

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

European Union Financial Conglomerates Directive

I.D. No. BNK-35-05-00005-E

Filing No. 889

Filing date: Aug. 15, 2005

Effective date: Aug. 17, 2005

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

Action taken: Addition of Part 114 to Title 3 NYCRR.

Statutory authority: Banking Law, section 14(1), (k) and art. XII

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

Specific reasons underlying the finding of necessity: Need to meet European Commission timetable for being designated as providing equivalent supervision for certain U.S. headquartered financial groups with business activities in the European economic community.

Subject: Supervision of art. XII investment company holding companies and their subsidiaries for purposes of the European Union Financial Conglomerates Directive.

Purpose: To clarify the examination, supervision, regulation and enforcement authority of the Superintendent of Banks over financial conglomerates

for purposes of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

Text of emergency rule:

Part 114

SUPERVISION AND REGULATION OF ARTICLE XII INVESTMENT COMPANY HOLDING COMPANIES AND THEIR SUBSIDIARIES FOR PURPOSES OF THE EUROPEAN UNION FINANCIAL CONGLOMERATES DIRECTIVE

(Statutory Authority: Banking Law §§ 14[1], 14[1][k], Article XII)

§ 114.1 Purpose and Scope.

Article XV of the Banking Law authorizes the formation of investment companies and Article XII of the Banking Law sets forth the rights and obligations of such investment companies. The purpose of this Part is to clarify the Superintendent's examination, supervision, regulation, and enforcement authority over financial conglomerates for purposes of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

§ 114.2 Definitions.

For purposes of this Part:

"Banking Law" means the New York Banking Law.

"Banking organization" means all banks, trust companies, private bankers, savings banks, safe deposit companies, savings and loan associations, credit unions and investment companies organized under the Banking Law.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of an investment company, whether by means of the ownership of the voting stock or equity interests of such investment company or of one or more persons controlling such investment company, by means of a contractual arrangement or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock or other equity interests of any investment company or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock or other equity interests of such investment company.

"Equivalent supervision" means a supervisory and regulatory regime meeting the standards required under the Financial Conglomerates Directive.

"Financial conglomerate" means a group meeting the definition of financial conglomerate under the Financial Conglomerates Directive and having an investment company within its structure.

"Financial Conglomerates Directive" means the European Union Financial Conglomerates Directive 2002/87/EC, as it may be amended from time to time.

"Investment company" means a banking organization organized pursuant to the Banking Law and subject to the provisions of Article XII of the Banking Law.

"Investment company holding company" means the top tier corporation or other entity that controls an investment company.

"Subsidiary" means a corporation or other entity at least 10 per centum of the voting stock or other equity interests of which is controlled directly or indirectly by an investment company holding company.

"Supervision Agreement" means an individual agreement entered into between a financial conglomerate and the Superintendent which provides for a detailed plan of supervision by the Superintendent over the financial conglomerate, including specific regulatory requirements applicable to the investment company holding company and its subsidiaries.

§ 114.3 *Examination, Supervision, Regulation, and Enforcement Authority of the Superintendent over Investment Company Holding Companies and their Subsidiaries for Purposes of the European Union Financial Conglomerates Directive.*

To assist the Banking Department in carrying out equivalent supervision of a financial conglomerate for purposes of carrying out the requirements of the Financial Conglomerates Directive, the Superintendent shall have examination, supervision, regulation, and enforcement authority over an investment company holding company and any of its subsidiaries to the same extent as he or she has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

This authority includes, but is not limited to, the authority to:

(1) apply Banking Law Section 36 relating to examinations and confidentiality of information to an investment company holding company and its subsidiaries, as if such entities were banking organizations;

(2) issue orders to an investment company holding company and its subsidiaries as provided in Banking Law Section 39, as if such entities were banking organizations;

(3) impose monetary penalties for violation of law or regulation, as provided in Banking Law Section 44, as if such entities were banking organizations;

(4) impose capital requirements on an investment company holding company and its subsidiaries, as appropriate or required in the judgment of the Superintendent;

(5) prescribe requirements for the keeping of books and records by the investment company holding company and its subsidiaries;

(6) require filing by the investment company holding company and its subsidiaries with the Superintendent of periodic reports of condition, reports of income, risk profiles, large exposures and such other reports as may be required by the Superintendent;

(7) levy assessments on the investment company holding company and its subsidiaries, as provided in Banking Law Section 17, as if such entities were banking organizations;

(8) issue such general or specific rules or regulations as may be necessary to effectuate the examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries for purposes of meeting the requirements of equivalent supervision under the Financial Conglomerates Directive.

§ 114.4 *Supervision Agreements with Financial Conglomerates.*

The Superintendent may enter into one or more Supervision Agreements with each financial conglomerate. Such Supervision Agreements will set forth the specific plan of supervision and detailed regulatory requirements applicable to an investment company holding company and its affiliates (e.g. capital requirements, reporting requirements, transactional limitations, etc.). The Superintendent may exercise enforcement authority under Banking Law Sections 39 and 44 for breaches or violations of such Supervision Agreements.

Such Supervision Agreements shall be in addition to, and shall not serve as a limitation on, the Superintendent's examination, supervision, regulation and enforcement authority provided under this Part over investment holding companies and their subsidiaries to the same extent as the Superintendent has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

§ 114.5 *Limitations.*

The Superintendent's examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries as provided in this Part is limited to those cases in which the Banking Department needs to provide equivalent supervision for a specific financial conglomerate under the Financial Conglomerates Directive.

The provisions of Banking Law Article XIII governing voluntary and involuntary liquidations of banking organizations shall not be applicable to investment company holding companies, although they are applicable to investment companies.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 12, 2005.

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

Regulatory Impact Statement

1. Statutory authority:

Section 14(1) of the Banking Law empowers the Banking Board to make, alter and amend rules and regulations not inconsistent with law. In addition, Section 14(1)(k) permits the Banking Board to prescribe the methods and standards to be used in examinations and valuations of assets of banking organizations. Article XII sets forth the powers as well as the duties and responsibilities of Article XII investment companies.

2. Legislative objective:

The rule promotes the legislative objective of maintaining the safety and soundness of banking organizations through effective examination and supervision. Banking Law Section 10 declares it to be the policy of New York that all banking organizations shall be supervised and regulated by the Banking Department in such manner as to ensure the safe and sound conduct of such business and to protect the public interest. Article XII sets forth the powers as well as the duties and responsibilities of Article XII companies. Such duties include recordkeeping and the provision of reports to the Superintendent. As banking organizations, Article XII companies are subject to examination by the Superintendent (B.L. Section 36) as well as to enforcement actions by the Superintendent (e.g. enforcement actions under B.L. 39; monetary penalties under B.L. 44).

The new rule clarifies the Superintendent's ability to carry out this supervision in those cases where equivalent supervision is required under the European Union Financial Conglomerates Directive (2002/87/EC) (the "Financial Conglomerates Directive" or "Directive") recently passed by the European Parliament.

3. Needs and benefits:

The purpose of the new rule is to clarify the Superintendent's examination, supervision, regulation and enforcement authority over Article XII investment companies (i.e. banking organizations formed pursuant to Article XII of the Banking Law) and their affiliates in situations where the Banking Department is responsible for providing "equivalent supervision" (as defined in the rule) for such banking organizations and their affiliates, under the Financial Conglomerates Directive.

The Directive will require supervisors in non-European countries to provide so-called "equivalent supervision" over a financial conglomerate to that which would be required in Europe. Under the Directive, groups or conglomerates that have activities in one or more financial business areas, including banking, insurance and securities, will be required to demonstrate that a financial regulator in their home country provides adequate supervision for the conglomerate on a consolidated basis.

The Banking Department currently has several conglomerates or financial groups with operations in Europe that will become subject to the supervision requirements of the Financial Conglomerates Directive in January 2005. These are large organizations which own Article XII banking corporations in New York and, as a result thereof, it is possible that the Banking Department would be required or requested to provide the required equivalent supervision for these organizations.

The ability of a U.S. supervisor fulfilling the role of equivalent supervisor to effectively examine and supervise a financial conglomerate must be clear. The requirements of the so-called "equivalent supervision" are broader than the supervision currently exercised by the Superintendent over Article XII investment companies owned by such entities, in that the Directive requires that the U.S. regulators effectively supervise the broader organization (i.e. from the parent level down) on a consolidated basis.

While this does not necessarily require that one supervisor functionally supervise and regulate each entity within a conglomerate, one supervisor will be relied upon to provide a coordinating role, and that supervisor must have a demonstrable ability to supervise, examine and regulate and take enforcement action against, if necessary, the organization as a whole. The Directive recognizes that many countries, including the U.S., regulate diverse financial conglomerates on a "functional" basis (i.e. insurance regulators regulate the insurance entities, securities regulators regulate the securities entities, etc.).

The Department has significant experience in providing consolidated supervision to large banking organizations, both in its role as supervisor of banks within a holding company structure and in its role as a consolidated supervisor for several Article XII companies owned by large financial institutions that have operations in Europe and abroad. The Department is also very accustomed to coordinating supervision among various regulators, including the banking, insurance and securities regulators in the U.S., as well as banking and other financial regulators in Europe and in other countries abroad.

The new rule is necessary to demonstrate and set forth unambiguously the Superintendent's powers and duties vis-à-vis the larger conglomerate organization in a situation where comprehensive equivalent supervision is required to be provided by the Superintendent. The regulation therefore

serves the purpose of making it clear to both the European Union regulators and to the conglomerate organization the authority of the Superintendent in this regard. Specifically, the regulation makes explicit that the parent company of an Article XII organization within a financial conglomerate is an Article XII holding company and that, to carry out the required equivalent supervision, the Superintendent has the authority to exercise examination, supervision, regulation and enforcement authority over the Article XII holding company and any of its subsidiaries in the same manner as over any banking organization. In this way, the Superintendent can exercise the supervisory tools necessary to provide effective consolidated supervision. The regulation makes clear that this authority to supervise and regulate the Article XII holding company and its subsidiaries in the same manner as a banking organization only is necessary and therefore only will be employed when the Superintendent is required to provide equivalent supervision under the Financial Conglomerates Directive. Thus, the applicability of the rule is limited to such situations involving these financial conglomerates.

The Superintendent's authority to examine and exercise certain control over affiliates (*e.g.* parent, sister companies) of any banking organization is already quite broad (see *e.g.* Banking Law Section 36). However, in order for a U.S. supervisor to be deemed capable of equivalent supervision, the authority to both regulate and take enforcement action against the affiliates of a banking organization must be apparent. The new rule provides that clarification. The financial conglomerate organizations themselves favor such clarification since they wish to demonstrate that their home country supervisors can provide the required equivalent supervision.

If the European Union determines that the supervision in the organization's home country is not "equivalent" to that provided to an entity headquartered in the European Economic Community, the organization will be forced to restructure its European operations so that equivalent supervision may be provided by a European regulator from a top tier entity located in Europe. For most U.S. organizations, this is a highly undesirable result that would involve costly restructuring in Europe and added layers of regulatory oversight.

Accordingly, the new rule demonstrating the Superintendent's authority and ability to carry out supervision in a manner deemed acceptable under the Directive serves the public need for U.S. financial conglomerate organizations to demonstrate consolidated supervision by a home country regulator.

4. Costs:

No significant new costs are imposed as a result of this rule. Banking organizations are already subject to monitoring and reporting requirements. This reporting would now be required at a consolidated level within the organization, which in many cases, is already being done. Any additional reporting or compliance requirements are a direct result of European Union Financial Conglomerates Directive itself. As noted in Section 3, "Needs and Benefits" above, U.S. organizations that are deemed to be financial conglomerates are in favor of the Superintendent's regulatory authority since, without such clarification, heavy costs of restructuring operations or duplicative regulation might be required to satisfy the European Union Directive.

5. Local government mandates:

The regulation imposes no burdens on local governments.

6. Paperwork:

Banking organizations, including Article XII companies, are currently subject to monitoring and reporting requirements. These requirements will continue and may need to be supplemented by reporting at the consolidated organizational level, which, in many cases is already done. Any such additional paperwork requirements, however, are a direct result, not of the new rule, but of new requirements imposed on the organizations under the European Union Directive which imposes new requirements on these organizations as a result of their European operations. These organizations favor reporting to a U.S. supervisor as a less costly alternative to direct reporting to European supervisors.

7. Duplication:

None. Various other U.S. supervisors, such as the Federal Reserve, the U.S. Securities and Exchange Commission, the Office of the Comptroller of the Currency and the Office of Thrift Supervision may be required to provide equivalent supervision to institutions under their jurisdiction that have European operations. However, supervision by federal regulators and the Banking Department would not be conflicting or duplicative, as an organization would only have one designated "equivalent supervisor" for purposes of the European Union Directive.

8. Alternatives:

a. Rely on Existing Authority

Consideration was given to relying on the Superintendent's existing authority to examine banking organizations and their affiliates, including the authority of the Superintendent to enter into quasi-contractual Supervision Agreements with an organization, such as a financial conglomerate. Although it was thought that it might be possible to demonstrate to the European Union that the Superintendent could carry out equivalent supervision based on existing authority, it was ultimately determined, in part based upon outreach to the European Commission ("Commission") and one organization that will be required to have consolidated equivalent supervision (see Section 11, "Outreach" below), that a regulation was necessary to clarify the extent of the Superintendent's examination, supervision, regulation and enforcement authority.

Banking Law Section 36 clearly grants the Superintendent the authority to examine banking organizations (which includes Article XII investment companies) as well as affiliates of banking organizations when necessary to determine the financial condition of a banking organization. The Superintendent can also issue enforcement orders against banking organizations under B.L. Section 39, and it is possible that certain activities of affiliates (*e.g.* ordering cease and desist, etc.) might be reachable through such orders. However, based on discussions with the Commission and European supervisors, it was clear to Department staff that the Commission, in order to make a determination that a supervisor could effectively provide equivalent supervision, strongly preferred, and would likely require, demonstrable express statutory or regulatory authority of the supervisor to carry out examination, supervision, regulation and enforcement over the conglomerate.

In the absence of the proposed rule, the Superintendent's authority to supervise the conglomerate in the manner required would be less clear. While the Superintendent has clear examination authority over affiliates when necessary to determine the financial condition of a banking organization, it is not clear that the Superintendent's authority to issue regulations applicable to, or enforcement orders or monetary penalties against, the financial conglomerate, extends to the banking organization's affiliates or parent company directly. The European Union as well as the financial conglomerate organizations for which the Banking Department may serve as equivalent supervisor both desire clarification to this effect. The proposed rule therefore would clarify that, for those organizations for which the Department is equivalent supervisor, the Superintendent's examination, supervision, regulation and enforcement authority extends to the Article XII company's top tier parent organization and other affiliates to the same extent as to any other banking organization.

A second approach utilizing the Department's existing authority would be to rely on the Superintendent's authority to enter into formal "Supervision Agreements" which set forth the Superintendent's plan of supervision, as well as the Superintendent's authority over the organization, and the organization's responsibilities as a supervised entity. Such agreements have been used in the past where consolidated supervision is required, and the uniqueness of each organization requires a tailored agreement. In fact, the new rule still calls for the use of such agreements with individualized supervision plans as part of the equivalent supervision framework. While in the past such comprehensive Supervision Agreements alone would be sufficient to demonstrate to European regulators that the U.S. regulator has a comprehensive plan of supervision for the organization, the new European Directive appears to require a firm statutory or regulatory expression of a U.S. supervisor's authority.

b. Promulgate a Regulation to Further Define Superintendent's Examination Authority Under Banking Law Section 36.

Another alternative that was considered was to adopt a general regulation of the Banking Board which would further define the scope of the Superintendent's examination authority under Banking Law Section 36. Such a regulation would also have been limited in nature and would have sought to define what is meant by "examination" of a banking organization in a situation where the banking organization is part of a group or conglomerate that requires equivalent supervision in the U.S. under the European Union Financial Conglomerates Directive.

This alternative was rejected by Department staff as less clear and less effective than the approach decided upon. For example, to accomplish the required end, the regulation would have needed to very broadly define the term "examination" to encompass the ability of the Superintendent to issue regulations and enforcement actions against both the banking organization and its affiliates.

Rather than demonstrate the Superintendent's authority as based solely on the examination authority described in B.L. Section 36, Department staff believes it is more appropriate to demonstrate the Superintendent's

authority as arising out of her overall ability to supervise and regulate Article XII banking organizations and their affiliates.

