

# RULE MAKING ACTIVITIES

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

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

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

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## Banking Department

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### EMERGENCY RULE MAKING

#### Regulation of Budget Planning Activities

**I.D. No.** BNK-36-05-00012-E

**Filing No.** 923

**Filing date:** Aug. 23, 2005

**Effective date:** Aug. 25, 2005

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

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

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

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

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

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

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

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

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

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

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

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

**Text of emergency rule:**

#### PART 404

#### BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES

(statutory authority: Banking Law, § 587)

#### § 404.1 Definitions.

For purposes of this Part:

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

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

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

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

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

#### § 404.2 Explanatory note.

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

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

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

#### § 404.3 Servicing By a Licensee Service Provider.

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

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

- (1) Name and address of the licensee service provider.
- (2) A description of the services to be provided by the licensee service provider.
- (3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

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

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

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

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

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

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

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

#### § 404.4 Servicing By A Non-Licensee Service Provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 404.5 Termination of Agreements or Contracts.

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

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

#### § 404.6 Compliance.

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 20, 2005.

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

#### Regulatory Impact Statement

##### 1. Statutory Authority:

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

##### 2. Legislative Objective:

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

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

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

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

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

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

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

##### 3. Needs and Benefits:

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

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

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

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

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

#### 4. Costs:

(a) Costs to State Government: None.

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

(b) Costs to Local Government: None.

(c) Costs to Regulated Entities:

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

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

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

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

#### 5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

#### 6. Paperwork:

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

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

#### 7. Duplication:

None.

#### 8. Alternatives:

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

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

(b) Do not propose the rule.

If this alternative were considered, the Banking Department would have to require that licensees not use the services of third party entities in distributing Debtor funds to creditors, in order to provide Debtors the consumer protections afforded under Section 580(4) of the Banking Law. This alternative is not feasible because, as many current and prospective licensees explained to the Banking Department, they need to use the

services of the third party providers in distributing Debtor funds. The need results primarily because they do not have the computerized technology, staffing and budgetary resources to provide the critical services that they perform.

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

9. Federal Standards:

None.

10. Compliance Schedule:

Compliance with the rule is required on or before May 18, 2004.

#### **Regulatory Flexibility Analysis**

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

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

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

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

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

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

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

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

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

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

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

#### **Job Impact Statement**

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

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

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

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

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

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## Department of Civil Service

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

#### Jurisdictional Classification

**I.D. No.** CVS-36-05-00006-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class in the Department of Law.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by increasing the number of positions of Assistant Attorney General from 594 to 600, Confidential Assistant from 6 to 12 and Investigator from 156 to 162.

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

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

#### Jurisdictional Classification

**I.D. No.** CVS-36-05-00007-P

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

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

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by increasing the number of positions of Assistant Curator from 1 to 2.

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

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

#### Jurisdictional Classification

**I.D. No.** CVS-36-05-00008-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the State University of New York.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "Central Administration," by increasing the number of positions of Secretary 2 from 12 to 13.

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

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

#### Jurisdictional Classification

**I.D. No.** CVS-36-05-00009-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Insurance Department.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Insurance Department, by adding thereto the position of Associate Attorney (Insurance Industry Investigations) (5).

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

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

#### Jurisdictional Classification

**I.D. No.** CVS-36-05-00010-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by adding thereto the subheading "Office of Homeland Security," and the positions of Critical Infrastructure Analyst 1, Critical Infrastructure Analyst 2, Intelligence Analyst 1, Intelligence Analyst 2, Administrative Assistant (5) and Senior Administrative Assistant (5).

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

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-36-05-00011-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Commission on Quality of Care for the Mentally Disabled," by deleting therefrom the positions of φMental Hygiene Facility Review Specialist 1 (25), φMental Hygiene Facility Review Specialist 2 (9), φMental Hygiene Facility Review Specialist 4 (6), Program Cost Analyst 1 (1), φProgram Cost Analyst 2 (3), φProgram Cost Analyst 3 (6) and φProgram Cost Analyst 4 (3) and by adding thereto the positions of Quality Care Facility Review Specialist 1 (24), Quality Care Facility Review Specialist 2 (10), φQuality Care Facility Review Specialist 3 (5), φQuality Care Facility Review Specialist 4 (1), Quality Care Program Cost Analyst 1 (2), Quality Care Program Cost Analyst 2 (5), φQuality Care Program Cost Analyst 3 (2) and φQuality Care Program Cost Analyst 4 (1).

