

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

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Mortgage Fraud Reporting

I.D. No. BNK-15-05-00006-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. BNK-15-05-00006-P was published in the *State Register* on April 13, 2005.

Subject: Mortgage fraud reporting.

Purpose: To require reporting of fraud or larceny committed in connection with a mortgage loan application.

Substance of rule: The proposed regulation obligates mortgage bankers, mortgage brokers and exempt organizations to file a report when there is a deceptive or dishonest act or practice and a report is not filed with the Banking Department under any other provision of federal or state law. This would include instances where a deceptive or dishonest act or practice is discovered to have been committed by a mortgage applicant or co-applicant, or other party not connected with the licensee, registrant or exempt organization. Subsequent reports of material developments are required. The Department will make a form for reports available. Reports will be treated as confidential.

Changes to rule: No substantive changes.

Expiration date: April 13, 2006.

Text of proposed rule and changes, if any, 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

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

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Elements of the Test Battery Used for Physical Fitness Screening

I.D. No. CJS-40-05-00022-P

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

Proposed action: This is a consensus rule making to amend section 6000.8(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 840(2)

Subject: Elements of the test battery to be used for physical fitness screening.

Purpose: To correct a syntax error regarding the number of push-ups a candidate must complete.

Text of proposed rule: Subdivision (b) of section 6000.8 of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

b) Elements of the test battery. Elements of the test battery to be used for physical fitness screening are described below. Although these elements may not be directly representative of essential job functions to be performed by an entry-level police officer, such elements do measure the candidate's physiological capacity to learn and perform the essential job functions. The minimum scores for employment as an entry-level police officer as set forth below represent the 40th percentile of fitness. If a candidate does not successfully score to the 40th percentile of fitness for each of the elements of the test battery, the candidate shall not be deemed to have successfully completed the physical fitness screening test. Nothing herein shall preclude an administrator of such screening test from substituting an element of the test battery, which such administrator has determined and validated to accurately assess the candidate's physiological capacity to learn and perform essential job functions. The 1.5 mile run shall only be administered to such individuals who have successfully completed each of the other two elements of the test battery (sit-up and push-up).

Sit-up Muscular endurance (core body) - The score indicated below is the number of bent-leg sit-ups performed in one minute.

Push-up Muscular endurance (upper body) - The score below is the [maximum] number of full body repetitions that a candidate must complete without breaks.

1.5 Mile Run Cardiovascular capacity - The score indicated below is calculated in minutes:seconds.

AGE/SEX	SIT-UP	TEST PUSH-UP	1.5 MILE-RUN
MALE			
20-29	38	29	12:29
30-39	35	24	12:53
40-49	29	18	13:50
50-59	24	13	15:14
60+	19	10	17:19
FEMALE			
20-29	32	15	15:05
30-39	25	11	15:56
40-49	20	9	17:11
50-59	14	9	19:10
60+	6	9	20:55

Text of proposed rule and any required statements and analyses may be obtained from: Mark Bonacquist, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, (518) 457-8420

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

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

Consensus Rule Making Determination

Regulations regarding physical fitness screening for candidates for appointment in the competitive class of the civil service as municipal police officers have been promulgated at 9 NYCRR section 6000.8. The regulation currently sets forth the minimum number of sit-ups and push-ups a candidate must complete, as well as the minimum time within which the candidate must complete a 1.5 mile run. Recently, Division staff were advised by a local government official of a syntax error in subdivision (b) of section 6000.8 with regard to the number of push-ups a candidate must complete. It currently states: "Push-up Muscular endurance (upper body) - The score below is the maximum (sic) number of full body repetitions that a candidate must complete without breaks." However, as is clear from the text of subdivision (b), the score represents the number of push-ups a candidate must complete without breaks, not the maximum number of push-ups the candidate must complete. In this context, it makes no sense to require a "maximum" number of sit-ups. Given the technical purpose and non-controversial nature of the proposal, the Division has determined that no person is likely to object to the adoption of this rule making.

Job Impact Statement

The proposal merely corrects in error in syntax regarding the number of push ups a candidate for appointment in the competitive class of the civil service as a municipal police officer must complete. As such, it is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

(b) The counsel shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the counsel shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.

[(c) The chief operating officer shall advise the commissioner on the formulation and review of policy, budget planning and development, legislative program developments, and program planning and evaluation, shall supervise the administration of specific department programs as delegated by the commissioner, and shall perform special assignments as directed by the commissioner.]

[(d)] (c) There shall be in the department, in addition to the divisions established by statute, such other divisions and such bureaus as shall be established by the commissioner with the approval of the Regents.

2. Section 3.9 of the Rules of the Board of Regents is amended, effective December 29, 2005, as follows:

§ 3.9 Appointments.

The commissioner shall appoint all officers and employees of the department. Appointments to the positions of [chief operating officer,] deputy commissioner, associate commissioner, assistant commissioner and director of the Office of Professional Discipline shall be made with approval of the Board of Regents.

3. Section 3.15 of the Rules of the Board of Regents is amended, effective December 29, 2005, as follows:

§ 3.15 Authorization to execute contracts.

(a) The following persons only are authorized to execute contracts on behalf of the State Education Department:

- (1) Commissioner of Education;
- [(2) Chief Operating Officer;]
- [(3)] (2) Counsel and Deputy Commissioner for Legal Affairs;
- [(4)] (3) Deputy Counsel; and
- [(5)] (4) Assistant Counsel.

(b) . . .

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

Data, views or arguments may be submitted to: Kathy A. Ahearn, Counsel and Deputy Commissioner for Legal Affairs, Office of Counsel, Education Department, State Education Bldg. Rm. 148, Albany, NY 12234, (518) 474-6400

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

Education Law section 305(1) provides that the Commissioner is the chief executive officer of the state system of education and of the Board of Regents. Section 305(6) provides that the Commissioner shall be responsible for the proper administration of the various officers and divisions of the State Education Department.

LEGISLATIVE OBJECTIVES:

Consistent with the authority granted to the Board of Regents and Commissioner of Education pursuant to Education Law sections 101 and 305, the proposed amendment repeals provisions relating to the appointment, duties and responsibilities of the position of Chief Operating Officer.

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, resulting in the elimination of the position of Chief Operating Officer.

COSTS:

- (a) Costs to State: None.
- (b) Costs to local government: None.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Duties and Responsibilities of the Chief Operating Officer

I.D. No. EDU-40-05-00003-P

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

Proposed action: Amendment of sections 3.8, 3.9 and 3.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided) and 305(1) and (6)

Subject: Duties and responsibilities of the chief operating officer of the State Education Department.

Purpose: To repeal provisions relating to the chief operating officer.

Text of proposed rule: 1. Section 3.8 of the Rules of the Board of Regents is amended, effective December 29, 2005, as follows:

§ 3.8 [Chief operating officer, counsel] *Counsel* and other personnel.

(a) There shall be [a chief operating officer,] a counsel to the Education Department and the University and such other personnel as may be appointed from time to time by the commissioner.

(c) Costs to private regulated parties: None.

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

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

The proposed amendment does not impose any reporting or other paperwork requirements.

LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

DUPLICATION:

The proposed amendment relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, resulting in the elimination of the position of Chief Operating Officer. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed amendment, which relates solely to the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on public and private sector interests in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect such interests, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates solely to the internal organization of the State Education Department and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that no substantial impact will occur, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensing Examination and Continuing Education Requirements for Architects

I.D. No. EDU-40-05-00004-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 69.1(c), 69.2, and 69.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6506(1); 6507(2)(a); 7304(4); and 7308(2) and (4)

Subject: Licensing examination and continuing education requirements for architects.

Purpose: To establish requirements for the licensing examination in architecture and for continuing education that licensed architects must complete to be registered to practice this profession in New York State.

Substance of proposed rule (Full text is posted at the following State website: www.op.nysed.gov/part69-2005.htm): The Commissioner of Education proposes to amend sections 69.1(c), 69.2, and 69.6 of the Regulations of the Commissioner of Education, relating to licensing examination and continuing education requirements for architects. The following is a summary of the substance of the proposed regulation:

Subdivision (c) of section 69.1 of the Regulations of the Commissioner of Education is repealed. This eliminates a provision that permitted conditional admission to the licensing examination in architecture.

Section 69.2 is amended to delete the numeric grade for the licensing examination in architecture and provide that the State Education Department may accept examination results reported on a pass/fail basis. In addition, the section is amended to provide time limits on the retention of credit for divisions of the licensing examination in architecture as follows: Applicants who have passed a division of the examination prior to January 1, 2006 shall retain credit for that examination division without time limitation. Applicants who have passed a division of the examination on or after January 1, 2006 shall retain credit for that division for a five-year period that begins on the date of the administration of that examination division.

Section 69.6 concerns continuing education requirements in architecture. Subdivision (c) of section 69.6 is deleted and a new subdivision (c) is added. Subparagraph (i) of paragraph (1) of this subdivision sets forth the requirement: During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of formal continuing education acceptable to the department, as defined in paragraph (2) of this subdivision, provided that the number of hours of such continuing education that consists of other educational activities as prescribed in paragraph (2) of this subdivision shall be limited in accordance with the requirements set forth in section 7308(2) of the Education Law. A minimum of 24 hours of such continuing education shall be in the areas of health, safety and welfare in accordance with the limitations and requirements set forth in section 7308(2) of the Education Law. Subparagraph (ii) sets forth a proration formula for each registration period of less than three years.

Paragraph (2) of subdivision (c) of section 69.6 defines continuing education that is acceptable to the State Education Department. Such continuing education must be in the subjects prescribed in subparagraph (i) of this paragraph and be the types of learning activities prescribed in subparagraph (ii) of this paragraph.

Subparagraph (i) of paragraph (2) prescribes that subjects for acceptable continuing education be formal courses of learning which contribute to professional practice in architecture: shall contribute to professional practice in architecture and lists curricular areas relating to the health, safety, and welfare of the public. The list of curricular areas has not been changed, except that the subjects, insurance and construction contract law, have been deleted and the subject zoning has been added.

Subparagraph (ii) of paragraph (2) prescribes acceptable continuing education shall be the types of learning activities prescribed in this subparagraph and be subject to the limitations prescribed in this subparagraph. The subparagraph specifies acceptable learning activities.

Subdivision (e) of section 69.6 prescribes the requirement for a licensee returning to the practice of architecture after a lapse in practice, defined as not being registered to practice in New York State. This subdivision states the existing requirement that formerly was in subdivision (c).

Subdivision (e) of section 69.6 is relettered (f) prescribes requirements for conditional registration when the continuing education has not been met. It is nonsubstantially amended in wording to be consistent with requirements in the other design professions of engineering and land surveying.

Subdivision (f) of section 69.6 is relettered (g) and amended to include requirements for recordkeeping by the licensee to accommodate the fact that the licensee may complete educational activities other than course work to meet the continuing education requirement.

Subdivision (g) of section 69.6 is relettered (h) and states the requirements for the measurement of continuing education study. The subdivision is nonsubstantially revised to be consistent with requirements in the other design professions of engineering and land surveying.

Subdivision (h) of section 69.6 is relettered (i). This subdivision contains requirements for the approval of sponsors of continuing education to

licensed architects. Paragraph (1) clarifies that the approval is for sponsors of continuing education to licensed architects in the form of courses of learning or self-study programs, and requires the sponsor to meet the requirements of either paragraph (2) or (3) of this subdivision.

Paragraph (2) of subdivision (i) provides that the Department will deem approved as a sponsor of continuing education to licensed architects in the form of courses of learning or self-study programs a sponsor of continuing education that is approved by organizations prescribed in the paragraph. Currently the regulation lists The American Institute of Architects Continuing Education System (AIA/CES). The amendment adds the International Association for Continuing Education and Training (IACET) and the Practicing Institute of Engineering to the list. This paragraph is also amended to provide that the Department will deem approved as a sponsor a postsecondary institution that has authority to offer programs that are registered pursuant to Part 52 of this Title or authority to offer equivalent programs that are accredited by an acceptable accrediting agency, whether or not the coursework is credit bearing. The current regulation restricts the approval to credit bearing courses at such institutions.

Paragraph (3) of subdivision (i) sets the standards for Department review of sponsors. The amendment is nonsubstantially amended to clarify that such approval is for the sponsor to offer continuing education to licensed architects in the form of courses of learning or self-study programs.

Subdivision (i) of section 69.6 is relettered (j) and establishes fees. It is nonsubstantially amended to correct references to relettered subdivisions, and clarify that sponsors are being approved for continuing education to licensed architects in the form of courses of learning or self-study programs.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to the practice of the professions and to promulgate rules to carry out such supervision.

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

Subdivision (4) of section 7304 of the Education Law requires an applicant for licensure in architecture to pass a licensing examination in accordance with Commissioner's regulations.

Subdivision (2) of section 7308 of the Education Law, as amended by Chapter 706 of the Laws of 2004, specifies the mandatory continuing education requirement for architects.

Subdivision (4) of section 7308 of the Education Law, as amended by Chapter 706 of the Laws of 2004, authorizes the Commissioner of Education to prescribe in regulations standards for mandatory continuing education for architects.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by establishing licensing examination and continuing education requirements in the profession of architecture.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish requirements for the licensing examination in architecture and for mandatory continuing education that licensed architects must complete to be registered to practice this profession in New York State.

Specifically, the amendment establishes a grade retention provision for the licensing examination in architecture. Applicants who have passed a division of the examination on or after January 1, 2006 will retain credit for that division for a five-year period that begins on the date of the administration of that examination division. In addition, the amendment provides that the results of the licensing examination will be reported on a pass/fail basis, rather than by numerical grade. These changes are supported by the

State Board for Architecture and are needed to conform to policies of the National Council of Architectural Registration Boards ("NCARB"), the national organization that gives the licensing examination in architecture.

The amendment also repeals a provision that permits an applicant for licensure to be conditionally admitted to the licensing examination based upon meeting the experience requirement within 90 days after the date of the examination. This provision is no longer needed because the examination is continuously available. It is unnecessary to accommodate applicants who are nearing completion of the experience requirement and want to take the licensing examination in a timely manner.

The amendment makes changes to the mandatory continuing education requirements for architects to implement the requirements of section 7308 (2) and (4) of the Education Law, as amended by Chapter 706 of the Laws of 2004. This statutory change permits licensed architects to complete educational activities other than formal coursework to meet the mandatory continuing education requirement. The regulation specifies the types of activities that an architect may engage in to meet the requirement.

The amendment also makes a change in the permissible subject matter for the continuing education. The amendment deletes the subjects, insurance and construction contracts law, because these subjects do not directly concern the practice of architecture, and adds the subject zoning as it relates to the improvement and/or protection of the health, safety and welfare of the public.

The amendment adjusts recordkeeping requirements that licensees must meet concerning mandatory continuing education. As stated above, the amendment permits continuing education to include specified educational activities other than formal coursework. The recordkeeping change is needed to specify the records that must be maintained for the other educational activities.

The amendment adjusts the provisions relating to approval of sponsors of continuing education to licensed architects. The Department will deem approved a sponsor that is approved by certain organizations that have adequate standards for such approval. Currently the regulation lists The American Institute of Architects Continuing Education System (AIA/CES). The amendment adds the International Association for Continuing Education and Training (IACET) and the Practicing Institute of Engineering to the list of organizations. This paragraph is also amended to provide that the Department will deem approved as a sponsor a postsecondary institution that has authority to offer programs that are registered pursuant to Part 52 of this Title or authority to offer equivalent programs that are accredited by an acceptable accrediting agency, whether or not the coursework is credit bearing. The current regulation restricts the approval to credit bearing courses at such institutions. These changes make the regulation consistent with the requirements in the other design professions of engineering and land surveying.

Finally, the amendment restructures the order and nonsubstantially changes wording in the continuing education requirements to be more consistent with the structure and wording used in the other design professions of engineering and land surveying. This will assist licensees to understand these requirements and make the requirements easier to administer.

4. COSTS:

(a) Costs to State Government: The amendment will not impose any additional costs on State government. The State Education Department will continue to review whether applicants for licensure in architecture meet licensing examination requirements and whether licensees are complying with mandatory continuing education requirements. Existing staff and resources of the State Education Department will continue to be used for these tasks.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None. The proposed amendment will not impose any additional cost on applicants for licensure in architecture or on licensed architects.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments establishes requirements relating to the licensing examination in architecture and continuing education that licensed architects must complete in order to remain registered to practice in New York State. The amendment does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The existing regulation contains recordkeeping requirements that a licensed architect must maintain for continuing education that is formal

coursework. The amendment further specifies the records that a licensee must maintain for other educational activities.

7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of this amendment. Therefore, the amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no Federal standards concerning the subject matter of this amendment, licensing examination and continuing education requirements for architects.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment affects individuals who apply for licensure in architecture and those who are licensed architects. It establishes requirements for the licensing examination in this field and mandatory continuing education requirements that licensed architects must meet.

The proposed amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments, or have any adverse economic effect on them. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. All 13,848 licensed architects who are registered to practice in New York would be subject to the requirements of the proposed amendment. Of these, 774 reported that their permanent address of record is in a rural county of the State. In addition, the proposed amendment would affect all applicants for licensure in architecture. Each year, about 575 apply to the State Education Department for licensure in this field. The Department estimates that about 52 will come from a rural county of New York State.

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

The amendment establishes a grade retention provision for the licensing examination in architecture. Applicants who have passed a division of the examination on or after January 1, 2006 will retain credit for that division for a five-year period that begins on the date of the administration of that examination division. In addition, the amendment provides that the results of the licensing examination will be reported on a pass/fail basis, rather than by numerical grade.

The amendment repeals a provision that permits an applicant for licensure to be conditionally admitted to the licensing examination based upon meeting the experience requirement within 90 days after the date of the examination.

The amendment makes changes to the mandatory continuing education requirements for architects to implement the requirements of section 7308(2) and (4) of the Education Law, as amended by Chapter 706 of the Laws of 2004. The amendment specifies educational activities other than formal coursework that a licensed architect may complete to meet the mandatory continuing education requirement.

The amendment makes a change in the permissible subject matter for the continuing education. The amendment deletes the subjects insurance and construction contract law and adds the subject zoning as it relates to the improvement and/or protection of the health, safety and welfare of the public.

The amendment adjusts recordkeeping requirements that licensees must meet concerning mandatory continuing education. The change specifies records that must be maintained for educational activities other than formal coursework.

The amendment adjusts the provisions relating to approval of sponsors of continuing education to licensed architects. The Department will deem approved a sponsor that is approved by certain organizations that have adequate standards for such approval. Currently the regulation lists The

American Institute of Architects Continuing Education System (AIA/CES). The amendment adds the International Association for Continuing Education and Training and the Practicing Institute of Engineering to the list of organizations. In addition, the amendment provides that a postsecondary institution that offers college programs registered by the Department or equivalent accredited programs is deemed an approved sponsor of continuing education, whether or not the coursework is credit bearing. The current regulation provides that such institutions would only be deemed approved for credit coursework.

The proposed amendment does not impose a need for professional services and does not establish additional reporting requirements on licensed architects or applicants for licensure in architecture, including those located in rural areas of New York State.

3. COSTS:

The proposed regulation does not impose additional costs on regulated parties, including licensed architects or applicants for licensure in architecture who are located in rural areas of New York State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes changes to an existing regulation of the Commissioner of Education regarding the licensing examination in architecture and continuing education requirements that a licensed architect must complete to be registered to practice in New York State. The existing regulation does not make exceptions for individuals who live or work in rural areas. The Department has determined that, as with the existing regulation, the proposed amendment should apply to all licensed architects and applicants for licensure in this field, regardless of their geographic location, to help ensure competency in this field in all geographic regions of the State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing parties having an interest in the practice of architecture. Included in this group were the State Board for Architecture and professional associations representing this profession. These groups have members who live or work in rural areas. Each organization has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

The proposed amendment concerns the licensing examination in architecture and mandatory continuing education requirements for architects. Specifically, the proposed amendment discontinues an unnecessary conditional admission requirement for the licensing examination, establishes standards for the retention of examination credit, and provides that the results of the examination will be reported on a pass/fail basis rather than by numerical grade. It also establishes standards for acceptable continuing education for architects, consistent with statutory requirements. These regulatory changes will have no effect on the number of jobs or employment opportunities in the field of architecture or any other field.

Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Chartering, Incorporation and Registration of Museums, Historical Societies and Cultural Agencies

I.D. No. EDU-28-05-00009-RP

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

Revised action: Repeal of sections 3.27 and 3.30 and addition of new sections 3.27 and 3.30 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 216 (not subdivided) and 217 (not subdivided)

Subject: Chartering, incorporation and registration of museums, historical societies and cultural agencies.

Purpose: To provide chartered museums, historical societies and cultural agencies with criteria they must meet to be incorporated and registered by the Board of Regents; require boards to adopt mission statements and a code of ethics; obtain IRS tax-exempt status; require audit committee reviews; provide new protections for facilities and collections; and allow

historical societies without collections to exchange a charter for a Regents certificate of incorporation.