The new rule is therefore a general Banking Board regulation based on Banking Law Section 14(1), 14(1)(k) and Article XII defining the Superintendent's specific expanded supervisory powers over the entities in a conglomerate whose top tier company is defined as an Article XII holding company in those cases in which the Banking Department needs to provide equivalent supervision as required under the Financial Conglomerates Directive.

9. Federal standards:

Not applicable. As noted above, various federal financial supervisors may also demonstrate their authority to provide consolidated equivalent supervision, but there are no specific standards which can be compared to those the Banking Department would apply to organizations under its supervision. While the supervisory regimes would likely be similar in order to accommodate the requirements of the European Union Directive, the specific requirements applicable to any given organization are individualized and part of a unique supervision plan.

10. Compliance schedule:

Not applicable. Organizations under the Department's supervision do not need to take affirmative steps to comply with the rule. Based upon the decision of European regulators whether the Banking Department will be required to provide equivalent supervision, the rule will either be applicable to such organizations or it will not. An individualized Supervision Agreement will then be worked out between the Banking Department and the organization, in consultation with European regulators.

11. Outreach:

In March 2004, a delegation of the Banking Department traveled to Brussels, Belgium and London, England to meet with staff of the Commission and the U.K.'s Financial Services Authority ("FSA"), respectively. The Commission is responsible for providing guidance to the various European financial supervisors on the supervisory regimes in other countries, including the U.S. Therefore, this body (including its technical committees) has the responsibility and the authority to determine whether the supervisory regimes in other countries are sufficiently "equivalent" to European regimes as required by the Directive. The Commission is therefore analyzing other supervisors' laws and regulations and practical approaches to supervision.

The FSA is one of the European financial supervisors with a major role in carrying out the Directive, particularly with respect to several of the U.S.-based financial conglomerates. This is because significant decision-making about which U.S. supervisor is best qualified to provide equivalent supervision to a particular organization rests with the European financial supervisor where the majority of the conglomerate organization's operations reside.

The Banking Department delegation explained to both the Commission and the FSA how the Banking Department conducts supervision of banking organizations, the authority of the Superintendent, and the legal and regulatory framework for supervision. The FSA has worked extensively with the Department over the years and was already quite familiar with the Department as a supervisor. In addition, in March, the delegation shared with both these entities a draft of the new rule and explained how it would clarify the Superintendent's authority over conglomerates for purposes of the Financial Conglomerates Directive. The Commission staff indicated that it would provide comments as this body has the primary responsibility for evaluating equivalence. In May 2004, the Commission staff commented favorably on the proposed rule and indicated its belief that the rule would be found sufficient for the purposes of the Directive. The staff suggested only a few minor wording changes to more closely conform certain terminology to that of the Directive.

The draft regulation was also shared with one of the organizations under the Department's supervision that will require equivalent supervision and for which it is most likely that the Department might be required to be the supervisor to provide such supervision.

The organization in general found the draft rule to be helpful and acceptable in form. After consideration of the organization's comments the Department determined to adopt the rule on an emergency basis in its present form.

The organization also questioned whether the language in the rule stating that the Superintendent has authority over an Article XII holding company and its subsidiaries "to the same extent" as over banking organizations implied that all such affiliates of an Article XII must therefore be regulated as if they were banking organizations. The Banking Department advised that is that this is clearly not the intent of the rule or of the European Union Directive. Rather, this language reflects the Department's

understanding that the European Commission wishes to see the equivalent authority available to the Superintendent for the supervision of the conglomerate as it would have over banking organizations.

The organization also had some inquiries about the technical terminology employed in the rule vis-à-vis the European Union Directive. These questions were cleared up to the organization's satisfaction based upon further discussions between the Department and the Commission staff to clarify this terminology.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted because the proposed rule will not impose any adverse economic impact, or reporting, or record-keeping or other compliance requirements on small businesses or local governments. The proposed rule relates to supervision of the parents and affiliates of Article XII investment companies having financial business operations within the European Union. These entities are large financial conglomerates, which do not qualify as small businesses in New York State and are not local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a rural area based on the character and nature of a rural area. The rule relates to supervision of large financial conglomerates. It is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted because the proposed rule has no effect on the creation or elimination of jobs. The rule clarifies the Superintendent's examination, supervision, regulation and enforcement authority over Article XII companies and their affiliates in situations where the Banking Department needs to provide equivalent supervision for purposes of the European Union Financial Conglomerates Directive. Accordingly, it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

**EMERGENCY
RULE MAKING**

High Cost Home Loans

I.D. No. BNK-35-05-00006-E

Filing No. 890

Filing date: Aug. 15, 2005

Effective date: Aug. 17, 2005

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

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

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

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

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

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

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

Substance of emergency rule: Summary of proposed amendments to Part 41:

Section 41.1(a) is amended to revise the definition of a lender subject to Part 41.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 12, 2005.

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

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

3. Needs and benefits:

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

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

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

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

None.

8. Alternatives:

The Banking Department considered whether to forego amending Part 41 or to repeal Part 41 in light of the enactment of section 6-l of the Banking Law, given that section 6-l may be viewed legally as occupying the field of regulation of high cost home loans in the state of New York. It was determined that Part 41 provides a more extensive regulatory scheme than section 6-l for the making of such mortgage loans, and therefore it is appropriate to make the non-conforming provisions of Part 41 consistent

with the comparative statutory provisions of section 6-l. In addition, the provisions of section 6-l that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making of such loans by articulating appropriate conditions, which such lenders and brokers must meet in order to be in compliance with certain non-defined statutory standards established by section 6-l.

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Capital District Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Conduct and Safety of the Public

I.D. No. CDT-35-05-00004-P

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

Proposed action: Addition of Part 5300 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1307(4)

Subject: Conduct and safety of the public.

Purpose: To promote the safety and welfare of the public by articulating rules of conduct and safety in the use of the facilities of the Capital District Transportation Authority, improve police officer enforcement capability, enhance customer safety and security, clearly communicate the rules applicable to transit customers, and conform rules to certain provisions of the Americans with Disability Act.

Text of proposed rule: CHAPTER LXI. CAPITAL DISTRICT TRANSPORTATION AUTHORITY

SUBCHAPTER A. RULES AND REGULATIONS GOVERNING THE CONDUCT AND SAFETY OF THE PUBLIC

PART 5300. RULES GOVERNING THE CONDUCT AND SAFETY OF THE PUBLIC IN THE USE OF THE FACILITIES OF CAPITAL DISTRICT TRANSPORTATION AUTHORITY

Section 5300.1 Authorization and purpose.

(a) The provisions of section 1307(4) of the Public Authorities Law provide the Capital District Transportation Authority and its subsidiaries with the power to make rules and regulations governing the conduct and safety of the public in the use and operation of the transit facilities of the authority and its subsidiaries.

(b) These rules are established by the Capital District Transportation Authority to promote safety, to facilitate the proper use of the transit facilities of the authority and its subsidiaries, to protect those transit facilities and their passengers, and to assure the payment of fares and other lawful charges for the use of their systems.

(c) These rules may be amended or added to, from time to time, at the sole discretion of the Capital District Transportation Authority in accordance with law.

Section 5300.2 Definitions.

The following terms as used in these rules shall have the following meanings:

(a) Authority means collectively the Capital District Transportation Authority and its subsidiaries, Capital District Transit System, Capital District Transportation District, Inc., Capital District Transit System, Number One, Capital District Transportation District Inc.; Capital District Transit System, Number Two, Capital District Transportation District, Inc., Access Transit Services, Inc., CDTA Facilities, Inc., public benefit corporations of the State of New York, except if the context in which the word authority is used indicates that it is either (but not both) Capital District Transportation Authority or the subsidiary to which reference is being made.

(b) Facilities includes all property and equipment, including, without limitation, rights of way and related signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, signage, storage yards, depots, repair and maintenance shops, yards, offices and other real estate or structures used or held for or incidental to the operation, rehabilitation or improvement of any rapid transit or omnibus line of the authority.

(c) Sound production device includes, but is not limited to, any radio receiver, phonograph, television receiver, musical instrument, tape recorder, cassette player, speaker device or system and any sound amplifier.

(d) Conveyance includes any omnibus or other vehicle previously used or held for use by the authority as a means of transportation of passengers.

(e) Rules means these rules.

(f) Person means any individual, firm, copartnership, corporation, association or company.

(g) Fare means the lawful charges established by the authority for the use of its facilities.

(h) Fare media means the various instruments issued by or on behalf of the authority to use for the payment of fare, including, but not limited to, tokens, passes, fare cards, swipers, go cards, transfers, tickets, and vouchers.

Section 5300.3 Construction.

In interpreting or applying the rules, the following provisions shall apply:

(a) The authority reserves the right from time to time to suspend, modify or revoke the application of any or all of the rules as it deems necessary or desirable.

(b) Any act otherwise prohibited by any of the rules is lawful if specifically authorized by agreement, permit, license, or other writing duly signed by an authorized officer of the authority or if performed by an

officer, employee or designated agent of the authority acting within the scope of his or her employment or agency.

(c) Rules shall apply with equal force to any person assisting, aiding or abetting another, including a minor, in any of the acts prohibited by the rules or assisting, aiding or abetting another in the avoidance of any of the requirements of the rules.

(d) The order or judgment of a court or other tribunal of competent jurisdiction that any provision of the rules is invalid shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate any other provision of the rules or the application of any part of the rules to any other person or circumstances; the provisions of the rules are declared to be severable.

(e) The singular shall mean and include the plural; the masculine gender shall mean the feminine and the neuter genders; and vice versa.

Section 5300.4 Payment of fare and access to authority facilities.

(a) No person shall use or enter upon the facilities or conveyances of the authority, for any purpose, without the payment of the fare or tender of other valid fare media used in accordance with any conditions and restrictions imposed by the authority. For the purposes of this section, it shall be considered an entrance into a facility or conveyance whenever a person passes through a point at which a fare is required or collected.

(b) Except for employees of the authority acting within the scope of their employment, no person shall sell, provide, copy, reproduce or produce, or create any version of any fare media or otherwise authorize access to or use of the facilities, conveyances or services of the authority without the written permission of a representative of the authority duly authorized by the authority to grant such right to others.

(c) No person shall put or attempt to put any paper, article, instrument or item, other than fare media issued by the authority and valid for the place, time and manner in which used, into any farebox, turnstile, pass reader or other fare collection instrument, receptacle, device, machine or location.

(d) Fare media that have been forged, counterfeited, imitated, altered or improperly transferred or that have been used in a manner inconsistent with the rules shall be confiscated.

Section 5300.5 Property and equipment.

(a) No person shall destroy, mark, soil or paint, or draw, inscribe, write, spray paint or place graffiti upon, or remove, injure or tamper with any facility, conveyance, sign, advertisement or notice of the authority, except that this provision shall not apply to any work within the scope of any contract made by or on behalf of the authority.

(b) No person shall post, distribute or display any sign, poster, notice, advertisement or other printed or written matter in or on any facility or conveyance without the permission of the authority, except as otherwise provided by law.

(c) Except as an incident to travel on authority facilities for which a fare has been paid or which has otherwise been duly authorized by the authority, no conveyance or facility may be occupied, used or handled, except by permit, agreement, license or other authorization of the authority duly made.

Section 5300.6 Use of the transit system.

(a) No person may vandalize or attempt to vandalize any facility or conveyance, or perform any act which causes or may tend to cause damage to any facility or conveyance, interfere with the provision of transit service or obstruct the flow of traffic on facilities or conveyances or which would in any way interfere or tend to interfere with the safe and efficient operation of the facilities or conveyances of the authority.

(b) No person, unless duly authorized by the authority shall engage in any commercial activity upon any facility or conveyance. Commercial activities include:

(1) the advertising, display, sale, lease, offer for sale or lease, or distribution of food, goods, services or entertainment (including the free distribution of promotional goods or materials); and

(2) the solicitation of money or payment for food, goods, services or entertainment. No person shall panhandle or beg upon any facility or conveyance.

(c) Except as expressly authorized and permitted in this subdivision, no person shall engage in any nontransit uses upon any facility or conveyance. Nontransit uses are noncommercial activities that are not directly related to the use of a facility or conveyance for transportation. The following nontransit uses are authorized and permitted by the authority, provided they do not impede transit activities and they are conducted in accordance with the rules governing the conduct and safety of the public in the use of the facilities of Capital District Transportation Authority: public speaking; distribution of written noncommercial materials; artistic per-

formances, including the acceptance of donations; solicitation for religious or political causes; solicitation for charities that (1) are duly registered as charitable organizations with the Secretary of State of New York under section 172 of the New York Executive Law or any successor provision, or (2) are exempt from Federal income tax under section 501(c)(3) of the United States Internal Revenue Code or any successor provision. Solicitors for such charities shall provide, upon request, evidence that such charity meets one of the preceding qualifications.

(1) Permitted nontransit uses may be conducted in the transit system except when on or within; an omnibus; any area not generally open to the public; or 50 feet from the marked entrance to an authority office or tower. The following activities are not subject to the distance requirements from an authority office or tower: leafleting or distribution of literature, campaigning, public speaking or similar activities, provided that no sound production device is used and no physical obstruction, such as a table or other object, is present.

(2) In no event will an activity be permitted in a location which interferes with the access onto or off of an escalator, stairway or elevator, or otherwise interferes with or impedes transit services or the movement of passengers.

(3) No activity permitted by this authorization shall be conducted in any area where construction, renovation or maintenance work is actively underway, or on or near the staircases, escalators, or elevators leading to the platform and including any such work in or near track areas.

(4) No activity may be permitted which creates excessive noise or which emits noise that interferes with transit operations. The emission of any sound in excess of 85 dBA on the A weighted scale measured at five feet from the source of the sound or 70 dBA measured at two feet from a token booth is excessive noise and is prohibited. In no event will the use of amplification devices of any kind, electronic or otherwise, be permitted.

(5) No person shall use media devices such as films, slides or videotapes.

(6) No person shall conduct or continue to conduct an activity permitted by this authorization which includes the use of a sound production device during any announcement made over the public address system or by a police officer or by an authority employee.

(7) No person shall misrepresent through words, signs, leaflets, attire or otherwise such person's affiliation with or lack of affiliation with or support by any organization, group, entity or cause, including any affiliation with or support by the authority or the Capital District Transportation Authority or any of their programs.

(8) Any person using the transit system for nontransit activities permitted pursuant to this rule does so at his or her own risk, and the authority assumes no liability by the grant of this authorization.

(d) All persons on or in any facility or conveyance of the authority shall:

(1) comply with all lawful orders and directives of any police officer or other authority employee acting within the scope of his or her employment;

(2) obey any instructions on notices or signs duly posted on any authority facility or conveyance; and

(3) provide accurate, complete and true information or documents requested by police officers or other authority personnel acting within the scope of their employment and otherwise in accordance with law.

(e) No person shall bring or carry onto a conveyance any liquid in an open container.

(f) No person shall falsely represent himself or herself as an agent, employee or representative of the authority or falsely represent himself or herself as a member of the any Police Department.

Section 5300.7 Disorderly conduct.

No person on or in any facility or conveyance shall:

(a) litter, dump garbage, liquids or other matter, create a nuisance, hazard or unsanitary condition (including, but not limited to, spitting, urinating, except in facilities provided). Trash and other waste materials contained in waste receptacles shall not be removed, except by persons duly authorized by the authority;

(b) smoke or carry an open flame or lighted match, cigar, cigarette, pipe or torch, except in those areas or locations specifically designated by the authority as authorized for smoking;

(c) sleep or doze where such activity may be hazardous to such person or to others or may interfere with the operation of the authority's transit system or the comfort of its passengers;

(d) engage in any form of gambling, except as specifically authorized as, for example, at OTB parlors;

(e) create any sound through the use of any sound production device, except as authorized by section 5300.6(c) of this Part. Use of radios and other devices listened to solely by headphones or earphones and inaudible to others is permitted;

(f) throw, drop or cause to be propelled any stone, projectile or other article at, from, upon, in or on a facility or conveyance;

(g) drink any alcoholic beverage or possess any opened or unsealed container of alcoholic beverage, except on premises duly licensed for the sale of alcoholic beverages, such as bars and restaurants;

(h) enter or remain in any facility or conveyance while his or her ability to function safely in the environment of an authority transit system is impaired by the consumption of alcohol or by the taking of any drug;

(i) conduct himself or herself in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace;

(j) occupy more than one seat on a station, platform or conveyance; lie on the floor, platform, stairway, landing or conveyance; or block free movement on a station, stairway, platform or conveyance; or

(k) commit any act which causes or may tend to cause harm to oneself to any other person including, but not limited to riding a bicycle, skateboard, roller skates, in-line skates or any self-propelled or motor-propelled vehicle. This provision does not apply to the proper use of self-propelled or motor-propelled wheelchairs or similar devices by a nonambulatory individual.

