. 2.

Substance of final rule: The Commission approved the proposed revisions to the existing Home Energy Fair Practices (HEFPA) Rules, 16 NYCRR Parts 11 and 12 that will appropriately implement Chapter 686's amendments to Public Service Law, Article 2 (§§ 30-53).

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 11.1-11.10, 11.12, 11.13, 11.15-11.18, 11.20, 11.21, 11.32, 12.0 and 12.3.

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

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

Changes made to the last published rule do not necessitate revision to the previously published regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and job impact statement because the changes are non-substantial. The changes at issue merely define or clarify the text and do not materially alter the rule's purpose, meaning or effect.

Assessment of Public Comment

i) Summary and Analysis of Issues Raised and Significant Alternatives Suggested

Comments were received from the following parties:

1. Public Utility Law Project (PULP)
2. Small Customer Marketer Coalition (SCMC)
3. National Fuel Gas Distribution Corporation (NFG)
4. NYS Office of Temporary & Disability Assistance (OTDA)
5. Energetix, Inc. (Energetix)
6. National Energy Marketers Association (NEM)
7. Central Hudson Gas & Electric Group (Central Hudson)
8. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd/O&R)
9. County of Erie Dep't. of Social Services (Erie County)
10. NYS Energy Research & Development Authority (NYSERDA)
11. NYC Human Resources Administration (HRA)
12. American Association of Retired Persons (AARP)
13. Niagara Mohawk Power Corporation (NMPC)
14. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (NYSEG)

15. The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan)

Several utilities commented that use of the term "termination" to mean both disconnection and termination is confusing and that the rules should be clarified with definitions of "termination", "disconnection", "ESCO" or "energy services company" and "suspension".

PULP, AARP and HRA assert that § 11.3's application requirements for residential service should be applied to ESCOs.

Several commentors complained that it is unclear when § 11.4 termination/disconnection rules apply versus when § 11.4-a suspension rules apply.

HRA argues that § 11.4-a should incorporate provisions from Commission orders related to public assistance applicants and recipients.

PULP, HRA, ConEd/O&R and KeySpan suggested that the content requirements for bills in § 11.16. be applied to ESCOs as well as distribution utilities.

ii) Reasons Why Significant Alternatives Were Not Incorporated Into the Rule

PULP, AARP and HRA's assertion that § 11.3's application requirements for residential service should be applied to ESCOs was not incorporated because it conflicts with PSL § 31.

With respect to comments concerning when § 11.4 or 11.4-a apply, no major charges were made in the rule because for ESCOs that are doing a termination followed by a suspension, both sections apply.

HRA's comment that § 11.4-a should incorporate provisions from Commission orders related to public assistance applicants and recipients was not incorporated into the rules because Commission orders make it clear that public assistance recipients may not be suspended.

PULP, HRA, ConEd/O&R and KeySpan's suggestion that the content requirements for bills in § 11.16 be applied to ESCOs as well as distribution utilities was not adopted because it is not required by the authorizing statute and could result in additional costs and burdens.

iii) Description of Changes Made in the Rule As a Result of Comments

The following clarifications are being incorporated in the final rules because they are non-substantial revisions and do not alter the effect, meaning or purpose of the proposed rules.

In response to the comments, the adopted rules no longer continue the use of one word ("terminate") to refer to the cessation of utility service, regardless of type of service at issue and/or the entity responsible for causing the cessation of said service. The various meanings of "termination," "terminating" or "termination" have been expressed with greater clarity at the outset and then reflected consistently throughout. The consistent use of "terminate" or "disconnect" or "suspend" throughout the rule, instead of using "terminate" to encompass all or any of the three terms, as was originally proposed, should eliminate potential confusion as to the activity or entity that is being referenced in rules without altering the effect, meaning or purpose of the proposed rule.