Substance of revised rule: The State Education Department proposes to amend sections 3.27 and 3.30 of the Rules of the Board of Regents, effective December 29, 2005.

Since publication of a Notice of Proposed Rule Making in the State Register on July 13, 2005, the proposed rule has been substantially revised to delete paragraph (viii) of paragraph (6) of subdivision (c) of section 3.27. In addition, a nonsubstantial revision was made in paragraph (10) of subdivision (a) of section 3.27, relating to the definition of "deaccession," to provide that the act of deaccession includes "... the act of recording/processing a removal from an institution's collection." The rule, as originally published, inconsistently and incorrectly referred to the "addition to", rather than "removal from", an institution's collection.

The following is a summary of the provisions of the revised proposed rule.

In general, section 3.27 is amended to establish criteria for Regents chartering and registration of museums and historical societies with collections, and section 3.30 is amended to provide criteria for the incorporation and registration of historical societies without collections and cultural agencies.

The substantive amendments are as follows:

Section 3.27(a) provides for definitions of terms used in section 3.27, including an expanded definition of "museum" to also include "halls of fame, zoos, aquariums, botanical gardens and arboretums" and to include among objects ordinarily owned, exhibited or maintained, and utilized, "artifacts, art, and specimens, including non-tangible electronic, video, digital and similar art." Definitions are also provided for "historical society with collections", "institution", "accessible", "accession", "catalogue", "collection", "collection care", "collection management", "deaccession", "diversity", "education/public programs and exhibitions", "hours of operation", "interpretation", "mission statement", "operating budget", an expanded definition of "professional staff" including an exception to the existing requirement for paid staff, for institutions having an operating budget of \$100,000 or less, "public trust", and "research".

Section 3.27(b) prescribes requirements for the provisional and absolute chartering of museums and historical societies with collections.

Section 3.27(c) prescribes requirements for the registration of museums and historical societies with collections, including requirements relating to organization, mission, governance, finance, facilities, collections care and management, and education, interpretation and presentation.

Section 3.27(c)(1) establishes organizational criteria including requirements that an institution seeking registration be chartered, incorporated or in operation a minimum of 5 years, be in compliance with all applicable local, state and federal laws and regulations; maintain a mailing address within New York State adequate for legal service, have sufficient financial and physical resources, and be open and accessible to the public on a regular basis, including a requirement that institutions having an operating budget in excess of \$100,000 per year shall be open to the public a minimum of 1,000 hours per year.

Section 3.27(c)(2) prescribes requirements relating to the mission of the museum or historical society with collections, including requirements for a written mission statement, that the mission statement be reviewed, and revised as necessary, at least every 5 years.

Section 3.27(c)(3) establishes governance criteria, including requirements that a board of trustees shall have no more than one-third (1/3) of its members related to each other by birth, marriage or domicile; that in any instance where there is a relationship between the institution and another entity, there shall be no more than a one-third (1/3) overlap between the officers and/or directors; that the museum or historical society with collections have a written and board-approved code of ethics that applies to trustees, administrators, staff and volunteers and is reviewed each year; and that the institution effectively advances diversity of membership and participation in the institution's mission.

Section 3.27(c)(4) establishes finance criteria, including requirements for a board-constituted audit committee for all institutions regardless of size of operating budget; for an independent audit by a certified public accountant for institutions whose operating budget exceeds \$250,000; and for an independent review by a certified public accountant if the institution's operating budget is at least \$100,000 but no more than \$250,000. There is no requirement for an independent audit or review if the institution's operating budget is below \$100,000. An institution will conduct its financial affairs in such a way as not to jeopardize the ownership or integrity of its collections; and will obtain and maintain tax-exempt status

under section 501(c)(3) or other applicable section of the Internal Revenue Code.

Section 3.27(c)(5) establishes criteria for facilities, including requirements for accessibility to those with disabilities, emergency action and disaster preparedness plans, an adequate, working alarm system, and a requirement that a historic structure be restored and/or maintained according to accepted historic preservation practices.

Section 3.27(c)(6) adds criteria for collections care and management, including a statement that collections or proceeds derived therefrom shall not be used as collateral for a loan, and a requirement that collections shall not be capitalized.

Section 3.27(c)(6) retains existing language that the acquisition and deaccessioning of collections by a museum shall be consistent with the mission and purposes of the museum; that requires a collection management policy; and requires that all or any part of proceeds from deaccessioning of collections may not be used for any purpose other than acquisition, preservation, protection or care of collections.

Section 3.27(c)(6) eliminates an existing provision that the Regents may grant an exception on application by a museum that wishes to apply all or any part of proceeds from deaccessioning of collections to any purpose other than acquisition, preservation, protection or care of collections.

Section 3.27(c)(7) adds new criteria for education, interpretation and presentation.

Section 3.27(d) requires each museum and historical society with collections to file annual reports with the Commissioner.

Section 3.27(e) provides criteria for the use of corporate names by a museum or historical society with collections, including use of the terms "National," "American," "United States," "World," "International," and similar geographically descriptive terms in a corporate name, and restricts use of the word "library" and "museum" in a corporate name unless the institution's charter provides authority to operate such and the library or museum operation meets the requirements of the Regents Rules and Commissioner's Regulations.

Section 3.27(f) requires a museum or historical society with collections to comply with State law relating to dissolution and distribution of assets.

Section 3.30 is amended to provide criteria for the incorporation and registration of historical societies without collections and cultural agencies.

Section 3.30(a) provides additional definitions, including a revised definition for "historical society without collections"; a definition for "cultural agency"; new definitions for "corporation", "accessible", "diversity", "education", "mission statement", and "operating budget", and a revised definition for "hours of operation" to replace the existing definition of "regular schedule."

Section 3.30(b) prescribes criteria for incorporation of historical societies without collections and cultural agencies by means of a Regents certificate of incorporation.

Section 3.30(c) prescribes criteria for registration of historical societies without collections and cultural agencies, including those relating to organization, mission, governance, finance, facilities, and education and interpretation.

Section 3.30(c)(1) establishes organizational criteria including requirements that a historical society without collections and a cultural agency be in compliance with all applicable local, state and federal laws and regulations; maintain a mailing address within New York State adequate for legal service, and be open and accessible to the public on a regular basis, including a requirement that corporations having an operating budget in excess of \$100,000 per year shall be open to the public a minimum of 1,000 hours per year.

Section 3.30(c)(2) prescribes requirements relating to the mission of historical societies without collections and cultural agencies, including requirements for a written mission statement, that the mission statement be reviewed, and revised as necessary, at least every 5 years.

Section 3.30(c)(3) prescribes governance criteria of historical societies without collections and cultural agencies, including a statement that the corporation's leadership consist of at least one person, paid or unpaid, who commands an appropriate body of knowledge and the ability to plan and implement programs of educational benefit to the public and which reflect the purpose of the corporation; that a board of trustees shall have no more than one-third (1/3) of its members related to each other by birth, marriage or domicile; that in any instance where there is a relationship between the corporation and another entity, there shall be no more than a one-third (1/3) overlap between the officers and/or directors; that the corporation have a written and board-approved code of ethics that applies to trustees, adminis-

trators, staff and volunteers and is reviewed each year; and that the corporation effectively advances diversity of membership and participation in the corporation's mission.

Section 3.30(c)(4) establishes financial criteria of historical societies without collections and cultural agencies, including requirements for a board-constituted audit committee for all corporations regardless of size of operating budget; for an independent audit by a certified public accountant for corporations whose operating budget exceeds \$250,000; and for an independent review by a certified public accountant if the corporation's operating budget is at least \$100,000 but no more than \$250,000. There is no requirement for an independent audit or review if the corporation's operating budget is below \$100,000. A corporation will obtain and maintain tax-exempt status under section 501(c)(3) or other applicable section of the Internal Revenue Code.

Section 3.30(c)(5) establishes criteria for facilities of historical societies without collections and cultural agencies, including requirements for accessibility to those with disabilities, emergency action and disaster preparedness plans, an adequate, working alarm system, and a requirement that a historic structure be restored and/or maintained according to accepted historic preservation practices.

Section 3.30(c)(6) adds new criteria for education and interpretation conducted by historical societies without collections and cultural agencies.

Section 3.30(d) requires that each historical society without collections and each cultural agency file an annual report with the Commissioner.

Section 3.30(e) prescribes criteria for the use of corporate names by historical societies without collections and cultural agencies.

Section 3.30(f) requires historical societies without collections and cultural agencies to comply with State law relating to dissolution and distribution of assets.

Revised rule compared with proposed rule: Nonsubstantive changes were made in section 3.27(c)(6)(viii) was deleted.

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

Data, views or arguments may be submitted to: Clifford A. Siegfried, Assistant Commissioner for Museums, New York State Museum, Cultural Education Center, Rm., 3023, Albany, NY 12230, c/o Museum Chartering Office, (518) 473-3131, e-mail: dpalmqui@mail.nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on July 13, 2005, the proposed rule has been revised as follows:

A nonsubstantial revision was made in paragraph (10) of subdivision (a) of section 3.27, relating to the definition of "deaccession," to provide that the act of deaccession includes "... the act of recording/processing a removal from an institution's collection." The rule, as originally published, inconsistently and incorrectly referred to the "addition to", rather than "removal from", an institution's collection.

A substantial revision was made by deleting subparagraph (viii) of paragraph (6) of subdivision (c) of section 3.27. This provision would have prohibited a museum or historical society with collections from acquiring title to any property that is known to the institution, or may reasonably be suspected by the institution, of having problematic or unclear provenance, including but not limited to, actions to recover property allegedly stolen or otherwise misappropriated in "areas of Nazi influence" during "the Nazi period" as those terms are defined in the subparagraph. The provision was based, in part, upon similar language appearing in proposed 2005 legislation (A.7518/S.4738) that was subsequently vetoed by the Governor. In view of the veto, it was determined that this provision should be deleted.

The above revisions to the proposed rule do not require any further changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on July 13, 2005, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed rule, as so revised, applies to museums, historical societies and related cultural agencies chartered, or otherwise incorporated by, the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the revised rule that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for

small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on July 13, 2005, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revisions to the proposed rule do not require any changes to the previously published Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on July 13, 2005, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, applies to museums, historical societies and related cultural agencies chartered, or otherwise incorporated by, the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on July 13, 2005, the State Education Department received the following comments:

1. COMMENT:

The outgoing president of the Museum Association of New York (MANY) wrote, "You and the Regents should know that you have the solid support of the MANY Board and the museum community in New York. It has taken us a while to be sure that we were incorporating the concerns of our diverse constituency. But I believe that we have reached a broad consensus."

DEPARTMENT RESPONSE:

Because of the nature of the comment, no response is required.

2. COMMENT:

One institution noted a typographical error in the definition of "deaccession" in that the act of deaccessioning should be defined as "the act of recording/processing a removal from an institution's collection" rather than "an addition to" the collection.

DEPARTMENT RESPONSE:

We corrected the error in the definition of "deaccession" by stating that the act of deaccessioning is "the act of recording/processing a removal from an institution's collection." This change constitutes a clarification of existing language and is not a substantial change in the rule.

3. COMMENT:

One medium-sized history museum noted that it would be a hardship to hire paid staff to meet the new requirement that a museum with an operating budget of over \$100,000 must be open to the public a minimum of 1,000 hours per year.

DEPARTMENT RESPONSE:

We note that the new rule does not require an institution to hire paid staff to open a minimum of 1,000 hours, but instead requires "paid and/or volunteer personnel who possess sufficient training and knowledge to meet the requirements of its mission and the needs of its collections."

4. COMMENT:

Two medium-sized history museums stated that it would be difficult to meet the new requirement to be open a minimum of 1,000 hours per year; that unpaid volunteers were becoming scarcer and harder to recruit; and that the budget would not support hiring paid docents. One of these museums is open 600 hours a year and the other is open "close" to 1,000 hours. A third medium-sized museum wrote to say we should exclude more categories of what constitutes income from our definition of "operating budget" so as to reduce the number of institutions covered by the requirement. A fourth institution, a medium-sized historic house museum, wrote that we should exclude all "special grant applications" from the calculation of "operating income"; exempt funds raised for care of collections; average an institution's income over a three-year period in calculating operating income; and total all the hours that the institution provides public services (such as lectures, special tours by appointment and school programs) in the calculation of 1,000 hours.

DEPARTMENT RESPONSE:

The new requirement that a museum with a budget of over \$100,000 open its facility a minimum of 1,000 hours is based on the current Regents rule definition in 3.27(a)(5) of "Schedule," namely, "The term schedule

means regular hours which constitute substantially more than a token opening, so that access is reasonably convenient to the public.” We proposed the new language in order to provide a specific number of hours and avoid different interpretations of what constitutes “reasonably convenient.” In response to the specific concerns, we analyzed the budgets and hours of the two medium-sized history museums. One museum with a \$180,000 annual budget currently opens its historic home for 600 hours per year; we determined it would cost approximately \$20,000 per year to pay a docent to open an additional 400 hours. The other museum is close to being open 1,000 hours and in the future we believe could achieve this goal. In response to the two medium-sized museums that wrote regarding the categories of what constitutes income in our definition of “operating budget,” we note that grants can be awarded for various purposes, but that grants awarded for capital improvements, endowment and care of collections are already excluded from the calculation of operating income. We have also found that an institution’s operating income over three-year periods is usually stable and does not need to be averaged, and that jumps in income are usually due to a successful capital campaign or a gift to endowment, which are categories already excluded in the calculation of operating income. As to the comment that we total all the hours that the institution provides public services, including lectures, special tours by appointment, school programs and the like, we again believe the institution’s facility should be accessible to the public at stated hours which are reasonable convenient.

5. COMMENT:

An attorney for a large art museum wrote that we should drop language that would forbid an institution “to acquire title to any property that is known to the institution, or may reasonably be suspected by the institution, of having problematic or unclear provenance, including but not limited to, actions to recover property allegedly stolen or otherwise misappropriated in areas of Nazi influence during the Nazi period,” for the reason that the Regents rules cannot “confer title to any property,” that New York law “already states that one cannot acquire good title to stolen work,” and that the words “problematic or unclear provenance” are unclear.

DEPARTMENT RESPONSE:

The provision was based, in part, upon similar language appearing in proposed 2005 legislation (A.7518/S.4738) that was subsequently vetoed by the Governor. In view of the veto, the proposed rule has been revised to delete this provision. The Department will consider proposing a similar amendment as a separate rule making in the event that legislation on this subject is subsequently enacted.

6. COMMENT:

One smaller institution asked if we meant to include third and fifth cousins and other distant relatives when we require that not more than 1/3 of board members may be related to each other by birth or marriage; and one small historical society suggested we redefine the relationship as limited to “immediate family.”

DEPARTMENT RESPONSE:

In regard to third and fifth cousins and other distant relatives serving on boards, we believe that such relationships should be included in the definition. Boards of not-for-profit corporations owe a duty to the public to have limited blood and marriage relationships, including those beyond “immediate family”, that could possibly limit the objectivity of board members in conducting business.

7. COMMENT:

One large county historical society asked whether an audit committee is needed if there is already a board-constituted finance committee in place.

DEPARTMENT RESPONSE:

We believe that all corporations regardless of size should appoint an audit committee; and that a larger corporation with an existing finance committee should still appoint an audit committee which does not include the president and treasurer so as to provide independent review of the audit.

8. COMMENT:

One smaller historical society noted that we dropped several proposed requirements relating to accessioning and deaccessioning of collections, and asked if this is a change of focus, and whether we would issue later documents providing additional guidance.

DEPARTMENT RESPONSE:

In the proposed rule we did drop several proposed requirements relating to accessioning and deaccessioning of collections, and we will provide additional guidance and direction in a revised and enhanced sample collection management policy.

9. COMMENT:

One large museum asked if we can be specific in our definition of “diversity” and specifically enumerate groups of individuals, such as women and African-Americans, that would constitute a “diverse” board.

DEPARTMENT RESPONSE:

Section 3.27(a)(11) defines “Diversity” to mean “broadly inclusive participation in every aspect of governance, staff, operations and programs to represent the community and constituency served in terms of race, ethnicity, gender, economic background and geography.” We believe that this definition provides a sufficient understanding of what constitutes “diversity” and that the application of the definition to specific situations may be best resolved through the issuance of guidance.

10. COMMENT:

A small historical society agreed that emergency action and disaster preparedness plans are worthwhile, but noted that plans for a small facility would be limited in scope. The same society also asked what constituted an “adequate” working alarm system for a facility, and noted its facility is in a populated area near a fire station and a State Trooper substation.

DEPARTMENT RESPONSE:

We will provide the text of sample emergency action and disaster preparedness plans, and we understand that such plans would be limited in scope for a small facility. We advise a museum with a facility that it consult the local fire marshal, fire department, security consultants, vendors and others to determine that it has an adequate working alarm system for its facility.

11. COMMENT:

A medium-sized history museum asked us to provide an outline or key points for developing a written code of ethics and a disaster preparedness plan.

DEPARTMENT RESPONSE:

We will provide the text of a sample code of ethics and disaster preparedness plan.

Office of General Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Freedom of Information Law and Access to Records

I.D. No. GNS-40-05-00023-P

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

Proposed action: This is a consensus rule making to amend sections 330-1.5, 330-1.7 and 330-1.8 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; Public Officers Law, sections 87 and 89; L. 2003, ch. 403; and L. 2005, ch. 22

Subject: Freedom of Information Law and access to records.

Purpose: To bring the regulation into conformity with the Public Officers Law regarding agency response to requests for records and with respect to records containing information on critical infrastructure.

Text of proposed rule: Section 330-1.5 is amended as follows:

(b) (1) Within five business days of the receipt of a written request for a record reasonably described, the records access officer shall make such record available, deny the request in writing, or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request shall be granted or denied, including, where appropriate, a statement that access to the records will be determined in accordance with Section 330-1.7 of this Part. If the Office of General Services determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within 20 business days from the date of the acknowledgment of the receipt of the request, the agency shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. Failure of the Office of General Services to conform to the provisions of this subdivision shall constitute a denial of access to records subject to appeal pursuant to subdivision 330-1.8(b) of this Part.

Section 330-1.7 is amended as follows:

§ 330-1.7 [Trade Secret Designation] *Submission of records containing trade secrets or critical infrastructure information.*

(a)(1) For purposes of this Part, trade secret means any record including, but not limited to: any proprietary data concerning past, present or planned future distribution, sales volumes, costs, or prices; customer or client lists; devices; processes or plans; formulas; patterns; procedures; studies; analyses, plans, and surveys; compounds; cost records; compilations of information and other confidential or proprietary information which is not generally published or divulged, the disclosure of which would cause substantial injury to the competitive position of the commercial enterprise, or if openly disclosed would permit an unfair advantage to competitors of the subject enterprise.

(2) For purposes of this Part, *critical infrastructure means systems, assets, places or things, whether physical or virtual, so vital to the State that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy.*

(b) A person may, at the time of submission of a record, request that the agency designate all or a portion of such record as a trade secret, and except such record from disclosure under paragraph (d) of subdivision 2 of section 87 of the Public Officers Law, and may at any time, request that the agency designate all or a portion of such record as critical infrastructure information, and except such record from disclosure under subdivision 2 of section 87 of the Public Officers Law. The record for which a trade secret designation is sought shall be labeled using such words as "trade secret", "confidential", "proprietary information" or words of similar import. Such request shall be in writing, identify the record [constituting a trade secret and the reasons why disclosure of such record would cause substantial injury. The request shall indicate, if appropriate:] for which a designation and exception from disclosure is being requested and state the reasons why the information should be excepted from disclosure. Requests for designation and exception from disclosure of trade secrets shall indicate, if appropriate:

(1) the specific record requested to be considered a trade secret, including, where applicable, page, form, line, chart or table designation;

(2) the confidential nature of the record, including a description of the nature and extent of the injury to the person's competitive position such as unfair economic or competitive damage which would be incurred were the record to be disclosed;

(3) whether the record is treated as confidential by the submitter, including whether it has been made available;

(4) whether any patent, copyright, or similar legal protection exists for the record;

(5) whether the public disclosure of such record is otherwise restricted by law, and the specific source and contents of such restrictions;

(6) the date upon which such record will no longer need to be kept confidential, if applicable;

(7) whether the request itself constitutes a record which, if disclosed, would defeat the purpose for which trade secret status is sought;

(8) whether the record is known outside of the business of the submitter; the extent to which the record is known by the employees and others involved in the business of the submitter;

(9) the value of the record to the submitter and to its competitors;

(10) the amount of effort or money expended by the submitter in developing the records; the ease or difficulty with which the record could be properly acquired or duplicated by others;

(11) any other factors considered relevant.