Section 5300.8 Weapons and other dangerous instruments.

(a) No weapon, dangerous instrument, or any other item intended for use as a weapon may be carried in or on any facility or conveyance. This provision does not apply to law enforcement personnel and persons to whom a license for such weapon has been duly issued and is in force (provided in the latter case the weapon is concealed from view). For the purposes hereof, a weapon or dangerous instrument shall include, but not be limited to, a firearm, switchblade knife, box cutter, straight razor or razor blades that are not wrapped or enclosed in a protective covering, gravity knife, sword, shotgun or rifle.

(b) No explosives or other highly combustible materials, or radioactive materials, may be carried on or in any facility or conveyance, except as authorized by the authority.

(c) Subject to other provisions of the law, this section shall not apply to a rifle or shotgun which is unloaded and carried in an enclosed case, box or other container which completely conceals the item from view and identification as a weapon.

Section 5300.9 Restricted areas and activities.

(a) No person, except as specifically authorized by the authority, shall enter or attempt to enter into any area not open to the public, including but not limited to bus operator's seat location, closed-off areas, mechanical or equipment rooms, concession stands, storage areas, interior rooms, roadbeds, tunnels, plants, shops, barns, garages, depots or any area marked with a sign restricting access or indicating a dangerous environment.

(b) No vehicle, except as specifically authorized, may be parked on authority property.

(c) Photography, filming or video recording in any facility or conveyance is permitted except that ancillary equipment such as lights, reflectors or tripods may not be used. Members of the press holding valid identification issued by the local Police Department are hereby authorized to use necessary ancillary equipment. All photographic activity must be conducted in accordance with the provisions of this Part.

(d) No person shall extend his hand, arm, leg, head or other part of his or her person, or extend any item, article or other substance outside of the window or door of a bus or other conveyance operated by the authority.

(e) No person shall enter or leave a bus or other conveyance operated by the authority except through the entrances and exits provided for that purpose.

(f) No person may carry on or bring to any facility or conveyance any item that:

(1) is so long as to extend outside the window or door of a bus or other conveyance;

(2) constitutes a hazard to the operation of the authority, interferes with passenger traffic, or impedes service; and

(3) constitutes a danger or hazard to other persons.

Nothing contained in this section shall apply to the use of wheelchairs, crutches, canes or other physical assistance devices.

(g) (1) No person may bring any animal on or into any conveyance or facility unless enclosed in a container and carried in a manner which would not annoy other passengers.

(2) Paragraph (1) of this subdivision does not apply to working dogs for law enforcement agencies, to service animals which have been trained or are being trained to aid or guide a person with a disability and are accompanying persons with disabilities, or to service animals which are being trained by a professional trainer. All service animals must be harnessed or leashed.

(3) Upon request by a law enforcement officer or other designated employee of the authority, a trainer must display proof of affiliation with a professional training school and that the animal is a licensed service animal or a service animal in training. Upon request of designated authority personnel, a passenger must display a service animal license issued by the Department of Health of the City of New York or by other governmental agencies in New York or elsewhere authorized to issue such licenses, or an identification from a professional training school that the animal is a trained service animal.

(4) Persons with disabilities who use service animals who do not have a service animal license or other proof that the animal is professionally trained as described in this subdivision may apply to the Capital District Transportation Authority on behalf of the authority for a service animal identification card.

(5) Designated authority personnel have the right to refuse admission to or eject any passenger accompanied by an animal which posed a direct threat to the safety of other passengers.

Section 5300.10 Fines and penalties.

Pursuant to section 1307 of the Public Authorities Law, any person committing one or more violations of these rules shall be subject to:

(a) ejection from the facility or conveyance at the time of the violation as may be directed by the duly authorized transit supervisor, superintendent or manager; and/or

(b) criminal prosecution for trespass and/or the violation in the criminal court of the jurisdiction where the violation occurs, which court may impose a fine not to exceed \$25 or a term of imprisonment for not longer than 10 days, or both.

Section 5300.11 Ejection.

(a) Any person who is observed by an employee of the Capital District Transportation Authority to be violating any of these rules may be ejected from the facility or conveyance as directed by a manager, superintendent, or transit supervisor; or by any other employee of the Capital District Transportation Authority when duly authorized by a manager, superintendent, or transit supervisor.

Text of proposed rule and any required statements and analyses may be obtained from: David E. Winans, General Counsel, Capital District Transportation Authority, 110 Watervliet Ave., Albany, NY 12206, (518) 482-6359, e-mail: davidw@cdta.org

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

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

Regulatory Impact Statement

1. Statutory authority: Public Authorities Law section 1307(4) authorizes the Capital District Transportation Authority (CDTA) to establish "rules and regulations governing the conduct and safety of the public . . . for the use and operation of any transportation facility and related services.

2. Legislative objectives: CDTA has been given statutory authority to adopt rules as deemed necessary, convenient or desirable for the use and operation of its transit system, including rules relating to the conduct and safety of the public. The effective use of transit facilities operated by CDTA requires that transit customers observe rules promoting the safety and welfare of all customers. Without Rules of Conduct, police enforcement in situations where there is a disturbance at a CDTA facility has been problematic. Adopting Rules of Conduct will provide a mechanism for law enforcement, as well as a means by which customers in violation of the rules of conduct may be denied transportation.

3. Needs and benefits: The proposed Rules of Conduct include the following basic rules: (a) an expressed prohibition against vandalism; (b) limitations on commercial activities; (c) limitations on non-transit use of CDTA facilities; (d) prohibition of certain activities, including littering, the creation of unsanitary conditions (including spitting, urinating), the prohibition of smoking, sleeping, gambling, playing loud music, throwing objects, drinking alcoholic beverages, annoying other customers, limiting access to facilities, skating or riding skateboards; (e) a prohibition against carrying weapons or other dangerous instruments; (f) limitations on certain activities including making entry into the operator's area, unauthorized parking, photography, putting arms or legs outside of the bus, boarding or alighting the bus through something other than the doors, or annoying passengers.

4. Costs: The rule has no projected costs inasmuch as its focus is the conduct of members of the public in their use of the transit system and facilities.

5. Local government mandates: No program, service, duty or responsibility is imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The rule imposes no reporting requirements.

7. Duplication: The rule creates no conflict or overlap with or duplication of any other legal mandate.

8. Alternatives: These Rules of Conduct are patterned after similar Rules of Conduct for the Metropolitan Transportation Authority (21 NYCRR 1040.1 *et seq.*). Consideration has been given to the various alternatives for regulating the behavior of transit customers, and promoting the safety and welfare of the public, but there are no written rules governing this behavior and conduct as it relates to the use of CDTA transit facilities, including buses. It was therefore deemed appropriate to adopt a set of rules that can provide a basis for denying transportation, or triggering law enforcement activity. The desire is that anyone seeking to engage in the restricted activities should not use CDTA service.

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

10. Compliance schedule: The dissemination of information to the transit-riding public generally occurs through communication from the bus operators, or notice is posted at transit facilities. Many of the proposed Rules of Conduct follow standard conventions, while others are already posted on CDTA buses. Communication of any rule violation will be handled by CDTA bus operators, who will be educated on the rules that are adopted. As such, a compliance schedule is unnecessary.

Regulatory Flexibility Analysis

Inasmuch as these Rules of Conduct address only the conduct of members of the public in their use of transit facilities, it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

Inasmuch as these Rules of Conduct extend only to transit facilities and paratransit operations within the urbanized areas of the Capital District, it does not affect rural areas as such term is defined in SAPA section 102(10) and Executive Law section 481.

Job Impact Statement

Inasmuch as these Rules of Conduct address only the conduct of members of the public in their use of transit facilities, it will not impact on jobs or employment opportunities.

porated, as well as more recent amendments to 40 CFR 279. By doing so, New York intends to obtain RCRA authorization from the USEPA for its used oil management program.

The rulemaking also codifies the provisions of Chapter 152 of the Laws of 1995, which amended Article 23, Title 23, of the Environmental Conservation Law (ECL), pertaining to the acceptance of household do-it-yourselfer (DIY) used oil at service and retail establishments.

The rulemaking will also restructure the regulations governing used oil management so that all of the 40 CFR-derived used oil requirements that are currently in Subpart 360-14 will be moved to 374-2. The latter Subpart will be reorganized to more closely mirror the format of 40 CFR 279. ECL, Article 23, Title 23-based requirements will also be moved from 360-14 to 374-2. The reorganized 360-14 will deal mostly with Part 360 permitting requirements. Subpart 360-1 will be updated to incorporate by reference the current version of 40 CFR 279. 6 NYCRR Appendix 26 and the reference to this Appendix in paragraph 372.1(e)(8) are deleted as they are out of date.

The federal provisions, including amendments to 40 CFR 279 that have been promulgated since the previous State used oil rulemaking, as well as federal provisions that were not included in the previous State used oil rulemaking, are listed below. The listing includes a brief description of the proposals and the Federal Register (FR) notice and date when these provisions were promulgated by the USEPA.

1. Standards for the management of used oil, for used oil generators (57 FR 41615, September 10, 1992) and for used oil transporters and transfer facilities (57 FR 41617, September 10, 1992), will state that, if owners and operators of these entities engage in other types of regulated used oil activities, such as burning, marketing, or processing, they will be subject to those regulatory standards as well.

2. Used oil transfer facilities which store used oil for more than 35 days will require compliance with processor standards (57 FR 41613, September 10, 1992).

3. The “used oil transporter” definition will be expanded to include owners and operators of used oil transfer facilities (57 FR 41613, September 10, 1992).

4. Transporters will be exempt from used oil processor standards when they ship used electrical transformer oil to their facilities, filter the oil, and return it to the transformer for re-use (59 FR 10560, March 4, 1994).

5. Requirements specific to used oil generators, aggregation points, and collection centers, are reformatted to be consistent with corresponding EPA standards, which were first promulgated at 57 FR 41615 - 41616 (September 10 1992), amended at 58 FR 26425 (May 3, 1993), at 59 FR 10560 (March 4, 1994), and at 63 FR 25009 (May 6, 1998).

Proposed regulatory provisions, derived from Chapter 152 of the Laws of 1995, which amended Title 23 of Article 23 of ECL, include the following:

1. Allowing a service or a retail establishment to refuse acceptance of used oil from a DIY oil changer if contamination is evident.

2. Allowing establishments to limit their acceptance of DIY used oil to normal business hours.

3. Allowing establishments to require that DIYs bring their used oil only in rigid screw-top containers.

4. Prohibiting service establishments from charging used oil disposal fees to their customers when customers bring their vehicles in for servicing.

A brief description of regulatory changes by Subpart is listed below:

1. Subpart 360-1 - Solid Waste Management Facilities : General Provisions - Updating the incorporation by reference of 40 CFR 260 - 299.

2. Subpart 360-14 - Used Oil Management Facilities:

a. Moving the following definitions to Subpart 374-2: “adjacent”, “on-premises oil changing operation”, “petroleum refining facility”, “retail”, “retail establishment”, “service establishment”, “total halogens”, “underground used oil tank”. Copying the following modified definition from 374-2: “used oil transporter”. Adding the following new definitions: “EPA”, “used oil processor/re-refiner”. Modifying the following definitions: “used oil”, “used oil transfer facility”, “processing” (formerly “used oil processing facility”), “used oil collection center” (formerly “collection center”). Deleting the following definitions: “tolling agreement”, “container” (defined in 374-2), “aggregation point” (defined in 374-2 as “used oil aggregation point”), “used oil storage facility”.

b. The list of exemptions is clarified so as to eliminate a common misunderstanding among regulators and the regulated community, that the exemptions contain “conditional requirements”. The perception exists that the failure of a facility to follow the listed requirements of an exemption is an acceptable practice, provided that the facility obtains a Part 360 permit.

Department of Environmental Conservation

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Used Oil Management

I.D. No. ENV-06-05-00002-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. ENV-06-05-00002-P was published in the *State Register* on February 9, 2005.

Subject: Used oil management.

Purpose: To update used oil regulations to implement amendments (L. 1995, ch. 152) to title 23 of art. 23 of the Environmental Conservation Law and implement provisions derived from the Federal used oil regulations, 40 CFR 279, that either had not been adopted previously, or that had been added to Federal regulations since the department's previous used oil rule making.

Substance of rule: This rulemaking incorporates into the state's used oil management program (6 NYCRR Subparts 360-1, 360-14, and 374-2) portions of the United States Environmental Protection Agency's (USEPA) regulations, found at Title 40 of the Code of Federal Regulations (CFR), Part 279, dating back to 1992, that had not been previously incor-

Many of these so called "conditional requirements" are, in fact, federally-based, 40 CFR 279 requirements, and any provision in 6 NYCRR that could be construed to allow non-compliance with these requirements must be revised, in order to eliminate any misconception and maintain equivalent stringency with corresponding federal requirements.

To avoid excessive duplication with provisions in the proposed applicability section of 374-2.2(a), a provision is proposed for the exemption subdivision of 360-14.1(b) that will exempt from Part 360 permitting any operations or materials that are not subject to used oil regulation under 374-2.2(a). This proposal will have the effect of consolidating into one exemption the exemptions from Part 360 that are in the current regulations at 360-14.1(d)(1), (9), (10), (11), (12), and (13).

c. Management standards for used oil generators (including used oil retention facilities), aggregation points, collection centers, transfer facilities, and processors/re-refiners are relocated to Subpart 374-2.

d. The transportation requirements for used oil, currently located at Section 360-14.5, are moved to Subpart 374-2. The requirements are relocated depending upon the category of used oil facility or handler that the various provisions of this Section refer to. The provision that allows the shipment of off-specification used oil to facilities, other than permitted facilities and burners, provided that Departmental approval has been obtained, has been deleted, as this provision is less stringent than Federal requirements.

3. Subpart 374-2 - Standards for the Management of Used Oil:

a. The following definitions have been added: "do-it-yourselfer used oil collection center", "existing tank", "household do-it-yourselfer used oil", "new tank", "tank", "used oil tank system". The following definitions have been modified: "used oil aggregation point" (formerly "aggregation point"), "used oil collection center" (formerly "collection center"), "used oil transfer facility", "used oil transporter", "used oil processor/re-refiner", (formerly used oil processing facility). The following definitions have been moved from 360-14 and modified: "Aboveground used oil tank", "Adjacent towns or cities" (formerly "adjacent"), "contract", "household do-it-yourselfer used oil generator" (formerly "do-it-yourself oil changer"), "used oil processor/re-refiner" (formerly "used oil processing facility").

b. Laboratory analysis requirements are clarified for rebuttable presumption and for fuel specification determinations.

c. Requirements for used oil generators are moved from various sections of Subpart 360-14 and consolidated into a new section, dedicated to generator management standards. The generator standards will incorporate provisions for used engine lubricating oil retention facilities, which are proposed to be relocated from Section 360-14.4. The standards are also proposed to codify statutory requirements, derived from Chapter 152 of the Laws of 1995.

d. A new section is added, dedicated to management standards for collection centers and aggregation points.

e. The Section devoted to Standards for Used Oil Transporters expands to include management standards for used oil transfer facilities, pursuant to the proposed expansion of the regulatory definition for "used oil transporter". Used oil transfer facility standards are currently combined with management standards and permitting requirements for processors and re-refiners, and are located in Subpart 360-14.

f. The section of Subpart 360-14 that is devoted to the permit application requirements to construct and operate used oil transfer, storage, or processing facilities is proposed to be replaced. Separate sections, detailing the permitting requirements for processors/re-refiners and for transfer facilities/non-DIY collection centers will remain in Subpart 360-14. New separate sections are proposed for Subpart 374-2, detailing the substantive management standards for processors/re-refiners and for transfer facilities. Management standards for non-DIY collection centers will be included in the proposed new section in Subpart 374-2 for aggregation points and collection centers.

Changes to rule: No substantive changes.

Expiration date: March 30, 2006.

