

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Maximum Permissible Fees Charged by Licensed Check Cashers

I.D. No. BNK-10-04-00001-P

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

Proposed action: Amendment of section 400.12 of Title 3 NYCRR.

Statutory authority: Banking Law, section 372(1)

Subject: Maximum permissible fees charged by licensed check cashers.

Purpose: To increase the maximum percentage rate that may be charged as a fee for cashing of checks by licensed check cashers; provide for an annual adjustment of such maximum per centum rate based upon an increase in the consumer price index; and increase the minimum fee that may be charged.

Text of proposed rule: Amend section 400.12 of Part 400, 3 NYCRR, as follows:

§ 400.12 Fees.

The licensee shall be permitted to charge or collect [in fees] a fee for cashing a check, draft or money order [a sum or sums] not to exceed a (a) [1.4] 1.5 per centum of the amount of the check, draft or money order, or (b) [60 cents] \$1, whichever is greater. *Effective January 1, 2005, and annually thereafter, the maximum per centum fee specified in clause (a) of this section, shall be increased by a per centum amount, based upon an*

increase in the annual consumer price index for the New York Northern N.J. Long Island, NY NJ CT PA area for all urban consumers (annual CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum per centum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed per centum amount and the result added to such maximum per centum fee. The resulting sum shall be the revised maximum per centum fee, which shall be posted upon the internet site of the Banking Department (www.banking.state.ny.us) by the superintendent not later than thirty days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum per centum fee shall be calculated and posted to the nearest one-hundredth of a per centum. Such revised maximum per centum fee shall be effective the first day of the month next succeeding the computation and posting of such per centum change and revised maximum per centum fee and shall continue in effect until revised and increased in the next succeeding year based upon an increase in such annual index. If such annual CPI-U does not increase in any one year, the maximum per centum fee in effect during the year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the superintendent from setting, by regulation, a different maximum per centum fee at any time where the superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers.

Text of proposed rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory authority. Section 372(1) requires that the Superintendent of Banks prescribe the maximum fees that may be charged for cashing a check, draft or money order (hereafter "check"). Pursuant to section 400.12 of Title 3 NYCRR, the Superintendent has established a maximum percentage amount that each check casher may charge against the face amount of the check. In addition, the regulation prescribes a minimum fixed-dollar amount that may be charged for the cashing of a check, regardless of the face amount of the check.

2. Legislative objectives. When imposing certain economic restrictions upon the conduct of business by check cashers through Chapter 546 of the laws of 1994, the Legislature stated as a matter of legislative intent that "check cashers provide important and vital services to New York citizens; that the business of check cashers shall be supervised and regulated through the banking department in such a manner as to maintain consumer confidence in such business and protect the public interest; that the licensing of check cashers shall be determined in accordance with the needs of the communities they are to serve; and that it is in the public interest to promote the stability of the check cashing business for the purpose of meeting the needs of the communities that are served by check cashers."

3. Needs and benefits. The setting of a maximum fee is in keeping with legislative intent in that it provides essentially for a fixed percentage return

per check, thus promoting the stability of the check cashing industry by providing the industry with a reasonable return on equity. However, by limiting the amount of such fees, it serves to maintain the public confidence by preventing excessive fees particularly where the availability of alternate check cashing facilities may be limited.

Because of various economic conditions affecting the check cashing industry, discussed in detail in the regulatory flexibility analysis, an increase in the maximum percentage fee is justified. Further, providing for an annual adjustment of the fee based upon any increase in the consumer price index will insure that the fee does not remain static as inflationary cost increases affect the industry, nor will it require subsequent regulatory amendments in order to modify the fee.

The increase in the minimum fixed-dollar amount of the fee from 60 cents to \$1.00 per check, regardless of the face amount of the check, provides a fixed return to a check casher for cashing checks having a small face-amount value for which the percentage fee charge would result in a fee of less than the fixed-dollar amount, in recognition of certain fixed unit costs for cashing each check. The proposed \$1.00 amount is identical to the maximum permissible amount retail vendors may charge customers for cashing checks incidental to their normal business transactions with the customers pursuant to section of 374 of the Banking Law.

4. Costs. The proposed rule imposes no additional costs or regulatory burden upon regulated parties, the Banking Department or other state agencies, or any other unit of government. Indeed, the proposed rule should reduce costs in the future for both regulated parties and the Banking Department, since subsequent proposed rule makings will not be necessary in order to adjust the maximum fee. Though increases in the maximum percentage amount will increase the fee cost to the consumer, a percentage adjustment of the base percentage maximum fee charge, based on the percentage change in the annual consumer price index, will result normally in annual increases in the percentage fee charge of much less than one-tenth of one percent, or less than ten cents per \$100 of the face amount of a check.

5. Local government mandates. The proposed rule imposes no mandates or costs upon local governments. The regulatory provisions apply only to licensed entities, and such entities are private business enterprises, and not governmental entities, either local, state or national.

6. Paperwork. The proposed rule imposes no paperwork requirements upon regulated parties or any unit of state government.

7. Duplication. None.

8. Alternatives. There are various possible alternatives to the existing and proposed maximum fee mechanism. One example would be to canvass other state regulatory agencies and determine what is the average percentage charge either allowed by law or determined by market competition in the various states regulating check cashers and determine a "national" average that could be applied in this state. The Department has determined this approach would likely result in a least a 100 percent increase in the percentage amount.

Another alternative would be to establish a fixed dollar amount for various ranges of the face amount of such checks. Presumably, under this scenario, the percentage amount for such fee charges would be greater the lesser the face amount of the check and the fees would need to have some relationship to the statewide average cost of cashing each check and the statewide average proportionate volume of check transactions relative to the checks' face values. A dollar fee amount, in contrast to a percentage fee amount, is not sensitive to cost and income differences in consumer markets relative to the location of licensed facilities. Finally, the existing fee could continue to be periodically adjusted by new rule making initiatives.

The proposed modification of the existing fee mechanism provides various advantages. First, the fee, relative to fees charged in other states, is one of lowest, if not the lowest, percentage fee charged by the industry, as noted in the regulatory flexibility analysis. This is beneficial to the consumer. Second, the annual CPI adjustment mechanism will permit annual incremental increases in the fee relative to increases in costs generally affecting both consumers and businesses. This will allow check cashing businesses to keep fee charges in line with cost increases, rather than lagging behind increases in operating expenses until the fee is periodically readjusted by regulatory action. Finally, this approach will eliminate the time and associated costs for both the Department and the industry to undertake periodic rule makings to adjust the fee.

9. Federal standards. There are no federal standards that apply to the setting of fees for the check cashing industry. The federal government does not license check cashers or directly regulate the primary transaction activity of check cashers.

10. Compliance schedule. None. The check cashing industry will adopt the maximum fee, as indicated in the proposed rule, when the rule becomes effective.

Regulatory Flexibility Analysis

1. Effective of Rule: The check cashing industry serves those areas and populations not traditionally served by banking institutions, which generally are immigrant and first-generation communities or communities demonstrating lower socio-economic conditions. Residents in such communities tend not to be accustomed or inclined to maintain customer account relationships with banking institutions. Absent the maintenance of an account relationship with a banking institution, members of these communities have virtually no source to cash payroll, government benefit, or personal checks other than check cashers or retail vendors where they make purchases. There are 217 licensed check cashing companies and 908 facilities of such companies that provide cashing and other financial services to such communities and will be affected by this regulatory action.

This rule has no effect upon local governments.

2. Compliance Requirements: None. There are no reasonable alternatives to this approach. The percentage fee is equitable in that it results in the charging of a proportionate amount as a fee compared to the face value of the check, thus reflecting the higher risk incurred by the check casher as the face value of the check increases.

This regulatory amendment imposes no additional regulatory burden upon regulated parties, which must be considered as small businesses, and imposes no regulatory burden on other businesses. In addition, the regulatory amendment imposes no additional regulatory burden on any level of government.

3. Professional Services: Regulated businesses will require no additional services.

4. Compliance Costs: The rule imposes no additional compliance costs upon regulated businesses.

5. Economic and Technological Feasibility: The current maximum percentage amount or fee that may be charged by a licensed check casher is 1.4 percent of the face amount of the check, which was authorized by amendment of section 400.12 in 1999. In adjusting the maximum amount of the fee, the Superintendent reviews economic data affecting the check cashing industry. In requesting an increase in this fee amount, the industry submitted an economic analysis by the National Economic Research Associates (NERA) that noted the increase in various cost factors over which the industry has virtually no control. These factors include a 17.5 percent increase in 2002 for local real estate taxes, thereby increasing rents for leased space. Check casher facilities tend to be located in high-traffic commercial retail areas and in leased spaces, the rental or lease agreements for which provide for pass-through of increases in local real estate and user taxes. In addition, insurance costs were estimated to increase in 2003-04 by 10 percent for crime-related insurance, 25 percent for property and liability insurance, and 15 to 30 percent for other related business insurance costs (worker compensation, auto, surety, etc.). Money delivery services (armored car services) were estimated by one carrier, which possesses 40 to 50 percent of the market, to increase by 5 percent in 2003-04. Also, bank services charges were expected to increase due to bank consolidation and an exiting of banks servicing check cashing businesses. (The exiting of banks from servicing the industry appears to be tied in part to the compliance requirements upon banks necessitated by the USA Patriot Act requirements.)

As a result of the September 11 terrorist attacks, check cashers were also made subject to the requirements of the Patriot Act, which imposed new compliance requirements upon licensed check cashers. The Act's provisions require check cashers to register with the federally created Financial Crimes Enforcement Network as money services businesses and to mount a satisfactory federal Bank Secrecy Act anti-money laundering compliance program. In addition, check cashers also function in virtually all instances as agents of licensed money transmitters, providing extensive wire transmittal and money order sales services to the same communities for which they provide check cashing services. Money transmission activities were also the subject of identical regulatory scrutiny and compliance requirements pursuant to the Patriot Act, and in this context, the cost of such compliance requirements are more significant. As a result of the economic downturn generated in part by the terrorist attacks, and as discussed in regard to the NERA report, above, check cashers experienced significant increases in both rental costs for their licensed locations associated with increases in property taxes as local government units sought to offset the loss of revenue from declining tax receipts from other governmental funding sources.

The check cashing industry also experienced increased costs for insurance and banking and money delivery services. These particular costs are not insignificant for the industry because of the high risk associated with delivering check cashing services. Further, for the period 1999-2002, the number of checks cashed declined by 5 percent while the dollar amount of checks cashed rose a negligible 1 percent.

In proposing to adjust the fee to 1.5 percent of the face amount of the check, the Superintendent has determined that a more rational approach for adjusting the percentage amount is to base the adjustment upon annual increases in the consumer price index for all urban consumers (CPI-U) for the NY metropolitan area, as published by the Bureau of Labor Statistics of the U.S. Department of Labor. This index reflects price increases and declines in a wide variety of retail goods and services purchased by all consumers and can be reasonably accepted as a reflection of the actual cost of living by consumers in the particular area measured. Based upon this index and reviewing the index increases in the CPI-U beginning from base years 1992 and 1999, which resulted in adjusted percentage maximum fees, respectively, of 1.45 percent and 1.55 percent, the Superintendent determined the reasonable approach would be to average the two fees. Thus, the resulting maximum fee for 2004 would be adjusted to 1.5 percent and thereafter annually adjusted based upon any increase in the CPI-U. It is noted that the index would need to increase by 2.5 percent for the next four years in order for the newly revised fee to increase beyond 1.6 percent. Reviews of fees charged in other states indicate that most states do not regulate or set maximum fees and amongst those that do, New York State's maximum fee is by far the lowest in the nation. An informal canvass of other state regulatory agencies indicate that check casher fees in those states tend to range from 3 to 5 percent of the face amount of the checks.

Finally, in amending section 400.12 to raise the minimum fee from 60 cents per check to \$1.00, the minimum fee that a licensed check casher may charge will be made identical to the permissible fee that may be charged by retail vendors when cashing checks of any face value for customers.

6. Minimizing Adverse Impact: There is no adverse impact upon regulated businesses. Given that the fee will be adjusted hereafter by computation of the increase in the CPI-U, and the posting of the percentage increase and adjusted maximum fee on the web site of the Department, this will no longer necessitate further regulatory amendments in order to adjust the fee.

7. Small Businesses and Local Government Participation: The fee increase and annual adjustment mechanism were reviewed by and is supported by the regulated industry.

Rural Area Flexibility Analysis

This proposed rule making will impose no additional costs on businesses or units of government located in rural areas of the State. Virtually all licensed check cashing facilities are located in metropolitan areas of the State, particularly the New York City metropolitan area.

Job Impact Statement

This regulatory amendment will impose no adverse effect upon regulated parties or upon other businesses in this State. It is presumed that the regulatory amendment will benefit the regulated parties.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-46-03-00005-A
Filing No. 215
Filing date: Feb. 19, 2004
Effective date: March 10, 2004

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the New York State Thruway Authority.

Text was published in the notice of proposed rule making, I.D. No. CVS-46-03-00005-P, Issue of November 19, 2003.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-49-03-00005-A
Filing No. 216
Filing date: Feb. 19, 2004
Effective date: March 10, 2004

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-49-03-00005-P, Issue of December 1, 2003.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-10-04-00026-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from the non-competitive class in the Department of Health and the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by deleting therefrom the position of Assistant Metropolitan Area Public Health Dentist (1) and, in the Department of Mental Hygiene under the subheading "Institutions," by deleting therefrom the position of Treatment Team Leader (Children and Youth Services) (in the Bronx Court Unit) (1).

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

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-10-04-00027-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Housing and Community Renewal," by deleting therefrom the position of Senior Ste-nographer (1) (until first vacated after July 13, 1982).

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

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-10-04-00028-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the New York State Thruway Authority.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by adding thereto the position of φCoordinator Safety and Security Services Tappan Zee Bridge (1).