(c) When a record deemed a trade secret or critical infrastructure information has been submitted to the agency, it shall be excepted from disclosure and be maintained apart by the agency from all other records until 15 days after the entitlement to such exception has been finally determined by the agency or such further time as ordered by a court of competent jurisdiction. Each of the agency's administrative directors or their designees shall be responsible for the custody of such records and each agency employee who has custody of records containing designated trade secrets or critical infrastructure information shall take appropriate measures to safeguard such records and to protect against unauthorized disclosure. Records containing designated trade secrets or critical infrastructure information may only be copied, distributed and evaluated as required by authorized employees involved in the proper conduct of their state duties. Appropriate restrictive notices shall be attached to such records.

(d) On the initiative of the agency at any time, or upon the written request of any person for access to a record to which trade secret or critical

infrastructure information status pursuant to subdivision (b) of this section has been granted or is pending, the agency shall:

(1) inform the person who submitted the request for exception of the agency's intention to determine whether such status should be granted or continued;

(2) permit the person who requested the exception, within 10 business days of receipt of notification from the agency, to submit a written statement of the necessity for the granting or continuation of such exception; and

(3) within 7 business days of receipt of such written statement, or within 7 business days of the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such status and stating the reasons therefor; copies of such determination shall be served upon the person who requested the exception, the person requesting a copy of the record and the Committee on Open Government.

(e) A denial of an exception from disclosure under subdivision (d) of this section and a denial of access to the record may be appealed by the person submitting the information or requesting the record as follows:

(1) within 7 business days of receipt of the written notice denying the request, the person may file a written appeal from the determination of the agency with the First Deputy Commissioner of General Services.

(2) The appeal shall be determined within 10 business days of the receipt of the appeal. Written notice of the determination shall be served upon the person requesting the record, the person who requested the exception and the Committee on Open Government. The notice shall contain a statement of the reasons for the determination.

(f) A proceeding to review an adverse determination pursuant to subdivision (e) of this section may be commenced pursuant to article 78 of the Civil Practice Law and Rules. Such proceeding, whenever brought by a person seeking an exception from disclosure pursuant to this subdivision, must be commenced within 15 days of the service of the written notice containing the adverse determination provided for in paragraph (e)(2) of this section.

(g) The person requesting an exception from disclosure pursuant to this subdivision shall in all proceedings have the burden of proving entitlement to the exception.

Section 330-1.8 is amended as follows:

§ 330-1.8 Denial of access to records other than those containing designated trade secrets or critical infrastructure information.

(a) Denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.

(b) Any person denied access to records may appeal in writing within 30 days of such denial.

(c) The following shall hear appeals for denial of access to records under article 6 of the Public Officers Law:

First Deputy Commissioner of General Services or a designee
Office of General Services
41st Floor Tower Building
Empire State Plaza Albany, NY 12242
Telephone (518) 474-598[2]8

(d) The time for deciding an appeal by the First Deputy Commissioner or a designee shall commence upon receipt of written appeal identifying:

(1) the date of a request for records;

(2) the records to which the requester was denied access; and

(3) the name and return address of the appellant.

(e) The First Deputy Commissioner or a designee shall inform the requester of a decision in writing within 10 business days of receipt of an appeal, which decision shall either fully explain the reasons for further denial or grant access to the records sought. Failure of the Office of General Services to conform to the provisions of this subdivision 330-1.8(e) shall constitute a denial.

(f) A final denial of access to a requested record, as provided for in subdivision (e) of this section, shall be subject to court review, as provided for in article 78 of the Civil Practice Law and Rules.

Text of proposed rule and any required statements and analyses may be obtained from: Paula Hanlon, Office of General Services, Corning Tower, 41st Fl., Empire State Plaza, Albany, NY 12242, (518) 474-0571, e-mail: paula.hanlon@ogs.state.ny.us

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

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

Consensus Rule Making Determination

This rule is being submitted as a consensus rulemaking in accordance with SAPA §§ 102(11) and 202(1)(b)(i) because no person is likely to object to its adoption because it merely implements or conforms to nondiscretionary statutory provisions.

Specifically, the proposed amendments are in response to changes in the Public Officers Law (POL) § 89(5)(1-a) regarding records containing critical infrastructure information. The proposed amendments seek to incorporate the statutory requirements into Part 330. Additionally, the amendments include recent changes to the POL pursuant to Chapter 22 of the Laws of 2005 regarding timeframes within which state agencies must respond to freedom of information requests.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposed amendments to Part 330 will not have an adverse impact on existing or future jobs and employment opportunities. The proposed requirements already exist in law and primarily involve the records access obligations of OGS. The proposed rulemaking relates to agency responses to requests for records and to the disclosure of certain public records. Specifically, it would amend the current regulations to be consistent with the State's Freedom of Information Law. The amendments would make Part 330 consistent with POL § 89 regarding identification and potential exemption of certain public records containing critical infrastructure information. The amendments also make current regulations consistent with Chapter 22 of the Laws of 2005 regarding agency obligations to respond to FOIL requests. This proposal does not impose any regulatory mandate on the regulatory community, nor does it require any businesses to purchase or modify any equipment, purchase any special permit or license or modify the means by which they conduct their business. Consequently, there could be no adverse impact on existing or future jobs and employment opportunities.

Department of Health

EMERGENCY RULE MAKING

Provision of Information by the EPIC Program

I.D. No. HLT-40-05-00015-E

Filing No. 1072

Filing date: Sept. 20, 2005

Effective date: Sept. 20, 2005

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

Action taken: Amendment of section 9600.4(c) of Title 9 NYCRR.

Statutory authority: Elder Law, sections 244, 245 and 246

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

Specific reasons underlying the finding of necessity: The specific reason underlying the finding of necessity to adopt as an emergency rule: The proposed regulation will require EPIC to share data with OTDA so that OTDA can match the data against its files of individuals who are in receipt of Food Stamp benefits. The match will enable an automated increase in Food Stamp benefits for those EPIC participants enrolled in the Medicare prescription drug discount program who are also Food Stamp beneficiaries. In order to obtain a deduction for medical expenses that will result in this increased benefit for calendar year 2004, the exchange of data must take place before the end of the calendar year. There is not enough time to canvas all EPIC participants for their consent to release of data. An emergency regulation mandating the sharing of data is the only way to ensure that those EPIC participants enrolled in the Medicare prescription drug program who are Food Stamp eligible will have the opportunity to get their medical deduction before the end of this calendar year and that the sharing of the data does not violate the confidentiality requirements of HIPAA. For these reasons, the Department finds that the immediate adoption of the regulation is necessary for the preservation of the public health, safety and general welfare and that compliance with the procedural requirements of the State Administrative Procedure Act (SAPA) 202(1) would be contrary to the public interest.

Subject: Provision of information by the EPIC Program.

Purpose: To enable the provision of information to OTDA by EPIC regarding participants who are enrolled in the Medicare Prescription Drug Card Program, thereby assisting these participants to receive an enhanced medical deduction in the calculation of food stamp benefits.

Text of emergency rule: A new subdivision (c) is added to Section 9600.4 of Title 9 NYCRR to read as follows:

(c) For the purpose of assisting participants to receive an appropriate amount of federal Food Stamp benefits, the Program for Elderly Pharmaceutical Insurance Coverage (EPIC) shall provide to the Office of Temporary and Disability Assistance (OTDA) information identifying EPIC participants who are also enrolled in the Medicare prescription drug discount card program authorized by Title XVIII of the Social Security Act. Information provided shall be limited to eligibility and enrollment data available to EPIC and sufficient to enable OTDA to identify those participants who are also Food Stamp recipients. OTDA's use of this information shall be limited to the purpose of identifying EPIC participants who are also Food Stamp recipients and are eligible for additional Food Stamp benefits by virtue of their enrollment in the Medicare prescription drug discount card program.

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 December 18, 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: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained sections 244(5)(a), 245(2) and 246(4) of the Elder Law.

Legislative Objectives:

Section 244(5)(a) of the Elder Law requires the Elderly Pharmaceutical Insurance Coverage (EPIC) panel, consisting of the Commissioners of the Departments of Education and Health, the Superintendent of Insurance, and the Directors of the State Office for the Aging and the Division of the Budget to promulgate regulations pursuant to Section 246(4) of the Elder Law, subject to the approval of the Director of the Budget. The Director of the Budget approved the promulgation of these regulations. Section 245(2) of the Elder Law requires the Executive Director of EPIC to appoint staff and request the assistance of any department or other agency of the State in performing such functions as may be necessary to carry out the provisions of the EPIC law and to perform such other functions as may be specifically required by the law, assigned by the EPIC panel, or necessary to ensure the efficient operation of the program. Section 246(4) of the Elder Law defines the scope of EPIC regulations as including procedures to ensure that all information obtained on persons applying for EPIC benefits remains confidential and is not disclosed to persons or agencies other than those entitled to such information because such disclosure is necessary for the proper administration of the EPIC program.

Needs and Benefits:

The EPIC program provides coverage of certain drugs for residents of the State of New York who are at least 65 years of age, who have incomes within the limitations prescribed by law, who are not in receipt of Medical Assistance and who do not have equivalent or better drug coverage from any other public or private third party payment source or insurance plan. The program provides an essential benefit for elderly New York residents who need financial assistance in order to obtain medications but who do not have other insurance benefits and are not in receipt of Medical Assistance coverage of their drug expenses. Chapter 49 of the Laws of 2004 authorizes the EPIC program to apply for transitional assistance under the Medicare prescription drug discount card program with a specific drug discount card under Title XVIII of the federal Social Security Act. EPIC automatically enrolled eligible participants in the Medicare prescription drug discount card program.

Section 1860D-31(g)(6) of the Social Security Act, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), 42 USC 1395w-141(g)(6), states that the availability of negotiated prices or transitional assistance received through the Medicare prescription drug card "shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program." The Secretary of the United States Department of Agriculture, through its Northeast Regional office,

has interpreted this statute as requiring that the discounts and subsidy a household receives through the Medicare prescription drug discount card be treated as standard medical expenses to be used in determining the household's medical expenses deduction for Food Stamp eligibility purposes.

EPIC seeks to assist its participants who are enrolled in the Medicare prescription drug discount program who are applying for or in receipt of Food Stamp benefits to receive the appropriate amount of Food Stamp benefits. Providing information to the Office of Temporary and Disability Assistance (OTDA) about its participants who are also enrolled in the Medicare Prescription Drug card program will assist these participants to receive an enhanced medical deduction in the calculation of Food Stamp benefits. Improved health outcomes for these participants as a result of increased Food Stamp benefits and the resultant potential for decreased prescription drug needs for these participants has a direct impact on the EPIC program and justifies the sharing of this information with OTDA.

COSTS:

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

There are no costs to regulated entities as a result of this proposed regulation which requires EPIC to share data with OTDA.

Costs to State and Local Governments:

There are no costs to State and local governments as a result of this proposed regulation.

Costs to the Department of Health:

The Department of Health will incur minimal costs in producing and transmitting the data required by this proposed regulation.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates on local governments.

Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment.

Duplication:

The proposed regulatory amendment does not duplicate any existing State or federal requirements.

Alternatives:

The alternative considered to the proposed regulatory amendment was to obtain individual consents for release of information from all EPIC participants who were enrolled in the Medicare prescription drug card program. The length of time required to obtain this consent would have meant that many elderly participants would lose the medical deduction to which they are entitled for the current year. Release of the information pursuant to regulation is a permissible release of protected health information under regulations implementing the Health Insurance Portability and Accountability Act (HIPAA) pursuant to 45 CFR 164.512(k)(6)(i).

Federal Standards:

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

Compliance Schedule:

The EPIC program will transfer data as required by this regulation as of the effective date of the regulation's filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The proposed amendment would not impose any adverse impact on businesses, either large or small, nor will the proposal impose any new reporting, recordkeeping or other compliance requirements on a business.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would require the EPIC program to share data concerning EPIC participants enrolled in the Medicare prescription drug program with OTDA in order for those participants to receive appropriate Food Stamp benefits. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, recordkeeping or any other new compliance requirements on rural or non-rural areas.

Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to assist EPIC participants enrolled in the Medicare prescription drug program to receive in a timely manner medical deductions, to which they are entitled, for Food Stamp eligibility purposes.

NOTICE OF ADOPTION

Review Criteria for Therapeutic Radiology

I.D. No. HLT-12-05-00003-A

Filing No. 1071

Filing date: Sept. 20, 2005

Effective date: Oct. 5, 2005

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

Action taken: Amendment of sections 708.2, 708.5 and 709.16 of Title 10 NYCRR.

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

Subject: Review criteria for therapeutic radiology.

Purpose: To revise the criteria.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-12-05-00003-P, Issue of March 23, 2005.

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

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

Assessment of Public Comment

The Department of Health received no comments in opposition to the proposed rule. Comments were received from one provider association suggesting that two passages referring, respectively, to equipment megavoltage and facility case mix be recast to ensure clarity. However, the Department finds that the language of the proposed rule with regard to these matters is clear as proposed and that the suggested grammatical changes are unnecessary.

The Finger Lakes Health Systems Agency (HSA) submitted comments questioning the prediction in the regulatory impact statement that the proposed rule could serve to lower health care costs. The Department concedes that this predicted effect, while plausible, is speculative and that the comments of the HSA may therefore have merit. However, the cost impact of the new rule does not bear on the substance of the proposed methodology; therefore, no change in the rule or the impact statement is necessary.

NOTICE OF ADOPTION

Long Term Ventilator Beds

I.D. No. HLT-20-05-00023-A

Filing No. 1072

Filing date: Sept. 20, 2005

Effective date: Oct. 5, 2005

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

Action taken: Addition of section 709.17 to Title 10 NYCRR.

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

Subject: Long term ventilator beds.

Purpose: To promulgate a need methodology for long term ventilator beds in residential health care facilities.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-20-05-00023-P, Issue of May 18, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adult Care Facility Regulations

I.D. No. HLT-40-05-00016-P

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

Proposed action: This is a consensus rule making to amend sections 486.4, 493.2 and 493.8 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 460-d(4)(b)

Subject: Adult care facility regulations.

Purpose: To conform with the language of section 460-d(4)(b) of the Social Services Law which allows for an adult care facility operating certificate to be suspended or limited without a hearing for a maximum of 60 days.

Text of proposed rule: Subdivision (d) of Section 486.4 is amended to read as follows:

(d) An operating certificate may be temporarily suspended or limited without a hearing for a period not in excess of 60 [30] days upon written notice to the facility that the department has found that the public health, or an individual's health, safety or welfare is in imminent danger. If the department schedules an expedited hearing to begin during the suspension period, in a proceeding to suspend, revoke or limit the operating certificate, as set forth in section 493.8 of this Title, the temporary suspension will remain in effect until the hearing decision is issued.

Subdivision (b) of Section 493.2 is amended to read as follows:

(b) The department may temporarily suspend or limit an operating certificate without a hearing for 60 [30] days or less if the department finds that the public health, or an individual's health, safety or welfare, is in imminent danger. If the department schedules an expedited hearing to begin during the suspension period, in a proceeding to suspend, revoke or limit the operating certificate, as set forth in section 493.8 of this Part, the temporary suspension will remain in effect until a decision is issued. The department also may issue an order to the operator to correct immediately a condition which constitutes a danger to the physical or mental health of the facility's residents. Such an order will remain in effect unless reversed by a decision issued after a hearing held under this Part.

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

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

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

Consensus Rule Making Determination

Statutory Authority:

The authority for promulgating this regulation is contained within Section 460-d of the Social Services Law (SSL). Chapter 436 of the Laws of 1997 transferred the responsibility for adult homes, enriched housing programs, and residences for adults ("adult care facilities" – ACFs) from the former Department of Social Services to the Department of Health.

SSL Section 460-d(4)(b) provides that an operating certificate may be suspended or limited without a hearing for a period not in excess of 60 days, upon written notice to the facility following a finding by the Department that the public health, or an individual's health, safety or welfare, are in imminent danger.

Basis:

Prior to 1994, SSL Section 460-d(4)(b) provided that the maximum period for which an operating certificate could be suspended or limited without a hearing was 30 days. This was reflected verbatim in Title 18 of New York Codes, Rules and Regulations (NYCRR), through Sections 486.4 and 493.2.

Chapter 733 of the Laws of 1994 was then enacted by the Legislature to, among other things, extend this period to 60 days. However, to date, Title 18 has not been amended to conform with Chapter 733. This regulatory package implements that conforming language to correct the discrepancy between law and regulation.

No person is likely to object to the proposed rule because it merely conforms existing statutory language within the Social Services Law to Title 18 NYCRR Parts 486 and 493.

Job Impact Statement

A Job Impact Statement is not included because the nature and purpose of the proposed regulation that it will not have a substantial adverse impact on jobs or employment opportunities. This regulation will not result in a reduction of staff providing necessary care.

Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Qualified Allocation Plan for the Allocation of Low-Income Housing Credits

I.D. No. HCR-40-05-00017-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 2040 of Title 9 NYCRR.

Statutory authority: U.S. Internal Revenue Code, section 42(m); NYS Public Housing Law, section 19; and Executive Order Number 135

Subject: State of New York's qualified allocation plan for the allocation of low-income housing credits.

Purpose: To amend the process by which the Division of Housing and Community Renewal reviews low-income housing credit applications; utilizes selection criteria and assesses fees for low-income housing credit applications and awards, and increase consistency with Federal statutes.

Public hearing(s) will be held at: 1:30 p.m. on Nov. 21, 2005, at the following Division of Housing and Community Renewal locations: 38-40 State St., Hampton Plaza Ballroom, Albany, NY; 25 Beaver St., 6th FL., Rm. 609, New York, NY; Statler Towers, Suite 600, 107 Delaware Ave., Buffalo, NY; and Syracuse Developmental Center, 2nd FL., D Wing, 800 S. Wilbur Ave., Syracuse, NY.

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

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

Text of proposed rule: Subdivision (l) of section 2040.2 is amended to read as follows:

(l) Operating *Deficit* Guarantee shall mean a commitment to pay any [unanticipated] operating deficits incurred during the first thirty-six months after the project is placed in service. The amount of such guarantee shall not be less than one fifth of the developer's fee approved by the Division. The guarantee shall be in the form of an irrevocable letter of credit for a term of not less than term of the guarantee or a cash equivalent approved by the Division.

Subdivision (n) of section 2040.2 is amended to read as follows:

(n) Preservation Project shall mean a project in which residential rental property is rehabilitated to extend its useful life to serve as affordable housing and which meets one of the following conditions: the project is to be carried out pursuant to a workout plan approved by a public agency or [;] the project includes the use of existing housing as part of a community revitalization plan and [; or,] the project averts the loss of affordable housing currently serving the housing needs of a population whose housing need would justify the replacement of the housing if it ceased to be available to that population. The scope of the rehabilitation must be sufficient for the project to function in good repair as affordable housing for a period equal to at least thirty years and at least fifteen years beyond the remaining term of any existing affordability restrictions.

Subdivision (c) of section 2040.3 is amended to read as follows:

(c) Processing Fees – The Division shall charge an application fee [credit reservation or binding agreement fee] and credit allocation fee. The application fee shall be \$2,000 [\$100; the credit reservation and binding agreement fee shall be \$250;] and the credit allocation fee shall be 6 percent [4 percent] of the first year credit allocation amount. All fees are due at the time of the request for action by the Division and are non-refundable. Not-for-profit applicants (or their wholly-owned subsidiaries) which will be the sole general partner of the partnership/project owner or sole managing member of the limited liability company/project owner may request and be approved to defer payment of fees until the time of carry-over allocation.

Subdivision (d) of section 2040.3 is amended to read as follows:

(d) Credit Allocation Process - Only applications submitted by a published deadline will be evaluated for an allocation. Applications will be

reviewed for completeness, eligibility, scoring, project feasibility, and consistency with the Division's underwriting standards. The Division expects to notify applicants within 150 [75] days from the application deadline on allocation decisions. The process the Division employs for allocating credit entails the following:

Subdivision (e)(16) of section 2040.3 is amended to read as follows:

(16) If a project includes the rehabilitation of any [occupied residential] building(s) the acquisition costs of the building(s) may not exceed twenty five percent (25%) of the total development costs of the project; unless: a) it is a Preservation Project (as defined at Section 2040.2(n)) or b) the Commissioner has determined that the preservation of the building(s) is in the best interest of the State (not applicable to applications reviewed under Section 2040.4).

Subdivision (e)(17) of section 2040.3 is added to read as follows:

(17) *Project construction has not started without prior authorization by the Division.*

Subdivision (f)(8) of section 2040.3 is amended to read as follows:

(8) Participation of Local Tax Exempt Organizations (5 points) - Scored on: a) whether a not-for-profit 501(c)(3) or its for-profit wholly owned subsidiary *will own an interest in the project and materially participate in the development and operation of the project throughout the compliance period* [is involved as a general partner and in project management] (3 points); and, b) whether such organization has *submitted [an] a written agreement to acquire the low income portion of the project at a cost equal to or below the minimum permitted pursuant to the Code for the purposes of a "Qualified Contract"* (2 points).