Text of proposed rule and changes, if any, may be obtained from: David O'Brien, Department of Environmental Conservation, Division of Solid and Hazardous Materials, 625 Broadway, Albany, NY 12233-7251, (518) 402-8633, e-mail: hwregs@gw.dec.state.ny.us

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

New York State Ethics Commission

NOTICE OF ADOPTION

Extension of Time for Filing a Financial Disclosure Statement

I.D. No. ETH-19-05-00005-A

Filing No. 893

Filing date: Aug. 16, 2005

Effective date: Aug. 31, 2005

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

Action taken: Amendment of section 936.2(f)(2)(i), (3)(i) of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c)

Subject: Extension of time for filing a financial disclosure statement.

Purpose: To amend the term "annual compensation."

Text or summary was published in the notice of proposed rule making, I.D. No. ETH-19-05-00005-P, Issue of May 11, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Theresa A. Schillaci, Ethics Commission, 39 Columbia St., Albany, NY 12207-2717, (518) 432-8250, e-mail: tschilla@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Inspection of Annual Statements of Financial Disclosure

I.D. No. ETH-19-05-00006-A

Filing No. 891

Filing date: Aug. 16, 2005

Effective date: Aug. 31, 2005

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

Action taken: Amendment of section 937.4(a) of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c), (17)(a)(1)

Subject: Public inspection of annual statements of financial disclosure.

Purpose: To amend the location where disclosure forms will be available for public inspections.

Text or summary was published in the notice of proposed rule making, I.D. No. ETH-19-05-00006-P, Issue of May 11, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Theresa A. Schillaci, Ethics Commission, 39 Columbia St., Albany, NY 12207-2717, (518) 432-8250, e-mail: tschilla@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Exemption from Filing a Financial Disclosure Statement

I.D. No. ETH-19-05-00007-A

Filing No. 892

Filing date: Aug. 16, 2005

Effective date: Aug. 31, 2005

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

Action taken: Amendment of section 935.1(h) of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(k)

Subject: Requesting exemptions from filing a financial disclosure statement.

Purpose: To amend the description of "State agency."

Text or summary was published in the notice of proposed rule making, I.D. No. ETH-19-05-00007-P, Issue of May 11, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Theresa A. Schillaci, Ethics Commission, 39 Columbia St., Albany, NY 12207-2717, (518) 432-8250, e-mail: tschilla@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Part-Time Clinics

I.D. No. HLT-32-04-00007-E

Filing No. 888

Filing date: Aug. 12, 2005

Effective date: Aug. 12, 2005

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

Action taken: Amendment of sections 703.6 and 710.1 of Title 10 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare and compliance with State Administrative Procedure Act Section 202(1) would be contrary to the public interest. These regulations repeal existing section 703.6 of 10 NYCRR and add a new section 703.6, amend sections 710.1(c)(1)(i) and 710.1(c)(4)(ii) and add section 710.1(c)(6)(v) to establish additional standards for the approval and operation of part-time clinics under Article 28 of the Public Health Law. The proposed rules would help ensure the provision of quality health care through needed preventive health screening programs and other public health initiatives to underserved populations and others in safe environments that protect both the patient and the general public.

A review of the part-time clinics approval system and operations raised serious questions and concerns as to whether care was being provided in appropriate sites, under adequate supervision, whether unnecessary care was being provided, whether the site environments were adequate and safe, and whether the type of services provided exceeded the original intent of the part-time clinic regulation. Examples of the problem areas include:

- The provision of radiology services in stationary sites and mobile vans where shielding may be inadequate.
- The provision of a full range of primary care services where minimum physical plant standards may not be met, as part-time clinics are exempt from most physical plant requirements. Inadequate space to provide the range of services safely compromised patient safety with narrow corridors which, if an emergency arises, would not provide for stretcher or wheelchair access or egress.
- The provision of a variety of complex services where more extensive supervision would be expected.
- The provision of services to all the residents in a given location, such as an Adult Home, raises questions about appropriate utilization.
- The provision of specialty services, such as pediatric cardiology utilizing sophisticated equipment, is considered inappropriate for a part-time clinic setting, since a comprehensive, integrated plan of care is needed to treat these patients effectively.
- The use of part-time clinics by some patients as their main source of health care compromises the continuity of their care, as the link to emergency and after-hours treatment becomes problematic.
- The improper application of infection control principles for sterilizing equipment.

The persistence of these problems warrants the issuance of these rules on an emergency basis.

The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
- Addition of a requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic or treatment center to ensure adequate supervision.
- Enhanced operating standards, including requirements for quality assurance and improvement and for credentialing of staff.
- Addition of a requirement for prior limited review of all new part-time clinic sites and the continuation or proposed relocation of existing clinics.
- Recognition that part-time clinics which are operated by city and county health departments are governed by section 614 of the Public Health Law.

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis, including the requirements for a period of time for public comment, would be contrary to the public interest because to do so would place patients at continued risk that they would be served in sub-standard environments without adequate supervision and where continuity of care cannot be insured. In addition, the proposed rules guard against the unnecessary expenditure of Medicaid funds for unneeded or duplicative services thereby making funds available for needed care. This emergency regulation will go into effect immediately after the expiration of the prior emergency regulation. Its duration will extend until permanent regulations are promulgated or a subsequent regulation is adopted on an emergency basis.

Subject: Part-time clinics.

Purpose: To clarify and enhance the requirements that apply to part-time clinics and require prior limited review of all part-time clinic sites.

Text of emergency rule: The current section 703.6 is repealed and a new section 703.6 is hereby adopted as follows:

Section 703.6 Part-time clinics

(a) *Applicability. In lieu of Parts 702, 711, 712 and 715 of this Title, this section shall apply to part-time clinic sites, except for those operated by the State Department of Health (other than those part-time clinics which are operated as an extension of Article 28 hospitals operated by the State Department of Health) or by the health department of a city or county as such terms are defined in section 614 of the Public Health Law. Such cities and counties shall submit to the State Department of Health information which lists the location(s), hours of operation and services offered at each part-time clinic operated by or under the authority of the city or county health department. This information shall be submitted annually, by January 30 of each year, as an update to the Municipal Public Health Services Plan (MPHSP) submitted by the city or county pursuant to section 602 of the Public Health Law, and shall provide such information for each part-time clinic operated by or under the authority of the city or county health department in the previous calendar year. Consistent with the definition of part-time clinic site in section 700.2(a)(22) of this Title, a part-time clinic shall:*

(1) *provide services which shall be limited to low-risk (as determined by prevailing standards of care and services) procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility. Such services may include health screening (such as blood pressure screening), preventive health care and other public health initiatives, procedures and examinations (such as well child care, the provision of immunizations and screening for chronic or communicable conditions which are treatable or preventable by early detection or which are of public health significance);*

(2) *be located at a site that has adequate and appropriate space and resources to provide the intended services safely and effectively and is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised; and*

(3) *not be located at a private residence or apartment, an intermediate care facility, congregate living arrangements (not including an individualized residential alternative, a shelter for adults or other group shelter operated by governmental or other organizations to provide temporary housing accommodations in a safe environment to at-risk populations), an area within an adult home, a residence for adults or enriched housing program as defined in section 2 of the Social Services Law unless the part-time clinic is an outpatient mental health program approved by the Office of Mental Health, or the private office of a health care practitioner or group of practitioners licensed by the State Education Department, except if the private office space is leased for a defined period of time*

and on a regular basis for the provision of services consistent with paragraph (1) of this subdivision.

(b) Department approval and/or notification.

(1) An operator of part-time clinics may initiate patient care services at a specific site only upon written approval from the department in accordance with the department's prior limited review process set forth at section 710.1(c)(6)(v) of this Title. To request such approval, the operator shall submit to the department, for each such site, information and documentation in a format acceptable to the department and in sufficient detail to enable the Commissioner to make a decision, including the following:

(i) the location, type and nature of the building, days and hours of operation, expected duration of operation (specified limited period of time, for example, seasonally), staffing patterns and objectives of the part-time clinic;

(ii) the leasing or other arrangement for gaining access to the site's real property, (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site);

(iii) the plans and strategies for meeting the operational standards set forth in this section and an explanation of how the operator will provide adequate supervision and ensure quality of care;

(iv) a listing of all part-time clinic sites already operated by the applicant;

(v) a description of the services to be provided and the populations to be served; and

(vi) procedures or strategies for advising patients on making arrangements for follow-up care.

(2) After initiating patient care services, an operator of part-time clinics may relocate a part-time clinic or change a category of service only upon written approval from the department in accordance with the department's prior limited review process as set forth in section 710.1(c)(6)(v) of this Title. The operator shall give written notification to the department at least 45 days prior to the relocation or change in services of a part-time clinic site. To request approval, the operator shall submit to the department, for the site of relocation or change in services, information concerning:

(i) the location, type and nature of the building, days and hours of operation, and expected duration of operation (specified limited period of time, for example, seasonally);

(ii) the leasing or other arrangement for gaining access to the site's real property (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site); and

(iii) a description of the services to be provided and the populations to be served.

(3) After initiating patient care services, the operator shall give written notification, including a closure plan acceptable to the department, to the appropriate regional office of the department at least 15 days prior to the discontinuance of a part-time clinic site other than a scheduled discontinuance as indicated in accordance with subparagraph (i) of paragraph (1) of this subdivision. No part-time clinic site shall discontinue operation without first obtaining written approval from the department.

(4) (i) The operator of any part-time clinic that was in operation on the effective date of this paragraph, and in conformance with all pertinent statutes and regulations in effect prior to that date, and has submitted request(s) to the department for approval to continue providing services for each such site by November 13, 2000 in accordance with such requirements shall be permitted to operate until and unless the department issues a written denial of approval to continue operation. If a request to continue operation of a part-time clinic site is denied, the operator shall cease providing services at such site.

(ii) The operator of any part-time clinic site for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall give the department the written notification and a closure plan required by subdivision (b)(3) of this section by November 28, 2000. Notwithstanding any other provision of this section, any part-time clinic for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall cease operations by December 31, 2000.

(c) Policies and procedures. (1) The operator shall ensure the development and implementation of written policies and procedures specific to each part-time clinic site which shall include, but need not be limited to:

(i) security, confidentiality, maintenance, access to and storage of medical records for each patient, including documentation of any diagnoses or treatments;

(ii) handling and storage of drugs in accordance with state law and regulation;

(iii) provision and storage of sterile supplies including plans for sterilization or disposal of contaminated supplies and equipment;

(iv) disposal of solid wastes and sharps;

(v) handling of patient emergencies, including written transfer agreements with hospitals within the service area;

(vi) a fire plan consistent with local laws;

(vii) credentialing of staff by the governing authority of the operator and assurance that only appropriately licensed and/or certified staff perform functions that require such licensure or certification;

(viii) quality assurance/improvement initiatives coordinated with such activities at the operator's primary delivery site(s);

(ix) utilization review;

(x) community outreach efforts designed to ensure that community members are aware of the availability of and the range of clinic services and hours of operation; and

(xi) assurance that patients can access necessary services without regard to source of payment.

(2) The following services shall not be provided at a part-time clinic site:

(i) services that require specialized equipment such as radiographic equipment, computerized axial tomography, magnetic resonance imaging or that required for renal dialysis;

(ii) services that involve invasion or invasive treatment procedures or disruption of the integrity of the body that normally require a surgical operative environment; and

(iii) services other than those available at the primary delivery site(s) listed on the primary facility's operating certificate.

(d) Services and personnel. The operator shall ensure that all health care services and personnel provided at the part-time clinic site shall conform with generally accepted standards of care and practice and with the following:

(1) Part-time clinics operated by hospitals shall comply with pertinent standards established in Part 405 of this Title including, but not limited to, sections 405.7 (Patients' rights) and 405.20 (Outpatient services), which cross-references the outpatient care provisions of sections 752.1 and 753.1 of this Title.

(2) Part-time clinics operated by diagnostic and treatment centers shall comply with the pertinent provisions of Parts 750, 751, 752 and 753 of this Title including, but not limited to, section 751.9 (Patients' rights).

(e) Environmental health. The operator shall ensure that:

(1) exits and access to exits are clearly marked;

(2) lighting is provided for exit signs and access ways when located in dark areas and/or during night hours or power interruptions;

(3) passageways, corridors, doorways and other means of exit are kept unobstructed;

(4) the part-time clinic site is kept clean and free of safety hazards;

(5) all water used at the part-time clinic site is provided from a water supply which meets all applicable standards set forth in Part 5 of this Title;

(6) equipment to control a limited fire is available; and

(7) smoking is prohibited within patient care areas.

(f) Waivers. The Commissioner, upon a request from the operator, may waive one or more provisions of this section upon a finding that such waiver would:

(1) enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access;

(2) contribute to attaining a generally recognized public health goal;

(3) not jeopardize the health or safety of patients or clinic staff; and

(4) not conflict with existing federal or state law or regulation.

Section 710.1(c)(1)(i) is hereby amended to read as follows:

(i) the requirements relating to the addition, modification or decertification of a licensed service other than the addition of a service or decertification of a facility's services as provided for in paragraph (6) of this subdivision or the addition or deletion of approval to operate part-time clinics, regardless of cost [;]. The addition or deletion of approval to operate part-time clinics shall not be applicable to the State Department of Health (other than for the addition or deletion of approval to operate part-time clinics as an extension of an Article 28 hospital operated by the State Department of Health) or to the health department of a city or county as such terms are defined in section 614 of the Public Health Law;

Section 710.1(c)(4)(ii) is hereby amended to read as follows:

(4) Proposals not requiring an application.

(ii) Any proposal to [add.] discontinue [or relocate] a part-time clinic site of a medical facility already authorized to operate part-time clinics pursuant to this Part shall not require the submission of an application pursuant to this Part, but compliance is required with the applicable notice provisions of Parts 405 and 703 of this Title.

Paragraph (6) of subdivision (c) of section 710.1 is hereby amended by the addition of a new sub-paragraph (v) to read as follows:

710.1(c)(6) Proposals requiring a prior review.

(v) Any proposal to operate, change services offered or relocate a part-time clinic site shall be subject to a prior limited review under Article 28 of the Public Health Law.

(a) Requests for approval under the prior limited review process shall be consistent with the provisions of section 703.6(b) of this Title.

(b) Requests for approval to operate, change a category of service offered or relocate a part-time clinic site in accordance with section 703.6(b) of this Title shall be made directly to the Division of Health Facility Planning.

(c) If the proposal is acceptable to the department, the applicant shall be notified in writing within 45 days of acknowledgment of receipt of the request. If the proposal is not acceptable, the applicant shall be notified in writing within 45 days of such determination and the bases thereof, and the proposal shall be deemed an application subject to full review, including a recommendation by the State Hospital Review and Planning Council, pursuant to section 2802 of the Public Health Law.

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 proposed rule making, I.D. No. HLT-32-04-00007-P, Issue of August 11, 2004. The emergency rule will expire October 10, 2005.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. This section also grants authority to establish requirements for projects subject to Certificate of Need review and other Department approvals.

Legislative Objectives:

Article 28 of the PHL seeks to ensure that hospitals and related services are of the highest quality, efficiently provided and properly utilized at a reasonable cost. Consistent with this legislative intent, the proposed amendments would update standards under which part-time clinics are permitted to operate and establish new procedures for the process by which clinics are approved to provide services. These changes will promote improved quality and appropriateness of care at a reasonable cost to payors.

Needs and Benefits:

Part-time clinics provide low-risk procedures and examinations which do not normally require back-up and support from the hospitals and diagnostic and treatment centers that sponsor them. Typical of such services are well-child care, immunization and screening for chronic and communicable conditions treatable or preventable by early detection. Part-time clinics may not deliver services which require specialized equipment, such as magnetic resonance imaging or dialysis, nor may they provide invasive treatment procedures which normally require a surgical environment. Once approved, part-time clinics may operate on either a short-term or permanent basis but may not offer services for more than a total of 60 hours per month.

Part-time clinics were established as a separate category of service to encourage the provision of basic preventive health care in community-based settings easily accessible to the general public and to groups targeted for particular services (e.g., senior citizens). Consequently, the approval process for these clinics is simpler than that for extension clinics of hospitals and diagnostic and treatment centers, whose services are more elaborate and hours of operation less restricted. The initial authority for a hospital or diagnostic and treatment center to operate part-time clinics

requires administrative approval under the Certificate of Need (CON) process. However, the subsequent opening of individual clinic sites previously required only a letter of notification to the appropriate area office of the Department of Health, submitted a minimum 15 business days in advance of the proposed commencement of service. Environmental requirements for part-time clinics are minimal, calling only for compliance with prevailing standards for life safety, sanitation and infection control. Some 300 hospitals and diagnostic and treatment centers are authorized to operate part-time clinics.