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

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-10-04-00029-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Family Assistance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by adding thereto the position of φDirector Systems Design and Development (1).

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

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

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

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

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

Education Department

EMERGENCY RULE MAKING

State Assessments and Graduation and Diploma Requirements

I.D. No. EDU-50-03-00002-E

Filing No. 220

Filing date: Feb. 24, 2004

Effective date: Feb. 24, 2004

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

Action taken: Amendment of section 100.5 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents in October 2003.

Under current regulations, the minimum passing score on five required Regents examinations rises from 55 to 65 for those students who entered grade 9 in the 2001-2002 school year and thereafter. The revised policy continues to allow a passing score of 55-64 on the five required Regents examinations as an option to meet local diploma requirements. The extension of this option will give students and schools more time to improve achievement while keeping the educational system moving forward toward the goal of higher achievement for all students. This provision will be in effect for all students currently in high school who entered grade 9 in the school years 2000-2001, 2001-2002, 2002-2003, and 2003-2004, and for those current eighth grade students who will enter grade 9 in the 2004-2005 school year.

The proposed amendment will also extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-11 school year. Under this safety net, students with disabilities who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test.

The proposed amendment also makes technical changes to clarify the requirements, provide scheduling flexibility to the schools and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation. The mathematics requirements need revision and clarification because present language would not allow students who took Course III after January 2003 to be eligible for a Regents Diploma with Advanced Designation. Course I phased out in January 2002, Course II phased out in January 2003, and Course III will phase out in January 2004.

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

The proposed rule was adopted at the November 13-14, 2003 Regents meeting, as an emergency measure effective December 1, 2003 to ensure that students who are in their senior year during in the 2003-2004 school year may timely graduate pursuant to revised diploma and graduation requirements, and to otherwise ensure that schools and school districts are able to make any necessary adjustments in students' class schedules to ensure their timely graduation pursuant to such requirements. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 17, 2003.

The proposed rule is being presented to the Board of Regents for adoption as a permanent rule at their February 23, 2004 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act. Pursuant to SAPA section 202(5), the permanent adoption cannot become effective until after its publication in the State Register on March 18, 2004. However, the November emergency adoption will expire on February 28, 2004, 90 days after its filing with the Department of State on December 1, 2003. A second emergency adoption is therefore necessary to ensure that the rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: State assessments and graduation and diploma requirements.

Purpose: To revise requirements for obtaining a Regent high school diploma, a Regents diploma with advanced designation, and a local high school diploma.

Substance of emergency rule: The State Education Department proposes to amend section 100.5 of the Regulations of the Commissioner of Education as an emergency measure, effective February 27, 2004. The following is a summary of the provisions of the proposed rule.

Under current regulations, the minimum passing score on five required Regents examinations rises from 55 to 65 for those students who entered grade 9 in the 2001-2002 school year and thereafter. The proposed amendment will continue to allow a passing score of 55-64 on the five required Regents examinations as an option to meet local diploma requirements. This provision will be in effect for all students currently in high school who entered grade 9 in the school years 2000-2001, 2001-2002, 2002-2003, and 2003-2004, and for those current eighth grade students who will enter grade 9 in the 2004-2005 school year.

The proposed amendment will also extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-11 school year. Under this safety net, students with disabilities who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test.

The proposed amendment also makes technical changes to clarify requirements relating to mathematics and visual arts and/or music, dance, or theatre alternatives, provide scheduling flexibility to the schools, and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation.

Section 100.5(a)(3), as revised, prescribes that students first entering grade nine in the 2001-2002 school year, but prior to the 2005-2006 school year, may receive either a Regents or a local high school diploma if they earn at least 22 units of credits. Students first entering grade nine in 2005-2006 and thereafter will only have the option to receive a Regents diploma if they earn at least 22 units of credit.

Section 100.5(a)(5), as revised, extends to September 2005 the option that schools may consider, for purposes of awarding a local diploma, a score of 55-64 as passing on the Regents Comprehensive Examination in English, the Regents examination in mathematics, the Regents examination in United States history and government, a Regents examination in science, and the Regents examination in global studies for students. For purposes of a Regents endorsed diploma, a score of 65 shall be considered passing. Subclause (3) of section 100.5(a)(5)(i)(a) under each subject has been deleted and subclause (4) has been renumbered to become subclause (3). The new subclause (3) extends the provision for students with disabilities that allows students who first enter grade nine prior to September 2010 and who fail a required Regents examination to meet local diploma requirements by passing the corresponding Regents Competency Test.

A new subparagraph (vii) is added to section 100.5(b)(7) to allow schools to issue a local diploma to students who first enter grade nine in or after September 2001 and prior to September 2005 that score 55-64 on any Regents examination required for graduation.

Section 100.5(b)(7)(iv)(c), as revised, clarifies the mathematics requirements to allow students who took Course III after January 2003 to be eligible for a Regents Diploma.

Section 100.5(b)(7)(v)(a), as revised, clarifies the mathematics requirements to allow students who took Course III after January 2003 to be eligible for a Regents Diploma with Advanced Designation.

Section 100.5(b)(7)(vi), as revised, extends the provision for students with disabilities that allows students who first enter grade nine prior to September 2010 and who fail a required Regents examination to meet local diploma requirements by passing the corresponding Regents Competency Test.

A new subparagraph (viii) is added to section 100.5(b)(7) to allow schools to issue a local diploma to students who first enter grade nine in or

after September 2001, and prior to September 2005, that score 55-64 on any Regents examination required for graduation.

Section 100.5(d)(2), as revised, continues the course options in the visual arts and/or music, dance, or theatre alternatives for students who enter grade nine after 2001 that previous students have used to satisfy Regents diploma requirements.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-50-03-00002-EP, Issue of December 17, 2003. The emergency rule will expire April 23, 2004.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

The proposed amendment will revise the graduation and diploma requirements first adopted by the Board of Regents in July 1999 to help ensure that all students in the State's public schools have the skills, knowledge and understandings they need to succeed in the next century. The proposed changes are necessary to implement revisions to policy adopted by the Board of Regents in October 2003. Under current regulations, the minimum passing score on five required Regents examinations rises from 55 to 65 for those students who entered grade 9 in the 2001-2002 school year and thereafter. The revised policy continues to allow a passing score of 55-64 on the five required Regents examinations as an option to meet local diploma requirements. The extension of this option will give students and schools more time to improve achievement while keeping the educational system moving forward toward the goal of higher achievement for all students. This provision will be in effect for all students currently in high school who entered grade 9 in the school years 2000-2001, 2001-2002, 2002-2003, and 2003-2004, and for those current eighth grade students who will enter grade 9 in the 2004-2005 school year.

Despite the significant increase in the number of students with disabilities taking Regents level courses and passing Regents examinations, there still is a significant gap between the performance of special education and general education students. Therefore, the proposed amendment will also extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-11 school year. Under this safety net, students with disabilities who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test.

The proposed amendment also makes technical changes to clarify the requirements relating to mathematics and visual arts and/or music, dance or theatre alternatives, provide scheduling flexibility to the schools, and choices for students who seek a Regents Diploma or a Regents Diploma with Advanced Designation. The mathematics requirements need revision and clarification because present language would not allow students who took Course III after January 2003 to be eligible for a Regents Diploma with Advanced Designation. Course I phased out in January 2002, Course II phased out in January 2003, and Course III will phase out in January 2004. The continuation of the visual arts and/or music, dance, or theatre alternatives provide students who enter grade 9 after 2001 with course options, such as participating in a school's major performing group or in an advanced out-of-school art or music activity, which previous students have used to satisfy Regents Diploma requirements.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment merely extends current Regents policy and enacts technical changes to correct certain citations and reinstate certain original language.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

The proposed amendment extends current requirements for meeting diploma and graduation requirements to give students and schools more time to improve achievement and enact technical changes to clarify existing requirements to ensure that all students have continued opportunities to complete requirements for a high school diploma and therefore does not impose any additional responsibility on local governments. School districts will determine whether they will provide the option for students to meet local diploma requirements by accepting a 55 passing score on the Regents examinations required for high school graduation.

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

PAPERWORK:

The proposed amendment does not impose any additional reporting, forms or other paperwork requirements on schools or school districts.

DUPLICATION:

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

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment will revise graduation and diploma requirements for students attending the public schools, consistent with policy adopted by the Board of Regents in October 2003. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does

not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

EFFECT OF RULE:

The proposed rule applies to each of the 708 public school districts in the State, and to charter schools that are authorized to issue local and Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 2 charter schools offering a full high school program, and 2 charter schools offering only 9th grade instruction.

COMPLIANCE REQUIREMENTS:

The proposed amendment imposes no additional compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understanding they will need to succeed. The proposed amendments will permit school districts to:

(1) determine whether they will provide the option for students currently in high school who entered grade 9 in 2000 through 2003 and current eighth graders who will enter grade 9 in 2004 to meet local diploma requirements by accepting a 55 passing score on the Regents examinations required for high school graduation;

(2) extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-2011 school year whereby such students who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test;

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

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

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on local governments. The proposed amendment merely extends current Regents policy and enacts technical changes to correct certain citations and reinstate certain original language.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

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

LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas and local diplomas. At present, there are no such charter schools located in rural areas.

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

The proposed amendment imposes no additional compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understanding they will need to succeed.

The proposed amendment will permit school districts to:

(1) determine whether they will provide the option for students currently in high school who entered grade 9 in 2000 through 2003 and current eighth graders who will enter grade 9 in 2004 to meet local diploma requirements by accepting a 55 passing score on the Regents examinations required for high school graduation;

(2) extend the existing safety net for all students with disabilities entering grade 9 prior to the 2010-2011 school year whereby such students who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test;

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

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

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

COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. The proposed amendment merely extends current Regents policy and enacts technical changes to correct certain citations and reinstate certain original language.

MINIMIZING ADVERSE IMPACT:

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

RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

NOTICE OF ADOPTION

Impartial Hearings for Students with Disabilities

I.D. No. EDU-33-03-00011-A

Filing No. 222

Filing date: Feb. 24, 2004

Effective date: March 18, 2004

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

Action taken: Amendment of section 200.5(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1)

Subject: Impartial hearings for students with disabilities.

Purpose: To prescribe procedures to ensure the timeliness of impartial hearings as required by the Federal Individuals with Disabilities Education Act and its implementing regulations.

Substance of final rule: The State Education Department proposes to amend paragraphs (3) and (4) of subdivision (i) of section 200.5 of the Regulations of the Commissioner of Education, effective May 1, 2004. The following is a summary of the substantive provisions of the proposed rule.

A new subparagraph (iii) is added to paragraph (3) to provide that the hearing, or a prehearing conference, shall be scheduled to begin within the first 14 days of the impartial hearing officer's appointment, unless an extension is granted pursuant to subparagraph (i) of paragraph (4) of section 200.5(i).

Subparagraph (vii) is amended to add language providing that at all stages of the proceeding, the impartial hearing officer may assist an unrepresented party by providing information relating only to the hearing process and that nothing contained in the subparagraph shall be construed to impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record.

A new subparagraph (xi) is added to provide that a prehearing conference with the parties may be scheduled. Such conference may be conducted by telephone. A transcript or a written summary of the prehearing conference shall be entered into the record by the impartial hearing officer. The proposed amendment also delineates the purposes of the prehearing conference.

Subparagraph (xi) of paragraph (3) is relettered as (xii). Clause (a) of the subparagraph is amended to provide that except as provided for in section 201.11, at least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

A new clause (b) is added to subparagraph (xii), to provide that the impartial hearing officer, wherever practicable, shall enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties.

A new clause (c) is added to subparagraph (xii) to provide that the impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer shall exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious. The impartial hearing officer may receive testimony by telephone, provided that such testimony shall be made under oath and shall be subject to cross examination.

A new clause (d) is added to subparagraph (xii) to provide that the impartial hearing officer may limit examination of a witness by either party whose testimony the impartial hearing officer determines to be irrelevant, immaterial or unduly repetitious.

A new clause (e) is added to subparagraph (xii) to provide that the impartial hearing officer may limit the number of additional witnesses to avoid unduly repetitious testimony.

A new clause (f) is added to subparagraph (xii) to provide that the impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross examination.

A new clause (g) is added to subparagraph (xii) to provide that the impartial hearing officer may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12 point type (footnotes minimum 10 point type) and not exceeding 6½ by 9½ inches on each page.

A new subparagraph (xiii) is added to provide that each party shall have up to one day to present its case unless the impartial hearing officer determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision. Additional hearing days, if required, shall be scheduled on consecutive days wherever practicable.

Paragraph (4) of subdivision (i) of section 200.5 is amended to provide that in cases where extensions of time have been granted beyond the applicable required timelines, the decision of the impartial hearing officer must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision.

Subparagraph (i) of paragraph (4) is amended to provide that each extension of time granted by the impartial hearing officer shall be for no more than 30 days.

A new subparagraph (ii) is added to provide that the impartial hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:

(a) the impact on the child's educational interest or well being which might be occasioned by the delay;

(b) the need of a party for additional time to prepare or present the party's position at the hearing in accordance with the requirements of due process;

(c) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and

(d) whether there has already been a delay in the proceeding through the actions of one of the parties.

A new subparagraph (iii) is added to provide that absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, settlement discussions between the parties or other similar reasons. Agreement of the parties is not a sufficient basis for granting an extension.

A new subparagraph (iv) is added to provide that the impartial hearing officer shall respond in writing to each request for an extension. The response shall become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension, but shall subsequently provide that decision in writing and include it as part of the record. For each extension granted, the impartial hearing officer shall set a new date for rendering his or her decision, and notify the parties in writing of such date.