Subdivision (f)(9) of section 2040.3 is amended to read as follows:

(9) Special Needs (5 points) - Scored if: [a)] the project will give preference in tenant selection to special populations for at least 15% of the units [(3 points);] and [b)] whether the special population given a preference will be served by supportive services *as evidenced by an agreement or commitment in writing with an experienced social service provider* [(2 points)].

Subdivision (f)(10) of section 2040.3 is amended to read as follows:

(10) Tenant Buy-Out Plan (2 points) [(5 points)] - Scored on whether there is an effective plan for the existing tenants to purchase the project as part of a buy-out plan at the end of the compliance period of 15 years.

Subdivision (f)(12) of section 2040.3 is renumbered as Subdivision (f)(14).

Subdivision (f)(12) of section 2040.3 is added to read as follows:

(12) *Energy Efficiency (2 points) - Scored to the extent the project will utilize energy efficient measures above minimum code requirements.*

Subdivision (f)(13) of section 2040.3 is added to read as follows:

(13) *Project Amenities (1 point) - Scored if the project will provide central air-conditioning or high speed internet access in all credit-assisted units.*

Subdivision (b) of section 2040.4 is amended to read as follows:

(b) *Application Process* - Applications must be submitted at least 90 days prior to the proposed construction start date on a form approved by DHCR and will be accepted and processed throughout the calendar year. The Division may request any and all information it deems necessary for project evaluation. If any submission is incomplete or if documentation is insufficient to complete any evaluation of the proposed project, processing will be suspended. DHCR will notify applicants how the submission is incomplete and provide at least ten business days for the applicant to submit the requested documentation. Complete applications will be reviewed relative to criteria contained herein at Section 2040.3 E and F for eligibility and public purpose. Within 60 [30 working] days after receipt of a complete application the Division will issue to the applicant a finding as to whether the application is consistent with this Qualified Allocation Plan and the amount of LIHC for which the project qualifies pursuant to Section 2040.3(g). If the application is consistent with this Qualified Allocation Plan, the applicant will receive processing instructions for a final allocation of credit. If the project is found to be inconsistent with the Division's Qualified Allocation Plan the owner will be notified of the reasons.

Subdivision (c) of section 2040.4 is amended to read as follows:

(c) *Processing Fees*: The Division shall charge an application fee of \$2,000 [\$100], due at the time of application. A credit allocation fee of 3 percent [1 percent] of the first year credit allocation amount is due at the time of request for the issuance of IRS Form 8609. *Not-for-profit applicants (or their wholly-owned subsidiaries) which will be the sole general partner of the partnership/project owner or sole managing member of the limited liability company/project owner may request and be approved to*

defer payment of the application fee until the time of issuance of the IRS Form 8609 allocation.

Subdivision (d) of section 2040.4 is amended to read as follows:

(d) *Determination of Credit Amount* - In accordance with Code Section 42(m)(2)(d) the issuer of the tax exempt bonds is responsible for determining the dollar amount of credit which is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. Such determination must be included in the applicant's request to the Division for a final allocation of credit. The Division will process requests for a final allocation of credit within 60 [30] days from receipt of all required documentation including an executed credit regulatory agreement with proof of recording. *The Division will apply the underwriting and design criteria as set forth in Section 2040.3(g) in determining the amount for the final credit allocation.*

Subdivision (b)(2)(ii)(b) of section 2040.8 is amended to read as follows:

(b) The certification required by this section (b) shall not be required if a waiver of the annual income recertification has been obtained for the project from the U.S. Internal Revenue Service [pursuant to Internal Revenue Service Revenue Procedure 94-64,] and a copy of the recertification waiver has been attached to the annual certification required by Section 2040.8. The Division shall not provide a statement in support of an owners application for a recertification waiver to the U.S. Internal Revenue Service that each residential rental unit in the building was a low-income unit under Section 42 of the Code at the end of the most recent credit period for the building, if the Division has (1) determined that the project is not in compliance with the provisions of this Low-Income Housing Credit Qualified Allocation Plan or the regulatory agreement required by section 2040.5, (2) has notified the project owner of the event(s) of non-compliance, and (3) the project owner has not documented correction of, or otherwise resolved, the non-compliance to the satisfaction of the Division.

Text of proposed rule and any required statements and analyses may be obtained from: Arnon Adler, Division of Housing and Community Renewal, 38-40 State St., Albany, NY 12207, (518) 486-3305

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

Public comment will be received until: five days after the last scheduled public hearing required by statute.

Regulatory Impact Statement

1. Statutory Authority:

Executive Order Number 135, dated February 27, 1990, authorizes the Commissioner to administer the State's annual allotment of federal low-income housing tax credits and designates DHCR as the State's lead Housing Credit Agency ("HCA"). U.S. Internal Revenue Code ("IRC") Section 42(m) provides that Low-Income Housing Credit ("Credit") must be allocated pursuant to a plan approved by the Governor. The 2005 2006 State Budget provides DHCR with the authority to collect application, allocation and monitoring fees for the administration of the federal Low-Income Housing Credit Program (the "Program") and the monitoring required thereunder.

2. Legislative Objectives:

The Program was enacted to encourage private investment in the construction or rehabilitation and operation of adequate, safe, and sanitary housing which is affordable to persons of low-income. The Program authorizes States to allocate Credit to owners of low-income housing which meets the eligibility and operating requirements of Section 42 of the IRC ("Federal Requirements"). Each state receives an annual allocation of Credit based upon population and must allocate the Credit in a timely manner or forfeit the unallocated Credit to a national pool which is distributed to states which have fully allocated their credit (the "Credit Pool"). New York State has never forfeited Credit to the Credit Pool.

3. Needs and Benefits:

Pursuant to the State Administrative Procedure Act, DHCR promulgates its plan for allocating Credit as a rule. The changes to the existing plan (the "Existing Rule") which would be made by this Proposed Rule (the "Proposed Rule") will amend 9 NYCRR, Part 2040 to:

1. Clarify the definition of Operating Deficit Guarantee. DHCR's Existing Rule provides for additional developer's fee in projects if funding for unanticipated operating deficits is guaranteed by the project owner. Issues have arisen over when an operating deficit is, "unanticipated". The elimination of the word "unanticipated" from the definition makes DHCR's existing policy clear — that in order to qualify for a 5 percent increase in the amount of the developer's fee, all operating deficits must be covered by the owner for the three year period.

2. Revise the definition of Preservation Project limiting the conditions under which a project could be considered subject to the Preservation Project set aside. The revision will narrow the definition so that all projects considered under the set-aside will avert the loss of affordable housing to market-rate housing or deterioration and abandonment, a key goal of DHCR's in maintaining the portfolio of affordable housing in New York State.

3. Increase the Credit application fee from \$100 to \$2,000 for projects applying for Credit from the State's Credit Ceiling, eliminate the Credit reservation and binding agreement fees and increase the Credit allocation fee from 4 percent to 6 percent of the amount of the credit allocated. The elimination of the Credit reservation and binding agreement fees will reduce complexity and processing tasks for both DHCR staff and successful applicants. As confirmed in a roundtable discussion held with private and not-for-profit developers, bank lenders and credit investors, the increase in the Credit application fee and the allocation fee will not have a significant impact on the applicants. Not-for-profit developers may defer the application fee until carryover allocation; therefore, not-for-profit applicants will not face undue financial hardships. The increase will bring DHCR's credit fees to a level commensurate with that of other states and enable the administration of the program to be better supported by the fee collected.

4. Revise the DHCR application decision notification date from 75 days to 150 days from the application deadline. This provides a more workable notification timeframe, necessitated by an extensive review process, entailing reviews of completeness, eligibility, project rating and ranking, and design and underwriting project feasibility and project viability.

5. Clarify that applications for projects that include the rehabilitation of an existing building may not include building acquisition costs in excess of 25 percent of total development costs unless the project meets the criteria for a "Preservation Project" by eliminating the words "occupied residential" from the threshold Eligibility Review Criteria at Subdivision (e)(16) of section 2040.3. This revision eliminates the possibility that an applicant could misconstrue the regulation to mean that vacant buildings would not be subject to this limitation on acquisition costs.

6. Add a threshold eligibility requirement prohibiting the commencement of construction without written authorization by DHCR. This addition codifies existing DHCR policy and assures that DHCR can assess a project's design and underwriting feasibility prior to an owner's incurring significant construction costs. This will avoid the problem of project owners starting construction, expecting a credit allocation and then facing severe financial hardships and potential project abandonment if DHCR determines that the project does not qualify for Credit.

7. Revise the conditions under which projects receive scoring points for participation by Local Tax Exempt Organizations to be consistent with the IRC requirement that states allocate 10 percent of the annual Credit Ceiling to projects in which a "qualified nonprofit organization is to own an interest in the project and materially participate in the development and operation of the project". DHCR must comply with the IRC's requirement that 10 percent of the credit allocated by a State, be allocated to projects in which a "qualified nonprofit organization is to own an interest in the project . . . and materially participate . . . in the development and operation of the project . . ." The Existing Rule's scoring and ranking criteria provides for the additional scoring points for applications in which a not-for-profit general partner participates in the management of the project, however it does not precisely match this IRC requirement. The Proposed Rule's scoring and ranking criteria clarifies that not-for-profit project participants must meet the IRC's standards of qualifying under the not-for-profit set-aside in order to obtain the scoring points.

8. Require that projects serving "special populations" such as persons with physical or mental disabilities provide supportive services for such tenants. The IRC requires that qualified allocation plans include certain selection criteria, including serving "tenant populations with special housing needs". The Existing Rule awards 3 points to proposed projects which give a preference in tenant selection to A "special populations" which include persons with AIDS, mentally ill persons, homeless persons, persons with disabilities, victims of domestic violence, and frail elderly persons. Under the Existing Rule, an additional 2 points are given to a project application if the special population(s) are served by supportive services. The Proposed Rule will award 5 points to project applications which commit to both give a preference to "special populations" and to serve those populations with supportive services by requiring applicants to provide a written agreement with a social service provider. With this change the Rule will more closely reflect the intent of the IRC and the experience

of DHCR in recognizing that "special populations" require supportive services in order to live independently.

9. Reduce the points awarded an applicant for proposing an effective tenant buy-out plan at the end of the 15 year compliance period; The reduction in scoring points for applicants proposing a tenant buyout at the end of the 15 year compliance period will enable DHCR to meet an IRC requirement for preference for projects with tenant buy-out plans without over emphasizing the preference and reallocating three scoring points in the Proposed Rule to new agency priorities, as follows:

a. two points for projects which will utilize energy efficient measures above minimum code requirements, furthering environmental conservation; and,

b. one point for projects providing amenities for tenants which are desirable but not always included in housing developed for low-income households.

10. Provide points for projects utilizing energy efficient measures above minimum code requirements, and for projects providing central air-conditioning or high-speed internet access to promote energy conservation, health, and education.

11. For projects financed by private activity bonds: requiring that applications be submitted at least 90 days prior to construction start; applying the underwriting review standards and requirements which are utilized for allocations from the State's Credit Ceiling; increasing the application fee to \$2,000 from \$100, and the allocation fee from 1 percent to 3 percent of the first year credit allocation amount, permitting not-for-profit applicants to defer application payment until allocation, and providing 60 days rather than 30 working days for DHCR to issue a final allocation of credit. DHCR is a member of the National Council of State Housing Agencies (NCSHA), an organization of state credit agencies which administer housing programs. DHCR took a lead role in 2004 in developing NCSHA's Recommended Practices for administering LIHC, in order to standardize and improve program administration. An important aspect of the NCSHA Recommended Practices are the state rules governing the allocation of credit to projects which receive tax-exempt bond financing and receive credit which is not competitive nor allocated from the state's housing credit allocation ceiling. In light of the NCSHA recommendations, DHCR has increased its review role for these projects over the past two years. The Proposed Rule will codify DHCR's existing review policies, better mirror the requirements of the IRC and bolster review responsibilities to assure project feasibility and viability through the LIHC regulatory period and the responsible use of credit resources for projects in need of a credit allocation, as follows:

a. prospective applicants must submit applications at least 90 days prior to the proposed construction start date, allowing DHCR sufficient time to review the project's design and underwriting feasibility before the owner incurs significant costs;

b. DHCR will issue a finding within 60 days, rather than the Existing Rule's 30 working days, regarding the project's consistency with the Qualified Allocation Plan and the amount of LIHC the project qualifies for according to our underwriting and programmatic parameters. Additionally, at project completion, DHCR will process requests for a final allocation of Credit within 60 days, rather than 30 days, enabling DHCR to apply its review criteria and program guidelines in determining the final credit allocation amount. These provisions provide DHCR with a reasonable amount of time to process initial reviews and final credit allocations on a timely basis and apply DHCR's standards to tax-exempt bond financed projects; and

c. the increased application fee of \$2,000 and credit allocation fee of 3 percent of the first year credit allocation will assist in covering DHCR's staff costs in the increased review responsibilities for credit applications for tax-exempt bond financed project. The increased fee levels are commensurate with the fees charged by other state housing credit agencies and bond issuing agencies and will not impose a financial hardship on the applicants, who will pay the fee out of tax credit equity generated from the sale of the tax credit.

12. Eliminate the outdated reference to the IRS Revenue Procedure for obtaining an annual income recertification waiver. This will help project owners to avoid referencing outdated procedures when making requests to the Internal Revenue Service.

4. Costs:

(a) Costs to State government

The costs incurred by the State government under both the Existing Rule and this Proposed Rule are costs incurred because of the need to maintain compliance with IRC Section 42. The changes to the Existing Rule that would be made by this Proposed Rule may result in some

increased costs to State government, which will be offset by the increase in fees of the Proposed Rule.

(b) Costs to local government
None.

(c) Cost to private regulated parties

The Proposed Rule should reduce some costs by eliminating the requirement of collecting multiple fees required by the Existing Rule. The overall increase in fees collected by DHCR are needed by DHCR to keep pace with increased staffing and recordkeeping costs of administering the program in compliance with the IRC, as well as increased review responsibilities for many credit projects. The increases are consistent with fees charged by other states.

5. Local Government Mandates:

None.

6. Paperwork:

None.

7. Duplication:

None.

8. Alternatives:

The alternative to the Proposed Rule is the Existing Rule which does not adequately address the Division's need to clarify its definitions, strengthen and broaden its scoring criteria to meet more programmatic goals, cover the costs of existing staff and DHCR's increased review function for all projects, including those financed by tax-exempt bonds. Specifically:

1. The alternative to adding the word "Deficit" to the definition of Operating Deficit Guarantee and eliminating the word "unanticipated" in regard to the developer's commitment to pay project operating deficits is to not amend the definition, causing project owners and developers to continue to question this definition and its applicability to their project, requiring more staff time to explain the definition.

2. The alternative to revising the definition of the term "Preservation Project" is to leave the current definition unaltered requiring DHCR to consider projects for the set-aside which may not avert the loss of affordable housing, which is contrary to DHCR's intent in preserving existing affordable housing in New York State.

3. The alternative to the increase in the Credit application fee will mean a loss of an important deterrent to the submission of frivolous applications for significantly infeasible projects which were submitted by applicants because of the minimal application fee, and would mean a loss of an important and fair source of state revenue needed to cover increasing staff costs. Without funds sufficient to cover the level of DHCR staff needed to review projects and administer the program, the potential for mistakes which could impair the program, delay projects from proceeding in the mandated timeframe and threaten DHCR's ability to fully allocate its annual Credit ceiling. Failure to fully allocate the annual Credit Ceiling would result in a loss of jobs and a decrease in the state's ability to develop and foster private investment in affordable housing.

4. The alternative to revising the expected DHCR application review notification date from 75 days of the application deadline to 150 days would result in DHCR's failure to comply with its own regulations or an inadequate review of applications.

5. The alternative to adding a threshold eligibility requirement that a project owner has not started construction without prior DHCR authorization may result in a project's failure to comply with other threshold requirements, such as the permanent involuntary displacement of existing tenants, failure to obtain all local governmental approvals including building permits and failure to notify the local chief executive officer of the locality of the project and/or respond to objections to the project. Further, DHCR's inability to review plans and specifications prior to project construction could result in hazardous, unsanitary and uninhabitable building construction which would fail to meet local or State building codes, creating blight in a community.

6. Failure to revise the scoring so projects with not-for-profit participation must meet the parameters of the IRC 10 percent not-for-profit set-aside might result in DHCR's inability to meet the 10 percent set-aside, an annual allocation requirement necessary so that DHCR fully allocates its annual Credit ceiling. Failure to abide by the IRC's requirement to allocate 10 percent of the Credit Ceiling to projects in which "qualified nonprofit organization is to own an interest in the project . . . and materially participate . . . in the development and operation of the project . . ." could result in the voiding of Credit allocated to projects not complying with the requirement, or sanctions by the IRS.

7. Failure to adjust the scoring criteria for projects serving tenant populations with special needs by requiring a written agreement with a

social service provider is the potential failure to adequately serve the special housing needs of such populations. These populations include homeless persons, persons with HIV/AIDS and mentally and physically disabled persons, who are attempting to live in an "integrated" residential environment. These social services are necessary in order for these persons to live independently. These conditions result in damage to the apartments, elimination of these apartments from the housing stock pending repairs, additional costs to the project, evictions, and for some, may lead to reinstationalization.

8. DHCR believed that the importance of the tenant buyout criteria was being overemphasized, and believed that it was more important to reallocate 3 points to new criteria – utilization of energy efficient measures and/or amenities such as central air-conditioning and high-speed internet access. No negative comments to the reduction in points for the tenant buyout were raised at the Roundtable.

9. DHCR has, at the urging of developers and project owners, as well as Roundtable participants, proposed to provide points for projects utilizing energy efficient measures and/or amenities such as central air-conditioning and high-speed internet access. For many elderly residents and people suffering from respiratory conditions, air conditioning is necessary for maintaining health. Lack of access to high speed internet access can limit educational opportunities. The alternative to providing points for these amenities is to fail to promote these desirable state policies.

10. DHCR has found that the current rule provides the issuers of private activity bonds and applicants with insufficient guidance regarding DHCR's process and the IRC's requirements with respect to Credit allocations for projects financed by private activity bonds. The alternative to revising DHCR's rule is the existing rule provision which DHCR believes may result in errors which jeopardize investors, developers, the development of the housing projects contemplated and, accordingly the welfare of prospective tenants in need of decent affordable housing.

9. Federal Standards:

This Rule does not exceed the minimum standards of the federal government for the Program.

10. Compliance Schedule:

Not applicable. The rule changes will affect only those who apply to DHCR for allocations of Credit after the amendments to the rule are effective.

Regulatory Flexibility Analysis

The Division of Housing and Community Renewal has found that the proposed amendments to the rule at 9 NYCRR Part 2040 (the "Proposed Rule") will have no negative impact on small businesses. DHCR sought and utilized the advice of persons who represent small businesses in order to ensure that the Proposed Rule would have no negative impact on small businesses. Prior to drafting this Proposed Rule, DHCR held a Roundtable Discussion (the "Roundtable"). Fifty eight representatives of the affordable housing industry who have been active in DHCR's Low-Income Housing Credit Program were invited to attend the Roundtable. The invitees included for-profit and not-for-profit housing developers, attorneys and Credit syndicators; approximately 24 of these were representatives of small businesses. 20 members of the affordable housing industry attended the Roundtable, 10 of who were representatives of small businesses. In fact, the proposed rule's addition of points for the inclusion of high speed internet access, central air conditioning, and energy efficient appliances and building systems, and amenities was the result of recommendations made by representatives of small businesses. No participant expressed an opinion indicating that any of the amendments in the Proposed Rule would adversely affect small businesses. Based upon the Roundtable, its prior experience in the allocation of Credit to projects which utilize small business services, and the nature of the amendments, DHCR does not anticipate that the amendments in the Proposed Rule will have any adverse impact on small businesses.

Rural Area Flexibility Analysis

The Division of Housing and Community Renewal has found that the Proposed amendments to the Rule at 9 NYCRR Part 2040 will not impose any adverse economic impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The changes to the Existing Rule which would be made by the proposed amendments impose no further requirements in rural areas, will not impose additional capital or compliance costs on person/entities which are located in rural areas, and will have no other adverse impacts on rural areas.

Prior to drafting the Proposed Rule, DHCR held a Roundtable Discussion (the "Roundtable"). Fifty eight members of the affordable housing industry who have been active in the Credit program were invited to attend the Roundtable, including members of the New York State Rural Housing

Coalition. The invitees included for-profit and not-for-profit housing developers, attorneys and Credit syndicators. No invitee expressed an opinion indicating that the proposed changes to the rule would adversely affect rural areas. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no impact should be anticipated.

Job Impact Statement

The Division of Housing and Community Renewal has found that the Proposed amendments to the Rule at 9 NYCRR Part 2040 will have no impact on jobs and employment opportunities. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no impact should be anticipated.