The leniency of regulation which has encouraged the provision of needed services has also led to the delivery of services in locations and on a scale not intended for part-time clinics. Some providers, for example, have set up part-time clinics in sites such as an adult home and patients' private residences and in other settings not sanctioned under the current regulations. Other operators of part-time clinics have offered services far more elaborate than the low-risk screening and basic care procedures to which part-time clinics are restricted. Still others have engaged in questionable billing practices, submitting claims to the Medicaid program at rates approved only for the broader array of services offered at diagnostic and treatment centers and hospital-based clinics.

With large part-time clinic networks (one network has over 600 sites), there are the issues of service quality and patient safety in settings that lack appropriate medical supervision and staff support and which do not meet operational and environmental requirements. The delivery of services under these circumstances can pose a threat to patient safety and demands the issuance of the new rules on an emergency basis.

An emergency regulation addressing part-time clinics was adopted effective August 15, 2000. Additional emergency regulations were adopted effective on November 13, 2000, February 12, 2001, May 14, 2001, August 10, 2001, November 8, 2001, February 7, 2002, May 6, 2002, August 1, 2002, October 29, 2002, January 27, 2003, April 25, 2003, July 24, 2003, October 22, 2003, January 20, 2004, April 20, 2004, July 19, 2004, October 19, 2004, December 16, 2004, February 16, 2005, April 14, 2005 and June 14, 2005. The last emergency adoption is scheduled to expire on August 13, 2005. This new emergency regulation will repeal and/or amend the regulations which would have gone back into effect upon the expiration of the June 14, 2005 emergency regulation.

The proposed emergency regulations will repeal the existing 10 NYCRR section 703.6 and replace it with a new section 703.6 more explicit in the requirements and prohibitions that apply to part-time clinics. They further amend section 710.1 to require a formal approval process for individual clinic sites. The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
- A requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic and treatment center to ensure adequate supervision.
- Enhanced operational standards, including requirements for quality assurance and improvement and for credentialing of staff.
- A requirement for prior limited review of new part-time clinic sites and proposed relocations of existing clinics. Requests for prior limited review must be submitted to the Department's central office at least 45 days in advance of the proposed commencement of service, instead of the 15 business days required for notification to the appropriate Department regional office.
- Recognition that part-time clinics which are operated by city and county health departments are governed by Section 614 of the Public Health Law.

The proposed rules apply to all existing part-time clinics as well as to all future sites. To ensure that the new regulations do not impede access to care by patients currently receiving services or penalize providers operating bona fide clinics, the proposed rules allow existing sites to continue in operation while their operators' applications for prior limited review of current services and sites are under review by the Department. The rules allowed operators 90 days from the effective date of the original emergency regulation, which was August 15, 2000, to submit such applications, which may include proposals to relocate noncompliant clinics to sites that are in compliance with the proposed regulations. For clinics that failed to submit such timely applications, the rules establish a deadline for submission of a closure plan.

Costs:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Both part-time clinics in existence at the time of the original emergency regulations and any new part-time clinics will be subject to the prior limited review process as set forth in the proposed amendments to section 710.1. The collection and submission of information for the prior limited review process will represent a new cost to the facility, but the Department has minimized that cost through issuance of a standardized form which can be filed electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Cost to State and Local Government:

There will be no additional cost to State or local governments. If inappropriate or duplicative Medicaid billings are reduced, or if sites providing unsafe or inappropriate services discontinue operations, State and local governments will realize a share of the Medicaid savings. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Cost to the Department of Health:

Additional costs related to the processing of prior limited review applications and stricter programmatic oversight of part-time clinics will be absorbed within existing resources.

Local Government Mandates:

This regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Paperwork:

The governing body will be responsible for filing requests for approval to operate specific sites under the limited prior review process. DOH will attempt to limit the paperwork burden by developing a standardized format for such submissions which may be filed electronically. DOH also considered requiring that each site maintain a patient log with numerous data elements. It was decided not to include this requirement in the operating standards because many of the data elements duplicated information in the medical record, and some could interpret the requirement as an unnecessary paperwork burden unrelated to patient care. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Duplication:

The regulations will not duplicate, overlap or conflict with federal or state statutes or regulations.

Alternative Approaches:

The alternative of taking no regulatory action was rejected because of the ongoing potential for questionable quality of care provided at inappropriate sites and because of fiscal irregularities at part-time clinics under current regulations. DOH also considered subjecting all current and proposed part-time clinics to the administrative review process rather than to the prior limited review process. That option was rejected in order to promote a streamlined review process for clinics and DOH and to avoid imposing on facilities the \$1,250 filing fee required for administrative reviews.

Federal Requirements:

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

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. Part-time clinics in operation at that time must have submitted requests to continue operating within 90 days of the

effective date of the adoption of the first emergency regulation (issued August 15, 2000) but may continue to operate until and unless DOH issues a written denial of approval to operate. If the governing body of a primary delivery site wishes to open a new part-time clinic site after the effective date of the regulation, it must submit an application. If the proposal is acceptable, DOH will so notify the applicant within 45 days of acknowledgement of receipt of the request.

Regulatory Flexibility Analysis

Effect of rule:

New York State has 9 hospitals, 167 diagnostic and treatment centers and approximately 455 adult homes and 53 congregate living centers that could be considered small businesses affected by this rule. Physician offices, of which the Department has no statistics on how many there are, also could be considered small businesses and impacted by this regulation. The Office of Mental Health approved approximately 980 outpatient mental health programs, the majority of which are small businesses. The Office of Mental Retardation and Developmental Disabilities approves Intermediate Care Facilities (ICFs) many of which would be considered small businesses and which also could be impacted by the regulation. With respect to local governments, to the extent the New York City Department of Health and 57 county health departments operate or propose to operate part-time clinics, they would be impacted by this regulation.

Compliance requirements:

In order to comply with these requirements, an operator/applicant will need to determine that the services to be provided at the part-time clinic(s) are limited to low-risk procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility as described in section 703.6(a)(1), be located at a site as described in 703.6(a)(2) and not be located at one of the sites as described in 703.6(a)(3). In addition, the operator/applicant must obtain written approval pursuant to the Department's prior limited review process set forth in section 710.1(c)(6)(v).

Professional services:

There should be no additional professional services required that a small business or local government is likely to need to comply with the proposed rule. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, adequate administrative mechanisms already should be in place to comply with any reporting and record-keeping requirements.

Compliance costs:

The collection and submission of information for the prior limited review process will represent a new cost to the facility, including facilities operated by a small business or local government. The Department has attempted to minimize that cost through the issuance of a standardized form, which may be obtained and submitted electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Economic and technological feasibility:

It should be economically and technologically feasible for small businesses and local governments to comply with the regulations. Providers should not need to hire additional professional or administrative staff to comply with the requirements of the regulations. Due to the nature of the services provided at part time clinics, such sites should not involve significant capital expenditures. Also, applicants under the prior limited review process for reviewing part time clinic proposals are not required to pay the \$1,250 fee applicable to full review and administrative review applications. Therefore, overall costs of compliance should be minimal. The Department of Health also has developed a standardized electronic application form that applicants may use by accessing the Department's "web"

page. This is technologically feasible using readily available, standard personal computers and internet access programs.

Minimizing adverse impact:

In developing the regulation, the Department considered the approaches set forth in section 202-b(1) of the State Administrative Procedure Act. The Department considered requiring all current and proposed part-time clinics to undergo the full administrative review process rather than the prior limited review process. That option was rejected in order to permit a streamlined review process for part-time clinics and to permit facilities to avoid the \$1,250 filing fee required for full or administrative reviews. The Department also has developed a standardized electronic form to minimize the paperwork burden for requests for approval to operate specific sites under the prior limited review process. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at-risk or medically underserved patients to obtain needed care and services which would be otherwise unavailable or difficult to access.

Language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised." In order to allow providers flexibility in bringing needed services to patients, the Department has refrained from specifying a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgment of receipt of the request.

Small business and local government participation:

Interested parties were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Rural Area Flexibility Analysis

Effect on Rural Areas

This rule applies uniformly throughout the State including all rural areas. Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements

This regulation should not adversely affect current rural part-time clinics that are providing quality services in appropriate settings. The new regulations will provide facilities with clarified operating standards that will enable them to operate in conformance with the law and meet generally accepted standards for quality care and safety of patients. Operators of part-time clinics in the State (including rural areas) must obtain written approval from the Department to continue operation, relocate, or open new part-time clinics in accordance with the Department's prior limited review process as outlined in section 710.1(c)(6)(v) of 10 NYCRR.

Professional Services

Hospitals should not need to hire additional professional or other staff to comply with the requirements of the new regulation. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, additional staff should not need to be hired, as administrative mechanisms should already be in place to comply with any reporting and recordkeeping requirements.

Compliance Costs

Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations. It is impossible to quantify such costs because the Department lacks the data on the number of part-time clinics currently out of compliance with the proposed standards and on the cost of bringing such facilities into conformity with the proposed rules. In general, however, establishment of part-time clinics will not require significant capital expenditures because such clinics are intended to be limited to low risk procedures and examinations that normally do not require backup and support from the primary delivery site of the operator or other medical facilities.

Minimizing Adverse Impact

In developing the regulation, the Department considered the approaches set forth in section 202-bb(2) of the State Administrative Procedure Act.

To minimize the paperwork and reporting requirements, the Department has developed a standardized application form which may be obtained and submitted electronically. Because the approval process is a limited review, the \$1,250 filing fee required for full or administrative reviews will not be imposed. The Department recognizes that part-time clinics can provide valuable sources of primary care in rural areas. These regulations will help to assure rural residents that such care meets appropriate quality and safety standards. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access. While language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised," The Department recognized that rural part-time clinics could serve a wide geographical area and did not specify a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgment of receipt of the request. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record.

Opportunity for Rural Area Participation

Rural areas were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a(2) of the State Administrative Procedure Act, because it is apparent from the nature and purpose of these proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities for those part-time clinics which provide appropriate services in appropriate locations. Those clinics which provide services in locations the Department deems unacceptable will be given an opportunity to relocate to an appropriate setting. The proposed amendments will help to ensure that qualified people provide clinical care and services. Appropriately operating part-time clinics will be allowed to continue providing care and services and newly-proposed sites will be permitted to open provided they can meet the standards established in the regulation. Thus, the jobs of people qualified to provide services, and currently doing so, will not be negatively impacted.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Payment for Psychiatric Social Work Services in Federally Qualified Health Centers**I.D. No.** HLT-35-05-00003-E**Filing No.** 887**Filing date:** Aug. 12, 2005**Effective date:** Aug. 12, 2005

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

Action taken: Amendment of section 86-4.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201.1(v)

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

Specific reasons underlying the finding of necessity: The amendment to 10 NYCRR 86-4.9 will permit Medicaid billing for individual psychotherapy services provided by certified social workers in Article 28 Federally Qualified Health Centers (FQHCs). In conjunction with this change, DOH is also amending regulations to prohibit Article 28 clinics from billing for group visits and to prohibit such services from being provided by part-time clinics.

Based upon the Department's interpretation of 10 NYCRR 86-4.9(c), social work services have not been considered billable threshold visits in Article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by federal law. Failure to comply with these mandates could lead to federal sanctions and the loss of federal dollars. Additionally, allowing Medicaid reimbursement for clinical social worker services is expected to increase access to needed mental health services.

Subject: Payment for psychiatric social work services in art. 28 federally qualified health centers.

Purpose: To permit psychotherapy by certified social workers a billable service under certain circumstances.

Text of emergency rule: 86-4.9 Units of service. (a) The unit of service used to establish rates of payment shall be the threshold visit, except for dialysis, abortion, sterilization services and free-standing ambulatory surgery, for which rates of payment shall be established for each procedure. For methadone maintenance treatment services, the rate of payment shall be established on a fixed weekly basis per recipient.

(b) A threshold visit, including all part-time clinic visits, shall occur each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit. Only one threshold visit per patient per day shall be allowable for reimbursement purposes, except for transfusion services to hemophiliacs, in which case each transfusion visit shall constitute an allowable threshold visit.

(c) Offsite services, visits related to the provision of offsite services, visits for ordered ambulatory services, and patient visits solely for the

purpose of the following services shall not constitute threshold visits: pharmacy, nutrition, medical social services *with the exception of clinical social services as defined in paragraph (g) of this section*, respiratory therapy, recreation therapy. Offsite services are medical services provided by a facility's clinic staff at locations other than those operated by and under the licensure of the facility.

(d) A procedure shall include the total service, including the initial visit, preparatory visits, the actual procedure and follow-up visits related to the procedure. All visits related to a procedure, regardless of number, shall be part of one procedure and shall not be reported as a threshold visit.

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

(f) Ordered ambulatory services may be covered and reimbursed on a fee-for-service basis in accordance with the State medical fee schedule. Ordered ambulatory services are specific services provided to nonregistered clinic patients at the facility, upon the order and referral of a physician, physician's assistant, dentist or podiatrist who is not employed by or under contract with the clinic, to test, diagnose or treat the patient. Ordered ambulatory services include laboratory services, diagnostic radiology services, pharmacy services, ultrasound services, rehabilitation therapy, diagnostic services and psychological evaluation services.

(g)(1) For purposes of this section, clinical social services are defined as,

(i) before September 1, 2004, individual psychotherapy services provided in a Federally Qualified Health Center by a certified social worker with psychotherapy privileges certification by the New York State Education Department, or by a certified social worker who is working in a clinic under qualifying supervision in pursuit of a psychotherapy privileges certification by the New York State Education Department.

(ii) on or after September 1, 2004, individual psychotherapy services provided in a Federally Qualified Health Center by a licensed clinical social worker, or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status by the New York State Education Department.

(2) Clinical social services provided in a part time clinic shall be ineligible for reimbursement under this paragraph. Clinical social services shall not include group psychotherapy services or case management services.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 9, 2005.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner. Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made changes to the Social Security Act affecting how prices are set for Federally Qualified Health Centers and rural health centers. Section 1902(a)(10) of the federal Social Security Act [42 U.S.C. 1396a(a)(10)] and 1905(a)(2) of the Social Security Act [42 U.S.C. 1396d(a)(2)] require the State to cover the services of Federally Qualified Health Centers. Additionally, section 1861(aa) of the Social Security Act [42 U.S.C. 1395x(aa)] defines the services that a Federally Qualified Health Center provides, including the services of a clinical social worker.

Legislative Objective:

The legislative objective of this authority is to allow, in limited instances, social work visits to be a billable threshold service in Article 28 clinics. This amendment will allow psychotherapy by certified social workers (CSWs) as a billable visit under the following circumstances:

- Services are provided by a certified social worker with psychotherapy privileges (on their SED certification), or a CSW who is working in a clinic under qualifying supervision in pursuit of such certification.

- Payment will only be made for services that occur in Article 28 clinic base and extension clinics only. Billings by part-time clinics will not be allowed.

- Psychotherapy services only will be permitted, not case management and related services.

- Billings for group psychotherapy will not be permitted in Article 28 clinics.

- Payment will only be made for services that occur in Federally Qualified Health Centers (FQHCs).

Needs and Benefits:

For some time, the Department of Health (DOH) has interpreted existing regulation 10 NYCRR Part 86-4.9(c) as restricting threshold reimbursement for medical social work services in Article 28 outpatient and diagnostic and treatment center (D&TC) clinics. Advocacy groups (e.g., United Cerebral Palsy (UCP), Community Health Care Association of New York (CHCANYS)) have challenged this policy interpretation arguing that the prohibition only relates to the provision of social work services coincident to medical care, not to medical/behavioral health services provided by certified social workers.

In addition, DOH's policy interpretation has also been inconsistent with the billing practices of the Office of Alcoholism and Substance Abuse Services (OASAS), the Office of Mental Health (OMH), and the Office of Mental Retardation and Developmental Disabilities (OMRDD). It is clear that permitting certified social workers to be reimbursed for behavioral health services is the generally accepted practice model. Thus, this amendment will, to some extent, provide consistency with billing practices of other state agencies in Article 31, 16 and 32 clinics. Furthermore, recent Federal changes related to Medicaid reimbursement for FQHCs mandate that psychotherapy services provided by a social worker be considered a billable service.

This approach will ensure access to social work services in the most underserved areas and increase consistency with the policies of other state agencies.

Costs:

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

Annually the estimated gross Medicaid cost for all CSW psychotherapy visits in FQHCs totals \$600,000, with a state share of \$150,000. This increase is anticipated to be partially offset by the savings associated with the elimination of clinic payments for group psychotherapy and the prohibition of CSW psychotherapy in part-time clinics.