Subparagraph (ii) of paragraph 4 of section 200.5(i) is relettered as subparagraph (v) and is amended to provide that the impartial hearing officer shall determine when the record is closed and notify the parties of the date the record is closed. The decision shall reference the hearing record to support the findings of fact. The impartial hearing officer shall attach to the decision a list identifying each exhibit admitted into evidence. Such list shall identify each exhibit by date, number of pages, and exhibit number or letter. In addition, the decision shall include an identification of all other items the impartial hearing officer has entered into the record.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 200.5(i)(3)(vii).

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

Regulatory Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on December 31, 2003, a nonsubstantial revision was made to the proposed amendment as follows:

Subparagraph (vii) of paragraph (3) of section 200.5(i) was revised in response to public comment to clarify that nothing contained in that subparagraph shall be construed to impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record.

The above revision to the proposed amendment does not require any changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the *State Register* on December 31, 2003, the proposed amendment was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revision to the proposed amendment does not require any changes to the previously published Regulatory Flexibility Analysis or Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of the Notice of Revised Rule Making in the *State Register* on December 31, 2003, the proposed amendment was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed amendment, as so revised, relates to procedures to ensure compliance with required timelines for conducting impartial hearings under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the *State Register* on December 31, 2003, the State Education Department received the following comments.

1. COMMENT:

Section 200.5(i)(3)(vii), which includes a provision that "[a]t all stages of the proceeding, the impartial hearing officer (IHO) may assist an unrepresented party by providing information relating only to the hearing process," should be further revised to add the following: "Nothing contained in this subsection, however, shall impair the right of a hearing officer to

ask questions of counsel or witnesses for the purpose of clarification of completeness of the record."

DEPARTMENT RESPONSE:

The proposed language relating to the IHO providing assistance to an unrepresented party must be read in context with the entire subparagraph (vii), which currently provides that "[t]he parties to the proceeding may be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities." The provision was meant to address situations where a party has no such representation. In such situations, the IHO may provide the unrepresented party with information relating to the hearing process. The provision was not meant to impair or limit the inherent authority of an IHO to ask questions of counsel and witnesses during the conduct of the impartial hearing. For purposes of clarification, the proposed amendment has been revised to add the following sentence to subparagraph (vii): "Nothing contained in this subparagraph shall be construed to impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record."

2. COMMENT:

The proposed amendment should be revised to authorize counsel for the parties to issue their own subpoenas, subject to the supervision of the impartial hearing officer.

DEPARTMENT RESPONSE:

The proposed amendment makes no substantive changes to the existing subpoena provisions relating to impartial hearings, which are found in section 200.5(i)(3)(iv). Therefore, the suggested revision is beyond the scope of this particular rule making.

3. COMMENT:

The provision in section 200.5(i)(3)(xii)(g) which limits memoranda of law to 30 pages is too restrictive, and should be replaced with the following suggested language: "To the extent requested by either of the parties, the impartial hearing officer shall allow memoranda of law from the parties. The hearing officer, in his or her sound discretion, shall be empowered to tailor the allowable length of the memoranda so as to be reasonably related to the complexity of the issues, and the length of the evidentiary presentation, allowing at least 30 pages upon the request of either party."

DEPARTMENT RESPONSE:

The suggested revision, in providing for an at least 30-page minimum rather than maximum length for memoranda of law, is contrary to the purpose of the proposed amendment, which is to prescribe procedures to ensure that impartial hearings are conducted in a timely manner pursuant to Federal requirements. The proposed amendment was previously revised in response to public comment to double the page limitation for memoranda of law from 15 pages to 30 pages and the Department believes this length to be sufficient.

4. COMMENT:

Section 200.5(i)(3)(xiii), limiting each side to one day to present its case unless the hearing officer determines "otherwise," is vague, arbitrary and insufficient since it "relies unduly on the grace and willingness of the hearing officer."

DEPARTMENT RESPONSE:

The comment mischaracterizes the proposed amendment as limiting each side's presentation to one day unless the hearing officer determines "otherwise." The provision in the proposed amendment actually states: "[e]ach party shall have up to one day to present its case unless the impartial hearing officer determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision." The standard to be followed by the IHO in determining whether to allow parties additional time is thus sufficiently articulated in the proposed amendment to provide flexibility where needed consistent with due process, while also ensuring that hearings are timely conducted consistent with Federal requirements.

5. COMMENT:

The provisions in section 200.5(i)(4)(iii) providing that agreement of the parties is not a sufficient basis for granting an extension, and that extensions shall not be granted for scheduling conflicts or settlement discussions, will discourage settlement discussions and may cause unnecessary hearings.

DEPARTMENT RESPONSE:

Agreement of the parties to extend time is not sufficient because pursuant to 34 CFR section 300.511(c), the IHO, and not the parties, is vested with the authority to determine whether to grant specific extensions of time. The proposed amendment would still permit an extension to be granted for scheduling conflicts or settlement discussions provided there is "a compelling reason or a specific showing of substantial hardship." This

will ensure that only necessary extensions are granted so that impartial hearings may be timely conducted and decided within Federal requirements.

6. COMMENT:

Section 200.5(i)(3)(xi) should be revised to ensure that unrepresented parents are not unfairly disadvantaged in prehearing conferences conducted by telephone. In addition, IHOs should be authorized to entertain a motion to reconsider and adjust the prehearing conference results in instances where unrepresented parents are unable to find counsel until after the prehearing conference is held.

DEPARTMENT RESPONSE:

The amendment is consistent with Court decisions allowing testimony by telephone and by affidavit under certain specified circumstances. It permits, but does not require, use of telephone and affidavit testimony, and leaves such use to the discretion of the hearing officer to determine the appropriateness of such use in individual cases. Further clarification regarding the use of telephone or affidavit testimony can be addressed through guidance documents. In addition, pursuant to section 200.5(i)(3)(vii), an IHO may assist an unrepresented party by providing information relating to the hearing process. The Department believes that determinations regarding prehearing conferences are best left to the discretion of the IHO.

NOTICE OF ADOPTION

Classroom Teaching Certification

I.D. No. EDU-37-03-00008-A

Filing No. 219

Filing date: Feb. 24, 2004

Effective date: March 11, 2004

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

Action taken: Amendment of sections 80-3.3, 80-4.3 and 80-4.4 and addition of section 80-3.7 to Title 8 NYCRR.

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

Subject: Individual evaluation requirements and other requirements for certification in the classroom teaching service.

Purpose: To establish requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs, streamline examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates, and remove unnecessary certification requirements. These new requirements will apply to candidates who apply for certification in a classroom title after Feb. 1, 2004.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-37-03-00008-P, Issue of Sept. 17, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Mandatory Continuing Education Requirements for Chiropractors

I.D. No. EDU-49-03-00016-A

Filing No. 218

Filing date: Feb. 24, 2004

Effective date: March 18, 2004

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

Action taken: Addition of section 73.5 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 212(3); 6502(1); 6504 (not subdivided); 6507(2)(a); 6508(1); and 6554-a(1)(a), (b) and (c), (2), (3), (4), (5), (6); and L. 2003, ch. 269, section (2)

Subject: Mandatory continuing education requirements for chiropractors.

Purpose: To set forth continuing education requirements and standards that licensed chiropractors must meet to be registered to practice in New York State and requirements for approval of sponsors of such continuing education.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-49-03-00016-P, Issue of December 10, 2003.

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

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

Assessment of Public Comment

The proposed rule was published in the *State Register* on December 10, 2003. Below is a summary of written comments received by the State Education Department concerning the proposed rule making and the Department's assessment of issues raised by the comments.

COMMENT: The President of New York Chiropractic College wrote that the subjects listed in the regulations for acceptable formal continuing education are consistent with those subjects considered acceptable formal chiropractic continuing education as taught by the New York Chiropractic College.

RESPONSE: The proposed amendment was developed through extensive consultation with the State Board for Chiropractic, professional associations that represent this profession, and chiropractic colleges, and the subjects listed in the regulation were developed through this consultation process. Section 6554-a of the Education Law requires the new regulation to prescribe subjects for the continuing education that are approved by an accredited chiropractic college, and the comment from the New York College of Chiropractic, an accredited chiropractic college, confirms that the subjects listed in the regulation have been approved by an accredited chiropractic college.

NOTICE OF ADOPTION

State Assessments and Graduation and Diploma Requirements

I.D. No. EDU-50-03-00002-A

Filing No. 221

Filing date: Feb. 24, 2004

Effective date: March 18, 2004

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

Action taken: Amendment of section 100.5 of Title 8 NYCRR.

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

Subject: State assessments and graduation and diploma requirements.

Purpose: To revise requirements for obtaining a Regents high school diploma, a Regents diploma with advance designation, and a local high school diploma.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-50-03-00002-P, Issue of December 17, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Standing Committees of the Board of Regents

I.D. No. EDU-52-03-00028-A

Filing No. 217

Filing date: Feb. 24, 2004

Effective date: March 18, 2004

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

Action taken: Amendment of sections 3.2 and 4-1.5 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided)

Subject: Standing committees of the Board of Regents.

Purpose: To conform the rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-52-03-00028-P, Issue of December 31, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

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

Requirements for Educational Leadership Programs

I.D. No. EDU-10-04-00003-P

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

Proposed action: Amendment of section 52.21(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 215 (not subdivided); 305(1), (2) and (7); 3004(1) and 3006(1)

Subject: Requirements for educational leadership programs.

Purpose: To modify the admission requirements for college programs that prepare school building leaders and school district leaders, and clarify the content requirements for college programs that prepare school building leaders, school district leaders, and school district business leaders.

Text of proposed rule: 1. Clause (b) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(b)(1) *Effective for students newly admitted to programs for the academic year 2004-2005, programs* [Programs] shall require candidates to possess a permanent or professional certificate in the classroom teaching service or pupil personnel service, or to demonstrate the potential for instructional leadership based on prior experiences that are evaluated using criteria established by the program and uniformly applied; and

(2) *Effective for students newly admitted to programs for the academic year 2005-2006 and thereafter, programs shall require candidates to hold a valid permanent or professional certificate in teaching, pupil personnel service, or administration that was issued by any state or national government; or alternatively, to demonstrate leadership potential through experience as a teacher, pupil service provider, or administrator for any schools serving any grades from pre-kindergarten through grade 12; and*

2. Subclause (5) of clause (d) of subparagraph (iv) of paragraph (2) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(5) student support services, including the provision of services to students with disabilities and to students who are English language learners;

3. Clause (i) of subparagraph (iv) of paragraph (2) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(i) Create the conditions necessary to provide a safe, healthy, and supportive learning environment for all students and staff, *including communicating and working effectively with social service and health service providers for this purpose;*

4. Clause (b) of subparagraph (ii) of paragraph (3) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(b)(1) *Effective for students newly admitted to programs for the academic year 2004-2005, programs* [Programs] shall require candidates to possess a permanent or professional certificate in the classroom teaching service or pupil personnel service, or to demonstrate the potential for instructional leadership based on prior experiences that are evaluated using criteria established by the program and uniformly applied; and

(2) *Effective for students newly admitted to programs for the academic year 2005-2006 and thereafter, programs shall require candidates to hold a valid permanent or professional certificate in teaching, pupil personnel service, or administration that was issued by any state or national government; or alternatively, to demonstrate leadership potential through experience as a teacher, pupil service provider, or administrator*

for any schools serving any grades from pre-kindergarten through grade 12; and

5. Clause (d) of subparagraph (iv) of paragraph (3) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(d) Create the conditions necessary to provide a safe, healthy, and supportive learning environment for all students and staff, *including communicating and working effectively with social service and health service providers for this purpose;*

6. Subclause (5) of clause (h) of subparagraph (iv) of paragraph (3) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(5) student support services, including the provision of services to students with disabilities and to students who are English language learners;

7. Subclause (4) of clause (a) of subparagraph (v) of paragraph (4) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(4) Create the conditions necessary to provide a safe, healthy, and supportive learning environment for all students and staff, *including communicating and working effectively with social service and health service providers for this purpose;*

8. Item (v) of subclause (8) of clause (a) of subparagraph (v) of paragraph (4) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(v) student support services, including the provision of services to students with disabilities and to students who are English language learners;

9. Subparagraph (iv) of paragraph (5) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective September 2, 2004, as follows:

(iv) Content requirement. Programs shall require candidates to complete studies sufficient to demonstrate, upon program completion, the knowledge and skills necessary to perform the following within the context of a school district business leadership position:

(a) [Create and sustain] *Assist with the establishment of a district budget that creates and sustains* financial and operational conditions within a district that [enable] *enables* all students to meet State learning standards and all staff to serve effectively in achieving that objective;

(b) Identify, develop, and endorse organizational and administrative policies and procedures for the district *that set a standard for ethical behavior and encourage initiative, innovation, and collaboration;*

(c) . . .

(d) Administer employment agreements and financial and operational resources, in accordance with state and federal laws and regulations, including *matters relating to collective bargaining and personnel management;* manage and evaluate district payroll operations;

(e) *Interact and communicate effectively with local, state, and federal representatives, applying statutes and regulations as required by law, and implementing school policies in accordance with law;*

[(e)] (f) . . .

[(f)] (g) . . .

[(g)] (h) . . .

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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of Higher Education, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: hedecom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law authorizes the Regents to register institutions in terms of New York standards.

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the educational supervision of the State and require reports from such schools.

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by adjusting requirements in the Regulations of the Commissioner of Education for college programs that prepare school building leaders, school district leaders, and school district business leaders for service in the public school system of New York State.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to modify the admission requirements for college programs that prepare school building leaders and school district leaders, and clarify the content requirements for college programs that prepare school building leaders, school district leaders, and school district business leaders. The proposed amendment results from comments from the field after the adoption by the Board of Regents in July 2003 of significant new requirements for educational leadership programs, including comments from colleges that offer such programs, organizations representing teachers and administrators, and members of the State Professional Standards and Practices Board for Teaching.