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

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

**Education Department**

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

**Duties and Responsibilities of the Chief of Staff and Counsel**

**I.D. No.** EDU-36-05-00013-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 and 3.9 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 101 (not subdivided)

**Subject:** Duties and responsibilities of the chief of staff and counsel of the State Education Department.

**Purpose:** To repeal provisions relating to the chief of staff; and designate the counsel as the deputy commissioner of education as specified in Education Law, section 101, 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 of the commissioner.

**Text of proposed rule:** 1. Section 3.8 of the Rules of the Board of Regents is amended, effective November 24, 2005, as follows:

§ 3.8 [Chief of staff, chief] *Chief* operating officer, counsel and other personnel.

(a) There shall be [a chief of staff,] 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.

(b) The [chief of staff] *counsel* shall be the deputy commissioner of education as specified in section 101 of the Education Law [and shall advise the commissioner on policy, coordinate action across the department on policy issues, facilitate internal and external communications in support of policy, and perform special assignments as directed by the commissioner]. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the [chief of staff] *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) . . .

(d) . . .

2. Section 3.9 of the Rules of the Board of Regents is amended, effective November 24, 2005, as follows:

§ 3.9 Appointments.

The commissioner shall appoint all officers and employees of the department [, except the chief of staff]. 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.

**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, 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:

Section 101 of the Education Law 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.

LEGISLATIVE OBJECTIVES:

Consistent with the authority granted to the Board of Regents pursuant to Education Law section 101, the proposed amendment repeals provisions

relating to the appointment, duties and responsibilities of the position of Chief of Staff, and designates the Counsel of the State Education Department as the deputy commissioner of education as specified in Education Law section 101: “. . . who shall perform such duties as the regents may assign to him 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 this chapter.”

#### 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 of Staff.

#### COSTS:

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

## Department of Environmental Conservation

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

#### Low-Level Radioactive Waste Transporter Permit and Manifest System Regulations

**I.D. No.** ENV-36-05-00002-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 381.18 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, art. 27, title 3, sections 27-0303 and 27-0305

**Subject:** Update the dates of publication of Federal regulations that are incorporated by reference to the most currently available volumes and delete an invalid room number referenced in the regulations.

**Purpose:** To maintain compatibility with the Nuclear Regulatory Commission's (NRC) Agreement State Program by correcting deficiencies identified in NRC's Integrated Materials Performance Evaluation Program review of 1998.

**Text of proposed rule:** Section 381.18 is amended as follows:

381.18 Materials Incorporated by reference

The following materials have been incorporated by reference in this Part. These references are available for inspection and copying at [Room 488 of] the Division of Solid & Hazardous Materials in the department's offices, 625 Broadway, Albany, New York 12233-7250, or may be obtained from the source listed.

(a) Section 274 of the Atomic Energy Act of 1954 as amended January 4, 1983, P.L. 97-415, Section 19(a), 96 Stat. 2079 (42 USC 2021).

(b) Title 49 Code of Federal Regulations (CFR) part 172, section 172.203(d) and sections 172.300-172.560 dated October 1, [1995] 2004.

(c) Title 49 Code of Federal Regulations (CFR) part 173, sections 173.401-173.478 dated October 1, [1995] 2004.

(d) Title 49 Code of Federal Regulations (CFR) part 177, section 177.817(e), dated October 1, [1995] 2004.

(e) Title 10 Code of Federal Regulations (CFR) part 20, section 20.2006 and Appendix [F] G [to sections 20.1001-20.2401], dated January 1, [1996] 2005.

(f) Title 10 Code of Federal Regulations (CFR) part 61, section 61.55, dated January 1, [1996] 2005.