Cost to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

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

Paperwork:

This amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for the services of certified social workers. In light of this federal requirement, no alternatives were considered.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective on the 1st day of the month following publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action. The proposed regulation will allow threshold visits to be billed in Article 28 clinics by CSW's with a "P" or "R" designation on their State Education Department's (SED) Certification or by CSWs who are working

in a supervised situation towards that certification, in a primary or extension (not part-time) clinic. Although some providers might experience problems hiring the higher level of supervision, the new prospective reimbursement system for FQHCs should ease the hiring of this staff.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

With the exception of part-time clinics, this rule will apply to all Article 28 primary and extension clinics (not part-time clinics) in New York that have been designated by the Centers for Medicare and Medicaid Services (CMS) as Federally Qualified Health Centers. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance. However, part-time clinic providers that perform fraudulent billing may be investigated and subsequently realize reduced Medicaid reimbursement.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has had conversations with the National Association of Social Workers Association (NASW), UCP, and CHCANYS to discuss Medicaid reimbursement for social work services and the impact of this new rule on their constituents. These groups and Association represent social workers from across the State, including rural areas.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

There are approximately 58 FQHCs, FQHC look-alikes, and rural health clinics.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic and that has been designated by the Centers for Medicare and Medicaid Services (CMS) as a Federally Qualified Health Center.

Minimizing Adverse Impact:

The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work services, based upon the Center's reasonable costs for delivering covered services.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the *NYS Register*.

Payment for Psychiatric Social Work Services

I.D. No.	Proposed	Expiration Date
HLT-32-04-00008-P	August 11, 2004	August 11, 2005

Industrial Board of Appeals

NOTICE OF ADOPTION

Form and Content of Petition

I.D. No. IBA-23-05-00001-A

Filing No. 886

Filing date: Aug 12, 2005

Effective date: Aug. 31, 2005

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

Action taken: Amendment of section 66.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Form and content of petitions filed with the board.

Purpose: To require petitioners to provide the board with their correct mailing address and telephone number, and standardize the form and content of the caption to the petition.

Text or summary was published in the notice of proposed rule making, I.D. No. IBA-23-05-00001-P, Issue of June 8, 2005.

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

Text of rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Insurance Department

NOTICE OF WITHDRAWAL

Excess Line Placement Governing Standards

I.D. No. INS-24-05-00005-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. INS-24-05-00005-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on June 15, 2005.

Subject: Excess line placement governing standards.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Accelerated Payment of the Death Benefit Under a Life Insurance Policy

I.D. No. INS-35-05-00002-P

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

Proposed action: Amendment of Part 41 (Regulation 143) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1113, 1304, 3201, 3209, 4217 and 4517

Subject: Accelerated payment of the death benefit under a life insurance policy.

Purpose: To clarify existing regulatory language and establish additional standards for accelerated payments of life insurance benefits in the event that the insured is chronically ill as defined by the Internal Revenue Code.

Substance of proposed rule (Full text is posted at the following State website: <http://www.ins.state.ny.us/rproindx.htm>): Section 41.1 sets forth the main purpose of the regulation, establishing rules for the accelerated death benefit provisions of life insurance policies and certificates. This section has been amended to refer to the statutory requirement for the

accelerated death benefit payments as described in Insurance Law sections 1113(a)(1)(C) and (D) to be federally tax qualified and to advise that it is the insurer's responsibility to ensure compliance with the Internal Revenue Code.

Section 41.2 is the definitions section. This section has been amended to provide for the statutory definition of the accelerated death benefits as described in Insurance Law sections 1113(a)(1)(C) and (D) and to incorporate the Internal Revenue Code definitions for chronically ill, licensed health care practitioner and qualified long term care services.

Section 41.3 sets forth the requirements and restrictions for advertisements for accelerated death benefits. Section 41.3(b) has been amended to make reference to the provisions in Section 41.8 for accelerated death benefits pursuant to sections 1113(a)(1)(C) and (D) of the Insurance Law. Section 41.3(c) has also been amended to add long term care insurance under the New York State Partnership for Long Term Care program as among the programs specified therein.

Section 41.4 sets forth the requirements for disclosure at the time of sale. This section also requires specific disclosure during the application or enrollment process and at the time that a claim for benefits is made. Section 41.4(b) has been amended to set forth the preliminary information and sales illustration requirements for accelerated death benefits pursuant to sections 1113(a)(1)(C) and (D) of the Insurance Law. Sections 41.4(c) through (g) have therefore been amended to reflect the specific requirements imposed by section 3230 of the Insurance Law that are applicable to accelerated death benefits as described in section 1113(a)(1)(A), (B) and (C) of the Insurance Law and the specific requirements that are applicable to accelerated death benefits as described in section 1113(a)(1)(D) of the Insurance Law. The former section 41.4(f) has been renumbered to section 41.4(h) and has been amended to indicate that the requirement to issue a new policy or schedule page or give written notice to reflect any newly reduced in force face amount or other policy values is applicable only to the acceleration of the death benefit in a lump sum. A new section 41.4(i) has been added to require that insurers accelerating the death benefit in installments or in a lump sum under the lien approach must issue a semiannual report on the status of the policy to the policyowner.

Section 41.5 establishes the minimum and maximum requirements for benefit levels, payment of benefits, and interest rates used. This section also sets forth the specific required policy form provisions. Section 41.5(b) has been amended to provide that the policy set forth the minimum and maximum amounts that may be accelerated. A new Section 41.5(c) has been added to allow the payment of an additional accelerated death benefit under Sections 1113(a)(1)(C) and (D) of the Insurance Law that is in excess of the policy's death benefit amount as long as there are no additional premium payments requirements for those benefits. A new section 41.5 (d) has been added to permit the payment of a residual death benefit, not subject to acceleration, in the event of death of the insured, when there is an acceleration of the death benefit under sections 1113 (a)(1)(C) and (D). A new section 41.5 (e) has been added to set forth the benefit levels and payment requirements for death benefits accelerated under Insurance Law sections 1113(a)(1)(A) and (B) and to incorporate and clarify those requirements from former sections 41.5(b), (c), (f) and (g). Section 41.5(j) has been amended to define the phrase "discount accelerated death benefit". A new section 41.5(m) has been added to address termination of the policy when the lien approach for accelerating the death benefit is utilized. The former section 41.5(m) has been renumbered to section 41.5(n) and amended so it is applicable only to policies and certificates that provide for the acceleration of the death benefit under Insurance Law sections 1113(a)(1)(A) and (B). The former section 41.5(p), which has been renumbered to section 41.5(q), has been amended to include chronic illness among those situations when recovery will not entitle the insurer to recover benefits. The former section 41.5(t) has been renumbered to section 41.5(u) and has been amended to include variable universal life policies. The former section 41.5(u) has been renumbered to section 41.5(v)(1) and (v)(2) and has been amended to address paid up nonforfeiture options for policies that accelerate the death benefit under Insurance Law sections 1113(a)(1)(A) and (B) and for policies that accelerate the death benefit under sections 1113(a)(1)(C) and (D). The former section 41.5(v) has been renumbered to section 41.5(w) and has been amended to provide an exception for accelerated death benefits under Insurance Law sections 1113(a)(1)(C) and (D) with respect to restrictions on exclusions for the payment of the accelerated death benefits.

Section 41.6 provides the criteria to determine eligibility for benefits. Section 41.6(a) has been amended to include reference to the acceleration of the death benefit under Insurance Law sections 1113(a)(1)(C) and (D). Section 41.6(d) has been amended to indicate that the regulation is not

applicable to long term care policies that fall within the parameters of the New York State Partnership for Long Term Care program.

Section 41.7 sets forth the actuarial requirements. Section 41.7(a) has been amended to delete the requirement of the submission of an actuarial memorandum with each policy form filing and to now require that the statement of self-support required by section 4228(h) of the Insurance Law indicate that the cost of providing the accelerated death benefits was considered in the demonstration of self support. A new section 41.7(b) requires that a nonforfeiture memorandum signed by a qualified actuary be submitted with each policy form filing. The former section 41.7(b) on Reserve requirements has been renumbered to section 41.7(c). A new section 41.7(c)(5) provides reserve requirements for policies that accelerate the death benefit to pay for long term care or provide benefits to a chronically ill individual. A new section 41.7(c)(6) addresses reserve requirements after a claim for an accelerated death benefit payable in installments has arisen. The former sections 41.7(c) and (d) have been deleted as moot.

Section 41.8 sets forth additional standards that are specific to policies which allow for the accelerated payment of death benefits in the event that the insured is confined in a long term care facility and/or qualifies for long term care benefits as described by Insurance Law Sections 1113(a)(1)(C) and (D). Some of the subjects which are addressed include consumer disclosure, required policy form provisions such as the free look provision, the reinstatement provision and the incontestability provision, the policy form submission requirement of a certification from a tax counsel that the accelerated death benefit payments qualify for favorable federal tax treatment, the permissible exclusions on payment of the accelerated death benefit, required monthly reports, replacement procedures, policy summary requirements, claim form disclosure language and claim procedures, requirements for coverage endorsed or sold by an association (as defined therein), prohibited sales practices and advertising and marketing requirements. Some of the requirements in section 41.8 are specific to the acceleration of the death benefit as described in section 1113(a)(1)(D). For example, section 41.8(a)(2) which provides that for life policies that allow for the acceleration of the death benefit as described in section 1113(a)(1)(D) of the Insurance Law the policy must include disclosure that it is not a health insurance policy and is not subject to the minimum requirements of the Insurance Law pertaining to long term care insurance, does not qualify for the New York State Long Term Care Partnership Program and is not a Medicare Supplement policy. Other requirements in section 41.8 are applicable to the acceleration of the death benefit as described in both sections 1113(a)(1)(C) and (D) of the Insurance Law such as described in section 41.8(e) which requires a free look period of not less than 30 days.

Section 41.9 is the separability provision of the regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Data, views or arguments may be submitted to: Kathleen A. Nelligan, Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 474-7668, e-mail: knelligan@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the amendment to Regulation No. 143 (11 NYCRR 41) is derived from Insurance Law sections 201, 301, 1113, 1304, 3201, 3209, 3230, 4217 and 4517.

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

Section 1113(a)(1) of the Insurance Law, as amended by Chapter 659 of the Laws of 1997 and Chapter 537 of the Laws of 2000, authorizes life insurers to make available the accelerated payment of part or all of the death benefit or payment of a special surrender value if the insured becomes chronically ill as defined by section 7702(B) of the Internal Revenue Code. The 1997 amendment to section 1113(a)(1) requires that a licensed health practitioner certify that the chronic illness is such that the insured will require continuous care for the remainder of life. The 2000 amendment allows for the payment of accelerated death benefits even if the chronic illness is temporary. The accelerated payments must qualify under section 101(g) of the Internal Revenue Code and all other applicable

sections of federal law in order to maintain favorable tax treatment. The availability of the accelerated payment of the death benefit provided under a life insurance policy will provide consumers with another financial resource to help pay the significant costs associated with long term care. It will also provide consumers who have purchased life policies with an accelerated death benefit feature, with an alternative to entering into a life settlement contract, selling their policy in accordance with Insurance Law Article 78 or liquidating other assets or going on public assistance when faced with long term care expenses.

Section 1304 of the Insurance Law requires insurers to maintain reserves for all life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Section 3201(c)(11)(B) of the Insurance Law requires the superintendent to promulgate a regulation establishing rules for advertising, disclosure, benefit levels, benefit eligibility, payment of long term care benefits, nonforfeiture and reserves for accelerated payment of the death benefit or special surrender values under a life insurance policy. In order for insurers to offer the accelerated payment of the death benefit of a life insurance policy for chronically ill insureds with long term care needs the applicable standards must be set forth in the regulation.

Section 3209 of the Insurance Law sets forth the disclosure requirements for all life insurance in this state at the time of solicitation, negotiation and procurement.

Section 3230 of the Insurance Law sets forth specific disclosure and procedural requirements for the processing of a request by the policyowner or certificateholder for an accelerated payment of the death benefit or payment of the special surrender value under a life insurance policy.

Section 4217 of the Insurance Law provides for the minimum valuation standards for life insurance policies issued by life insurance companies doing business in this state.

Section 4517 of the Insurance Law provides for the minimum valuation standards for life insurance certificates issued by fraternal benefit societies in this state.

2. Legislative objectives:

The addition of sections 1113(a)(1)(C) and (D) to the Insurance Law allows insurers to offer consumers the option of accelerating the death benefit under their life insurance policy when the insured is chronically ill and may need additional financial resources to assist with meeting long term needs and expenses. Access to existing resources such as the death benefit of a life insurance policy and the ability for insurers to provide for alternate ways to meet the increasing long term care needs and expenses has become critical especially in view of the already significant financial burdens on the Medicaid and Medicare programs. The Legislature also requires that the accelerated death benefit payments for chronic illness be federally tax-qualified. The standards set forth by the regulation provide consumers with proper disclosure about this new benefit and help to ensure the favorable federal tax treatment for the payment of the benefits.

3. Needs and benefits:

The current regulation governing accelerated death benefits has been in effect since 1992. The regulation was promulgated at that time to implement sections 1113(a)(1)(A) and (B) of the Insurance Law. Sections 1113(a)(1)(A) and (B) permit the acceleration of the death benefit of a life insurance policy upon the diagnosis of a terminal illness with a life expectancy of twelve months or less or a medical condition requiring extraordinary care or treatment regardless of life expectancy.

Since that time, the Legislature has amended Insurance Law sections 1113(a)(1), 3201 and 3230 to allow for the payment of accelerated death benefits in the event that the insured becomes chronically ill. Section 1113(a)(1)(C) permits the acceleration of the death benefit upon the certification of a licensed health care practitioner of any condition that requires continuous care for the remainder of the insured's life in an eligible facility or at home. The insured must be chronically ill as defined by the Internal Revenue Code and the accelerated death benefits must qualify for favorable federal tax treatment. Section 1113(a)(1)(D) permits the acceleration of the death benefit upon the certification of a licensed health care practitioner that the insured is chronically ill as defined by the Internal Revenue Code and provided the accelerated death benefits qualify for favorable federal tax treatment and the insurer issuing the policy is a qualified long term care carrier under the Internal Revenue Code.

The Department has worked closely with the life insurance industry in developing a comprehensive approach for the implementation of sections 1113(a)(1)(C) and (D). It was concluded that a regulation which provides specific guidance to insurers in the development of their accelerated death benefit products was the preferable approach to a regulation which would simply make reference to other provisions of the Insurance

Law, the federal tax code or the NAIC Model Long Term Care Insurance Act and Model Regulation.

The need to find viable financial alternatives to help with long term care expenses has become a significant public policy concern. The amended regulation will give insurers licensed to do business in this state the ability to offer this new product feature in New York and provide consumers with an option to access their life insurance death benefit in the event of chronic illness. Consumers will also be provided with the advantage of having such accelerated death benefit payments be federally tax-qualified.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal. Many insurers are already offering accelerated death benefit features for terminal illness or for an illness which requires extraordinary medical care. Insurers will need to update their policy forms to make this new benefit available. No insurer is required to develop an insurance product to be in compliance with the regulation. The offering of this benefit is optional for the insurer.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments. The regulation applies only to licensed life insurers and fraternal benefit societies.

5. Local government mandates:

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

6. Paperwork:

The regulation imposes minimal new reporting requirements for insurers. For accelerated death benefits paid in the event that the insured is confined in a long term care facility and/or qualifies for long term care benefits as defined by law, certain annual certifications must be filed with the Insurance Department, in limited situations. When a group policy or certificate is issued to an association, the insurer must certify annually that the association has complied with the applicable requirements of the regulation. Also, for accelerated death benefits paid in the event that the insured qualifies for long term care benefits as defined by law, the insurer must annually report all policy or certificate rescissions, both state and country-wide, except those which the insured voluntarily effectuated. For policies or certificates that provide for the payment of accelerated death benefits as described in section 1113(a)(1)(D) the insurer must maintain records of all replacement sales and number of lapses of such policies and certificates.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

The Insurance Department had extensive discussions with the Life Insurance Council of New York, a trade organization representing life insurance companies doing business in New York, during the drafting of the regulation. The regulation is reflective of the input received and the various alternatives considered during those discussions.