The amendment modifies the admission requirements for school building leaders and school district leaders programs to require that the candidate have professional experience in a school serving any grades from pre-kindergarten through grade 12, rather than leadership experience in any field, as an alternative to holding a permanent or professional certificate in school service. This is needed to ensure that the candidates for program admission have the appropriate background in the field of education so that they may properly benefit from study in school leadership programs. This new admission requirement will be effective for students newly admitted to programs in the 2005-2006 academic year, and thereafter.

The amendment will also clarify the content requirements for all school leadership programs. The amendment requires school building and school district leadership programs to prepare candidates for serving students who are English language learners, and for working effectively with social service and health care providers. It requires school district business leadership programs to prepare candidates to set a standard for ethical behavior, to encourage initiative, innovation, and collaboration, to understand personnel management, and to interact and communicate effectively with local, state, and Federal representatives.

4. COSTS:

(a) Cost to State government: The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government: The amendment will not impose any additional costs on local government.

(c) Cost to private regulated parties. The amendment will not result in any additional costs to students enrolled in educational leadership programs or colleges that offer such programs.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local government.

6. PAPERWORK:

The proposed amendment will not impose any reporting or recordkeeping requirements on colleges that offer educational leadership programs.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternative proposals considered. The amendment clarifies existing requirements.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with requirements qualifying individuals to serve in leadership positions in the New York State public schools, the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

The admission requirements for school leadership programs will be effective for students newly admitted to programs for the academic year 2005-2006. The remaining changes are effective on the rule's effective date.

Regulatory Flexibility Analysis

The proposed amendment regulates institutions of higher education that offer educational leadership programs, which are neither small businesses or local governments. The amendment will not impose any adverse economic impact, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The rule will apply to all programs that prepare education leaders at New York institutions of higher education. At the present time, five institutions offering such programs are located in one of the 44 rural counties with less than 200,000 inhabitants or one of the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The purpose of the proposed amendment is to modify the admission requirements for college programs that prepare school building leaders and school district leaders, and clarify the content requirements for college programs that prepare school building leaders, school district leaders, and school district business leaders. The proposed amendment adjusts requirements for educational leadership programs adopted by the Board of Regents in July 2003.

The amendment modifies the admission requirements for school building leaders and school district leaders programs to require that the candidate have professional experience in a school serving any grades from pre-kindergarten through grade 12, rather than leadership experience in any field, as an alternative to holding a permanent or professional certificate in school service. This new admission requirement will be effective for students newly admitted to programs in the 2005-2006 academic year, and thereafter.

The amendment will also clarify the content requirements for all school leadership programs. The amendment requires school building and school district leadership programs to prepare candidates for serving students who are English language learners, and for working effectively with social service and health care providers. It requires school district business leadership programs to prepare candidates to set a standard for ethical behavior, to encourage initiative, innovation, and collaboration, to understand personnel management, and to interact and communicate effectively with local, state, and Federal representatives.

The amendment does not require public or private entities located in rural areas to hire additional professional services in order to comply. In addition, it does not impose any new reporting or recordkeeping requirements.

3. COSTS:

The amendment will not result in any additional costs to colleges that offer educational leadership programs, including those located in rural areas of the State. It will also not impose any additional costs on students enrolled in educational leadership programs, including student who live or work in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment adjusts standards for programs leading to educational leadership certificates. The State Education Department has determined that the amendment's requirements should apply to all educational leadership programs, no matter their geographic location, to ensure a high standard of preparation across the State. Because of the nature of the proposed amendment, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The proposed amendment results from comments from the field after the adoption by the Board of Regents in July 2003 of significant new requirements for educational leadership programs, including comments from colleges that offer such programs, organizations representing teachers and administrators in all parts of the State, including rural areas, and members of the State Professional Standards and Practices Board for Teaching, which has rural representation. Each of these entities was sent a copy of the proposed amendment and asked to comment on it.

Job Impact Statement

The proposed amendment will modify the admission requirements for college programs that prepare school building leaders and school district leaders, and clarify the content requirements for college programs that prepare school building leaders, school district leaders, and school district business leaders. The amendment relates to requirements for college programs that prepare public school administrators and will have no impact upon the number of jobs and employment opportunities in the field of school administration. Because it is evident from the nature of the proposed amendment that it would have no impact on the number of jobs and employment opportunities in the field of school administration or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Health

NOTICE OF ADOPTION

Personal Care Services Reimbursement

I.D. No. HLT-46-03-00006-A

Filing No. 242

Filing date: Feb. 24, 2004

Effective date: March 10, 2004

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

Action taken: Amendment of section 505.14 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 363-(a)(2) and 365-a(2)(e)

Subject: Personal care services reimbursement.

Purpose: To revise Medicaid reimbursement regulations to include a two percent penalty for late submission of cost reports and to institute a 30-day advance notification of January personal care rates.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-46-03-00006-P, Issue of November 19, 2003.

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

Text of 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

Assessment of Public Comment

The following comments are being made to points raised by the New York State

Association of Health Care Providers, Inc. (HCP) regarding proposed changes to Part

505.14(h) of 18 NYCRR.

Comment

HCP opposes the proposed regulation that would implement a 2% penalty on personal care service provider rates for the late submission of a cost report. Such penalty would negatively impact the financial condition of these providers and could create unnecessary hardship.

Response

This proposal is designed to create a uniform regulatory process for addressing non-compliance with mandated cost reporting requirements. In accordance with current regulations, all other long term care providers, including certified home health agencies, long term home health programs and nursing facilities, are subject to a 2% penalty for non-compliance with cost reporting requirements. This regulation proposes to apply that same

uniform standard to personal care providers. The current lack of such a provision has resulted in non-compliance with reporting requirements by approximately 20% of personal care providers. The potential application of a penalty is a common tool utilized by regulators to encourage compliance by regulated parties. The penalty creates no hardship on providers that comply with current regulatory reporting requirements.

Comment

HCP supports the proposal to require the Department to notify personal care providers of their approved rate at least 30 days prior to the effective date of the rate and the proposed change to increase the time period from 60 to 90 days for providers to appeal the rate calculation.

Response

The Department recognizes the support and assistance of HCP in this proposal to insure a more accurate, timely and comprehensive determination of reimbursement rates for personal care providers.

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Treatment of Opiate Addiction

I.D. No. HLT-37-03-00001-C

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

The notice of proposed rule making, I.D. No. HLT-37-03-00001-P was published in the *State Register* on September 17, 2003.

Subject: Treatment of opiate addiction.

Purpose: To allow the treatment of opiate addiction in an office-based setting while curtailing controlled substance diversion.

Substance of rule: United States Public Law 106-310, the Children's Health Act of 2000 was enacted on October 17, 2000. Title XXXV of this law, Waiver Authority for Physicians Who Dispense or Prescribe Certain Narcotic Drugs for Maintenance Treatment or Detoxification Treatment, is better known by the short title Drug Addiction Treatment Act of 2000 (DATA).

DATA allows physicians to prescribe and dispense narcotics in Schedules III, IV, and V of the Controlled Substances Act (CSA) that have been specifically approved by the Food and Drug Administration (FDA) for the purpose of maintenance or detoxification of opiate addiction.

The DATA expands availability of treatment of opiate dependent patients allowing physicians to prescribe narcotic drugs for opiate addiction, requiring only self-certification, and moves the treatment of addiction from the clinic to the private physician's office and the patient's own pharmacy. The law allows qualified physicians to prescribe and dispense Schedule III, IV, and V narcotics that have been approved by FDA for use in maintenance or detoxification treatment. Currently the only such drug approved for such use is buprenorphine.

Buprenorphine is a partial opioid against with a significant potential for abuse. To meet the legislative purpose of Article 33 and the intent of the DATA, additional regulations are necessary to ensure buprenorphine is not diverted into illegal channels, while ensuring access to care.

These regulations require that the physician register with the Department of Health, as well as the Office of Alcohol and Substance Abuse Services (OASAS), to provide such treatment. This will ensure that the physician possesses the addiction treatment qualifications required by DATA and is in good standing with respect to adherence to controlled substances laws. The physician will be required to report the names of such patients whom they are providing such treatment. Pharmacies that wish to dispense buprenorphine will also be required to register with the department. Registered pharmacies will be required to file buprenorphine prescription data with the department in the same manner they currently follow for Schedule II controlled substances and benzodiazepines. The department will have the capability of monitoring the utilization of buprenorphine by the analysis of this data in the same manner currently utilized for controlled substances with significant abuse potential.

Changes to rule: No substantive changes.

Expiration date: September 16, 2004.

Text of proposed rule and changes, if any, 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.

Industrial Board of Appeals

NOTICE OF WITHDRAWAL

Form and Content of Petition

I.D. No. IBA-01-04-00009-W

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

Action taken: Notice of proposed rule making, I.D. No. IBA-01-04-00009-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on January 7, 2004.

Subject: Form and contents of petitions filed pursuant to Labor Law, section 101.

Department of Motor Vehicles

NOTICE OF ADOPTION

Drivers' Licenses

I.D. No. MTV-52-03-00025-A

Filing No. 243

Filing date: Feb. 24, 2004

Effective date: March 10, 2004

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

Action taken: Amendment of Part 3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 385(1)(h) and 501(2)(b)

Subject: Drivers' licenses.

Purpose: To clarify that a personal use endorsement is required on the licenses of drivers of 45-foot recreational vehicles.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-52-03-00025-P, Issue of December 31, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Drinking Driver Program

I.D. No. MTV-10-04-00023-P

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

Proposed action: Amendment of section 134.14(b) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 1196(1) and (6)

Subject: Drinking Driver Program.

Purpose: To increase the fees for the program.

Text of proposed rule: Subdivision (b) of Section 134.14 is amended to read as follows:

(b) Except as provided in subdivisions (c) and (d) of this section, the total fee for a rehabilitation program shall not exceed [250] \$300. Seventy-five dollars of any such total fee shall represent the reimbursement of costs for administrative expenses incurred by the Department of Motor Vehicles and sentencing courts. A participant in the program shall not be required to pay the \$75 fee to the department if such participant held a conditional license pending prosecution under section 134.18 of this Part,

if such conditional license was not revoked, and such conditional license was issued as the result of the same violation on which participation in such program is based. *The Commissioner may require that up to five dollars of the total fee for a rehabilitation program shall be used for reimbursement of costs for curriculum enhancements to be developed by the Department of Motor Vehicles and/or a third party authorized by the Department. If the Commissioner so requires, written notification of such requirement shall be sent to all rehabilitation programs, and such portion of the fee shall be paid by the program directly to such authorized third party.*

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

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law § 1196(1) establishes the Alcohol and Drug Rehabilitation Program (also referred to as the Drinking Driver Program or "DDP") within the Department of Motor Vehicles. Vehicle and Traffic Law § 1196(6) provides that the Commissioner shall establish a schedule of fees to be paid by or on behalf of each participant in the program, and may from time to time, modify the fees.

2. Legislative objectives: Vehicle and Traffic Law § 1196(6) provides that the fees to be established by the Commissioner shall defray the ongoing expenses of the program. The proposed rule is in accord with the public policy objectives that the Legislature sought to advance by allowing the Commissioner to modify such fees in order that the expenses of the DDP be defrayed.

3. Needs and benefits: There are 54 Drinking Driver Program (DDP) providers in New York State. In calendar year 2001, the DDPs provided their services to 20,960 individuals. The cost charged to individuals by DDPs is set in regulation. Currently, the DDPs are permitted to charge an individual up to \$175 for participation in the program. The enrollee pays \$75 directly to the Department for administrative purpose. Therefore, the total cost to the enrollee currently is \$250.

The Department met several times with DDP providers and their representatives who expressed concern about the rising cost of running their programs. They contended that a fee increase was necessary to offset rising costs in order to conduct a successful program. It was reported that a majority of the DDPs were operating in deficit. The DDPs provided evidence to the Department that demonstrated that a fee increase was necessary.

The proposed revisions increase the allowable fee that the DDPs charge to participants from \$175 to \$225, with the same \$75 fee to be paid directly to the Department for administrative costs. The Department found that the \$50 increase is necessary to defray the actual expenses of the DDP. This will ensure that providers will not be in deficit. Furthermore, a fee increase has not been instituted since 1996. As of January 2002, several of the Drinking Driver Programs stated that unless a fee increase was approved they would be forced to discontinue their respective programs. The fee increase is expected to satisfy the needs of the DDP providers while keeping the DDP relatively affordable to the public.

This regulation further satisfies the industries request that a curriculum enhancement process be established. The rule promulgates that DDP providers shall pay a maximum of \$5 (of the total fee), which will be dedicated to the formulation of a curriculum program. The Department or a third party authorized by the Department will establish the curriculum enhancement program via an RFP process.

4. Costs: a. The approximate cost to regulated parties: The proposed rule will not impose additional costs on those entities that provide the Drinking Driver Program, since it will allow them to charge an additional \$50 to be paid by each participant in the program. The rule provides that a maximum of \$5 of the total fee shall be paid by DDP providers for curriculum enhancements. Those who enroll in the program will bear the \$50 increase. Based upon the most recent complete statistics available from 2001, there were 20,960 enrollees. If each enrollee were to be charged the additional \$50, this would result in a revenue generation estimated to be approximately \$1,048,000 annually. The enrollees would pay these costs.

b. Costs to the agency, the State and local governments: None. State and local agencies are not affected by this rule, and therefore, the rule will not impose any costs on those agencies.

5. Local government mandates: This rule does not affect local governments, and therefore, imposes no mandates on local governments.

6. Paperwork: There are no additional reporting requirements associated with this rule.

7. Duplication: This rule does not duplicate, overlap, or conflict with any other State or federal statute or regulation.

8. Alternatives: The Department considered increasing the DDP by a smaller amount, but such a smaller increase would not sufficiently address the current deficit facing DDP providers.