(g) Title 10 Code of Federal Regulations (CFR) part 71, sections 71.0-71.137, dated January 1, [1996] 2005.

(h) Title 49 Code of Federal Regulations (CFR) part 387, Section 387.9, dated October 1, [1995] 2004.

Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**Text of proposed rule and any required statements and analyses may be obtained from:** John B. Zeh, Department of Environmental Conservation, Bureau of Hazardous Waste and Radiation Management, 625 Broadway, Albany, NY 12233-7255, (518) 402-8579, e-mail: radregs@gw.dec.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 rulemaking is a consensus rule because it is minor in nature and consists entirely of technical amendments. These technical amendments involve the updating of the publication dates of certain federal regulations that are incorporated by reference and the deletion of one invalid room number from a previous address. Adopting these changes is necessary to continue consistency between the State and federal regulations and maintain New York State's compatibility with the federal Agreement States Program.

#### Job Impact Statement

A Job Impact Statement has not been prepared for this consensus rulemaking as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State. The amendments

merely update the publication dates of federal regulations incorporated by reference and delete reference to an invalid room number located at the department's former address.

The proposed rule is not expected to result in any decrease of full-time annual jobs or employment opportunities which would otherwise be available to the residents of the State in the next two years.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Camping Opportunities for People with Disabilities

**I.D. No.** ENV-36-05-00004-P

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

**Proposed action:** Addition of sections 190.0(b)(10) and 190.3(f) to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (d), (2)(m), 9-0105(1), (3); Executive Law, section 816(3) and the Americans with Disabilities Act (ADA) (Public Law, 101-336)

**Subject:** Providing camping opportunities for people with disabilities.

**Purpose:** To reserve certain accessible campsites for people with disabilities.

**Text of proposed rule:** Paragraphs (10), (11), (12), and (13) of subdivision 190.0(b) are renumbered paragraphs (11), (12), (13), and (14) and a new paragraph (10) is added to read as follows:

*(10) Person with a disability shall mean a person with (a) a physical impairment that substantially limits one or more of the major life activities of such individual; and/or (b) a record of such impairment.*

Add a new subdivision (f) to section 190.3 to read as follows:

*(f) No person, other than a person with a disability and that person's associated camping group, shall occupy any camping site that the Department has designated as reserved for use by persons with disabilities.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Thomas Wolfe, Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255, (518) 402-9428, e-mail: [tbwolfe@gw.dec.state.ny.us](mailto:tbwolfe@gw.dec.state.ny.us)

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

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

**Additional matter required by statute:** A negative declaration has been prepared and is in compliance with art. 8 of the Environmental Conservation Law.

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

#### Regulatory Impact Statement

##### 1. Statutory authority

Environmental Conservation Law ("ECL") section 1-0101(3)(b) directs the Department to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301(1)(b) gives the Department the responsibility to "promote and coordinate management of . . . land resources to assure their protection. . . and take into account the cumulative impact upon all such resources in . . . promulgating any impact upon all such resources. . . in promulgating any rule or regulation." ECL sections 3-0301(1)(d) and 9-0105(1) authorize the Department of Environmental Conservation to "exercise care, custody, and control" of State lands. ECL section 3-0301(2)(m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of (the ECL)," and ECL 9-0105(3) authorizes DEC to "make necessary rules and regulations to secure proper enforcement of (ECL Article 9)." Furthermore, Executive Law section 816(3) authorizes DEC "to develop rules and regulations necessary, convenient or desirable to effectuate (DEC's unit management planning responsibilities)."

The Americans with Disabilities Act (ADA) (Public Law 101-336), along with the Architectural Barriers Act of 1968 (ABA) (PL 90-480) and the Rehabilitation Act of 1973; Title V, Section 504, ( PL 93-112) contain similar mandates which have had a profound effect on the manner by which people with disabilities are afforded equality in their recreational pursuits. The ADA is a comprehensive law prohibiting discrimination against people with disabilities in employment practices, use of public

transportation, use of telecommunication facilities and use of public accommodations. Title II of the ADA applies to the Department and requires, in part, that reasonable modifications must be made to its services and programs, so that when those services and programs are viewed in their entirety, they are readily accessible to and usable by people with disabilities. This must be done unless such modification would result in a fundamental alteration in the nature of the service, program or activity or an undue financial or administrative burden to the Department. Since recreation is an acknowledged public accommodation program of the Department, and there are services and activities associated with that program, the Department has the mandated obligation to comply with the ADA, Title II and ADA Accessibility Guidelines, as well as Section 504 of the Rehabilitation Act.