Alternatives considered and rejected included having all the Regulation 62 (11 NYCRR 52) standards for long term care health insurance policies apply to the life insurance product. This alternative was rejected because Regulation 62 does not require all long term care health insurance products to be federally tax qualified. There was concern that some of the long term care standards in Regulation 62 would not be appropriate for a federally tax qualified product. Sections 1113(a)(1)(C) and (D) require that the accelerated death benefit payments received under a life insurance policy be federally tax qualified. However, it should be noted that Regulation 62 standards were taken into consideration during the drafting of the regulation.

Another alternative considered and rejected was the complete adoption of the 1993 National Association of Insurance Commissioners Long Term Care Insurance Model Act and Regulation standards. Given that the standards were developed over ten years ago and are structured for long term care health insurance products, it was concluded that the better course of action would be to utilize the NAIC standards where required by the Internal Revenue Code and develop standards that were more appropriate for life insurance policies that offer accelerated death benefits for long term care. As a result the regulation reflects an agreed upon blending of NAIC standards, standards similar to Regulation 62, where appropriate, and new standards.

However, there is one controversial issue that remains which can be found in Section 41.8(dd) of the regulation. Section 41.8(dd) requires that when benefits are being paid out under an accelerated death benefit issued pursuant to Section 1113(a)(1)(D) and the life insurance policy terminates, the accelerated death benefit payments must continue without interruption.

Such extension of benefits may be limited to the duration of the benefit period or to the payment of maximum benefits and may be subject to any waiting periods or other applicable policy provisions.

The 1993 National Association of Commissioners Long Term Care Model Regulation provides that this requirement for the extension of benefits is applicable only to benefits payable for institutionalization. A few insurers who have structured their nationwide accelerated death benefit product for compliance with the Model Regulation are concerned by the regulation's deviation from the Model's standard for their New York product and the administrative costs that may be incurred as a result of the deviation.

The Department considered but rejected the concept of limiting the extension of benefits requirement to just institutions as a matter of public policy. Individuals today are strongly encouraged to use home care as an alternative to entering a nursing home or other institution. Home care benefits in some situations may be more beneficial to the individual both personally and financially.

The intent of the regulation and its enabling legislation is to allow life insurance to be used as an alternative means of helping consumers fund the ever increasing costs of long term care. The Department, therefore, felt compelled to afford home care the same treatment as institutionalization with respect to the extension of benefit requirement.

9. Federal standards:

Sections 1113(a)(1)(C) and (D) of the Insurance Law require that the insured be chronically ill as defined in section 7702B of the Internal Revenue Code and that the accelerated death benefit payment be federally tax qualified under section 101(g) of the Internal Revenue Code and all other applicable sections of federal law to maintain favorable federal tax treatment. Section 1113(a)(1)(D) of the Insurance Law requires that the insurer be a qualified long term insurance carrier under section 4980C of the Internal Revenue Code. The Internal Revenue Code requires compliance with certain provisions of the 1993 National Association of Insurance Commissioners Long Term Care Insurance Model Act and Regulation or more stringent state requirements. Accordingly, to a great extent, the language of the amendment is mandated by such requirements.

10. Compliance standards:

All insurers licensed to do business in this state must comply with this regulation if they choose to offer the accelerated payment of the death benefit in their life insurance policies pursuant to section 1113(a)(1)(C) or (D) of the Insurance Law. Compliance will be required on the effective date of the amendment.

Regulatory Flexibility Analysis

1. Small businesses:

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

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurers covered by the regulation do business in every county in this state, including rural areas as defined under State Administrative Procedures Act section 102(10).

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

The regulation establishes rules for the accelerated death benefit provisions of life insurance policies and certificates, including additional standards that are specific to policies which allow for payment of benefits in the event that the insured is confined in a long term care facility and/or qualifies for long term care benefits as defined by law.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal. Some insurers are currently selling this type of benefit in other states so the cost to develop the product for sale in this state in compliance

with the regulation will be minimal. The amendment will allow insurers to sell a product that currently cannot be marketed in this state. This will provide increased business opportunity for the insurers.

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

The amendment was drafted after the Department had numerous discussions with the Life Insurance Council of New York (LICONY) regarding this regulation. As the Insurance Department was developing it, copies of each draft version of the amendment were distributed to LICONY for comments. A description of the proposed amendment was included in the Insurance Department's regulatory agenda which was published in the June 2004 issue of the *State Register*.

Job Impact Statement

1. Nature of impact:

The Insurance Department finds that this amendment will have a positive impact or no impact on jobs and employment opportunities. The regulation establishes rules for the accelerated death benefit provisions of life insurance policies and certificates, including additional standards that are specific to policies which allow for payment of benefits in the event that the insured is confined in a long term care facility and/or qualifies for long term care benefits as defined by law. The amendment will allow insurers to expand their business in New York by allowing them to sell a wider range of products.

2. Categories and number affected:

The Insurance Department finds that no categories of jobs or number of jobs will be affected.

3. Regions of adverse impact:

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

4. Minimizing adverse impact:

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

5. Self-employment opportunities:

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

and ability to be admitted if offered a placement. The committee shall base its reconfirmation of eligibility on a review of the documentation provided. Such reconfirmation shall be based on a unanimous decision, made in writing and shall include the physician's signature. If a child found eligible is expected to be unavailable for admission for a period of less than 30 days, the child's eligibility shall be considered to be suspended. The child may be put back on eligibility status as of the date that the temporary suspension ends. [The pre-admission certification committee shall base reconfirmation on a unanimous decision of those present. Such reconfirmation shall be made in writing and include the physician's signature.]

(j) The pre-admission certification committee shall decertify the child from eligibility and shall provide written notice of the decertification to the referral agency contact and child and/or family if:

(1) the committee is notified or independently determines that the child has been placed in another appropriate setting and care in a residential treatment facility is no longer needed;

(2) the child is receiving appropriate services that meet the child's clinical needs;

(3) the parent(s) or guardian(s) state that the child's admission into a residential treatment facility is no longer desired;

(4) the child's clinical condition has deteriorated such that admission to a residential treatment facility as set forth in Section 583.8 of this Part would no longer be appropriate for a period of more than 30 days; or,

(5) that the child no longer meets criteria for admission.

The committee may consider the sufficiency and accuracy of documentation it has received, and may request clarification and/or additional documentation, in determining whether to certify the child as eligible or decertify the child from eligibility.

(k) The pre-admission certification committee shall provide written notification to the [child, or to the individual or agency making an application on behalf of the] referral agency contact and child and/or child's parent or legal guardian, as appropriate, or to the Family Court, if the child is the subject of a proceeding currently pending in the Family Court:

(1) that additional information or assessments have been requested prior to making an eligibility determination; (2) that an eligibility determination has been made and whether or not the child has been determined to be eligible; (3) that a referral has been made to another pre-admission certification committee for consideration for certification as priority for admission to a residential treatment facility bed designated in that region; or (4) that a certification [as priority] for admission to a residential treatment facility has been made.

[(k)] (l) The pre-admission certification committee shall act in a timely manner.

(1) All applications shall be reviewed for completeness within seven calendar days of receipt. (2) Once all necessary information has been obtained, an eligibility determination shall be made within 30 calendar days. (3) Once an eligibility determination has been made, written notification shall be made within seven calendar days. (4) Eligibility shall be reviewed every 60 days as required by Section 583.9(i).

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 583.9(i) and (j).

Text of rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

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

Non-substantive changes were made that did not necessitate revision to the previously published statements regarding the Regulatory Impact Statement (RIS), Regulatory Flexibility Analysis (RFA), Rural Area Flexibility Analysis (RAFA) or the Job Impact Statement (JIS).

The following non-substantive changes were made to the text of the amendment to Part 583:

1. Non-substantive change applying to the heading of section 583.9.

In response to two public comments and for the purpose of clarification, the Office determined to delete the phrase "expiration of eligibility" from the heading of section 583.9 since this term is unnecessary and does not appear in the text of the section.

2. Non-substantive change applying to § 583.9(i).

In response to a public comment and for the purpose of clarification, the Office determined to add the words, "based on a unanimous decision", to the third sentence of § 583.9(i), so that such sentence shall read: "Such reconfirmation shall be based on a unanimous decision made in writing, and shall include the physician's signature."

3. Non-substantive change applying to § 583.9(j).

Office of Mental Health

NOTICE OF ADOPTION

Pre-Admission Certification for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-04-05-00004-A

Filing No. 885

Filing date: Aug. 12, 2005

Effective date: Aug. 31, 2005

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

Action taken: Amendment of section 583.9 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

Subject: Pre-admission certification committees for residential treatment facilities for children and youth.

Purpose: To revise the pre-admission certification process.

Text of final rule: Subdivision 583.6 of 14 NYCRR is amended as follows:

Paragraph (e) of Subdivision 583.6 is repealed.

Subdivision 583.9 of 14 NYCRR is amended as follows:

§ 583.9 Pre-admission process.

(i) The pre-admission certification committee shall reconfirm its determination of eligibility of a child when admission to a residential treatment facility does not occur within [45] 60 days of the determination of eligibility pursuant to [section 583.6(b)] subdivisions (b) and (d) of section 583.6 and section 583.8 of this Part by requesting an update of the child's status, including the child's clinical status, current placement, and willingness

In response to two public comments and for the purpose of clarification, the Office determined to add a separate paragraph to conclude § 583.9(j) to read as follows: "The committee may consider sufficiency and accuracy of documentation it has received, and may request clarification and/or additional documentation, in determining whether to certify the child as eligible or decertify the child from eligibility."

Assessment of Public Comment

A Summary is being provided because the full Assessment of Public Comment exceeds 2,000 words. Copies of the Full Assessment of Public Comment may be obtained from the agency contact.

A comment was received suggesting adding language to section 583.9(j) confirming the pre-admission certification committee's (PACC) authority to verify documentation of the clinical condition of the child before acting. The agency will make the suggested change.

A series of comments were received: (a) Stating that providing documentation each 60 days is a burden. The agency replied that it is an improvement over the current 45 days. (b) Questioning the term "willingness" of the child to be admitted. The agency explained the term is necessary in the context of statutory admission standards. (c) Stating that the language regarding a child expected to be "unavailable for admission" for 30 days or more is confusing. The agency explained the term, giving as an example a child expected to be hospitalized for over 30 days. (d) Asking what the PACC will determine is an "appropriate setting" for purposes of determining the placement priority of those children. The agency replied that it is within the PACC's authority to determine this based on documentation submitted. (e) Asking if a child will not be available for over 30 days, shouldn't the action be to suspend, rather than decertify. The agency replied that a suspension is intended to be temporary, and little clinical information is needed to restore a suspended child to the list. However for a child unavailable for over 30 days a new clinical review is necessary. (f) Asking if there is an appeal from a PACC decision. The agency said the statute gives no authority to the agency to overrule a PACC. (g) Asking if, by removing the word "priority" from section 583.9(k), the PACC would no longer be making placement decisions based on a child's priority on the waiting list. The agency replied that priority decisions would continue to be made, this change related to notices regarding a child eligible for the list, but not as a priority. (h) Stating that the rule creates a burden that diminishes the waitlist but doesn't ensure services are received. The agency disagreed and said that a waitlist established under the rule will be more likely to consist only of children actually ready for placement.

A series of comments were received: (a) Stating that decertification and suspension are practices not now addressed in statute or regulation and if PACCs are engaged in such practices then they violate existing regulations. The agency disagreed and said current regulations permit PACCs to make determinations to decertify or find a child not eligible and nothing prohibits use of such terms. (b) Stating that the term "expiration of eligibility" in the heading of section 583.9 is not explained. The agency agreed it is not necessary and will delete it. (c) Questioning the term "temporary suspension." The agency replied that the term "temporary suspension" applies when an eligible child is expected to be unavailable for less than 30 days. (d) Asking if physician approval was necessary for reconfirmations of eligibility. The agency replied yes, it both authorizes the child's list placement and is a Medicaid determination. (e) Questioning removal of the requirement that PACCs unanimously reconfirm eligibility. The agency agreed and will add language requiring unanimous reconfirmation. (f) Asking if PACC's are authorized to predetermine length of stay. The agency replied no. (g) Asking what "referral agency contact" means. The agency replied it is the party providing information regarding the child. (h) Questioning the PACC's authority to determine ineligibility, suspension and decertification. The agency replied sufficient authority is provided.

The agency received comments that: (a) Recommended that documentation should be required for any changes in clinical condition or other factors that support a change in eligibility. The agency agreed and will add language to provide the PACC with clear authority to require such documentation. (b) Recommended that the regulation should clarify the roles of parents and guardians in those situations where parental consent did not accompany the application, such as Family Court referral or a voluntary admission. The agency explained that the PACC will have to determine the necessity and appropriateness of the parent or guardian's involvement based on the particular circumstances of the case.

Public Service Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-32-05-00008-P, pertaining to Order Adopting Proposal to Amend the Gas Purchase of Receivables Program by Consolidated Edison Company of New York, Inc., published in the August 10, 2005 issue of the *State Register* contained an incorrect purpose. The correct purpose is:

To approve or reject, in whole or in part, a petition for clarification of its order adopting proposal to amend the Gas Purchase of Receivables Program.

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

NOTICE OF ADOPTION

Petition of Rehearing by Tenant Research Team

I.D. No. PSC-20-04-00011-A

Filing date: Aug. 12, 2005

Effective date: Aug. 12, 2005

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

Action taken: The commission, on June 15, 2005, adopted an order in Case 03-E-0598 granting, in part, the petition for rehearing by Tenant Research Team (TRT) of the commission's submetering order issued Sept. 26, 2003.

Statutory authority: Public Service Law, sections 22 and 65(1)

Subject: Request for rehearing of the commission's order issued Sept. 26, 2003.

Purpose: To grant, in part, the petition for rehearing.

Substance of final rule: The Commission adopted an order, granting in part, the petition for rehearing by Tenant Research Team (TRT) of the Commission's Submetering Order issued September 26, 2003, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-0598SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charges to the Performance Metrics of the Gas Operations and Safety Measures by New York State Electric & Gas Corporations

I.D. No. PSC-35-05-00007-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 changes to the gas operations and safety measures provisions of New York State Electric & Gas Corporation's gas rate plan, as reflected in a joint proposal filed on Aug. 2, 2005. The commission may adopt, reject or modify, in whole or in part, the changes proposed by the parties. The commission may also consider other related matters.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Changes to the performance metrics for New York State Electric & Gas Corporation's gas operations and safety measures as replacements for its Case Iron Main Replacement Program, and related matters.

Purpose: To consider a joint proposal filed by the parties.

Substance of proposed rule: New York State Electric & Gas Corporation (NYSEG) is operating its gas business pursuant to a rate plan ap-

proved by the Public Service Commission (Commission) in November, 2002. The rate plan includes a number of gas operations and safety measures, one of which is a Cast Iron Main Replacement Program. The rate plan provides that interested parties would meet to develop joint recommendations on a replacement for this program starting in January 2006.

On August 2, 2005, NYSEG filed a Joint Proposal that recommends three new programs to replace the Cast Iron Program, with proposed revenue adjustments for failure to achieve the recommended targets/thresholds under each program. The new programs would involve replacing bare steel mains, reducing the annual number of leak backlogs, and preventing excavation damages to NYSEG's gas facilities; the maximum revenue adjustment for each program would be \$100,000.

The Commission may adopt, reject, or modify, in whole or in part, the recommendations in the Joint Proposal, and it may also consider other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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-G-1668SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pension Accounting and Related Rate Making by Taconic Telephone Corporation

I.D. No. PSC-35-05-00008-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 petition filed by Taconic Telephone Corporation for the purpose of handling the accounting gain resulting from the termination of its employees' defined benefit pension plans and subsequent request for sharing the savings.

Statutory authority: Public Service Law, sections 91 and 94(2)

Subject: Pension accounting and related rate making.

Purpose: To determine appropriate accounting treatment and disposition of pension related deferrals resulting from conversion of a defined benefit plan to a defined contribution plan and seek exemption from the pension policy statement.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Taconic Telephone Corporation for the purpose of handling the accounting gain resulting from the termination of its employees' Defined Benefit Pension plans and subsequent request for sharing the savings. The company seeks to apportion the total savings between three areas: to retain a portion of the savings as an incentive, to use a portion for capital expenditures, and to return a portion to customers through bill credits. The company also seeks an exemption from the Commission's Policy Statement on Pension and OPEBs and to reduce annual revenue to address the significant reduction in its pension costs.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.
(05-C-1002SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Demand Side Management Action Plan by the New York State Energy Research and Development Authority

I.D. No. PSC-35-05-00009-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, or modify, in whole or in part, a demand side management action plan (action plan) filed by the New York State Energy Research and Development Authority in the Consolidation Edison Company of New York, Inc. electric rate case. The commission may also resolve disputed matters set forth in the action plan, and consider other related issues.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Consideration of the action plan, the disputed matters discussed therein, and other related issues.