9. Federal standards: The proposed rule does not exceed any federal minimum standards.

10. Compliance schedule: The Department of Motor Vehicles anticipates that affected DDP providers will be able to comply with the proposed rule immediately.

Regulatory Flexibility Analysis

1. Effect of rule: The rule would affect all 54 Drinking Driver Program providers statewide. The Department estimates that all 54 DDP providers are small businesses. The rule would allow DDP providers to increase the fees to be paid by or on behalf of each participant in the DDP by \$50. The rule would also require that a maximum of \$5 of the total program fee be paid by DDP providers for curriculum enhancements. The rule will have no impact on local governments.

2. Compliance requirements: All DDP providers would be able to charge an additional \$50 per participant for the Drinking Driver Program. DDP providers are not required to increase the fee. The rule would also provide that up to \$5 of the total fee be paid by DDP providers to an authorized third party for curriculum enhancements. The rule will have no impact on local governments.

3. Professional services: DDP providers will not require additional professional services in order to comply with the rule. The rule will have no impact on local governments.

4. Compliance costs: DDP providers would be allowed to charge and additional \$50 for the program and would have to pay a maximum of \$5 of the total program fee for curriculum enhancements. The rule will have no impact on local governments.

5. Economic and technological feasibility: The DDP providers have the economic and technological ability to comply with the regulation. The rule would decrease the economic impact on providers by allowing them to charge an increased fee for the Drinking Driver Program. The rule does not require the use of technology for compliance. The rule will have no impact on local governments.

6. Minimizing adverse impact: The rule would decrease the economic impact on providers by allowing them to charge an increased fee for the Drinking Driver Program. The Department considered increasing the DDP by a smaller amount, but such a smaller increase would not sufficiently address the current deficit facing DDP providers. The rule will have no impact on local governments.

7. Small business and local government participation: The Department met several times with DDP providers and their representatives who expressed concern about the rising cost of running their programs. They contended that a fee increase was necessary to offset rising costs in order to conduct a successful program. It was reported that a majority of the DDPs were operating in deficit. The DDPs provided evidence to the Department that demonstrated that a fee increase was necessary. Other State and local agencies are not affected by this rule, and, therefore, this rule will not impose any costs on those agencies.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted, because the proposed rule will not impose an adverse impact, nor reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted, because the Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-49-03-00013-A

Filing date: Feb. 24, 2004

Effective date: First full billing date following the date of this filing

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

Action taken: Revision in the rates for the sale of power and energy for the Village of Watkins Glen, NY.

Statutory authority: Public Authorities Law, section 1005, subpara. 5

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity. This is not a result of a Power Authority rate increase to the village.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-49-03-00013-P, Issue of December 10, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, New York Power Authority, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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.

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

Rates for the Sale of Power and Energy by Oneida-Madison Electric Cooperative, Inc.

I.D. No. PAS-10-04-00002-P

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

Proposed action: Revision in rates for the sale of power and energy for the Oneida-Madison Electric Cooperative, Inc.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Text of proposed rule:

ONEIDA-MADISON ELECTRIC COOPERATIVE, INC.

Proposed Monthly Rates

	Proposed Rate ¹
Residential S.C. 1	
Customer Charge	\$10.00
Energy Charge, per kWh	\$.08700
Seasonal S.C. 2	
Customer Charge	\$10.00
Energy Charge, per kWh	\$.07700
Commercial S.C. 3	
Demand Charge, per kW	\$ 9.00
Energy Charge, per kWh	\$.09128
Security Lighting S.C. 4	
(Charge per lamp, per month)	
175 Mercury Vapor	\$ 7.97

¹ Purchased Power Adjustment reflected in proposed rates.

Text of proposed rule and any required statements and analyses may be obtained from: Angela Graves, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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

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

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

Statements and analyses are 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.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Investigation into the Transactions of Camfield-Purcell Water Works, Inc. and Brickyard Road Water System

I.D. No. PSC-10-04-00004-EP

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

Action taken: The commission, on Feb. 24, 2004, adopted an order in Case 04-W-0214 approving the investigation into the acts and practices of Camfield-Purcell Water Works, Inc. (Camfield-Purcell) and Brickyard Road Water System (Brickyard).

Statutory authority: Public Service Law, section 89-b

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: Immediate adoption is necessary to avoid disruption in service and to ensure that customers of Camfield-Purcell continue to receive safe and adequate water service.

Subject: Investigation into the transactions of Camfield-Purcell and Brickyard.

Purpose: To avoid the termination of water service.

Public hearing(s) will be held at: 10:00 a.m., March 11, 2004 at Public Service Commission, Three Empire State Plaza, Albany, NY.

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

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

Substance of emergency/proposed rule: The Commission approved an investigation into the adequacy of service by Camfield-Purcell Water Works, Inc. (Camfield-Purcell) and Brickyard Road Water System to ensure that the water service of Camfield-Purcell's customers is not adversely affected, subject to the terms and conditions set forth in the order.

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

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

Data, views and arguments may be submitted to: Jaelyn 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 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-0214SA1)

NOTICE OF ADOPTION

Calculation of Franchise Fees by Cablevision Systems Long Island Corp.

I.D. No. PSC-39-03-00017-A

Filing date: Feb. 23, 2004

Effective date: Feb. 23, 2004

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

Action taken: The commission, on Jan. 21, 2004, adopted an order in Case 00-V-0618, granting Cablevision Systems Long Island Corporation d/b/a Cablevision a waiver of section 595.1(o)(2) pertaining to the calculation of franchise fees.

Statutory authority: Public Service Law, sections 216(1)

Subject: Calculation of franchise fees.

Purpose: To allow Cablevision Systems Long Island Corporation d/b/a Cablevision to exclude the franchise fees collected in the Village of Massapequa Park from inclusion in its calculation of gross receipts.

Substance of final rule: The Commission approved Cablevision Systems Long Island Corporation's d/b/a Cablevision request for a waiver of 595.1(o)(2) of Commission rules to permit exclusion of franchise fee collections from the calculation of the franchise fee base.

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-V-0618SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Glenn Gardens Associates, LP

I.D. No. PSC-44-03-00007-A

Filing date: Feb. 18, 2004

Effective date: Feb. 18, 2004

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

Action taken: The commission, on Feb. 11, 2004, adopted an order in Case 03-E-1425, allowing Glenn Gardens Associates, LP (Glenn Gardens) to submeter electricity at 175 W. 87th St., New York, NY.

Statutory authority: Public Service Law, sections 65(1) and 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve a request by Glenn Gardens to submeter electricity.

Substance of final rule: The Commission authorized Glenn Gardens Associates, LP to submeter electricity at 175 West 87th Street, Manhattan, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-E-1425SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Refund of Overpayments for Hydroelectric Charges by the Village of Rockville Centre

I.D. No. PSC-10-04-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a supplemental petition filed by the Village of Rockville Centre to use the remaining portion of a refund received from the New York Power Authority, plus accrued interest, for extraordinary capital projects.

Statutory authority: Public Service Law, sections 66(12) and 113(2)

Subject: Refund of overpayments for hydroelectric charges.

Purpose: To allow the Village of Rockville Centre to use a refund for extraordinary capital improvements.

Public hearing(s) will be held at: 7:00 p.m., March 24, 2004 at Rockville Center (John A. Anderson) Recreation Center, 111 N. Oceanside Rd., Rockville Center, NY; and 9:00 a.m., March 25, 2004 at Rockville Centre Village Hall, 2nd Fl., One College Place, Rockville Center, NY.

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

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

Substance of proposed rule: On June 21, 2002, the Public Service Commission authorized the Village of Rockville Centre to use approximately \$2 million, of a \$2.8 million refund related to overpayments for hydroelectric power from the New York Power Authority, to complete transmission system upgrades. In a supplemental petition, the Village of Rockville Centre is proposing to use the remaining refund proceeds, plus accrued interest, for extraordinary capital projects.

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

Data, views or argument may be submitted to: 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: five days after the last scheduled public hearing.

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.

(02-E-0322SA3)

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

Temporary Protective Order

I.D. No. PSC-10-04-00005-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 will consider adopting a temporary protective order for use by parties that want involvement in a replication effort to examine parity metrics that compare Verizon's wholesale service quality performance against its retail service quality performance.

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

Subject: Temporary protective order.

Purpose: To consider adopting a protective order for a term of approximately six months in order to complete a parity metrics replication effort.

Substance of proposed rule: The Commission will consider adopting a temporary protective order in this proceeding so that interested parties can begin a replication effort that will examine parity metrics. If adopted, the temporary order would supersede the existing order for a fixed term of approximately six months in order to allow sufficient time to complete the parity metrics replication effort.

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.

(97-C-0139SA19)

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

Interconnection Agreement between Verizon New York Inc. and Sprint Communications Company L.P.

I.D. No. PSC-10-04-00006-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 modification filed by Verizon New York Inc. and Sprint Communications Company L.P. to revise the interconnection agreement effective on Nov. 1, 2003.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Sprint Communications Company L.P. in November 2003. The companies subsequently have jointly filed amendments to clarify the provisions regarding Unbundled Network Elements and Combinations. The Commission is considering these changes.

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.

(99-C-1389SA4)

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

Interconnection Agreement between Verizon New York Inc. and RCN Telecom Services, Inc.

I.D. No. PSC-10-04-00007-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 modification filed by Verizon New York Inc. and RCN Telecom Services, Inc. to revise the interconnection agreement effective on June 4, 2001.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and RCN Telecom Services, Inc. in June 2001. The companies subsequently have jointly filed

amendments to clarify the provisions regarding reciprocal compensation rates. The Commission is considering these changes.

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.

(01-C-0504SA2)

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

Interconnection Agreement between Verizon New York Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue

I.D. No. PSC-10-04-00008-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 modification filed by Verizon New York Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue to revise the interconnection agreement effective on Jan. 4, 2004.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue in January 2004. The companies subsequently have jointly filed amendments to clarify the provisions regarding addition of the rates, terms and conditions set forth in the TRO Attachment and the Pricing Exhibit. The Commission is considering these changes.

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.

(02-C-1023SA2)

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

Interconnection Agreement between Verizon New York Inc. and Cypress Communications Operating Company, Inc.

I.D. No. PSC-10-04-00009-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, a modification filed by Verizon New York Inc. and Cypress Communications Operating Company, Inc. to revise the interconnection agreement effective on Dec. 19, 2003.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Cypress Communications Operating Company, Inc. in December 2003. The companies subsequently have jointly filed amendments to clarify the provisions regarding addition of the rates, terms and conditions set forth in the TRO Attachment and the Pricing Exhibit. The Commission is considering these changes.

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

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

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

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

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

(03-C-0949SA2)

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

Interconnection Agreement between Verizon New York Inc. and Volo Communications of New York, Inc.

I.D. No. PSC-10-04-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Volo Communications of New York, Inc. for approval of an interconnection agreement executed on Sept. 22, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Volo Communications of New York, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Volo Communications of New York, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-C-0142SA1)

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

Interconnection Agreement between Verizon New York Inc. and Slic Network Solutions Inc. d/b/a slic.com

I.D. No. PSC-10-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New

York Inc. and Slic Network Solutions Inc. d/b/a slic.com for approval of an interconnection agreement executed on Jan. 22, 2004.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Slic Network Solutions Inc. d/b/a slic.com have reached a negotiated agreement whereby Verizon New York Inc. and Slic Network Solutions Inc. d/b/a slic.com will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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-C-0144SA1)

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

Interconnection Agreement between Verizon New York Inc. and BAK Communications, LLC

I.D. No. PSC-10-04-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and BAK Communications, LLC for approval of an interconnection agreement executed on Jan. 21, 2004.

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

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

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

Substance of proposed rule: Verizon New York Inc. and BAK Communications, LLC have reached a negotiated agreement whereby Verizon New York Inc. and BAK Communications, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 20, 2006, or as extended.

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-C-0145SA1)

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

Interconnection Agreement between Verizon New York Inc. and Globecom Inc.

I.D. No. PSC-10-04-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Globecom Inc. for approval of an interconnection agreement executed on July 20, 2003.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Globecom Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Globecom Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 18, 2006, or as extended.

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-C-0146SA1)

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

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

I.D. No. PSC-10-04-00014-P

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

Proposed action: As discussed in an order establishing further procedures issued Oct. 29, 2003 in Case 00-E-1273, the commission is considering disbursements from an electric benefit fund created under a rate plan for Central Hudson Gas & Electric Corporation and related deferrals and is reviewing service quality standards and policy programs at the utility. The commission may adopt, modify or reject, in whole or in part, policies, procedures and ratemaking on the issues raised in its Oct. 29, 2003 order.

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

Subject: Disbursements from an electric benefit fund created under a rate plan for Central Hudson Gas & Electric Corporation and related deferrals and service quality standards and policy programs at the utility.

Purpose: To consider future disbursements.

Substance of proposed rule: As discussed in an Order Establishing Further Procedures issued October 29, 2003 in Case 00-E-1273, the Commission is considering disbursements from an electric Benefit Fund created under a Rate Plan for Central Hudson Gas & Electric Corporation and related deferrals and is reviewing service quality standards and policy programs at the utility. The Commission may adopt, modify or reject, in whole or in part, policies, procedures and ratemaking on the issues raised in its October 29, 2003 Order.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-E-1273SA6)

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

Electric Service Standards

I.D. No. PSC-10-04-00016-P

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

Proposed action: The Public Service Commission is considering whether to modify, in whole or in part, the service standards used to measure reliability and quality of electric service for each of the large New York State electric utilities.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Electric service standards used to measure the reliability and quality of electric service for each of the large New York State electric utilities.

Purpose: To modify the standards used to measure the reliability and quality of electric service.

Substance of proposed rule: The Public Service Commission is considering whether to modify, in whole or in part, the service standards used to measure reliability and quality of electric service for each of the large New York State electric utilities.

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.