Section 11.2(a) added clarifying definitions

(1-c) *The term ESCO refers to an entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility.*

(1-d) *The terms terminate or termination mean ending an ESCO's provision of commodity service.*

(1-e) *The terms disconnect or disconnection mean ending distribution service (alone or in combination with commodity service) by and solely at the behest of the utility providing such service.*

(1-f) *The terms suspend or suspension mean a customer's loss of delivery service at the request of an ESCO.*

(03-M-0117SA3)

NOTICE OF ADOPTION

Waiver of Certain Requirements by Time Warner Cable of New York City**I.D. No.** PSC-08-04-00014-A**Filing date:** June 10, 2004**Effective date:** June 10, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 04-V-0089 granting Time Warner Cable of New York City (Time Warner) a waiver of the requirements of 9 NYCRR 595.4(c)(11) of the Public Service Commission's rules and regulations.

Statutory authority: Public Service Law, section 595.4(c)(11)

Subject: Request for a waiver of the requirements of 9 NYCRR 595.4(c)(11).

Purpose: To allow one of Time Warner's Public, Educational and Governmental (PEG) access channels to remain on an upper tier of service.

Substance of final rule: The Commission approved Time Warner Cable of New York City's (Time Warner) request for a waiver of the requirements of 9 NYCRR 595.4(c)(11) to allow one of Time Warner's nine Public, Educational and Government (PEG) access channels to remain on an upper tier of service.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-0089SA1)

NOTICE OF ADOPTION

Disbursements from an Electric Benefit Fund by Central Hudson Gas & Electric Corporation

I.D. No. PSC-10-04-00014-A
Filing date: June 14, 2004
Effective date: June 14, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 00-E-1273 approving a joint proposal concerning the disbursements from an electric benefit fund created under a rate plan for Central Hudson Gas and Electric Corporation.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Central Hudson's rate plan and benefit fund.

Purpose: To promote a more efficient, equitable and competitive energy market.

Substance of final rule: The Commission adopted the terms set forth in a Joint Proposal by Central Hudson Gas & Electric Corporation (Central Hudson), Department of Public Service Staff and certain energy services companies concerning the disbursements from an electric Benefit Fund created under a Rate Plan for Central Hudson, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-E-1273SA6)

NOTICE OF ADOPTION

Service Quality Standards by Central Hudson Gas & Electric Corporation

I.D. No. PSC-10-04-00019-A
Filing date: June 14, 2004
Effective date: June 14, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 00-G-1274 approving the service quality standards, policy programs and deferrals of Central Hudson Gas & Electric Corporation's (Central Hudson) rate plan.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Central Hudson's rate plan.

Purpose: To create a more efficient, equitable and competitive energy market.

Substance of final rule: The Commission approved the service quality standards and policy programs and deferrals of Central Hudson Gas & Electric Corporation's Rate Plan, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-G-1274SA2)

NOTICE OF ADOPTION

Transfer of Property by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-15-04-00016-A
Filing date: June 10, 2004
Effective date: June 10, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 04-M-0317 making permanent the March 30, 2004 order approving property transfer.

Statutory authority: Public Service Law, section 70

Subject: Transfer of easement interests.

Purpose: To adopt the March 30, 2004 order on a permanent basis so Astoria Energy LLC can maintain the financing and construction schedule for its electric generating facility.

Substance of final rule: The Commission adopted as a permanent rule a joint petition by Consolidated Edison Company of New York, Inc. (Con Edison) and Astoria Energy LLC (Astoria) authorizing Con Edison to transfer an easement in certain real property involving approximately 2.1 acres of property to Astoria.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-M-0317SA2)

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

Refund of Overpayment of Intrastate Access Charges

I.D. No. PSC-26-04-00004-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 require certain incumbent local exchange telephone corporations that overcollected intrastate access charges to refund such overcollections with interest.

Statutory authority: Public Service Law, sections 23, 90, 92, 94 and 96

Subject: Refund of overpayments of intrastate access charges.

Purpose: To determine the amount of overcollected intrastate access charges to be refunded, and the appropriate level of interest to be refunded with the overcharges.