Insurance Department

EMERGENCY RULE MAKING

Rules Governing Valuation of Life Insurance Reserves

I.D. No. INS-40-05-00002-E

Filing No. 1069

Filing date: Sept. 19, 2005

Effective date: Sept. 19, 2005

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

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517

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

Specific reasons underlying the finding of necessity: During 2004, the Department became aware that some insurers have designed certain life insurance products with the clear intent of circumventing the existing reserve standards. The Department is concerned with the solvency of those insurers who fail to set aside sufficient funds to pay claims as they pose a serious threat to consumers who rely on insurers to honor their commitment both now and in the future. In addition, insurers who have elected to circumvent the law place themselves at a competitive advantage over those insurers who follow the rules and establish the appropriate level of reserves. On a daily basis, those insurers who abide by the law suffer substantial losses in terms of market share, as they cannot effectively compete against insurers that do not set aside adequate reserves. Action must be taken now to end this practice of under reserving by insurers that have decided market share is more important than the safety and soundness of policyholder funds.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the September 30, 2005 quarterly statement is November 15, 2005. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this first amendment to Regulation No. 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: To prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates, with primary emphasis on valuation of non-level premium and/or non-level benefit life insurance policies, indeterminate premium life insurance policies, universal life insurance policies, variable life insurance policies, and credit life insurance policies in accordance with statutory reserve formulas.

Substance of emergency rule: The First Amendment to Regulation No. 147 provides new mortality and reserve standards for credit life insurance policies. It also provides new reserve standards for certain other specified life insurance policies. The following is a summary of the amendments to Regulation No. 147:

Section 98.1(a) was amended to include credit life insurance policies and to mention clarification of principles.

Section 98.2(b) was amended to ensure consistency in applicability wording within the regulation.

Section 98.2(i) was amended to state that unless notification was previously provided to the superintendent to adopt lower reserves based on the requirements of this Part, insurers may not adopt such lower reserves without the prior approval of the superintendent.

A new subdivision (j) was added to section 98.2 regarding the use of the minimum mortality standards defined in Part 100 of this Title.

A new subdivision (k) was added to section 98.2 regarding the applicability of this regulation to certain specified life insurance policies.

A new subdivision (l) was added to section 98.2 regarding the applicability of this regulation to credit life insurance.

Subdivision (d)(2) of section 98.4 was amended to change an incorrect reference.

The last sentence of section 98.4(s) was amended to change a reference from 1% to one percent, in order to be consistent with similar references in other sections of the regulation.

Section 98.4(u) was amended to reference the examples and reserve methodologies described in section 98.9 of this Part.

The third sentence of paragraph (2) of section 98.6(a) was amended to change an incorrect reference to the Contract Segmentation Method to the mortality and interest rates used in calculating basic unitary reserves.

Section 98.7(b)(1)(i) was amended to reference section 98.9 of this Part.

Section 98.7(b)(1)(ii) was amended to have the definition of secondary guarantee period extended to this whole Part rather than just paragraph (1) of section 98.7.

Section 98.7(b)(1)(iii) was amended to reference section 98.9 of this Part and provides clarification of an example supplied in this section.

Section 98.7(c) was amended to change the reference from age 100 to the age at the end of the applicable valuation mortality table, since the 2001 CSO Mortality Tables go out to ages greater than 100.

Section 98.8(b) was amended to reference section 98.9 of this Part.

A new section 98.9 was added for certain specified life insurance policies. This section provides examples of policy designs which constitute guarantees and describes the reserve methodologies to be used in valuing such policies.

A new section 98.10 was added for credit life insurance. This section provides minimum mortality standards and minimum reserve standards for such policies.

Section 98.9 was renumbered to section 98.11. This is the severability provision.

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 December 17, 2005.

Text of emergency 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

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the First Amendment of Regulation No. 147 (11 NYCRR 98) is derived from sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. 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 to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this paragraph.

Section 4217(c)(6)(D) permits the superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions for section 4217 to such policies and contracts, as the superintendent deems appropriate.

Section 4217(c)(9) requires that reserves for any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or which is of such a nature that the minimum reserves cannot be determined by the methods prescribed in sections 4217 and 4218, must be computed by a method consistent with the principles of sections 4217 and 4218 as determined by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract.

Section 4240(d)(7) states that the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

For fraternal benefit societies, section 4517(b)(2) provides that reserves according to the commissioners reserve valuation method for life insurance certificates providing for a varying amount of benefits or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this subsection (b).

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. After the adoption of the current version of Regulation No. 147 and the National Association of Insurance Commissioners (NAIC) Valuation of Life Insurance Policies model regulation (adopted in 1999), some companies developed life insurance products that resulted in reserves being held that were lower than the reserves defined in section 4217 of the Insurance Law and the current version of Regulation No. 147, even though these products had similar death benefit and premium guarantees. To clarify the intent of the NAIC model regulation, NAIC Actuarial Guideline 38 was developed in 2002. The Guideline stated that new policy designs which are created to simply exploit a perceived loophole must be reserved in a manner similar to more typical designs with similar guarantees. Section 98.4(u) of the current version of Regulation No. 147 also contains wording to address consistent reserving principles. In the past year the Department became aware that, in spite of such wording, some companies were creating new products to exploit a perceived loophole in the reserve methodologies described in Actuarial Guideline 38. The new reserve methodologies in this amendment address this problem. Not adopting this amendment could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

The regulation will also set standards for determining policy reserves for credit life insurance.

4. Costs:

Costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most companies would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with the modifications is estimated to be \$50,000 - \$100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

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 no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

One significant alternative considered was to keep the current version of Regulation No. 147, in combination with the formulas in the current version of Actuarial Guideline 38, which would result in some companies holding reserves lower than those intended by section 4217 of the Insurance Law and Regulation No. 147. Over the course of several months, the Department discussed this matter as part of the NAIC Life and Health Actuarial Task Force forums and in several conference calls and meetings with impacted insurers. During this period, revised wording to NAIC Actuarial Guideline 38 was exposed. In response to the exposed wording, a group of impacted insurers submitted a letter stating that they believed the wording in NAIC Actuarial Guideline 38 should not be changed. The Department reviewed the insurers concerns related to the exposed wording, but determined that such wording was needed because the Department believes the reserves that would be held by these insurers would be lower than those intended by section 4217 of the Insurance Law, Regulation No. 147, and NAIC Actuarial Guideline 38.

The wording in the NAIC's December 2004 draft exposure of revised Actuarial Guideline 38 is the basis for the wording in section 98.9(c)(7)(i) of this amendment to Regulation No. 147 and sets reserves at intended levels for policies issued on or after January 1, 2000 through December 31, 2005. The wording in a widely distributed September 2004 draft of revised Actuarial Guideline 38 is the basis for the wording in section 98.9(c)(7)(ii) of this amendment to Regulation No. 147, and applies to policies issued on or after January 1, 2006. This provision is intended to discourage new policy designs created to exploit any perceived loopholes found in the future.

Another alternative was to not include the methodology stated in Section 98.9(c)(8)(ii), which states the standards for certain universal life insurance policies issued on or after January 1, 2006, and instead rely on the methodology stated in section 98.9(c)(8)(i). This could result in companies being able to design policies that would result in reserves being held that are lower than those intended by section 4217 of the Insurance Law and Regulation No. 147.

Another alternative was to keep the current minimum standard for credit life insurance, but this would result in a mortality standard that is inconsistent with that stated in a recently adopted NAIC model regulation.

9. Federal standards:

There are no federal standards in this subject area.

10. Compliance schedule:

This regulation applies to financial statements filed on or after December 31, 2004. The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place in the course of attempting to develop a national standard through the National Association of Insurance Commissioners. Since this regulation has been adopted on an emergency basis since December 29, 2004, insurers have had ample time to achieve full compliance.

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 insurers authorized 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 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:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

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

The amendment to this regulation establishes reserve requirements for certain types of life insurance, including universal life insurance with secondary guarantees, and for credit life insurance.

3. Costs:

Costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with these modifications is estimated to be \$50,000 - \$100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

5. Rural area participation:

The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place in the course of attempting to develop a national standard through the National Association of Insurance Commissioners. Insurers that may be impacted by this standard are aware of the issues and should have already formed an estimate of the impact. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 5, 2005 issue of the *State Register*.

Job Impact Statement

Nature of Impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting life insurance reserves for insurers. The regulation is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers authorized to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

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

Self-employment opportunities:

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

EMERGENCY RULE MAKING

Rules for Key Person Corporate-Owned Life Insurance

I.D. No. INS-40-05-00019-E

Filing No. 1075

Filing date: Sept. 20, 2005

Effective date: Sept. 20, 2005

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

Action taken: Addition of Part 48 (Regulation 180) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, and 3205

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

Specific reasons underlying the finding of necessity: Corporate-owned life insurance covering rank-and-file employees, also called "janitor insurance" or "dead peasant insurance," has been the focus of numerous negative press articles and public commentaries over the last several years. In many cases, the covered employees were not notified and did not consent to such insurance. In addition, the Internal Revenue Service has

pursued litigation against some companies using corporate-owned life insurance as a means of evading taxes.

Most recently in response to criticism concerning COLI, the United States Senate has drafted legislation that provides for the taxation of death proceeds of corporate-owned life insurance under certain circumstances. The Senate's proposal addresses the abuses of "janitor insurance" and recognizes the legitimate business need for COLI to serve as a funding vehicle for employee benefit plans. As a result, the Senate's legislative proposal provides that death benefits under corporate-owned life insurance policies will not be taxable if the employee is a key employee as defined in the proposed legislation.

The potential for abuse in the corporate-owned life insurance market has long been a concern of the New York Legislature. Chapter 491 of the Laws of 1996 added a new subsection (d) to Section 3205 to provide notice, consent and termination rights to employees, including rank-and-file employees, whose lives were insured under corporate-owned life insurance programs designed to fund employee benefit plans. Such notice, consent and termination rights were designed to reduce the potential for abuse in the COLI market.

Since the notice, consent and termination rights only apply in the case of Section 3205(d) COLI and not key person COLI under Section 3205(a)(1)(B), it is imperative that insurers only insure key employees under Section 3205(a)(1)(B). This will also ensure that rank and file employees and other non-key employees receive the notice, consent and termination rights prescribed by Section 3205(d) and to curb some of the reported abuses associated with COLI on rank-and-file employees. This will serve to ensure that employees insured pursuant to the insurable interest provisions of Section 3205(a)(1)(B) are key employees.

The establishment of a key employee standard based on the proposed federal legislation will aid in curbing abuse in the corporate-owned life insurance market. Therefore, for the reasons stated above, this rule must be promulgated on an emergency basis for the preservation of the general welfare.

Subject: Rules for key person corporate-owned life insurance.

Purpose: To provide guidance to insurers in defining the term key person for the purpose of compliance with the requirements of section 3205(a)(1)(B) and (d) of the Insurance Law.

Text of emergency rule:

11 NYCRR 48

REGULATION NO. 180

KEY PERSON COMPANY-OWNED LIFE INSURANCE

§ 48.0 Preamble and Purpose.

(a) Section 3205(b)(2) of the Insurance Law provides in part that "No person shall procure or cause to be procured, directly or by assignment or otherwise any contract of insurance upon the person of another unless the benefits under such contract are payable . . . to a person having, at the time when such contract is made, an insurable interest in the person insured."

(b) Section 3205(a)(1)(B) of the Insurance Law defines the term "insurable interest", for the purposes of life and accident and health insurance, to include "a lawful and substantial economic interest in the continued life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured."

(c) Under Section 3205(a)(1)(B), an employer has an insurable interest in the lives of certain employees and other persons, commonly referred to as "key employees" or "key persons", whose services and qualifications are of such nature that their death or disability would cause the employer to incur a substantial pecuniary loss.

(d) The purpose of this Part is to establish standards for life insurers and fraternal benefit societies issuing key person company-owned life insurance to ensure that the employees or other persons on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key persons.

§ 48.1 Underwriting Guidelines.

An insurer using key person company-owned life insurance shall establish and apply appropriate underwriting guidelines to ensure that the employees or other persons on whose lives policies are written pursuant to Section 3205(a)(1)(B) are actually key persons.

§ 48.2 Standards.

For purposes of this Part and for establishing whether there exists an insurable interest under Section 3205(a)(1)(B) at the time the policy is issued, the term key person shall include the following persons:

(a) An employee who is one of the five highest paid officers of the employer;

(b) An employee who is a five-percent owner of the employer. A “five-percent owner” shall mean:

(1) If the employer is a corporation, any person who owns or controls more than five percent of the outstanding stock of the corporation or stock possessing more than five percent of the total combined voting power of all stock of the corporation; or

(2) If the employer is not a corporation, any person who owns more than five percent of the capital or profits interest in the employer;

(c) An employee who had compensation from the employer in excess of \$90,000 in the preceding year;

(d) An employee who is among the highest paid 35 percent of all employees; or

(e) An employee or other person who makes a significant economic contribution to the company, including but not limited to, an employee who is responsible for management decisions, has a significant impact on sales or a special rapport with customers and creditors, possesses special skills, or would be difficult to replace. Criteria for the employer’s determination shall be included in the insurer’s underwriting guidelines.

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 December 18, 2005.

Text of emergency 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

Regulatory Impact Statement

1. Statutory authority:

The superintendent’s authority for the adoption of Regulation 180 (11 NYCRR 48) is derived from Sections 201, 301, and 3205 of the Insurance Law.

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 to make regulations.

Section 3205 of the Insurance Law defines the term “insurable interest” and sets forth insurable interest requirements for any policy of life insurance and accident and health insurance.

2. Legislative objectives:

The insurable interest requirements contained in Section 3205 reflect the state’s public policy against contracts wagering on human life. Section 3205(b)(2) prohibits the issuance of any policy upon the life of another person unless the beneficiary is the insured, personal representative of the insured, or a person having an insurable interest in the insured at the time the policy is issued.

Section 3205(a)(1)(B), applicable when policies are purchased by persons not closely related to the insured by blood or by law, defines “insurable interest” to include a lawful and substantial economic interest in the continued, life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured. Employers and insurers have historically relied upon Section 3205(a)(1)(B) to satisfy the insurable interest requirement for the purchase of insurance on the lives of “key persons” or “key employees.”

In 1996, the Legislature added new subsections (d) and (e) to Section 3205 of the Insurance Law (L. 1996 c. 491) to specifically grant employers an insurable interest in any employee or retiree who is eligible to participate in an employee benefit plan. The Legislature enacted Section 3205(d) in order to assist employers with the financing of employee benefit plans through the use of corporate-owned life insurance (“COLI”) purchased on the lives of employees.

The purpose of the proposed regulation is to establish standards for life insurers issuing key employee COLI, pursuant to Section 3205(a) rather than Section 3205(d) COLI, to ensure that the employees on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key employees.

3. Needs and benefits:

As noted in the Federal Standard section below, the definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate’s proposal is intended to eliminate well-publicized abuses of COLI. The proposal also recognizes the legitimate business need for employers to use corporate owned policies as a funding vehicle for

employee benefits, and specifically provides that COLI death benefits would not be taxable if the covered employee meets the definition of a key employee.

The potential for abuse in the COLI market has historically been a concern of the New York legislature as evidenced by the enactment of notice, consent and termination rights in Section 3205(d) and (e) of the Insurance Law in 1996, establishing an insurable interest for the purchase of life insurance used to fund employee benefit plans. Since the employee notice, consent and termination rights are not required when company-owned life insurance is purchased under Section 3205(a)(1)(B), it is imperative that insurers be provided with standards for key employees to ensure that such employees are key employees and to avoid the potential for any further abuses in the market. The establishment of a key employee standard would provide such guidance.

In addition, a key employee standard would enhance the Department’s market conduct exams by providing field examiners with a reference point. Field examiners currently lack statutory or regulatory standards for determining the proper application of Section 3205(a) and, specifically, whether COLI insurance issued pursuant to Section 3205(a) is on key employees.

The key employee standard is particularly important in the bank-owned life insurance market, in which employees do not receive Section 3205(d) protections. Currently, banks do not purchase coverage under Section 3205(d) because the employee’s ability to terminate coverage makes the policy an unreliable mechanism for funding plan liabilities and results in adverse tax consequences to the bank. When bank-owned life insurance is issued as key employee coverage under Section 3205(a)(1)(B), the key employee standard created by this proposed regulation will help ensure that the covered employees will in fact be key employees.

4. Costs:

Life insurers licensed in New York that sell key employee COLI are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key employee COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the proposed regulation. Any insurers in the key employee COLI market that lack established key person underwriting guidelines would incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the proposed regulation.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

5. Local government mandates:

The proposed 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 proposed regulation imposes no new reporting requirements.

7. Duplication:

The proposed regulation does not duplicate any existing law or regulation.

8. Alternatives:

The Department considered but rejected the prospect of issuing a Circular Letter to establish the standard for key person. The Department was concerned that the Circular Letter proposal would not have the same force and effect of a regulation, and would therefore be an inadequate mechanism to apply and enforce the insurable interest requirements of Section 3205.

9. Federal standards:

The definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft COLI bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate bill, which was approved by the Senate Finance Committee in February, 2004, provides that a key employee may be either a “highly compensated employee” under Section 414(q) of the Internal Revenue Code or a “highly compensated individual” under Section 105(h)(5) of the Internal Revenue Code (except that ‘35 percent’ shall be substituted for ‘25 percent’ in subparagraph (C) thereof). The purpose of the definition of key employee in the Senate bill is to create an exemption from tax for death proceeds paid to employers in connection with COLI, and does not relate to state insurable interest laws. There is no federal standard that defines key employee in the context of insurable interest for life insurance.

10. Compliance schedule:

The proposed regulation establishes a standard for all key employee life insurance policies issued before and after the effective date of the Regulation.

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 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 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 SAPA 102(10).

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

The regulation provides guidance to insurers in defining the term key person.

3. Costs:

Life insurers that sell key person COLI to fund broad-based employee benefit plans are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key person COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the Regulation. Any insurers in the key person COLI market that lack established key person underwriting guidelines will incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the Regulation.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with the Life Insurance Council of New York, a trade organization representing life insurers in New York.

Job Impact Statement

Nature of impact: The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation provides guidance to insurers in defining the term key person for the purpose of compliance with the requirements of section 3205(a)(1)(B) of the Insurance Law.

Categories and number affected: No categories of jobs or number of jobs will be affected.

Regions of adverse impact: This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

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

Self-employment opportunities: This rule would not have a measurable impact on self-employment opportunities.

Division of the Lottery

EMERGENCY RULE MAKING

Mega Millions Multi-State Lottery Game

I.D. No. LTR-40-05-00020-E

Filing No. 1076

Filing date: Sept. 20, 2005

Effective date: Sept. 20, 2005

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

Action taken: Amendment of Part 2806 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1617

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

Specific reasons underlying the finding of necessity: The New York Lottery and other participating Mega Million States have added California to the Mega Millions game, and have amended the game rules, including the prize structure by which the game is governed. The next drawing under the new rules is scheduled to take place on September 20, 2005, and thus the amended regulations need to be in place by that date.

Subject: Mega Millions multi-state lottery game.

Purpose: To add a new state in Mega Millions game and clarify regulations.

Text of emergency rule: 21 NYCRR Section 2806.1 subdivision (a)-(c) is hereby repealed and replaced by new 21 NYCRR Section 2806.1 subdivision (a)-(c).

§ 2806.1 Purpose.

(a) *The purpose of MEGA MILLIONS is the generation of revenue for education in New York through the operation of specially-designed multi-state lottery game(s) that will award prizes to ticket holders consistent with the game rules established for a particular game. Such game(s) may include instant tickets ("instants") and/or matching specified combinations of numbers randomly selected in regularly scheduled drawings ("on-line").*

(b) *During each MEGA MILLIONS on-line drawing, six (6) MEGA MILLIONS Winning Numbers will be selected from two (2) fields of numbers in the following manner: five (5) winning numbers from a field of one (1) through fifty-six (56) numbers, and one (1) winning number from a field of one (1) through forty-six (46) numbers.*

(c) *The objective of MEGA MILLIONS on-line drawings shall be to select at random, with the aid of drawing equipment, MEGA MILLIONS Winning Numbers, pursuant to the controls and methods established for the game.*

21 NYCRR Section 2806.2 paragraph (1), (4), (5), (7) through (13)-(16) of subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.2 paragraphs (1), (4), (5), (7) through (13)-(16) of subdivision (a).