(02-E-1240SA1)

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

Refund of Overpayments for Hydroelectric Charges by the City of Jamestown

I.D. No. PSC-10-04-00017-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 supplemental petition filed by the City of Jamestown to use the remaining portion of a refund received from the New York Independent Systems Operator for extraordinary capital projects.

Statutory authority: Public Service Law, sections 66(12) and 113(2)

Subject: Refund of overpayments for hydroelectric charges.

Purpose: To allow the City of Jamestown to use a refund for extraordinary capital improvements.

Substance of proposed rule: On December 24, 2003 the City of Jamestown submitted a petition to use refund proceeds from various sources towards several capital projects. In a supplemental petition, the City is proposing to apply additional refund proceeds from the New York Independent Systems Operator to the proposed capital projects.

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

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

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

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

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

(03-E-1785SA2)

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

Sale-Leaseback Transaction by KeySpan-Ravenswood, LLC

I.D. No. PSC-10-04-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve or deny, in whole or in part, a petition by KeySpan-Ravenswood, LLC (Ravenswood) (petitioner) for approval of a sale-leaseback transaction that will result in a transfer of Ravenswood Unit 40 to a group of equity investors, simultaneously with a lease of the facility back to Ravenswood to allow for Ravenswood's continued operation and management control of the facility; confirmation of petitioner's status as a lightly regulated electric corporation; waiver of certain filing requirements; and related relief.

Statutory authority: Public Service Law, sections 4(1), 69 and 70

Subject: Financing and transfer of lightly regulated electric generation assets, and related matters.

Purpose: To consider whether the proposed transaction, including related matters, should be approved.

Substance of proposed rule: By petition filed February 17, 2004, Ravenswood seeks approval, pursuant to PSL §§ 69 and 70, of a sale-leaseback transaction that would result in the transfer of Ravenswood Unit 40 to a group of equity investors and a lease of the facility back to Ravenswood to allow for Ravenswood's continued operation and management of the facility. Petitioner also seeks confirmation that it will continue to be lightly regulated as an electric corporation, as well as a waiver of certain filing requirements. Petitioner seeks approval of the transaction on an emergency basis, claiming that emergency action would be in the public interest and would benefit public health, safety and the general welfare, because it would allow for the addition and maintenance of new generation capacity in the constrained New York City load pocket.

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-0195SA1)

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

Service Quality Standards by Central Hudson Gas & Electric Corporation

I.D. No. PSC-10-04-00019-P

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

Proposed action: As discussed in an order establishing further procedures issued Oct. 29, 2003 in Case 00-G-1274, the commission is reviewing service quality standards and policy programs and deferrals at Central Hudson Gas & Electric Corporation. The commission may adopt, modify or reject, in whole or in part, policies, procedures and ratemaking on the issues raised in its Oct. 29, 2003 order.

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

Subject: Service quality standards and policy programs and deferrals at Central Hudson Gas & Electric Corporation.

Purpose: To consider adoption.

Substance of proposed rule: As discussed in an Order Establishing Further Procedures issued October 29, 2003 in Case 00-G-1274, the Commission is reviewing service quality standards and policy programs and deferrals at Central Hudson Gas & Electric Corporation. The Commission may adopt, modify or reject, in whole or in part, policies, procedures and ratemaking on the issues raised in its October 29, 2003 Order.

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

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

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

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

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

(00-G-1274SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petitions for Rehearing and Clarification by Niagara Mohawk Power Corporation, et al.

I.D. No. PSC-10-04-00020-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petitions filed by Niagara Mohawk Power Corporation (NMPC), KeySpan Energy Delivery New York and Long Island (KeySpan), Consolidated Edison company of New York, Inc. (Con Edison), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E) (collectively utilities), Belkin, Burden, Wenig & Goldman, LLP, National Energy Marketers Association (NEM), and the Small Customer Marketer Coalition (SCMC) seek rehearing and clarification of certain provisions of the commission's Dec. 5, 2003 order on petitions for rehearing and clarification concerning the implementation of L. 2002, ch. 686 and pro-ration of partial customer payments on consolidated bills.

Statutory authority: Public Service Law, sections 22, 30-53, 65 and 66

Subject: Petitions for rehearing and clarification.

Purpose: To rehear the commission's Dec. 5, 2003 order.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant or deny, in whole or in part, the petitions filed by Niagara Mohawk Power Corporation (NMPC), KeySpan Energy Delivery New York and Long Island (KeySpan), Consolidated Edison Company of New York, Inc. (Con Edison), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E) (collectively utilities), Belkin, Burden, Wenig & Goldman, LLP, National Energy Marketers Association (NEM), and the Small Customer Marketer Coalition (SCMC) seek rehearing and clarification of certain provisions of the Commission's December 5, 2003 Order on Petitions for Rehearing and Clarification concerning the implementation of Chapter 686 of the Laws of 2002 and pro-ration of partial customer payments on consolidated bills. The Commission will consider petitioning parties' requests to, among other things, exempt submeterers from the provisions of the Home Energy Fair Practices Act (HEFPA), allow submeterers, when following HEFPA to suspend delivery service, exempt from pro-ration proceeds obtained

through a collection agent, establish a temporal limit on the applicability of arrears to pro-ration, subordinate termination notices with respect to suspension and disconnection notices, and to allow for the transmission of special needs customers' information by the utility to the applicable energy services company (ESCO) without the customer's prior consent.

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

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

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

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

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

(03-M-0117SA4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pole Attachments

I.D. No. PSC-10-04-00021-P

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

Proposed action: The commission is considering recommendations of staff regarding pole attachment procedures, including the possible amendment of Opinion No. 97-10 in Case 95-C-0341, to prohibit rental charges for overlashing of facilities onto existing attachments.

Statutory authority: Public Service Law, sections 94(2) and 66(1)

Subject: Pole attachments.

Purpose: To prohibit rental charges for overlashing of facilities onto existing attachments.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, Recommendations of Staff regarding pole attachment procedures, including the possible amendment of Opinion No. 97-10 in Case 95-C-0341, to prohibit rental charges for overlashing of facilities onto existing attachments.

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

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

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

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

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

(03-M-0432SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. PSC-10-04-00022-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 petition filed by Consolidated Edison Company of New York, Inc. for authority under section 70 of the Public Service Law to sell approximately 126 acres of vacant land and for related relief.

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

Subject: Transfer of approximately 126 acres of vacant land and related matters.

Purpose: To consider granting approval.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, the proposed sale of approximately 126 acres of vacant land, owned by Consolidated Edison Company of New York, Inc. (Con Edison). The land, located in the Town of Red Hook, is part of the Mid-Hudson site, which was acquired in the 1970s by Con Edison for generation purposes. The site is no longer needed for the company's utility operations, and Con Edison has been selling it in individual or groups of parcels. The Commission is also considering related matters.

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. 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.

(03-M-1748SA1)

Department of Taxation and Finance

EMERGENCY RULE MAKING

Estimated Tax Payments on Sale or Transfers of Real Property by Nonresident Taxpayers

I.D. No. TAF-06-04-00001-E

Filing No. 244

Filing date: Feb. 24, 2004

Effective date: Feb. 24, 2004

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

Action taken: Addition of Part 163 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 663; and 697(a)

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

Specific reasons underlying the finding of necessity: Section 663 of the Tax Law requires nonresident taxpayers to estimate and pay the personal income tax liability on the gain, if any, on sales or transfers of real property within New York State. Section 663 was added by Part V3 of Chapter 62 of the Laws of 2003, and subsequently amended by Chapter 686 of the Laws of 2003. Chapter 686 became law on October 21, 2003 and Part P of such Chapter, which contains the amendments to section 663, applies to sales or transfers of real property on or after September 1, 2003. The Commissioner of Taxation and Finance is required by section 663 to promulgate regulations implementing the section. Since the law was already in effect, an emergency action was necessary so the commissioner could put regulatory amendments in place immediately. This first emergency action was filed on November 12, 2003. To ensure the continuation of the rule, it was readopted as an emergency measure and proposed as a permanent rule on January 22, 2004. The permanent rule will become effective when the Notice of Adoption is published in the *State Register*. Because the earliest date that the Notice of Adoption can be published is April 14, 2004, and the first emergency readoption will expire on March 22, 2004, this second adoption is necessary to continue the rule until the rule can be adopted as a permanent measure.

Subject: Estimated tax payments on sales or transfers of real property by nonresident taxpayers.

Purpose: To implement the estimated tax on sales or transfers of real property within New York State by nonresident taxpayers as required by new section 663 of the Tax Law.

Text of emergency rule: Section 1. A new part 163 is added to such regulations to read as follows:

PART 163

ESTIMATED PERSONAL INCOME TAX DUE UPON THE SALE OR TRANSFER OF REAL PROPERTY BY A NONRESIDENT TAXPAYER
(Statutory authority: Tax Law, §§ 171, 663, 697)

Section 163.1 General and definitions.

(a) Section 663 of the Tax Law requires that a nonresident taxpayer must estimate and pay the personal income tax liability on the gain, if any, upon the sale or transfer of real property within New York State. For purposes of section 663, the following rules and definitions apply:

(1) "Date of sale or transfer" is the date the deed effecting the conveyance is delivered by the seller or transferor to the transferee.

(2) "Nonresident taxpayer." (i) A nonresident taxpayer is an individual who qualifies as a nonresident individual under section 605(b)(2) of the Tax Law, or an estate or trust that qualifies as a nonresident estate or trust under section 605(b)(4) of the Tax Law, on the date of sale or transfer of real property.

(ii) An individual who is not domiciled in New York State but who may be considered a resident of New York State for tax purposes under section 605(b)(1)(B) of the Tax Law at the end of a taxable year, by virtue of maintaining a permanent place of abode in New York State for substantially all of the taxable year and by spending in aggregate more than one hundred eighty-three days of the taxable year in New York State, is a nonresident for purposes of this requirement unless the individual has already qualified as a resident on the date of sale or transfer of real property. (See section 105.20 of this Title concerning qualifying as a resident under section 605(b)(1)(B).)

(3) "Gain" on the sale or transfer has the same meaning as used in section 1001 of the Internal Revenue Code as that section applies to the sale or transfer of real property.

(4) "Sale or transfer of real property" means the change of ownership of a fee simple interest in real property by any method.

(5) "Seller or transferor" means the individual, estate, or trust making the sale or transfer of a fee simple interest in real property.

(6) "Recording officer" means the county clerk of the county, except in a county having a register, where it means the register of the county, or in the city of New York where it means the city register and any other employee of the Department of Finance, as appropriate.

Section 163.2 Estimation of tax due.

(a) A nonresident taxpayer must estimate the personal income tax due on a form prescribed by the commissioner, using an estimated tax rate that equals the highest rate of tax for the taxable year provided in section 601 of the Tax Law. The estimated tax due will equal the gain, if any, multiplied by that rate. The amount of the gain used in the computation is equal to the amount reportable for federal income tax purposes for the taxable year.

(b) If the real property being sold or transferred is located partly within and partly without New York State, then the nonresident taxpayer must estimate the tax due using only the portion of the gain reasonably attributable to the portion of the real property located within New York State.

(c) If the nonresident taxpayer is an estate or trust, it must estimate the tax due based on the gain, if any, computed without reduction for any distribution of income to the beneficiaries during the tax year of the sale or transfer.

Section 163.3 Filing and payment.

(a) A nonresident taxpayer must file the estimated tax form with the recording officer, along with payment of any estimated tax due, at the time a deed is recorded or accepted for recording. The taxpayer must make a payment payable to the Department of Taxation and Finance for the estimated tax that is separate from any other payment made to the recording officer at this time. (For an alternate payment and certification procedure which is available for sales with a date of sale or transfer on or before December 31, 2003, see Part 163 of Title 20 NYCRR (adopted on August 26, 2003) and section 663 of the Tax Law enacted by Chapter 62, Laws of 2003. The payment and certification procedure set forth in the August 26, 2003 regulation is in lieu of the procedure set forth herein.) Except for a nonresident taxpayer who meets one of the exemptions from the requirements described in section 163.4 of this Part, all nonresident taxpayers who are sellers or transferors of real property within New York State must file the estimated tax form whether or not they have a gain.

Section 163.4 Exemption from requirements.

(a) Section 663(d) of the Tax Law provides that the requirements of section 663 do not apply where:

(1) the real property being sold or transferred is the principal residence of the seller or transferor within the meaning of section 121 of the Internal Revenue Code (see subdivision (b) of this section);

(2) the seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration (see definition of "consideration" in section 575.1(d) of this Title); or

(3) the seller or transferor, or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

(b) The principal residence exemption set forth in paragraph (a)(1) of this section applies only where the property being sold or transferred qualifies in total as the principal residence of the seller or transferor. If the property being sold or transferred includes both the principal residence and other property, then the taxpayer must file and pay any estimated tax due based on the gain from the other property.

Section 163.5 Requirements for recording of deed.

(a) No deed shall be recorded or accepted for recording by any recording officer unless the recording officer has received with respect to every seller or transferor who is an individual, estate or trust: (1) a form prescribed by the commissioner, along with payment in full of the estimated tax due, if any, or, (2) a form prescribed by the commissioner containing a certification by the individual, estate or trust that section 663 is inapplicable to the sale or transfer. The method for taxpayers to make the certification is prescribed in forms and instructions.

Section 163.6 Designation of and duties of agents.

The recording officers in New York State shall act as the agents of the commissioner to collect the estimated tax due, if any, shown to be payable on the form prescribed by the commissioner. The recording officer must collect the estimated tax at the time that a deed is recorded or accepted for recording and must collect a payment payable to the Department of Taxation and Finance for the estimated tax that is separate from any other payment made to the recording officer at this time. Every recording officer must remit to the commissioner any funds collected and returns filed with such recording officer in a timely manner, not to exceed three business days after receipt of the funds and returns.

Section 163.7 Liability of recording officer.