Substance of proposed rule: By Order Resolving Issues Related to Independent Telephone Companies' Access Charges, the 1998 Ice Storm and Other Matters, issued December 4, 1998, the Commission directed certain local exchange telephone corporations to file tariffs to reduce intrastate access charges. Certain companies neglected to file the tariff reductions, or reduce them appropriately, resulting in overcollections of intrastate access charges. The Public Service Commission is considering whether to require these incumbent local exchange telephone corporations that overcollected intrastate access charges to refund such overcollections with interest.

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

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

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

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

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

(94-C-0095SA27)

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

Mini Rate Increase by Salamanca Board of Public Utilities

I.D. No. PSC-26-04-00005-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by the Salamanca Board of Public Utilities to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Electricity to become effective Oct. 1, 2004.

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

Subject: Mini rate increase.

Purpose: To revise rates and charges to increase annual base electric revenues by about \$238,103 or 11 percent.

Substance of proposed rule: Salamanca Board of Public Utilities has made a tariff filing to revise its rates and charges to increase annual base electric revenues by about \$238,103 or 11% to become effective October 1, 2004. The Commission may approve, modify or reject the rate filing in whole or part.

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-E-0735SA1)

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

Competitive Backout Credit by National Fuel Gas Distribution Corporation

I.D. No. PSC-26-04-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by National Fuel Gas Distribution Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 8.

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

Subject: Competitive backout credit and low income residential assistance service.

Purpose: To remove tariff language.

Substance of proposed rule: National Fuel Gas Distribution Corporation proposes to remove tariff language relating to the Competitive Backout Credit from S.C. no. 19 – Supplier Transportation, Balancing and Aggregation and to delete S.C. No. 2 – Low Income Residential Assistance Service from its gas tariff, P.S.C. No. 8. These rates and services expire on September 30, 2004.

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.

(00-G-1858SA6)

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

Capacity Release Service by Orange and Rockland Utilities, Inc.

I.D. No. PSC-26-04-00007-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 Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 4.

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

Subject: Capacity release service.

Purpose: To extend its capacity release service for a 12-month period.

Substance of proposed rule: Orange and Rockland Utilities, Inc. proposes to extend its Capacity Release Service which is applicable under its S.C. No. 6 and 11 – Transportation Service for a 12-month period commencing November 1, 2004 and ending on October 31, 2005.

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-G-0682SA1)

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

Capacity Release Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-26-04-00008-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, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 9.

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

Subject: Capacity release service.

Purpose: To extend the capacity release service for a 12-month period.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. proposes to extend its Capacity Release Service which is applicable under its S.C. No. 9 – Transportation Service for a 12-month period commencing November 1, 2004 and ending on October 31, 2005.

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)(i) of the State Administrative Procedure Act.

(04-G-0688SA1)

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

Transfer of Assets by Farms Water Company, Inc. and the Dutchess County Water and Wastewater Authority

I.D. No. PSC-26-04-00009-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 joint petition filed by Farms Water Company, Inc. and the Dutchess County Water and Wastewater Authority requesting approval to transfer all of the water supply assets of Farms Water Company, Inc. to the Dutchess County Water and Wastewater Authority.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of assets.

Purpose: To approve the transfer of assets.

Substance of proposed rule: On June 14, 2004, Farms Water Company, Inc. (Farms Water) and the Dutchess County Water and Wastewater Authority (Dutchess County) filed a joint petition requesting approval of the transfer of all of the water supply assets of Farms Water to Dutchess County for \$1,967,350. Farms Water provides metered water service to approximately 525 residential customers in a real estate subdivision known as Dalton Farms and one wholesale customers, the Town of Beekman, Poughquag Water District, located in the Town of Beekman, Dutchess County. Fire protection service is not provided. The Commission may approve or reject, in whole or in part, or modify the company's petition.

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: Jaelyn 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-W-0737SA1)