(1) *Agent - The person who has been licensed and authorized by the New York Lottery to sell lottery tickets pursuant to Part 2801 of these regulations.*

(4) *Cash Option - The manner in which the on-line MEGA MILLIONS Jackpot Prize may be paid in a single payment.*

(5) *Claimant - Any person or entity submitting a claim form within the required time period to collect a prize for any MEGA MILLIONS Ticket. A Claimant may be the person or entity named on a signed MEGA MILLIONS Ticket, or the bearer of an unsigned MEGA MILLIONS Ticket. No Claimant may assert rights different from the rights acquired by the original Purchaser at the time of purchase.*

(7) *Jackpot Prize - For the on-line MEGA MILLIONS game, the prize awarded for selecting all the numbers drawn from both fields. If more than one player from all participating lottery states has selected all the numbers drawn, the jackpot prize shall be divided among those players. Jackpot prize may also be referred to from time to time as "Grand Prize". For any other game, the Jackpot Prize will be identified in game rules issued for such game.*

(8) *MEGA MILLIONS Play Area - For the on-line MEGA MILLIONS game, the areas on a MEGA MILLIONS play slip identified by an alpha character, A through E, containing two separate fields - one field of*

56 and a second field of 46 – both containing one or two digit numbers each. This is the area where the player, or computer if the player is using the Quick Pick option, will select five (5) one or two-digit numbers from the first field, and will select one (1) one or two-digit numbers from the second field.

(9) MEGA MILLIONS Play Slip - For the on-line MEGA MILLIONS game, a computer-readable form, printed and issued by the New York Lottery, used in purchasing a MEGA MILLIONS Ticket, having up to five (5) separate play areas. The Play Slip additionally includes boxes for selection of Cash Option or Annuity Option. The play slip also provides for multiple drawing wagering up to 26 draws.

(10) MEGA MILLIONS Ticket - A game ticket, produced on official paper stock, by an agent in an authorized manner, bearing player or computer selected numbers from the play area on the play slip, game name, drawing dates, amount of wager, jackpot prize payment option, and validation data.

(11) MEGA MILLIONS Winning Numbers - For the on-line MEGA MILLIONS game, five (5) one or two digit numbers, from one (1) through fifty-six (56) and one (1) one or two-digit number from one (1) through forty-six (46), randomly selected at each MEGA MILLIONS drawing, which shall be used to determine winning MEGA MILLIONS plays contained on MEGA MILLIONS Tickets.

(12) Pari-Mutuel - For the on-line MEGA MILLIONS game total amount of prize money allocated to pay prize Claimants, at the designated prize level, divided among the number of winning MEGA MILLIONS Tickets.

(13) Party Lottery or Party Lotteries - One or more of the state lotteries established and operated pursuant to the laws of any state lottery which becomes a signatory to the Mega Millions Game agreement.

(16) Quick-Pick - For the on-line MEGA MILLIONS game, a player option in which MEGA MILLIONS number selections are determined at random by the lottery terminal.

21 NYCRR Section 2806.3 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.3 subdivision (a)

§ 2806.3 Ticket Sales.

(a) The sale of MEGA MILLIONS Tickets within New York State may be conducted only by an agent.

21 NYCRR Section 2806.4 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.4 subdivision (a)

§ 2806.4 Ticket Price.

(a) For the on-line MEGA MILLIONS game: MEGA MILLIONS Tickets may be purchased for \$1.00 per play at the discretion of the Purchaser, in accordance with the number of game panels and inclusive drawings. The Purchaser receives one play for each \$1.00 wagered in MEGA MILLIONS. Instantants will be at the price stated on any such ticket. Tickets may contain multiple plays.

21 NYCRR Section 2806.5 subdivision (f) is hereby repealed and replaced by new 21 NYCRR Section 2806.5 subdivision (f)

§ 2806.5 Play Characteristics and restrictions.

(f) For the on-line MEGA MILLIONS game, purchasers may submit a manually completed MEGA MILLIONS Play Slip to an Agent to have issued a MEGA MILLIONS Ticket. MEGA MILLIONS Play Slips shall be available at no cost to the Purchaser and shall have no pecuniary or prize value, or constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other non-manual method of marking Play Slips is prohibited.

21 NYCRR Section 2806.6 is hereby repealed and replaced by new 21 NYCRR Section 2806.6

§ 2806.6 Time, Place and Manner of Conducting Drawings

For the on-line MEGA MILLIONS game: MEGA MILLIONS drawings will be conducted twice weekly approximately 11:00 p.m. Eastern Time in one of the party lottery states. The day, time, frequency and location of the MEGA MILLIONS drawings may be changed following public announcement.

21 NYCRR Section 2806.7 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 subdivision (a)

§ 2806.7 Prize Structure

(a) For the on-line MEGA MILLIONS game - Matrix of ⁵/₅₆ and ¹/₄₆ with 50 Percent Anticipated Prize Fund

Match Field 1	Match Field 2	Odds	Prize Category	Percentage of Prize Fund
5	1	1:175,711, 536.00	Grand	63.60 percent
5	0	1:3,904,700.80	Second	12.80 percent
4	1	1:689,064.85	Third	2.90 percent
4	0	1:15,312.55	Fourth	1.96 percent

3	1	1:13,781.30	Fifth	2.18 percent
2	1	1:843.75	Sixth	2.38 percent
3	0	1:306.25	Seventh	4.58 percent
1	1	1:140.63	Eighth	4.26 percent
0	1	1:74.80	Ninth	5.34 percent
Reserve				0 percent
Totals				1:39.89
				100 percent

21 NYCRR Section 2806.7 paragraph (1) of subdivision (b) is hereby repealed and replaced by new 21 NYCRR Part 2806.7 paragraph (1) of subdivision (b)

(b) Jackpot Prize Payments.

For the on-line MEGA MILLIONS game:

(1) The prize money allocated from the winning pool for the Jackpot Prize, plus any money brought forward from a previous drawing plus any money added from the prize reserve fund or any other available source pursuant to a guaranteed first prize amount announcement will be divided equally among all Jackpot Prize winners in all participating lottery states. Prior to each drawing, the annuitized MEGA MILLIONS Jackpot Prize amount will be advertised. The advertised Jackpot Prize amount shall be the basis for determining the amount to be awarded for each MEGA MILLIONS Panel matching all five (5) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 and the one (1) MEGA MILLIONS Winning Number drawn for Field 2.

21 NYCRR Section 2806.7 paragraph (1) of subdivision (c), paragraph (2) of subdivision (c), paragraph (6) of subdivision (c) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 paragraph (1) of subdivision (c), paragraph (2) of subdivision (c), paragraph (6) of subdivision (c)

(c) Second through Ninth Level Prizes

For the on-line MEGA MILLIONS game:

(1) MEGA MILLIONS Panels matching five (5) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1, but not matching the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Second Prize of \$250,000*.

(2) MEGA MILLIONS Panels matching four (4) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 and the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Third Prize of \$10,000*.

(6) MEGA MILLIONS Panels matching three (3) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 but not matching the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Seventh Prize of \$7.

21 NYCRR Section 2806.7 subdivision (d) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 subdivision (d)

(d) In a single on-line drawing, a Claimant may win in only one prize category per single MEGA MILLIONS Panel in connection with MEGA MILLIONS Winning Numbers, and shall be entitled only to the highest prize.

Footnote identified by asterisk is hereby repealed and replaced by new footnote identified by asterisk

* Should total prize liability, exclusive of Grand/Jackpot Prize rollover from previous drawings and California Lottery sales and prizes for prize levels 2 through 9, exceed 300% of draw sales or 50% of draw sales plus \$50,000,000, whichever is less, (both hereinafter referred to as the "Liability Cap"), the Second through Fifth prizes shall be paid on a pari-mutuel rather than fixed prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the fixed prize. The amount to be used for the allocation of such pari-mutuel prizes shall be the Liability Cap less the amount paid for the Grand/Jackpot Prize and prize levels Six through Nine.

21 NYCRR Section 2806.9 paragraph (10) of subdivision (a), paragraph (14) of subdivision (a), paragraph (15) of subdivision (a) is hereby repealed and replaced by new 21 NYCRR Part 2806.9 paragraph (10) of subdivision (a), paragraph (14) of subdivision (a), paragraph (15) of subdivision (a)

(10) The ticket must not be misregistered, defectively printed, or produced in error to an extent that it cannot be processed by the New York Lottery;

(14) The ticket must be submitted to the New York Lottery and to no other lottery participating in any MEGA MILLIONS lottery game.

(15) No MEGA MILLIONS ticket purchased outside the State of New York may be presented to either the New York Lottery or an agent for payment within New York.

21 NYCRR Section 2806.9 paragraph (1) of subdivision (b) is hereby repealed and replaced by new 21 NYCRR Part 2806.9 paragraph (1) of subdivision (b)

(b) (1) The Director may, at his/her option, replace an invalid ticket with a MEGA MILLIONS Ticket of equivalent sales price;

21 NYCRR Section 2806.12 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.12 subdivision (a)

§ 2806.12 Governing Law

(a) In purchasing a ticket issued for MEGA MILLIONS within New York State, the Purchaser agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of New York State, and by directives and determinations of the Director of the New York Lottery. The Purchaser agrees, as its sole and exclusive remedy, that claims arising out of a ticket purchased in New York State from an agent can be pursued only against the New York Lottery and no other lottery. Litigation, if any, arising from the purchase of a MEGA MILLIONS ticket in New York State from an agent shall only be maintained against the New York Lottery within the State of New York.

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 December 18, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Dwight T. Flynn, Counsel, Division of the Lottery, One Broadway Center, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: dfflynn@lottery.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Lottery was authorized by Chapter 383 of the Laws of 2001 to commence a multi-state lottery game. The rule amends Lottery regulations pertaining to the operation of such game pursuant to the Lottery's authority under Tax Law Section 1604 to promulgate rules and regulations governing the operation of Lottery games.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. Entry into a multi-state game has allowed the Lottery to offer large jackpot prizes and permits its retailers around the state to compete with sales of lottery products in bordering states, providing them an immediate competitive advantage at the point of purchase. On average the revenue to education from Mega Millions has been roughly \$158 Million per fiscal year in New York State. The addition of California to Mega Millions is expected to generate roughly another \$30 Million annually for education.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. New game brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: None.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

**EMERGENCY
RULE MAKING**

New York King Kong Millions Promotional Game

I.D. No. LTR-40-05-00026-E

Filing No. 1078

Filing date: Sept. 16, 2005

Effective date: Sept. 16, 2005

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

Action taken: Addition of Part 2837 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a); and NYCRR Title 21, Chapter XLIV, section 2804.6

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

Specific reasons underlying the finding of necessity: The New York Lottery will be conducting a New York King Kong Millions promotion game. Game sales are scheduled to commence on or about Nov. 7, 2005. § 1612 of the Tax Law requires that the rules and regulations for any promotional game be published at least forty-five (45) days prior to date of game commencement. Accordingly, these emergency regulations need to be published not less than 45 days prior to Nov. 7, 2005, thereby leaving insufficient time for the normal rule making process under SAPA § 202 to be completed.

Subject: New York Lottery's New York King Kong Millions promotional game.

Purpose: To add New York King Kong Millions promotion games to current New York Lottery regulations.

Text of emergency rule:

PART 2837
NEW YORK LOTTERY
KING KONG MILLIONS

Section 2837.1 Definitions. The following definitions apply to the King Kong Millions game.

(a) "Bet ticket" means the ticket generated by the computer terminal containing a listing of one (for a \$2 purchase), three (for a \$5 purchase) or seven (for a \$10 purchase) randomly generated numbers which are purchased by a player for the King Kong Millions game.

(b) "Computer terminal" means the device at the on-line retailer location authorized by the Lottery for the placing of New York King Kong Millions game bets.

(c) "Director" means the Director of the New York State Lottery or any other person to whom the director's authority is lawfully delegated.

(d) "Draw date" means the date determined by the Director on which the winning jackpot, second and third place numbers are drawn for the New York King Kong Millions game.

(e) "Drawing" refers to the formal process of selecting winning numbers for the New York King Kong Millions game.

(f) "Game" is the New York King Kong Game which is a lottery game that a player purchases number(s) generated by the Lottery's on-line gaming computer system.

(g) "Gross sales" means the sum of the purchases of King Kong Millions game tickets eligible for the New York King Kong Million game draw date.

(h) "King Kong Millions" means a game played at any on-line retailer location(s) by purchasing randomly generated number(s) which matches the winning number(s) of the jackpot, second or third prize of the number(s) drawn on the draw date.

(i) "Lottery or State Lottery" means the New York State Division of the Lottery operated pursuant to Article 34 of the Tax Law.

(j) "Lottery rules and regulations" means the rules and regulations currently in force as adopted by the Lottery.

(k) "Manual entry" means the capability of the computer terminal operator to enter the amount of dollars played by a player (i.e., \$2, \$5 or \$10) for the King Kong Millions game into the terminal in response to verbal or written communication by the player. There is no play card for the King Kong Millions Game.

(l) "On-line retailer" means a person licensed to sell lottery tickets, pursuant to Part 2801 of this Title.

(m) "Prize pool" means 40 percent of the gross sales for the New York King Kong Millions game which is allocated for the purpose of paying prizes.

(n) "Randomly generated number" means the number or number(s) selected randomly by a computer.

2837.2 Drawing.

(a) For the New York King Kong Millions game, winning numbers shall be (i) randomly selected in accordance with existing Lottery draw procedures and (ii) announced publicly.

(b) The New York King Kong Millions drawing shall be conducted on or about December 5, 2005.

2837.3 Calculation and payment of prizes.

(a) Prizes for the King Kong Millions game shall be calculated as follows:

(1) From the prize pool, the cost of not less than ten (10) third tier prizes and not less than five (5) second tier prizes shall be drawn and shall be subtracted from the prize pool.

(2) The balance of the prize pool not allocated to the second-tier or third-tier prizes shall be allocated to the first place or jackpot prize, plus any money required to be added from any other available source, to meet the amount of the most recently announced first or jackpot prize for the King Kong Millions game.

(b) The holder of a winning ticket may win more than one prize per bet ticket in connection with the winning numbers drawn for a particular King Kong Millions game.

(c) The payment of prizes to persons under 18 years of age and to those who are known to have died before receiving any or all of the particular prize shall be paid as prescribed in Lottery rules and regulations, as set forth in Part 2803 of this Title.

2837.4 Withholding. Federal, State and local withholding taxes shall be withheld by the Lottery from prize payments in such amounts as may be required in accordance with the applicable provisions of law.

2837.5 Procedures for claiming a prize.

(a) All prizes must be claimed within one year of the drawing date. All prize claims must be made by surrendering the winning ticket, together with a completed prize claim form, to the Lottery in person at a Lottery office or by mail, addressed to: New York Lottery, Post Office Box 7533, Schenectady, NY 12301-7533.

(b) A bet ticket is deemed to be a bearer instrument. Neither the New York State Lottery nor its contractors shall be responsible for lost or stolen New York King Kong Millions game bet tickets, nor for alleged winning tickets thrown away by mistake. Neither the New York State Lottery nor its contractors shall be responsible for lost or stolen game tickets.

2837.6 Disputes. In the event a dispute occurs between the Lottery and/or its contractors and the player as to whether a ticket is a winning ticket, and if the ticket prize is not paid, the Director may, at his or her discretion, refund the entry cost of the panel played by the player on that ticket. This shall be the sole and exclusive remedy of the player.

2837.7 Ticket sales.

(a) No person shall sell a New York King Kong Millions game ticket at a price greater than that fixed by this Part.

(b) The price for a New York King Kong Millions game bet is \$2 for one number; \$5 for three numbers and \$10 for seven numbers.

2837.8 Prize funds. Forty percent of gross sales for the King Kong Millions game shall be paid into the New York Lottery prize account for allocation of prize winnings.

2837.9 Determination of winning ticket prizes, chances of winning, allocation of winning prize pool. For the New York King Kong Millions game, winning numbers shall be randomly selected and announced publicly. Any bet ticket having a match with the winning number shall be entitled to the prize for which the number was drawn. There shall be one first place or jackpot prize; not less than five (5) second place prizes; and not less than ten (10) third place prizes awarded. The prizes for the New York King Kong Millions Game shall be as follows:

PRIZE CATEGORY	AMOUNT WON
First	As Announced
Second	\$1,000,000 each
Third	\$100,000 each

The first place or jackpot prize shall be payable in a lump sum or in twenty-five (25) equal annual installments in accordance with Lottery procedures for similar games.

2837.10 Miscellaneous.

(a) Where one person submits a ticket as agent or nominee for another person or persons, the Lottery shall not be deemed to have any knowledge of such transaction, and all dealings of the Lottery will be conducted solely with the bearer of the ticket.

(b) No claimant will be considered eligible to receive a prize without presentation of a valid winning bet ticket.

(c) The New York State Lottery reserves the right to change the prize structures, frequency of draws, draw dates, or the games themselves.

(d) If for any reason, an on-line bet ticket is not entirely legible or is misprinted or altered in any way, then the on-line computer record created at the time of sale will be the sole method of determining whether such ticket is a valid winning ticket.

(e) When any question shall arise as to the validity of a Lottery drawing for any reason whatsoever, the director shall make the determination as to the validity of said drawing on the basis of the information at his or her disposal. His or her determination shall be a final determination.

(f) New York King Kong Millions bet tickets may not be cancelled once issued by the computer terminal. However, the retailer may receive credit for any unreadable bet ticket issued, as these tickets (although unreadable) are recorded on the computer file as valid bets.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire December 14, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Robert J. McLaughlin, General Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: rmlaughlin@lottery.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2804.6, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's New York King Kong Millions promotional game.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York King Kong Millions promotional game allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games. The New York King Kong Millions promotional game is anticipated to bring in more than \$25 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. New game brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to adding New York King Kong Millions promotional game is not to proceed and forfeit the investment already made by the New York State Lottery for the game. The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

Department of Motor Vehicles

NOTICE OF ADOPTION

Commercial Driver's Licenses and Restricted Use Licenses

I.D. No. MTV-30-05-00003-A
Filing No. 1070
Filing date: Sept. 19, 2005
Effective date: Oct. 5, 2005

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

Action taken: Amendment of Parts 3 and 135 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 501, 501-a, 502, 503 and 530(5)

Subject: Commercial driver's licenses and restricted use licenses.

Purpose: To make conforming amendments in compliance with L. 2005, chs. 60 and 61 regarding driver's licenses.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-30-05-00003-P, Issue of July 27, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-40-05-00025-P

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

Proposed action: Revision in rates for Village of Fairport.

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

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity; this increase in rates is not the result of a Power Authority rate increase to the Village.

Substance of proposed rule: VILLAGE OF FAIRPORT

Proposed Monthly Rates

	Proposed ¹ Rates
Residential S.C. 1 Customer Charge	\$4.00
	Non-Winter (April-November)
Energy Charge, per kWh	\$.03500
	Winter (December-March)
Energy Charge, per kWh	\$.03500
First 1,000 kWh.	\$.03500
Over 1,000 kWh.	\$.05250
Small Commercial S.C. 2 Customer Charge	\$6.00
	Non-Winter (April-November)
Energy Charge, per kWh	\$.03500

Winter
(December-March)
\$.05250

¹ Purchased Power Adjustment reflected in proposed rates.

VILLAGE OF FAIRPORT
Proposed Monthly Rates

	Proposed ¹ Rates
Commercial S.C. 3	
Demand Charge, per kW	\$3.00
Energy Charge, per kWh	\$.04100
Industrial S.C.4	
Demand Charge, per kW	\$5.00
Energy Charge, per kWh	\$.01900
Security Lighting S.C. 5 (Charge per lamp, per month)	
175 Mercury Vapor	\$5.65
250 Mercury Vapor	\$6.75
400 Mercury Vapor	\$9.25
1,000 Mercury Vapor	\$16.50
70 High Pressure Sodium	\$5.65
100 High Pressure Sodium	\$6.75
150 High Pressure Sodium	\$8.00
250 High Pressure Sodium	\$9.25

¹ Purchased Power Adjustment reflected in proposed rates.

VILLAGE OF FAIRPORT
Proposed Monthly Rates

	Proposed ¹ Rates
Street Lighting S.C. 6	
Facilities Charge, per lamp, per month	\$9.25
Energy Charge, per kWh, per month	\$.02620

¹ Purchased Power Adjustment reflected in proposed rates.

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

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

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

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

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

Public Service Commission

NOTICE OF ADOPTION

Water Rates and Charges by United Water New Rochelle Inc.

I.D. No. PSC-43-04-00025-A
Filing date: Sept. 14, 2005
Effective date: Sept. 14, 2005

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

Action taken: The commission, on July 20, 2005, adopted an order in Case 04-W-1210 approving a petition by United Water New Rochelle Inc. (UWNR) concerning revenue reconciliation and purchased water reconciliation for the year ended July 11, 2003.

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

Subject: Revenue and purchased water reconciliation.

Purpose: To approve UWNR's request concerning revenue and purchased water reconciliation.