A recording officer is not liable for any inaccuracy in any statement on the form prescribed by the commissioner or in the amount of estimated tax collected so long as he or she collects the estimated tax shown as payable on the form.

Section 163.8 Validity of record of deed.

When a deed is recorded notwithstanding an omission or inaccuracy in the form prescribed by the commissioner or in any certification by the transferor on such form or a deficiency in the payment of estimated tax, the record of such deed is not invalidated by reason of such omission, inaccuracy, erroneous certification or deficiency and the title founded on such deed is not impaired thereby.

Section 2. This emergency re-adoption is effective on February 24, 2004, the date that the Notice of Emergency Adoption is filed with the Secretary of State, and will remain in effect for a period of 60 days (April 23, 2004). The amendments re-adopted on an emergency basis shall apply to all sales or transfers of real property within New York State by taxpayers subject to Article 22 of the Tax Law on or after September 1, 2003.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. TAF-06-04-00001-EP, Issue of February 11, 2004. The emergency rule will expire April 23, 2004.

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; Section 663 of the Tax Law, which was added by part V3 of Chapter 62 of the Laws of 2003 and amended by Part P of Chapter 686 of such Laws, provides that the Commissioner shall promulgate rules and regulations implementing the estimated tax on the sale or transfer of real

property within New York State by nonresident taxpayers; and section 697(a) provides the authority for the Commissioner to make such rules and regulations that are necessary to enforce the personal income tax.

2. Legislative objectives: The purpose of these amendments is to implement the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers, contained in section 663 of the Tax Law. Section 663 was added by part V3 of Chapter 62 of the Laws of 2003, and amended by Part P of Chapter 686 of such Laws.

3. Needs and benefits: New section 663(h) of the Tax Law provides that the Commissioner shall promulgate rules and regulations implementing the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers. The adoption of this regulation will satisfy that requirement. The rule will benefit taxpayers by providing guidance about the new statutory requirements by clarifying (1) who the new law applies to, (2) what sales or transfers are covered by the law, and (3) how the exceptions to the requirements apply to taxpayers.

Section 663(e) of the Tax Law provides that every recording officer in New York State shall act as an agent of the Commissioner for purposes of collecting the estimated personal income tax, if any, shown to be payable upon the form prescribed pursuant to section 663(b). The section also provides that the Commissioner, by regulation, shall prescribe one or more methods for the recording officer's collection of such estimated tax and the due dates for the recording officer's remittance to the Commissioner of any funds collected and any returns filed with such recording officer. To meet the statutory directives, the proposal requires that the recording officer must collect a payment which is separate from any other payments made at the time the deed is recorded or accepted for recording, and must remit any funds collected and returns filed within three business days after receipt of the funds and returns.

The requirement for the separate payment will benefit any taxpayers subject to paying the estimated tax by ensuring that their estimated tax payments are properly recorded and credited to their estimated personal income tax account. The requirement that the funds and returns be sent by the recording officer to the Department within three business days will benefit taxpayers by ensuring that the money is properly credited to their accounts on a timely basis so that it may be matched to their personal income tax return at year end. If the money is not properly credited on a timely basis, the processing of the taxpayer's return will be delayed. The proposed regulatory requirements will help prevent any unnecessary delays or backlogs in processing.

This rule was adopted as an emergency measure on November 12, 2003 and re-adopted as an emergency measure and proposed as a permanent rule on January 22, 2004. The permanent rule, proposed on January 22, will become effective when the Notice of Adoption is published in the *State Register*. Because the earliest date that the Notice of Adoption can be published is April 14, 2004, and the first emergency re-adoption will expire on March 22, 2004, this second emergency re-adoption is necessary to continue the rule until the adoption becomes effective.

4. Costs: There are no fiscal or nonfiscal costs related to the promulgation of the regulation to the State, to this agency, to local governments, or to regulated parties beyond those imposed by the statute. This analysis is based on a review of the statutory provisions and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Bureau of Fiscal Management, and Planning and Management Analysis Bureau.

5. Local government mandates: The requirements imposed on local recording officers to act as agents of the Commissioner and collect and remit estimated tax forms and payments are imposed by section 663 of the Tax Law rather than by this regulation. The regulation provides the separate payment method for collection of tax and the due date of three business days, discussed above.

6. Paperwork: Since the requirement for nonresident taxpayers to estimate the tax upon the sale or transfer of real property within New York State was established by new section 663 of the Tax Law, any paperwork required is attributable to the statute and not the regulation.

7. Duplication: There are no relevant rules which are duplicated, overlapped, or in conflict with the regulation.

8. Alternatives: Because the regulation is specifically required by sections 663(e) and 663(h) of the Tax Law, no significant alternative to promulgating the regulation was considered.

Alternative ways to meet the statutory directives regarding the method of collection and due dates were considered. The separate payment method and the due date of three business days were discussed with the County Clerks' Association, and were determined to be the best policies to satisfy

the needs of the recording officers, taxpayers, and the Department in response to section 663 of the Tax Law.

To allow for a transition period for the procedure provided by Chapter 686, the Department's policy and this emergency action provide that the prior procedure can be used for sales with a date of sale or transfer on or before December 31, 2003.

9. Federal standards: The rule does not exceed any federal minimum standard for the same or similar subject area.

10. Compliance schedule: Section 663 of the Tax Law, which imposes new requirements on nonresident taxpayers and local recording officers, applies to sales or transfers of real property within New York State on or after September 1, 2003. This effective date was set by Part V3 of Chapter 62 of the Laws of 2003. Section 663 was amended by Part P of Chapter 686 of the Laws of 2003 and the September 1, 2003 effective date was retained in this amendment. The schedule for parties to comply with the regulation is affected by the fact that Chapter 686 became law after September 1, 2003 and changed the procedure for taxpayers. Under Chapter 62, taxpayers were required to file the estimated tax form and pay any tax due directly to the Department. A regulation was adopted as an emergency measure on August 26, 2003 reflecting section 663 as in Chapter 62. Chapter 686 changed the requirement so that taxpayers are now required to file and pay any tax due with the recording officer at the time the deed is recorded or accepted for recording. Because the original effective date was retained by the later amendments, a transitional provision is included in this proposal to allow taxpayers to continue to use the prior procedure as an alternative for sales of real estate with a date of sale or transfer on or before December 31, 2003. To provide the recording officers adequate time to prepare, a meeting was held with the County Clerks' Association to discuss the new procedures and to receive their input regarding the proposed requirements and advance copies of forms and instructions were provided to the recording officers. A technical memorandum has also been issued to notify taxpayers and real estate professionals about the changes.

Regulatory Flexibility Analysis

1. Effect of rule: Section 663 of the Tax Law provides that every recording officer in New York State shall act as an agent of the Commissioner of Taxation and Finance for purposes of collecting the estimated personal income tax. The section also provides that the Commissioner, by regulation, shall prescribe one or more methods for the recording officer's collection of such estimated tax and the due dates for the recording officer's remittance of funds collected and returns filed. The effect on local governments is the addition of responsibilities placed on local recording officers, which is primarily due to the statute. The rule has a small effect on local governments because it provides the collection method and due date for remitting funds collected and returns filed.

It is anticipated that the rule will have little or no effect on small businesses.

2. Compliance requirements: Local recording officers are required by the statute to act as agents of the Commissioner and collect and remit tax payments and returns. The recording officers must build this new process into their office procedures. The rule provides the method for the collection of the estimated tax and that the recording officer must remit to the Department any funds collected and returns filed in a timely manner, not to exceed three business days after receipt of the funds and returns.

3. Professional services: No professional services are necessary in order to comply with the rule. Some taxpayers may choose to utilize professional services in order to comply with the rule, and because the requirements involve the sale of real property, it is likely that the taxpayers affected already utilize professionals to perform these types of services.

4. Compliance costs: Because the requirements on the recording officers are primarily imposed by section 663 of the Tax Law rather than the regulation, there are no compliance costs to local governments as a result of the rule. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

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

6. Minimizing adverse impact: In order to minimize any adverse impact on the local recording officers, the Department met with the County Clerks' Association to discuss the new procedures and to receive their input regarding the proposed requirements. Advance copies of estimated tax forms and instructions were provided to the recording officers so they could prepare for the change in procedure.

7. Small business and local government participation: The following organizations were notified that the Department was in the process of

developing this rule and were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors; the Small Business Council of the New York State Business Council; and the Retail Council of New York State.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Section 663 of the Tax Law provides that all recording officers in New York State, including those in rural areas, shall act as agents of the Commissioner of Taxation and Finance for purposes of collecting the estimated personal income tax. According to information supplied by the former New York State Office of Rural Affairs, there are 44 counties throughout New York State that are rural areas (having a population of less than 200,000) and 71 towns in the remaining 18 counties of New York State that are rural areas (with population densities of 150 people or less per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The requirement imposed on local recording officers to collect the estimated tax forms and payments is imposed by section 663 of the Tax Law rather than by this regulation. This regulation, as required by section 663, requires that the recording officer collect a payment which is separate from any other payments made at the time the deed is recorded or accepted for recording, and that the recording officer must remit any funds and returns within three business days after receipt of the funds and returns.

The reporting, recordkeeping and other compliance requirements imposed on taxpayers and recording officers are attributable to the statute and not the regulation. This regulation will not encourage or discourage the use of any professional services regardless of the taxpayer's geographical location.

3. Costs: There are no fiscal or nonfiscal costs related to the promulgation of the regulation to local governments or to regulated parties located in rural areas beyond those imposed by the statute. This analysis is based on a review of the statutory provisions and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Bureau of Fiscal Management, and Planning and Management Analysis Bureau.

4. Minimizing adverse impact: In order to minimize any adverse impact on the local recording officers, the Department met with the County Clerks' Association to discuss the new procedures and to receive their input regarding the proposed requirements. The separate payment method and the due date of three business days were discussed with the County Clerks' Association, and were determined to be the best policies to satisfy the needs of the recording officers, taxpayers, and the Department in response to section 663 of the Tax Law. Advance copies of estimated tax forms and instructions were provided to the recording officers so they could prepare for the change in procedure. A technical memorandum has been issued to explain the new requirements to taxpayers and tax professionals.

5. Rural area participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the New York Conference of Mayors, the Association of Towns of New York State, the New York State Association of Counties, the Deputy Secretary of State for Local Government and Community Services, the Small Business Council of the New York State Business Council, the National Federation of Independent Businesses, the Division of Small Business of the New York State Department of Economic Development and the Retail Council of New York State.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is anticipated that the rule will have no adverse impact on jobs and employment opportunities. The purpose of these amendments is to implement the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers, as required by section 663 of the Tax Law. Section 663 was added to the Tax Law by part V3 of Chapter 62 of the Laws of 2003, and amended by Part P of Chapter 686 of the Laws of 2003. Neither section 663 nor the rule imposes any additional tax liability.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Personal Income Tax Regulations

I.D. No. TAF-52-03-00024-A
 Filing No. 245
 Filing date: Feb. 24, 2004
 Effective date: March 10, 2004

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

Action taken: Amendments of sections 114.1, 115.1 and 115.4; repeal of sections 113.1, 114.1(b), 115.2 and 115.3; and addition of new sections 113.1, 115.2 and 115.3 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, and 697(a)

Subject: New York deduction of a resident individual.

Purpose: To update the New York deduction used in computing the New York taxable income of a resident individual.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-52-03-00024-P, Issue of December 31, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED

Fuel Use Tax

I.D. No. TAF-10-04-00024-P

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

Proposed action: Amendment of section 492.1(b) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning April 1, 2004, and ending June 30, 2004, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xxxiv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Component Rate	Aggregate Rate
(xxxiii) January - March 2004					
10.5	18.5	33.1	10.3	18.3	31.15
(xxxiv) April - June 2004					
10.5	18.5	33.1	11.0	19.0	31.85

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

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

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

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

Statements and analyses are 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.

PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED

Farming and Commercial Horse Boarding Operations

I.D. No. TAF-10-04-00025-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 528.7 and 528.22 of Title 20 NYCRR. This rule is proposed pursuant to SAPA section 207(3), Review of Existing Rules.

Statutory authority: Tax Law, sections 171, First; 1101(b)(19) and (20); 1105(c)(3)(vi) and (5)(iii); 1115(a)(6), (15) and (16); 1115(c)(2); 1142(1) and (8); and 1250 (not subdivided)

Subject: Farming and commercial horse boarding operations.

Purpose: To correct dated sections of the sales and use tax regulations to reflect current Tax Law as it pertains to farming and commercial horse boarding operations.

Text of proposed rule: Section 1. The heading of section 528.7 of such regulation is amended to read as follows:

Section 528.7 *Farming and commercial horse boarding operations.* (Tax Law, sections 1101(b)(19) and (20); 1105(c)(3)[.] (vi) and (5)(iii); 1115(a)(6), (15), and (16); and 1115(c)(2))

Section 2. Subparagraph (ii) of paragraph (1) of subdivision (a) of section 528.7 of such regulation is REPEALED, and paragraph (1) is further amended to read as follows:

(1)(i) All tangible personal property, *whether or not incorporated in a building or structure*, for use or consumption [directly and] predominantly *either* in the production for sale of tangible personal property by farming[, with the exception of property which will be incorporated into a building or structure] *or in a commercial horse boarding operation (or in both)* is exempt from the *New York State and local sales and compensating use [tax] taxes.* (See sections 1115(a)(15) and (16) of the Tax Law exempting certain tangible personal property sold to a contractor, subcontractor, or repairperson when the property is to become an integral component part of a structure, building, or real property used predominantly either in the production phase of farming or in a commercial horse boarding operation, or in both.)