Purpose: To consider approving, rejecting, or modifying, in whole or in part, the action plan, resolving disputed matters set forth in the action plan, and other related issues.

Substance of proposed rule: In its March 27, 2005 Order setting new electric rates for Consolidated Edison Company of New York, Inc. (Con Edison), the Public Service Commission (Commission) established demand side management (DSM) goals within Con Edison's service territory to be obtained through DSM programs administered by NYSEDA and Con Edison. The Commission also required the development of an Action Plan addressing 16 specific items associated with the expansion of existing DSM programs and identification of additional DSM opportunities within Con Edison's service territory.

On August 16, 2005, after collaborating with Con Edison and numerous interested parties, the New York Energy Research and Development Authority (NYSEDA) filed the Action Plan. That document discusses each of 16 specified items and other issues associated with promoting DSM in Con Edison's service territory, including defining the Total Resource Cost Test and "Clean Distributed Generation" for purposes of the DMS programs. The parties were not able to reach unanimous agreement on all aspects of these definitions and on some other issues and seek Commission resolution of their disagreement.

The Commission may approve, reject or modify, in whole or in part, the Action Plan. The Commission may also resolve the disputed matters presented in the Action Plan, and it may consider other, related issues.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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-0572SA6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Automated Meter Recording Equipment by Central Hudson Gas & Electric Corporation

I.D. No. PSC-35-05-00010-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 Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: Automated meter recording (AMR) equipment for interruptible customers and daily balancing and monthly cashout procedures for interruptible and firm transportation customers.

Purpose: To require the installation of automated meter recording equipment for large customers taking service under Service Classification Nos. 8, 9 and 11 and implement daily balancing and monthly cashout procedures for interruptible and firm transportation customers taking service under Service Classification Nos. 9 and 11 respectively.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's request to require the installation of Automated Meter Recording equipment for large customers taking service under S.C. No. 8—Interruptible Rate, S.C. No. 9—Interruptible Transportation/Standby Sales Services and S.C. No. 11—Firm Transportation—Core and to implement daily balancing and monthly cashout procedures for interruptible and firm transportation customers taking service under S.C. Nos. 9 and 11, respectively.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(04-G-0463SA3)

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

Power for Jobs Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-35-05-00011-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 Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9 to become effective November 10, 2005.

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

Subject: Power for Jobs Program.

Purpose: To eliminate the term of service contained in Rider Q—Power for Jobs Program.

Substance of proposed rule: On August 10, 2005, Consolidated Edison Company of New York, Inc. (Con Edison) filed proposed tariff amendments to eliminate the term limitations contained in Rider Q – Power for Jobs Program because Chapter 59 of the Laws of 2005 provides for New York State to determine the term for each customer. The proposed effective date of Con Edison's filing is November 10, 2005. The Commission may approve, reject or modify, in whole or in part, Con Edison's proposed tariff revisions.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillings, 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.

(05-E-0997SA1)

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

Multi-Year Authority to Issue Securities by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-35-05-00012-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 a request by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island for multi-year authority to, among other things, issue up to \$450,000 in securities and enter into revolving credit loans and bank loans. The commission may approve, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 69 and 108(1)

Subject: Multi-year authority to issue up to \$450 million in securities and enter into revolving credit loans and bank loans.

Purpose: To obtain authorization to issue up to \$450 million in securities and enter into revolving credit loans and bank loans.

Substance of proposed rule: The KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island submitted a petition dated July 28, 2003 and a supplemental filing dated July 14, 2005 seeking multi-year authorization to issue up to \$450 million in securities and enter into revolving credit loans and bank loans. KeySpan Energy Delivery Long Island seeks authorization to issue new debt securities by entering into one or more promissory notes with the KeySpan Corporation in order to benefit from certain long term debt issued by the KeySpan Corporation. The proposed promissory note transaction seeks a change in the debt and preferred stock provisions of the Merger Plan approved by the Commission in Case 97-M-0567. The Commission may approve, modify or reject, in whole or in part, the relief requested.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillings, 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-1056SA2)

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

Multi-Year Authority to Issue Securities by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York

I.D. No. PSC-35-05-00013-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 a request by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for multi-year authority to, among other things, issue up to \$475 million in securities and refinance \$650 million of existing debt. The commission may approve, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 69 and 108(1)
Subject: Multi-year authority to issue up to \$475 million in securities and refinance up to \$650 million in securities.

Purpose: To obtain authorization to issue up to \$475 million in securities and refinance up to \$650 million in securities.

Substance of proposed rule: The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York submitted a petition dated July 28, 2003 and a supplemental filing dated July 14, 2005 seeking multi-year authorization to issue up to \$475 million in securities and to refinance up to \$675 million in securities. The Brooklyn Union Gas Company seeks authorization to issue new debt securities by entering into one or more promissory notes with the KeySpan Corporation in order to benefit from certain long term debt recently issued by the KeySpan Corporation. The proposed promissory note transaction seeks a change in the debt and preferred stock provisions of the Merger Plan approved by the Commission in Case 97-M-0567. The Commission may approve, modify or reject, in whole or in part, the relief requested.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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-1057SA2)

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

Extension of the Systems Benefits Charge (SBC) and the SBC-Funded Public Benefit Programs

I.D. No. PSC-35-05-00014-P

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

Proposed action: The Public Service Commission is considering extension of the system benefits charge (SBC) and SBC-funded public benefit programs.

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

Subject: Extension of the systems benefits charge (SBC) and the SBC-funded public benefit programs.

Purpose: To consider extension of the programs.

Substance of proposed rule:

The System Benefits Charge (SBC) program was initiated in 1998 for a three-year period by the New York State Public Service Commission (Commission) with the goal of providing programs to encourage energy efficiency, a cleaner environment and to reduce the financial burden of energy costs on low-income New Yorkers. In 2001, the Commission reviewed and extended the program for a five-year period, which ends on June 30, 2006.

On January 28, 2005, the Commission issued a public notice seeking feedback on 14 critical questions regarding the future of the SBC program. The questions included whether the program should continue after June 30, 2006, and if so, what its goals, time frame, and funding level should be. Over 160 responses were received. The majority of the comments favor the SBC program and recommend its continuation. NYS Department of Public Service Staff reviewed the comments, examined the performance of the SBC programs and considered the degree to which the SBC program is still a necessary ingredient in New York's energy mix. Staff has prepared a Proposal which is a strategy for the overall SBC program beyond June 2006. The Proposal is to renew and extend the program with minor modifications for a 5-year period ending on June 30, 2011. The ratepayer funding level will remain at the current level of \$150 million per year.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our

website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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. (05-M-0090SA1)

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

Winter Requirement for Retail Supplies by Central Hudson Gas & Electric Corporation

I.D. No. PSC-35-05-00015-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 proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: Winter requirement for retail suppliers.

Purpose: To eliminate the requirement that retail suppliers take winter gas supply from the company when enrolling customers during the months of December through March.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's request to eliminate the requirement that retail suppliers take winter gas supply from the company when enrolling customers during the months of December through March.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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. (05-M-0332SA1)

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

Electronic Tariff Filing by the Golf Course Road Lot Owners Association

I.D. No. PSC-35-05-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by the Golf Course Road Lot Owners Association for waiver of the Public Service Commission's rate setting authority and approval of its electronic tariff schedule, P.S.C. No. 1—Water.

Statutory authority: Public Service Law, sections 5(4) and 89-c(10)

Subject: Electronic tariff filing.

Purpose: To approve an electronic tariff schedule, P.S.C. No. 1—Water, for the Golf Course Road Lot Owners Association.

Substance of proposed rule: On August 4, 2005 the Golf Course Road Lot Owners Association (the company or GCRLOA), filed an electronic tariff schedule, P.S.C. No. 1 — Water, which sets forth the rates, charges, rules and regulations under which the association will provide water service to become effective November 1, 2005. The tariff defines when a bill will be delinquent and establishes a late payment charge and a returned check charge. The restoration of service charge will be \$50. GCRLOA currently provides water service to nine customers located in the Town of Copake, Columbia County. GCRLOA also requests waiver of the Public Service Commission's rate setting authority. The Commission may approve or reject, in whole or in part, or modify the petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/F96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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.

(05-W-0365SA2)

Thruway Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

One-Way Traffic; Median Strips; Passing

I.D. No. THR-35-05-00001-P

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

Proposed action: Amendment of sections 103.3, 103.4 and 103.6 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 354(5), (15) and 361(1)(a); and Vehicle and Traffic Law, section 1630

Subject: Requirements for one-way traffic, "median" strips, and driving, overtaking and passing on the Thruway.

Purpose: To update existing regulatory language so that it is consistent with current highway geometry and industry standards and promote traffic safety.

Text of proposed rule: § 103.3 One-way traffic. Except as otherwise directed by proper authority, no person shall operate, or cause to be moved, any vehicle on the Thruway system except in the direction of traffic. The driver of a vehicle entering a service area, interchange, shoulder, or deceleration lane shall enter *such area, interchange, shoulder or lane* from the [right hand lane. Upon entering a traffic lane from a service lane, interchange or access ramp, the driver of a vehicle shall use the acceleration lane and he shall enter the Thruway] *adjacent traffic lane, exercising caution so as not to interfere with or endanger traffic. Similarly, the driver of a vehicle leaving a service area, interchange, shoulder, or acceleration lane shall enter the Thruway system using the adjacent traffic lane, exercising caution so as not to interfere with or endanger traffic.*

§ 103.4 Use of the [medial] *median* strip. (a) Driving a vehicle on or across, or parking, standing or stopping a vehicle on the [medial] *median* strip is prohibited; provided, however, that these prohibitions shall not apply to:

- (1) police, maintenance or official Thruway Authority vehicles;
- (2) emergency service vehicles operated by oil companies under contract with the Thruway Authority;
- (3) towing trucks and emergency service vehicles operated by garages authorized by the Thruway Authority;

(4) certified tandem maintenance vehicles provided in the provisions governing tandem trailer operations;

(5) fire vehicles or ambulance when operated in the performance of their official duties;

(6) independent contractors' [construction] *and consultants'* vehicles [authorized by the Thruway Authority and when supervised] *when issued a U-turn authorization letter from the Thruway Authority; or*

[(7) emergency services coming to the assistance of a disabled truck or bus when such emergency service vehicle is (i) owned and operated by, or (ii) under contract with the subject company whose vehicle is disabled and provided the crossing or use of the medial strip is necessary for the purpose of towing, repairing or otherwise servicing the disabled vehicles and it is done under the supervision and with the consent of the State Police or an employee of the Thruway Authority;]

[(8) disabled vehicles in tow by any emergency service vehicle operating under the conditions set forth in paragraph (7) of this subdivision; or]

[(9)] (7) any other vehicle duly authorized by the Thruway Authority's Executive Director or his designee; provided, however, that in all cases, the operator thereof uses caution so as not to interfere with or endanger traffic.

(b) The prohibition against parking in the [medial] *median* strip shall not apply if, in the opinion of a member of the State Police, parking on the shoulder is dangerous or impractical under the conditions then existing and provided it will not interfere with maintenance operations.

§ 103.6 Driving, overtaking and passing. (a) Trucks, buses and vehicles hauling trailers are prohibited from using the extreme left lane on the [following portions of the] Thruway system[:], *as posted.*

- (1) milepost 0.0 to milepost 13.0 northbound;
- (2) milepost 44.6 to milepost 17.8 southbound;
- (3) milepost 146.9 northbound to milepost 159.5 westbound;
- (4) milepost 158.7 eastbound to milepost 147.3 southbound;
- (5) milepost 420.7 to milepost 428.8 westbound;
- (6) milepost 429.1 to milepost 420.7 eastbound;
- (7) milepost N-0.7 to milepost N-6.5 northbound;
- (8) milepost N-6.5 to milepost N-0.5 southbound;
- (9) milepost NE-3.5 to milepost NE-15.0 northbound;
- (10) milepost NE-15.0 to milepost NE-3.5 southbound;]

(b) *Trucks and vehicles hauling trailers are restricted to the right two lanes on the Thruway system, as posted.*

[(b)](c) The provisions of [subdivision] *subdivisions* (a) and (b) of this section shall not apply where the normal lanes are not available by reason of construction, accident, or otherwise, *and where the left lane is used to enter or exit an interchange.*

Text of proposed rule and any required statements and analyses may be obtained from: Marcy Pavone, Legal Assistant II, New York State Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-2867, e-mail: marcy_pavone@thruway.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

1. Statutory Authority:

Subdivision 5 of section 354 of the Public Authorities Law authorizes the Thruway Authority to make "...rules and regulations governing the use of the thruways and all other properties and facilities under its jurisdiction..." Subdivision 15 of that same section authorizes the Thruway Authority "to do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title." In addition, subdivision 1(a) of section 361 of the Public Authorities Law authorizes the Thruway Authority "...to promulgate such rules and regulations for the use and occupancy of the thruway as may be necessary and proper for the public safety and convenience, for the preservation of its property and for the collection of tolls..."

Vehicle and Traffic Law § 1630 gives the Thruway Authority the power to "...by ordinance, order, rule or regulation prohibit, restrict or regulate traffic on or pedestrian use of any highway, property or facility under its jurisdiction." Subdivisions 9 and 16 of this section specifically include the power to regulate the use of medial strips and entering and exiting roadways. Subdivision 12 of this section also grants the Thruway Authority the power to regulate the direction of traffic and the use of traffic lanes.

2. Legislative Objectives:

This amendment of § 103.3 of NYCRR Title 21 is intended to update the language regarding one-way traffic to conform to the geometry of

several interchanges. This section currently states that traffic entering an interchange and other Thruway facilities shall enter from the right-hand lane. Certain Interchanges must be entered from the left-hand traffic lanes, including Mainline Interchange 24 and New England Thruway Interchanges 10 and 12. This amendment of § 103.4 replaces “medial” with “median” as the latter is a term accepted by transportation agencies including FHWA, USDOT, and NYSDOT, and is consistent with the rules and codes of said transportation organizations. This amendment to section 103.4 also removes company owned and operated emergency service vehicles from the list of vehicles exempt from the prohibitions related to use of the median. Disabled vehicles in the median are best handled by emergency service vehicles properly equipped and authorized by the Thruway Authority to remove the disabled vehicle safely. This amendment of § 103.6 would prohibit trucks, buses, and trailers from using the extreme left lane on those portions of the Thruway that are so posted. Currently, § 103.6 lists those segments of the Thruway system where this extreme left lane restriction exists. Given the continuous changes to the Thruway system, if left in this format § 103.6 would need to be continuously amended to add or remove specific highway segments. This amendment would ensure that this rule stays current with modifications to highway configurations. This amendment of § 103.6 would also add language restricting trucks and vehicles hauling trailers to the right two lanes on the Thruway system, as posted. In areas where the Thruway has three lanes, the extreme left-hand lane serves as the passing lane and allowing larger vehicles, such as trucks, to travel in such lane can cause congestion and delay.

3. Needs and Benefits:

The purpose of this rulemaking is to bring the Thruway Authority rules and regulations regarding entering traffic into conformity with the geometry of several interchanges; change medial strips to median strips so that it is consistent with current industry terminology; restrict emergency service vehicles in the median to those equipped and authorized by the Thruway Authority to remove vehicles safely and prohibit the use of the extreme left lane by trucks, buses, and trailers on those portions of the Thruway where there are three lanes. These changes will keep the Thruway Authority current with the transportation industry and provide a safer and more efficient traveling environment for Thruway motorists.

4. Costs:

(a) The costs to regulated parties for implementation of and continuing compliance with the rule: this rule will impose no costs on regulated parties for implementation or compliance.

(b) The costs to the agency, the state and local governments for implementation and continuation of the rule: there are no significant costs associated with this rule.

5. Local Government Mandates:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

The Thruway Authority had considered no change; however, there was a need to update existing regulatory language so that it is consistent with current highway geometry, industry standards, and current federal regulations, thereby, promoting traffic safety.

9. Federal Standards:

None.

10. Compliance Schedule:

Ongoing.

Regulatory Flexibility Analysis

This regulation will have no negative impact on small businesses or local governments beyond the effect that the current regulations already have on them.

Rural Area Flexibility Analysis

This regulation does not impose any adverse impact on rural areas whether through compliance, reporting or in any other way, and as such, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities. As such, a Job Impact Statement is not required.