Substance of final rule: The Commission approved a petition by United Water New Rochelle (UWNR) concerning its Revenue Reconciliation and Purchased Water Reconciliation for the year ended July 11, 2003, and directed UWNR to file, on not less than one day's notice, Consumption Adjustment Clause Statement No. 2 effective January 1, 2006, setting forth a surcharge of \$0.2490 per hundred cubic feet to be applied to all bills rendered from January 1 through March 31, 2006, 2007 and 2008, 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. (04-W-1210SA1)

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

Interconnection Agreement between ALLTEL New York, Inc. and CAT Communications International

I.D. No. PSC-40-05-00005-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by ALLTEL New York, Inc. and CAT Communications International for approval of an interconnection agreement executed on Aug. 18, 2005.

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

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

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

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

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-1068SA1)

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

Interconnection Agreement between Frontier Communications of Sylvan Lake, Inc., et al. and MCI metro Access Transmission Services, LLC

I.D. No. PSC-40-05-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of Sylvan Lake, Inc., Frontier Communications of New York, Inc. and MCI metro Access Transmission Services, LLC for approval of an interconnection agreement executed on Aug. 12, 2005.

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

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

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

Substance of proposed rule: Frontier Communications of Sylvan Lake, Inc., Frontier Communications of New York, Inc. and MCI metro Access Transmission Services, LLC have reached a negotiated agreement whereby Frontier Communications of Sylvan Lake, Inc., Frontier Communications of New York, Inc. and MCI metro Access Transmission Services, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until August 12, 2006, or as extended.

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-1084SA1)

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

Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and MCI metro Access Transmission Services, LLC

I.D. No. PSC-40-05-00007-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 whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and MCI metro Access Transmission Services, LLC for approval of an interconnection agreement executed on July 20, 2005.

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

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

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

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

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. Brillong, 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-1085SA1)

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

Development of Funding Mechanism for Customer-Sited Tier Technologies

I.D. No. PSC-40-05-00008-P

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

Proposed action: As discussed in the commission's order approving implementation plan, adopting clarifications, and modifying environmental disclosure program, issued on April 14, 2005, and based upon discussions among workshop participants, the commission is considering specific design details and methodologies pertinent to the customer-sited tier to ensure that photovoltaic generation, small wind systems, and fuel cells, as well as any similar technologies that may become eligible for Renewable Portfolio Standard (RPS) Program support in the future, will continue to play a role in diversifying the New York State's energy mix and stimulating economic development in the State. The commission is also considering eliminating the size limitation on eligible wind projects.

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

Subject: Development of funding mechanism for customer-sited tier technologies.

Purpose: To establish a distribution mechanism for RPS Program funds assigned to the customer-sited tier.

Substance of proposed rule: The Commission is considering specific design details and funding methodologies pertinent to the Customer-Sited Tier to encourage development of photovoltaic generation, small wind systems, and fuel cells, as well as any similar technologies that may become eligible for Renewable Portfolio Standards (RPS) Program support in the future. The proposal under consideration is to allocate the following level of funding: 80% of the annual Customer-Sited Tier program funding to the three currently-eligible technologies. Of this 80%, for years through 2009, 43% will be allocated to solar photovoltaic generation, 43% will be allocated to fuel cells, and 14% will be allocated to small wind. The remaining 20% would be allocated, on a discretionary basis, to technologies the Commission may add to the eligible list or will be distributed on an as needed basis to the eligible technologies.

The Commission may accept, reject, or modify any proposals relating to these 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. Brillong, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(03-E-0188SA12)

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

Transmission Revenue Adjustment by Niagara Mohawk Power Corporation

I.D. No. PSC-40-05-00009-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, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207 to become effective Dec. 19, 2005.

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

Subject: Transmission revenue adjustment.

Purpose: To make modifications to the procedures currently used to calculate the transmission revenue adjustment on a monthly basis.

Substance of proposed rule: On September 14, 2005, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff amendments to make modifications to the procedures it currently uses to calculate the Transmission Revenue Adjustment on a monthly basis, as detailed in Rule No. 43. The proposed effective date of Niagara Mohawk's filing is December 19, 2005. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk'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. Brillong, 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-1140SA1)

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

Uniform System of Accounts by St. Lawrence Gas Company, Inc.

I.D. No. PSC-40-05-00010-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 a petition by St. Lawrence Gas Company, Inc. seeking permission to defer expenses related to the Department of Public Service 2005-2006 Statement of Estimated Assessment. The commission may accept, reject, or modify, in whole or in part, the relief requested.

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

Subject: Uniform system of accounts—request for accounting authorization to defer expenses.

Purpose: To allow St. Lawrence Gas Company, Inc. to defer expenses beyond the end of the current fiscal year.

Substance of proposed rule: The Public Service Commission is considering a request by St. Lawrence Gas Company, Inc. to defer until the company's next rate case the incremental expenses of the 2005-2006 Department of Public Service Estimated Assessment, which were higher than anticipated in the company's last rate case, and which the company claims may materially affect the cost of providing service. The Commission may consider the accounting treatment of these expenses, and prescribe a methodology to recover these expenses from customers. The Commission may accept, reject, or modify, 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.

(05-G-1063SA1)

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

Energy Services Company Deposit for Electronic Data Interchange Testing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI

I.D. No. PSC-40-05-00011-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 KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI (KeySpan) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: Deposit required by ESCO for electronic data interchange testing.

Purpose: To require a deposit from an energy services company in order for it to be able to participate in electronic data interchange testing with the Public Service Commission and KeySpan.

Substance of proposed rule: The Commission is considering KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI's (KeySpan) request to require an ESCO to pay a deposit in order for the ESCO to be allowed to participate in Electronic Data Interchange Testing with both the Public Service Commission and KeySpan.

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-G-1122SA1)

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

Energy Services Company Deposit for Electronic Data Interchange Testing by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-40-05-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY (Brooklyn Union) 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: Deposit required by ESCO for electronic data interchange testing.

Purpose: To require a deposit from an energy services company in order for it to be able to participate in electronic data interchange testing with the Public Service Commission and Brooklyn Union.

Substance of proposed rule: The Commission is considering The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY's (Brooklyn Union) request to require an ESCO to pay a deposit in order for the ESCO to be allowed to participate in Electronic Data Interchange Testing with both the Public Service Commission and Brooklyn Union.

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-G-1123SA1)

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

United Water New York Inc.'s Waiver of Rules Tariff

I.D. No. PSC-40-05-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the application of Key Construction, developer of a 26-unit housing project for senior citizens located at 201 N. Main St., Spring Valley, NY, for a waiver of section 3.4(D) of United Water New York Inc.'s tariff, which requires installation of water meters for each dwelling unit within an apartment, co-operative or condominium constructed on or after April 15, 1991.

Statutory authority: Public Service Law, section 89-c(1), (2), (10)(a) and (e)

Subject: United Water New York Inc.'s waiver of rules tariff.

Purpose: To waive section 3.4(D) of the United Water New York Inc.'s tariff to allow master-metering of a senior living facility.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the application of Key Construction, developer of a 26 unit housing project for senior citizens located at 201 N. Main St., Spring Valley, New York, for a waiver of Section 3.4(D) of United Water New York Inc.'s tariff, which requires installation of water meters for each dwelling unit within an apartment, co-operative or condominium constructed on or after April 15, 1991.

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-0857SA1)

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

Increase in Rates and a Surcharge by The Callicoon Water Company

I.D. No. PSC-40-05-00014-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 whether to approve or reject, in whole or in part, or modify, The Callicoon Water Company's request for a 63 percent rate increase and to institute a quarterly surcharge of \$36.15 per customer to establish an escrow account with a maximum balance of \$36,000 for capital improvements and emergency or extraordinary expenditures.

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

Subject: An increase in rates as well as a surcharge to fund an escrow account for capital improvements and extraordinary or unexpected expenditures.

Purpose: To increase base rates by 63 percent and approve a quarterly surcharge of \$36.15 per customer to fund an escrow account for capital improvements and extraordinary or unexpected expenditures.

Substance of proposed rule: On September 12, 2005, The Callicoon Water Company (Callicoon) filed for a 63% increase in rates designed to produce an increase in annual revenue of about \$56,921 and to be allowed to impose a surcharge of \$36.15 per customer per quarter to establish an escrow account with a maximum balance of \$36,000 for capital improvements and extraordinary or unexpected expenditures. Callicoon is about to begin a multi-year construction program to repair its storage basin, replace an elevated storage tank and replace some of its mains. It is estimated that the first two projects will cost about \$72,000. Callicoon provides water service to about 161 flat rate customers and 5 metered customers in the Unincorporated Hamlet of Callicoon, Town of Delaware, Sullivan County. Callicoon's tariff and proposed tariff amendments are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under the Commission Documents - Tariffs. The Commission may approve or reject, in whole or in part, or modify Callicoon's request.

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-1097SA1)

Racing and Wagering Board

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

Authorizing and Prohibiting Drugs and Medications Used to Treat Race Horses Prior to a Race

I.D. No. RWB-40-05-00001-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 4043.2 and 4120.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101.1, 902.1 and 301.2(a)

Subject: Authorizing and prohibiting drugs and medications used to treat race horses prior to a given race.

Purpose: To eliminate obsolete drugs or medications, add new drugs or medications and reclassify the timing of administration of certain drugs or medications to harness and thoroughbred race horses prior to the start of a given race.

Substance of proposed rule (Full text is posted at the following State website: www.racing.state.ny.us): Section 4043.2 is amended to make New York State's thoroughbred medication rules consistent with the thoroughbred racing industry's model drug rules. The amendments will expand the definition of a drug to include orally-administered substances that exhibit drug-like actions or properties, eliminate endoscopic examination for furosemide cases, expand the administration of medication to include "any means" rather than merely "injection," revise permissible substances on the various medication administration lists, and change the prohibition time period from "start of the racing program" to the scheduled post time of a race.

Section 4120.2 is amended to make New York State's thoroughbred medication rules consistent with the harness racing industry's model drug rules. The amendments will expand the definition of a drug to include orally-administered substances that exhibit drug-like actions or properties, eliminate endoscopic examination for furosemide cases, expand the administration of medication to include "any means" rather than merely "injection," revise permissible substances on the various medication administration lists, and change the prohibition time period from "start of the racing program" to the scheduled post time of a race.

Text of proposed rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206-1668, (518) 453-8460, ext. 3300, e-mail: gpronti@racing.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: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101.1, 902.1, and 301.2(a) authorizes the New York State Racing and Wagering Board ("Board") to prescribe and promulgate regulations to specify the use and testing of drugs and medications in race horses. Section 101.1 creates within the executive department the Board, and provides that the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities, both on-track and off-track, in the state, and over the corporations, associations, and persons engaged therein. Section 902.1 authorizes the Board to promulgate any rules and regulations necessary to implement equine drug testing and expenses, and sets forth that equine drug testing at race meetings shall be conducted by a land grant university within New York State, with a regents approved veterinary college facility. Further, section 902.1 provides that the Board shall promulgate rules and regulations to implement administrative penalties of loss of purse money, fines, or denial, suspension or revocation of a license for drugged horses. Section 301.2(a) authorizes the Board to prescribe rules and regulations for effectually preventing the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed of harness horses in races in which they are about to participate.

2. Legislative objectives: To enable the Board to assure the public's confidence and preserve the integrity of racing at pari-mutuel betting tracks by regulating the use of drugs and medications in race horses so that their natural racing ability is not compromised or enhanced by such use.

3. Needs and benefits: A modernization of New York's equine drug rules is necessitated as the existing rules are outdated and are no longer best suited for today's racing environment or drug testing protocols. Since the time when the rules were enacted in 1982, with one amendment in 1995 to authorize furosemide, commonly referred to as Lasix or Salix, the racing industry has met significant change with regard to the use and control of medications used in horse racing. Over the past two decades, testing instrumentation and detection protocols for equine drugs have become more sophisticated. Also, the proposed rules list new drugs with improved medical outcomes and removes obsolete drugs currently listed in the rules that are no longer utilized.

Racing jurisdictions across the country have developed and promoted model rules on the use and control of medications in racing in order to foster uniformity across state jurisdictional lines. The Board's New York State Medication Advisory Committee comprised of horsemen, veterinarians, pharmacologists, track management, and the stewards/judges at the

tracks was instrumental to the formulation of the proposed rules. Additionally, input from the Mid-Atlantic Consortium of Racing States, the National Thoroughbred Racing Association's (NTRA) Racing Medication and Testing Consortium, the United States Trotting Association (USTA), as well as the International Association of Racing Commissioners International (ARCI), and the North American Pari-Mutuel Regulators Association (NAPRA) was considered.

Horses that win a portion of the purse or prize money, usually those that finish first through fourth, are tested and their blood and urine samples are taken immediately following a race by staff employed by the Board at the various racetracks. The samples are then signed, sealed, packed and sent under "chain of custody" for testing to the Cornell University laboratory. The instrumentation at Cornell University allows chemists to detect and quantify drugs in race horses and to ascertain when the drugs were administered relative to the start of a race. Approximately 62,000 equine samples of both urine and blood are collected and tested annually. Less than one-half of one-percent of the samples are determined positive for drugs. New York's medication rules are based on various time periods preceding a race when the drugs have no effect on performance at the time administered or "withdrawal time." The proposed rules still recognize that benchmarks of the timing of administrations are an effective guideline for equine drug testing and rules enforcement. Licensees find this guideline a practical reference when seeking to understand and abide by New York's drug rules.

All withdrawal times of administration designated in the rules are no longer based on the start of the racing program, but on the start of the race in which the horse is entered. The current rule may give an unfair advantage to those horses racing in the first races of the day, as there is an estimated 4 to 5½ hours in terms of withdrawal time to those horses as it takes that long to run the entire day's racing program of up to twelve races.

There is an addition of a 24-hour withdrawal category permitting the intravenous injection of either of two non-steroidal anti-inflammatory drugs before the scheduled post-time or start-time of the race in which the horse is to compete. These drugs will not be found in post-race blood or urine samples of the race horses if administered 24 hours before the race, and the drugs serve a therapeutic purpose up until that time, and will not affect performance during the race if administered as the rule prescribes. In summary, today's testing instrumentation allows for greater specificity as to the timing of administrations. For instance, the amendment of 4043.2(c)(2)(5)(6)(7) and (8), removes sulfa expectorants, omeprazole, cimetidine, ranitidine and sucralfate out of the "seven-day" category and into the 24-hour category. These drugs, not available twenty years ago, treat ulcers common in horses. Because these drugs are detectable within 24 hours, and they do not interfere with testing for other drugs, and have no known pharmacological affect on performance, 24 hours is a practical and realistic benchmark for testing.

There is an addition of a 96-hour withdrawal category because most drugs are not detected past 96 hours before a race, and certain identifiable and therapeutic substances do not affect performance in race horses when administered 96 hours before a race.

Additionally, many of the drugs already set forth by name in the current rule were reassigned different withdrawal times, based on scientific advances in testing and detection. Drugs removed from the list are either no longer manufactured or in use.

Any new drug not listed in the current drug rules are, by default, considered "seven-day" drugs and are not permissible unless administered more than seven days prior to the start of the race program. Therefore, new drugs that should not be defaulted into the "seven-day" category have been evaluated and assigned the proper specific withdrawal time.

These changes will eliminate the purported confusion that occurs when a layperson or veterinarian reviews the rule and there is no reference to a specific drug. It has been increasingly argued by trainers and/or owners that because the drug was not referenced by name anywhere in the rule, the reader thought it was permissible to give it as opposed to understanding it fell into the "seven-day" cut off category. This defense has become more prevalent as the newer drugs are more commonly and widely used. The "seven-day" category will still exist but less commonly used drugs will fall into it because, with this update, those drugs commonly used are now referenced by name in the rule.

Furosemide is the only permissible race day medication in New York. The proposed amendment establishes the minimum dosage limit at 3 cubic centimeters, from 5 cubic centimeters. There needs to be more flexibility in dosage than currently allowed under the 5 cubic centimeter minimum due to the fact that horses can have varied reactions to the administration of furosemide. Furosemide is a relatively potent diuretic and a low-end dose may be necessary in some horses to prevent dehydration and electrolyte

imbalances. The 3 cubic centimeter minimum is an amount that is still detectable in post-race samples. Such post-race samples are necessary to ensure that trainers administered furosemide, thereby preventing a trainer or veterinarian from misrepresenting that the drug was administered to the horse and running without furosemide in an attempt to influence race performance.

Overall, the proposed rule clarifies and modernizes rules which are no longer consistent with the scientific testing methodologies currently available, and current veterinary practices and procedures.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: See (d) below.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting for the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. There will be no cost to the agency, because the agency is continuously evaluating and reevaluating medications administered to race horses as part of its regulatory function. The costs are already part of the Board's Equine Drug Testing and Research Program budget. There are no additional costs to regulated individuals, who already comply with specific requirements.

5. Local government mandates: None. See above.

6. Paperwork: None. See above.

7. Duplication: None.

8. Alternatives:

(a) One alternative is to make no change in the existing rules. This alternative is not viable because the objective is to update the list of permissible medications consistent with the integrity of racing and the needs of the industry.

(b) Another alternative would be the elimination of time-based standards. These would be replaced by a rule prohibiting the mere presence of drugs rather than the detection of drugs based upon administration within a certain prescribed time. This alternative was rejected because it would not provide the same level of guidance to horsemen and veterinarians as is provided by a time based system.

(c) Alternative approaches were considered and discussed by members of the Mid-Atlantic Consortium of Racing States, the National Thoroughbred Racing Association's Racing Medication and Testing Consortium, the United States Trotting Association, as well as the International Association of Racing Commissioners International, and the North American Pari-Mutuel Regulators Association. These rules reflect a uniform medication policy endorsed by racing commission representatives from the Mid-Atlantic region, home to the largest concentration of horse racing in the United States. This initiative sets the standard for the rest of the country to follow. ARCI and NAPRA adopted these rules, and the NTRA is promoting implementation nationally.

9. Federal standards: None.

10. Compliance schedule: Once adopted, the rule can be implemented immediately.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendments merely continue the Board's program governing the administration of medication to race horses on a time basis prior to participating in a race pursuant to the existing rule and the amendments prescribed herein. Consequently, the rule neither affects small business, local governments, jobs nor rural areas. The rule proposal allows the Board to prescribe or prohibit administration of drugs to horses pursuant to an updated list, which eliminates obsolete drugs, adds new drugs, changes withdrawal times for other drugs and establishes additional withdrawal categories based on regulatory and industry needs. Prescribing or prohibiting the administration of medications to race horses does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8), nor does it affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, and because the Board has been previously been monitoring, and regulating the administration of medications to harness and thoroughbred race horses.

in the statute. The Fire Administrator has determined that no person is therefore likely to object to the Rule as written. [SAPA § 202(1)(b)(I)].

Job Impact Statement

Pursuant to General Municipal Law § 209-cc (L. 2002, c. 680) the State Fire Administrator, in consultation with the Department of Environmental Conservation, has adopted a report form and instructions for reporting the presence of wild animals pursuant to the requirements of the statute (19 NYCRR Part 820, *Register*, March 16, 2005). While the instructions reiterate the reporting exemptions set forth in the original legislation, the Legislature has since created several additional exemptions. This consensus rule making conforms the exemptions contained in the reporting instructions with those set forth in the current statute. As it is a ministerial detail being carried out in strict compliance with the statutory directive, it will have no impact on jobs or employment beyond those that may occur due to the statute itself.

Department of Taxation and Finance

NOTICE OF ADOPTION

Offers in Compromise

I.D. No. TAF-30-05-00004-A

Filing No. 1077

Filing date: Sept. 16, 2005

Effective date: Oct. 5, 2005

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

Action taken: Amendment of Parts 5000 and 5005 of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subds. First, Fifteenth and Eighteenth-a

Subject: Offers in compromise.

Purpose: To reflect existing department policy concerning offers in compromise and amend the regulations to reflect legislative amendments and technical corrections.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-30-05-00004-P, Issue of July 27, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State, City of New York and City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-40-05-00024-P

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

Proposed action: Amendment of sections 171.4(b)(1), 251.1(b) and 291.1(b); repeal of Appendixes 10, 10-A and 10-C; and addition of new Appendixes 10, 10-A and 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 671(a)(1); 697(a); 1309; 1312(a); 1329(a); 1332(a); and Model Local Law, section 7 found in section 1340(c); Codes and Ordinances of the City of Yonkers, sections 15-105; 15-108(a); 15-121; and 15-130; Administrative Code of the City of New York, sections 11-1771(a); 11-1797(a); 11-1909; and 11-1943

Subject: New York State, City of New York and City of Yonkers withholding tables and other methods.

Purpose: To reflect changes in supplemental withholding tax rates for wages and compensation paid on or after Jan. 1, 2006.