Section 3. Paragraph (2), including Example 1 (Example 2 remains unchanged), of subdivision (a) of section 528.7 of such regulation is amended to read as follows:

(2) [Effective September 1, 1982, the] *The services of installing, maintaining, servicing, and repairing the tangible personal property specified as exempt in paragraph (1) of this subdivision are [exempt] excluded from the [New York] State and local sales and compensating use taxes. However, this [exemption] exclusion does not apply to the sales and compensating use taxes imposed in New York City under section 1107 of the Tax Law.* (See section 527.5 of this Title for [a description of the terms] *rules pertaining to installing, maintaining, servicing, and repairing tangible personal property.*)

“Example 1:” A farmer (*or an operator of a commercial horse boarding operation*) located in an upstate county in this State has a tractor repaired. *The tractor is used predominantly in farm production (or in a commercial horse boarding operation).* The charge for materials is \$100 and *the charge for labor is \$50.* The farmer [issued] *gives the vendor a timely filed and properly completed [Farmer’s Exemption Certificate] exemption certificate and is not required to pay the New York State and local sales and compensating use taxes on the total charge for [material] materials and labor. It does not matter whether [there is a breakdown] the vendor’s invoice separately states the charges for the materials and labor [on the bill as both components are exempt from], since neither is subject to tax.*

Section 4. Examples 3 and 4 in paragraph (3) of subdivision (a) of section 528.7 of such regulation are REPEALED, and paragraph (3) is further amended to read as follows:

(3) [There is no exemption from the tax imposed on the] *The services of maintaining, servicing, and repairing real property, [except when such services are rendered to a grape trellis or a silo as described in subparagraph (1)(ii) of this subdivision] property, or land that is used or consumed predominantly either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation (or in both) are excluded from State and local sales and compensating use taxes.* (See

section 527.7 of this Title for rules pertaining to maintaining, servicing, and repairing real property.)

Section 5. Paragraph (4) of subdivision (a) of section 528.7 of such regulation is renumbered to be paragraph (5) of such subdivision, and a new paragraph (4) is added to read as follows:

(4) Fuel, gas, electricity, refrigeration, and steam, and gas, electric, refrigeration, and steam service of whatever nature for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation (or in both) are exempt from State and local sales and compensating use taxes. (See, however, sections 1115(j) and 1120 of the Tax Law with respect to motor fuel and diesel motor fuel.)

Section 6. Paragraph (5), as renumbered, of subdivision (a) of section 528.7 of such regulation is amended to read as follows:

(5) Tangible personal property and services eligible for exemption or exclusion may be purchased without payment of tax upon the issuance to the vendor of a timely filed and properly completed [Farmer's Exemption Certificate] exemption certificate. (See subdivision (e) of this section.)

Section 7. Subdivision (b), excluding the examples which remain unchanged, of section 528.7 of such regulation is amended to read as follows:

(b) "Farming and commercial horse boarding operation defined." (1) The term "farming" means and includes the following types of farming and activities: [(1) raising]

(i) agriculture, floriculture, horticulture, aquaculture, and silviculture;

(ii) stock, dairy, poultry [or furbearing animals; (2) dairy], fruit [or, fur-bearing animal, truck, and tree farming; [(3)]

(iii) graping; [(4) operating ranches, nurseries, orchards or vineyards; and (5)]

(iv) ranching;

(v) operating nurseries, greenhouses, vineyard trellises, or other similar structures used primarily for the raising of agricultural, horticultural, viticultural, viticultural [or], floricultural, or silvicultural commodities;

(vi) operating orchards;

(vii) raising, growing, and harvesting crops, livestock and live-stock products (see section 301(2) of the New York State Agriculture and Markets Law); and

(viii) raising, growing, and harvesting woodland products, including, but not limited to, timber, logs, lumber, pulpwood, posts and firewood.

Section 8. A new paragraph (2) is added, following Example 3, to subdivision (b) of section 528.7 of such regulation to read as follows:

(2) The term "commercial horse boarding operation" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives \$10,000 or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. A commercial horse boarding operation does not include any operation whose primary on-site function is horse racing. (See section 301(13) of the New York State Agriculture and Markets Law.)

Section 9. Subparagraphs (i) and (ii) of paragraph (1) of subdivision (c) of section 528.7 of such regulation are amended to read as follows:

(i) Administration includes activities such as sales promotion; general office work; credit and collection; purchasing; maintenance; transporting, receiving, and testing of raw materials; and clerical work in production such as preparation of work production and time records. However, tangible personal property used or consumed in administrative activities that are related to farm production, as described in subparagraph (ii) of this paragraph, is considered to be used or consumed in farm production. This includes tangible personal property used in activities such as preparing animal feed, weight, and health records; and performing research related to farm production.

(ii) Farm production begins with the preparation of the soil or other growing medium, [and] or, in the case of animals, from the beginning of the life cycle. Production ceases when the product is ready for sale in its natural state; for. For farm products [which] that will be converted into other products, farm production ceases when the normal development of the [agricultural] farm product has reached a stage where it will be processed or converted into a related product.

Section 10. Paragraph (1), Examples 1 through 9, and the cross-reference in subdivision (d) of section 528.7 of such regulation are REPEALED, and subdivision (d) is further amended to read as follows:

(d) ["Directly and predominantly"] "Predominantly." [(2)] (1) "Predominantly" means that the tangible personal property must be used or consumed; the real property or land must be used or consumed; or the building, structure, or real property into which the tangible personal property has been incorporated must be used, more than 50 percent of the time [directly] either in the production [phase] for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both.

(2) See section 1115(a)(6)(B) of the Tax Law concerning motor vehicles used predominantly ("i.e.," more than 50 percent) either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both. The percentage of a vehicle's use in such activities may be computed either on the basis of mileage or hours of use, at the discretion of the purchaser or user.

Section 11. Subdivision (e) of section 528.7 of such regulation is REPEALED, and subdivision (f) of such section is relettered to be subdivision (e).

Section 12. Subdivision (e), as relettered, of section 528.7 of such regulation is amended to read as follows:

(e) "[Farmer's] Exemption [Certificate] certificate." (1) [A] An appropriate and properly completed [Farmer's Exemption Certificate is] exemption certificate may be used by a farmer or by an operator of a commercial horse boarding operation to make exempt or excluded purchases of tangible personal property and services described in this [Part] section.

(2) [The Farmer's Exemption Certificate] An exemption certificate may not be used for purchases of [telephone, telegraph, electric, gas and refrigeration service, and heating or] motor fuel. The tax must be paid on such purchases, and the farmer or operator of a commercial horse boarding operation may [claim] apply for a refund or credit of the tax paid on [the portion] motor fuel that is used for exempt or excluded purposes.

(3) [The Farmer's Exemption Certificate] An exemption certificate may be used as a blanket certificate[,] or as a single purchase certificate.

(4) [The Farmer's Exemption Certificate] An exemption certificate is considered to be properly completed when it contains the following information:

(i) name and address of the vendor;

(ii) name and address of the farmer or of the operator of the commercial horse boarding operation;

(iii) signature of the farmer or of the operator of the commercial horse boarding operation (or of the authorized representative of the farmer or operator) certifying that the property or services will be used or consumed in an exempt or excluded manner; [and]

(iv) date prepared; and

(v) any other information required pursuant to Articles 28 and 29 of the Tax Law and Part 532 of this Title.

Section 13. Subparagraphs (viii) through (xi) of paragraph (1) of subdivision (a) of section 528.22 of such regulation are REPEALED, and subparagraphs (vi) and (vii) of such paragraph are amended to read as follows:

(vi) mining; or

(vii) extracting[.];

Section 14. A new cross-reference is added at the end of paragraph (1) of subdivision (a) of section 528.22 of such regulation to read as follows:

"Cross-reference:" See section 528.7(a)(4) of this Part regarding fuel, gas, electricity, refrigeration, and steam, and like services used in farm production or in a commercial horse boarding operation, or in both.

Section 15. Example 3 in subdivision (c) of section 528.22 of such regulation is REPEALED, and Examples 4 and 5 in such subdivision are renumbered to be Examples 3 and 4, respectively.

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

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

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

Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Regulatory Agenda section of the January 2, 2002, *State Register* a list of rules that were adopted by the Commissioner of Taxation and Finance in 1997 and a notice of the Department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. Comments from

the public concerning the continuation or modification of these rules were invited until February 19, 2002. No public comments were received by the Department in response to the listing in January 2002, of the amendments made to section 528.7 of Title 20 NYCRR that were adopted by the Commissioner on May 14, 1997, and published in the *State Register* on June 4, 1997 (I.D. #TAF-12-97-00014-A) concerning the exemptions from New York State and local sales and compensating use taxes applicable to farming. This notwithstanding, the Department has determined as a result of its 2002 review that because of recent substantive amendments to the underlying provisions of the Tax Law, the 1997 amendments are now dated and cannot be continued without modification; thus, requiring this rule. See section 3, Needs and benefits, of the Regulatory Impact Statement that is being filed with this rule.

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, First; 1101(b)(19) and (20); 1105(c)(3)(vi) and (5)(iii); 1115(a)(6), (15), and (16); 1115(c)(2); 1142(1) and (8); and 1250 (not subdivided). Section 171, First of this statutory authority provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Chapters 407 of the Laws of 1999 and Chapters 63 and 472 of the Laws of 2000 amended (or added) sections 1101(b)(19) and (20); 1105(c)(3)(vi) and (5)(iii); 1115(a)(6), (15), and (16); and 1115(c)(2) of the Tax Law with regard to farming and commercial horse boarding as explained below. Sections 1142(1) and (8) of Article 28 and section 1250 of Article 29 of the Tax Law also provide for the adoption of rules and regulations that are appropriate to carry out and jointly administer the New York State and local sales and compensating use taxes imposed by and pursuant to the authority of such Articles.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administer the provisions of the Tax Law and take judicious regulatory action when warranted. Chapter 407 (Part Y) of the Laws of 1999 and Chapters 63 (Part B) and 472 (section 31) of the Laws of 2000 significantly expanded the exemption from New York State and local sales and compensating use taxes applicable to farm production and provided a parallel exemption for commercial horse boarding operations in this state. For farmers, commercial horse boarding operators, and retailers alike, the legislation clarified and simplified the applicable exemptions from tax. This rule helps implement the legislation.

3. Needs and benefits: The purpose of this rule is to correct section 528.7 ("Farming") and, in part, section 528.22 ("Fuel, gas, electricity, refrigeration and steam and like services used in production") of the sales and compensating use tax regulations to reflect current Tax Law as it pertains to farming and commercial horse boarding operations. Pursuant to section 207 of the State Administrative Procedure Act, the Department of Taxation and Finance is required every five years to review all of its regulatory amendments to 20 NYCRR that were adopted on or after January 1, 1997. In 1997, the Commissioner adopted amendments to section 528.7 of the regulations providing that certain personal protective equipment purchased for use directly and predominantly in farm production was exempt from tax. The amendments also extended the farming exemption to materials used in silo foundations where the materials became integral component parts of the foundations. Because Chapter 407 of the Laws of 1999 and Chapters 63 and 472 of the Laws of 2000 substantially broadened the farming exemption (Tax Law, section 1115[a][6] and related provisions), the prior amendments are now obsolete and cannot be continued without modification; thus, necessitating this rule. Prior to the law changes, tangible personal property had to be used directly and predominantly in farm production in order to be exempt from tax, and certain property that was incorporated in buildings or structures was excluded from the tax exemption — consequently requiring the interpretive amendments in 1997. Current law does not have the "directly" or building/structure limitations. Accordingly, the rule does not affect the exempt status of the property previously addressed since the expanded statutory exemption now includes such properties. This rule renews the subject regulations by deleting dated information and by incorporating in the regulations the legislative objectives of recent amendments to the Tax Law. The rule consolidates matters relating to farming and commercial horse boarding operations in section 528.7 of the regulations by relocating applicable utility provisions from section 528.22. The rule also makes technical and editorial changes throughout.

4. Costs: It is estimated that because the rule merely brings obsolete provisions of the regulations into conformity with existing law, there are

no costs to regulated parties associated with the implementation of and continued compliance with this rule. Nor are there any costs to this agency, New York State, or its local governments for the implementation and continued administration of the rule. This analysis is based upon discussions among personnel from the Department's Office of Counsel, Office of Tax Policy Analysis, Fiscal Services Bureau, and Client Support Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule imposes no reporting requirements, forms, or other paperwork upon regulated parties beyond that required by law.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule. This rule is specific to the exemption from State and local sales and compensating use taxes for farming and commercial horse boarding, as prescribed in the Tax Law. It is noted that the "commercial horse boarding operation" as defined in section 1101(b)(20) of the Tax Law has the same meaning as such term is defined in section 301(13) of the New York State Agriculture and Markets Law.

8. Alternatives: No significant alternatives to the rule were considered by this Department because the rule simply reflects current statutory provisions for which there are no discretions. If the Department did not adopt the rule, the regulations would be obsolete and conflict with the Tax Law.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: No time is needed in order for regulated parties to comply with this rule. The rule will take effect on the date that the Notice of Adoption is published in the *State Register* and imposes no compliance requirements beyond those required by law.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, record-keeping, or other compliance requirements on small businesses or local governments. This rule simply amends the sales and compensating use tax regulations to reflect recent amendments to the Tax Law pertaining to farming and commercial horse boarding operations.

The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the New York Farm Bureau, the Small Business Council of the NYS Business Council, the Division for Small Business of NYS Empire State Development, the National Federation of Independent Businesses, the Retail Council of NYS, the NYS Association of Counties, the Association of Towns of NYS, the NYS Conference of Mayors and Municipal Officials, and the Office of Local Government and Community Services of the NYS Department of State.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas. In addition, this rule will not impose any additional reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. This rule simply amends the sales and compensating use tax regulations to reflect recent amendments to the Tax Law pertaining to farming and commercial horse boarding operations.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs and employment opportunities. This rule simply amends the sales and compensating use tax regulations to reflect recent amendments to the Tax Law pertaining to farming and commercial horse boarding operations.