Substance of proposed rule (Full text is posted at the following State website: www.tax.state.ny.us): Section 671(a)(1), section 1309, section 1329(a), and section 7 of the Model Local Law contained in section 1340(c) of the Tax Law and section 11-1771(a) of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of New York State personal income tax, City of Yonkers income tax surcharge, City of Yonkers earnings tax on nonresidents, and City of New York personal income tax on residents reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals Appendixes 10, 10-A, and 10-C of Title 20 NYCRR and enacts new Appendixes 10, 10-A, and 10-C of such Title to provide new New York State, City of Yonkers, and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2006. The amendments reflect the return to tax tables used in 2002 for New York State and the City of New York based on the lapse of revisions of the tax tables and the tax table benefit recapture provided in Chapters 62 and 63 of the Laws of 2003 and the postponement of the expiration of City of New York tax provisions by Chapter 636 of the Laws of 2005. The new tables and other methods for the City of Yonkers also reflect amendments to City of Yonkers local laws increasing the amount of its income tax surcharge and its rate of earnings tax on nonresidents. The rule also reflects the decreases in the New York State and City of New York supplemental withholding tax rates applied to supplemental wage payments and the increase in such rate for the City of Yonkers.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations that are necessary to enforce the personal income tax. Section 1329(a) of the Tax Law and section 15-105 of the Codes and Ordinances of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be withheld in the same manner and form as that required by sections 671 through 678 of the Tax Law, except where noted; section 1332(a) of the Tax Law and section 15-108(a) of the Codes and Ordinances of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Section 7 of the Model Local Law found in section 1340(c) of the Tax Law and sections 15-121 and 15-130 of the Codes and Ordinances of the City of Yonkers provide with respect to the withholding of the City of Yonkers nonresident earnings tax, that the provisions of Part V of Article 22, as described above, shall have the same force and effect as if they were incorporated into the Codes and Ordinances of the City of Yonkers, except where noted. Section 1309(not subdivided) of the Tax Law provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) of the Tax Law provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Tax Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by tax regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York; section 11-1909 (not subdivided) and section 11-1943 (not subdivided) provide that after January 1, 1976 the laws found in Parts V and VI

of Article 22 of the Tax Law, which contain sections 671 through 699 of the Tax Law and which pertain to the withholding of tax and the procedural and administrative aspects of the state tax law, shall have the same force and effect as if they were incorporated into the Administrative Code of the City of New York, except where noted.

2. Legislative objectives: New Appendixes 10, 10-A, and 10-C of Title 20 NYCRR contain the revised New York State, City of Yonkers and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2006. The amendments reflect the return to tax tables used in 2002 for New York State and the City of New York based on the lapse of revisions of the tax tables and the tax table benefit recapture provided in Chapters 62 and 63 of the Laws of 2003 and the postponement of the expiration of City of New York tax provisions by Chapter 636 of the Laws of 2005. The new tables and other methods for the City of Yonkers also reflect amendments to City of Yonkers local laws increasing the amount of its income tax surcharge and its rate of earnings tax on nonresidents. The rule also reflects the decrease, to 7.35 percent, of the New York State supplemental withholding tax rate; the decrease, to 4.00 percent, of the New York City supplemental withholding tax rate; and the increase, to 0.735 percent, of the City of Yonkers supplemental withholding tax rate; which rates are to be applied to supplemental wage payments.

3. Needs and benefits: This rule sets forth New York State, City of Yonkers and City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2006. The amendments reflect the lapse of revisions of the tax tables and the tax table benefit recapture provided in Chapters 62 and 63 of the Laws of 2003, the postponement of the expiration of City of New York tax provisions by Chapter 636 of the Laws of 2005, and amendments to City of Yonkers local laws. This rule benefits taxpayers by providing New York State, City of Yonkers and City of New York withholding rates that more accurately reflect the current income tax rates. If this rule was not promulgated, the use of the existing withholding tables would cause over withholding for some taxpayers and under withholding for some others.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law, the Codes and Ordinances of the City of Yonkers, and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of New York State, City of Yonkers and City of New York personal income tax on residents, and City of Yonkers nonresident earnings tax reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendixes 10, 10-A, and 10-C of Title 20 NYCRR to the rates of the New York State income tax, the City of Yonkers income tax surcharge on residents and the City of Yonkers nonresident earnings tax, and the City of New York personal income tax on residents, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to revise the New York State withholding tables and other methods, the City of Yonkers income tax surcharge on residents and earnings tax on nonresidents withholding tables and other methods, and the City of New York personal income tax on residents withholding tables and other methods arises due to the statutory change in the rates of New York State and City of New York personal income tax and in the amount of the City of Yonkers income tax surcharge and in the rate of the City of Yonkers nonresident earnings tax, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, and Office of Budget and Management Analysis.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be sent copies of the new tables and other methods as part of the employer's guide which is routinely revised.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since the Tax Law, the Codes and Ordinances of the City of Yonkers, and the Administrative Code of the City of New York mandate that New York State, City of Yonkers and City of New York withholding tables and other methods be promulgated (see Section 1 of this

statement), there are no viable alternatives to providing such tables and other methods. The only alternative to promulgating this rule would be to allow the current withholding tables to remain in effect. This alternative, however, would require that employers withhold at rates that do not reflect the personal income tax rates of New York State, the City of Yonkers and the City of New York which will be in effect for the 2006 tax year.

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

10. Compliance schedule: Affected employers will be receiving the required information in sufficient time to implement the revised New York State, City of Yonkers and City of New York withholding tables and other methods for wages and other compensation paid on or after January 1, 2006.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, which are currently subject to the New York State, City of Yonkers, and City of New York withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the New York State, City of Yonkers, and City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised New York State, City of Yonkers, and City of New York withholding tables and other methods. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms or other paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any of such services.

4. Compliance costs: Small businesses and local governments are already subject to the New York State, City of Yonkers, and City of New York withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

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

6. Minimizing adverse impact: Sections 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1332 of the Tax Law mandates, in part, that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(13) of the State Administrative Procedure Act, who is cur-

rently subject to the New York State, City of Yonkers and City of New York withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The number of employers that are also public or private interests in rural areas cannot be determined with any degree of certainty. According to information supplied by the former New York State Office of Rural Affairs, there are 44 counties throughout New York State that are rural areas (having a population of less than 200,000) and 71 towns in the remaining 18 counties of New York State that are rural areas (with population densities of 150 people or less per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the New York State, City of Yonkers and City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms or other paperwork.

Further, many employers currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the New York State, City of Yonkers and City of New York withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of Yonkers and City of New York purposes. As such, these changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Sections 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1332 of the Tax Law mandates, in part, that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the withholding requirements.

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

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. These amendments provide new New York State, City of Yonkers and City of New York withholding tables and other methods, applicable for compensation paid on or after January 1, 2006. The rule also reflects the decreases in the New York State and City of New York supplemental withholding tax rates applied to supplemental wage payments and the increase in such rate for the City of Yonkers.

Office of Temporary and Disability Assistance

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

Child Support Standards Chart
I.D. No. TDA-40-05-00021-P

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

Proposed action: Amendment of section 347.10(a)(9), (b) and (c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 111-a and 111-i(2)

Subject: Child support standards chart.

Purpose: To update the child support calculations formula as reflected in the child support standards chart.

Text of proposed rule: Paragraph (9) of subdivision (a) of section 347.10 is amended to read as follows:

(9) "Self-support reserve" means 135 percent of the poverty income guidelines amount, which is updated annually by the Federal Department of Health and Human Services, and which will be provided by the [department] office annually. For calendar year [1996] 2005, the self-support reserve is [\$10,449] \$12,920.

Items 18, 20 and 21 of the child support guidelines worksheet contained in subdivision (b) of section 347.10 are amended to read as follows:

18. Subtract line 17 from line 16. 18. \$ _____

a. If line 18 is greater than or equal to [\$10,449] \$12,920 (the self-support reserve) enter the line 17 amount on line 22 below.

No further calculations are necessary.

b. If line 18 is less than [\$10,449] \$12,920, proceed to step 19.

20. Self-Support Reserve. 20. [\$ 10,449] \$12,920

21. Subtract line 20 from line 19. 21. \$ _____

a. If line 18 is less than [\$7,740] \$9,570 (poverty level), enter on line 22 the greater of \$300 or the amount from line 21.

b. If line 18 is greater than or equal to [\$7,740] \$9,570 (poverty level), but less than [\$10,449] \$12,920 enter on line 22 the greater of \$600 or the amount from line 21.

The text of section 347.10(c) is amended and the chart sections for annual incomes from \$0 to \$19,899 contained in that subdivision are repealed and replaced with the following chart sections reflecting the 2005 federal poverty income guidelines amount and the self support reserve:

(c) The following child support standards chart sets forth annual obligation amounts yielded by annual absent parent income levels, up to \$200,000, through application of the child support percentages as defined in this section:

CHILD SUPPORT STANDARDS CHART

Released CHILD SUPPORT STANDARDS CHART

[April 1, 1996] April 1, 2005

PREPARED BY NEW YORK STATE [DEPARTMENT OF SOCIAL SERVICES] OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, [OFFICE] DIVISION OF CHILD SUPPORT ENFORCEMENT

The tables provided as part of the Child Support Standards Chart should be used to determine the annual child support obligation amount pursuant to the provisions of Chapter 567 of the laws of New York of 1989. The current poverty income guidelines amount for a single person as reported by the United States Department of Health and Human Services is [\$7,740] \$9,570, and the self-support reserve for [1996] 2005 is [\$10,449] \$12,920.

How to use the Chart:

1. Locate the "Income Range" you are looking for in the upper right hand corner of each page.
2. Locate the row labeled "Annual Income" on one of the tables of that page.
3. Go across the top of the table to the column corresponding to the "Number of Children" for whom support is sought.

4. The dollar amount listed where the "Annual Income" row and the "Number of Children" column meet is the amount of the basic child support obligation, where additional amounts are not applicable for the child care, health care and education for the children for whom support is sought.

5. Where additional amounts for child care, health care and educational expenses are appropriate, see the worksheet on page 21.

Please note: Where the total of both parents exceeds \$80,000, the law permits, but does not require, the use of the Child Support Percentages in calculating the annual child support obligation amount on the income above \$80,000.

The Child Support Standards Chart

Child Support Percentages

One Child	17% of combined parental income
Two Children	25% of combined parental income
Three Children	29% of combined parental income
Four Children	31% of combined parental income
Five Children	no less than 35% of combined parental income

INCOME RANGE

0-9,999

ANNUAL INCOME	NUMBER OF CHILDREN				
	1	2	3	4	5+
000-9,999	300	300	300	300	300

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
10,000	10,099		300	300	300	300	300
10,100	10,199		300	300	300	300	300
10,200	10,299		300	300	300	300	300
10,300	10,399		300	300	300	300	300
10,400	10,499		300	300	300	300	300
10,500	10,599		300	300	300	300	300
10,600	10,699		300	300	300	300	300
10,700	10,799		300	300	300	300	300
10,800	10,899		300	300	300	300	300
10,900	10,999		300	300	300	300	300

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
11,000	11,099		300	300	300	300	300
11,100	11,199		300	300	300	300	300
11,200	11,299		300	300	300	300	300
11,300	11,399		300	300	300	300	300
11,400	11,499		300	300	300	300	300
11,500	11,599		300	300	300	300	300
11,600	11,699		600	300	300	300	300
11,700	11,799		600	300	300	300	300
11,800	11,899		600	300	300	300	300
11,900	11,999		600	300	300	300	300

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
12,000	12,099		600	300	300	300	300
12,100	12,199		600	300	300	300	300
12,200	12,299		600	300	300	300	300
12,300	12,399		600	300	300	300	300
12,400	12,499		600	300	300	300	300
12,500	12,599		600	300	300	300	300
12,600	12,699		600	300	300	300	300
12,700	12,799		600	300	300	300	300
12,800	12,899		600	600	300	300	300
12,900	12,999		600	600	300	300	300

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
13,000	13,099		600	600	300	300	300
13,100	13,199		600	600	300	300	300
13,200	13,299		600	600	300	300	300
13,300	13,399		600	600	380	380	380
13,400	13,499		600	600	480	480	480
13,500	13,599		600	600	600	580	580
13,600	13,699		680	680	680	680	680

13,700	13,799	780	780	780	780	780
13,800	13,899	880	880	880	880	880
13,900	13,999	980	980	980	980	980
		NUMBER OF CHILDREN				
ANNUAL INCOME		1	2	3	4	5+
FROM		ANNUAL OBLIGATION AMOUNT				
14,000	14,099	1,080	1,080	1,080	1,080	1,080
14,100	14,199	1,180	1,180	1,180	1,180	1,180
14,200	14,299	1,280	1,280	1,280	1,280	1,280
14,300	14,399	1,380	1,380	1,380	1,380	1,380
14,400	14,499	1,480	1,480	1,480	1,480	1,480
14,500	14,599	1,580	1,580	1,580	1,580	1,580
14,600	14,699	1,680	1,680	1,680	1,680	1,680
14,700	14,799	1,780	1,780	1,780	1,780	1,780
14,800	14,899	1,880	1,880	1,880	1,880	1,880
14,900	14,999	1,980	1,980	1,980	1,980	1,980

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
15,000	15,099		2,080	2,080	2,080	2,080	2,080
15,100	15,199		2,180	2,180	2,180	2,180	2,180
15,200	15,299		2,280	2,280	2,280	2,280	2,280
15,300	15,399		2,380	2,380	2,380	2,380	2,380
15,400	15,499		2,480	2,480	2,480	2,480	2,480
15,500	15,599		2,580	2,580	2,580	2,580	2,580
15,600	15,699		2,652	2,680	2,680	2,680	2,680
15,700	15,799		2,669	2,780	2,780	2,780	2,780
15,800	15,899		2,686	2,880	2,880	2,880	2,880
15,900	15,999		2,703	2,980	2,980	2,980	2,980

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
16,000	16,099		2,720	3,080	3,080	3,080	3,080
16,100	16,199		2,737	3,180	3,180	3,180	3,180
16,200	16,299		2,754	3,280	3,280	3,280	3,280
16,300	16,399		2,771	3,380	3,380	3,380	3,380
16,400	16,499		2,788	3,480	3,480	3,480	3,480
16,500	16,599		2,805	3,580	3,580	3,580	3,580
16,600	16,699		2,822	3,680	3,680	3,680	3,680
16,700	16,799		2,839	3,780	3,780	3,780	3,780
16,800	16,899		2,856	3,880	3,880	3,880	3,880
16,900	16,999		2,873	3,980	3,980	3,980	3,980

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
17,000	17,099		2,890	4,080	4,080	4,080	4,080
17,100	17,199		2,907	4,180	4,180	4,180	4,180
17,200	17,299		2,924	4,280	4,280	4,280	4,280
17,300	17,399		2,941	4,325	4,380	4,380	4,380
17,400	17,499		2,958	4,350	4,480	4,480	4,480
17,500	17,599		2,975	4,375	4,580	4,580	4,580
17,600	17,699		2,992	4,400	4,680	4,680	4,680
17,700	17,799		3,009	4,425	4,780	4,780	4,780
17,800	17,899		3,026	4,450	4,880	4,880	4,880
17,900	17,999		3,043	4,475	4,980	4,980	4,980

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
18,000	18,099		3,060	4,500	5,080	5,080	5,080
18,100	18,199		3,077	4,525	5,189	5,180	5,180
18,200	18,299		3,094	4,550	5,278	5,280	5,280
18,300	18,399		3,111	4,575	5,307	5,380	5,380
18,400	18,499		3,128	4,600	5,336	5,480	5,480
18,500	18,599		3,145	4,625	5,365	5,580	5,580
18,600	18,699		3,162	4,650	5,394	5,680	5,680
18,700	18,799		3,179	4,675	5,423	5,780	5,780
18,800	18,899		3,196	4,700	5,452	5,828	5,880
18,900	18,999		3,213	4,725	5,481	5,859	5,980

ANNUAL INCOME	FROM	THRU	NUMBER OF CHILDREN				
			1	2	3	4	5+
19,000	19,099		3,230	4,750	5,510	5,890	6,080
19,100	19,199		3,247	4,775	5,539	5,921	6,180
19,200	19,299		3,264	4,800	5,568	5,952	6,280
19,300	19,399		3,281	4,825	5,597	5,983	6,380
19,400	19,499		3,298	4,850	5,626	6,014	6,480
19,500	19,599		3,315	4,875	5,655	6,045	6,580
19,600	19,699		3,332	4,900	5,684	6,076	6,680
19,700	19,799		3,349	4,925	5,713	6,107	6,780
19,800	19,899		3,366	4,950	5,742	6,138	6,880

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

Section 111-a of the SSL requires the OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the Department of Health and Human Services by Part D of Title IV of the Federal Social Security Act.

Section 111-i(2) of the SSL requires the Commissioner of OTDA to publish annually in its regulations the revised self-support reserve and a revised child support standards chart.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that to the greatest extent possible parents provide financial support for their children.

3. Needs and Benefits:

These amendments are required in order to comply with section 111-i(2) of the SSL. That section provides in paragraph (a) that the Commissioner of OTDA shall publish annually in its regulations the revised self-support reserve to reflect the annual updating of the poverty income guidelines amount for a single person as reported by the Federal Department of Health and Human Services. Paragraph (2) of that section provides that the Commissioner of OTDA shall publish in its regulations a child support standards chart to reflect the dollar amounts yielded through application of the child support percentage, as defined in the Domestic Relations Law.

The existing child support standards chart and the self-support reserve referred to in that chart do not reflect the current amounts that are to be applied when determining the amount of child support to be imposed. Therefore, it is necessary that the existing regulations be amended to delete any inconsistent requirements as well as to update the child support standards calculations formula necessary to correctly reflect the dollar amounts yielded through application of the child support percentages described in the chart.

4. Costs:

There are no costs associated with the proposed amendments. The increase in the poverty level and self-support reserve, as contained in the proposed amendments are required under Federal and State statutes. Although these increases would affect the amount of child support collected for those cases that now fall below the new poverty level and self support reserve, the overall impact of these changes would not be significant since the amount of child support collected for all cases has been increasing.

5. Local Government Mandates:

No new or additional requirements will be imposed on local child support enforcement units as a result of the proposed amendments.

6. Paperwork:

No new or additional requirements will result from these amendments.

7. Duplication:

The proposed amendments do not duplicate, overlap or conflict with any existing State or Federal laws or regulations.

8. Alternatives:

The proposed amendments are required in order to comply with section 111-i(2) of the SSL. Therefore, no alternatives were considered.

9. Federal Standards:

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

10. Compliance Schedule:

The revised child support standards chart was published on April 1, 2005 and is currently being applied on a statewide basis.

Regulatory Flexibility Analysis

1. Affect on Small Business and Local Governments:

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

2. Compliance Requirements:

Section 347.10(b) of 18 NYCRR provides in part that the local child support enforcement unit must utilize the provisions of section 347.10 to determine the amount of the basic child support obligation. Such determination must take into consideration the gross (total) income and allowed deductions of both parents in order to calculate their individual and combined parental income, the basic child support obligation, each parent's percentage of the combined parental income, and each parent's appropriate share of the basic child support obligation. The proposed amendments to section 347.10 will update the child support guidelines worksheet and child support standards chart so that they are consistent with the amounts used currently by the local child support enforcement units to calculate the amounts of child support obligations.

3. Professional Services:

The regulations should not require the social services districts to hire new staff or require any new professional services.

4. Compliance Costs:

The regulations should not result in increased administrative costs for social services districts.

5. Economic and Technological Feasibility:

The social services districts have the economic and technological ability to comply with the proposed regulations.

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

Although there was no social service district participation in the development of these proposed regulatory amendments, social services districts have been informed of the proposed amendments and they are currently using the amounts specified in the proposed amendments to calculate child support obligations.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

There are 44 social services districts in rural areas that will be affected by these proposed regulations.

2. Reporting, Recordkeeping and other Compliance Requirements; and Professional Services:

The proposed amendments will not result in any new reporting or recordkeeping requirements. The proposed amendments will not require social services districts in rural areas to hire new staff or require the districts to obtain any new professional services.

Section 347.10(b) of 18 NYCRR provides in part that all local child support enforcement units must utilize the provisions of section 347.10 to determine the amount of the basic child support obligation. Such determination must take into consideration the gross (total) income and allowed deductions of both parents in order to calculate their individual and combined parental income, the basic child support obligation, each parent's percentage of the combined parental income, and each parent's appropriate share of the basic child support obligation. The proposed amendments to section 347.10 will update the child support guidelines worksheet and child support standards chart so that they are consistent with the amounts used currently by the local child support enforcement units to calculate the amounts of child support obligations.

3. Costs:

The proposed regulations will not result in increased administrative costs for social services districts in rural areas.

4. Minimizing Adverse Impact:

The proposed regulations will not have an adverse impact on social services districts, including those in rural areas.

5. Rural Area Participation:

Although there was no social service district participation in the development of these proposed regulatory amendments, social services districts in rural areas have been informed of the proposed amendments and they are currently using the amounts specified in the proposed amendments to calculate child support obligations.

Job Impact Statement

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