The proposed regulation is necessary to ensure full compliance with the spirit of the above mentioned State and Federal laws when related to those facilities which have been created or improved for use by people with disabilities.

##### 2. Legislative objectives

In adopting various articles of the ECL, the legislature has established forest, fish, and wildlife conservation to be policies of the State and has empowered DEC to exercise "care, custody, and control" over certain state lands and other real property. In line with these statutory interests, the regulations will protect natural resources and the safety and welfare of those who engage in recreational activities on Department managed lands. In addition, as Title II of the ADA applies to the Department and requires reasonable modifications to services and programs, so they are readily accessible to and usable by people with disabilities, there would be no assurance that the facilities would be readily accessible or usable in the absence of the current regulation which provides the Department with a vehicle to reserve facilities for their exclusive use.

##### 3. Needs and benefits

In furtherance of the Department's mandate to provide access to DEC programs for people with disabilities, the proposed regulation would allow DEC land managers to post a camping site as reserved for the exclusive use of person's with disabilities in areas where it is deemed appropriate. In order to comply with Title II of the ADA, the Department has modified many campsites and lean-tos to create accessibility for persons with disabilities. The new accessible campsites contain specific design elements which invite use specifically by people with mobility impairments. In most cases, these sites will be utilized on a "first come, first served basis" and be open to everyone. However, in some areas of heavy use, and where there are a large number of campsites available, it will be necessary to post an accessible site as reserved for exclusive use by people with disabilities to ensure that the site would be available for use by the people it was designed for and their companions. In Title 6 NYCRR Section 190.3 there is currently no regulation pertaining to the use of camping sites designated for use by persons with disabilities.

The proposed changes in 6 NYCRR are for the purpose of establishing reasonable opportunity for the use of these facilities by persons with disabilities, while not inordinately inconveniencing the rest of the public. This regulation will be beneficial to persons with disabilities and their associated camping group as there are a limited number of improved sites available to them. Also the general public will benefit by being educated as to the existence of these accessible sites and avoid situations where someone may be occupying an improved site unknowingly when others are available. Thus, a person who requires an improved and designated site will not have to ask people occupying the site to move. The Department will benefit from a management standpoint as it will be able to designate sites that are appropriate for the actual use.

Individual members of the Department of Environmental Conservation's Accessibility Advisory Committee, the Forest Preserve Advisory Committee, the New York State Trails Council, and the Independent Living Council received an announcement of our intent to put this regulation forward along with a request for preliminary comments. Responses that were received were supportive in nature.

##### 4. Costs

There would be no increased staffing, construction or compliance costs projected for state or local governments or to private regulated parties. Costs to the regulating agency would be minimal, approximately \$100 for the necessary signage.

##### 5. Local government mandates

This proposal will not impose any program, service, duty nor responsibility upon any county, city, town, village, school district or fire district.

##### 6. Paperwork

With the possible exception of a slight increase in the number of citations issued by the Department during the first few months after the regulation takes effect, an increase in paperwork is not expected.

#### 7. Duplication

There is no duplication, overlap, nor conflict with State or Federal rules.

#### 8. Alternative approaches

The no action alternative would retain existing regulations that pertain to the designation of campsites. However, the existing regulations do not allow for the reservation of sites for exclusive use by persons with disabilities. The existing regulation also does not make the necessary provisions to ensure that all reasonable modifications are made to the Department's services and programs, so that when those services and programs are viewed in their entirety, they are readily accessible to and usable by people with disabilities. This is unacceptable since it would leave Department personnel with no legal authority to enforce who can and can not use camping sites designated for persons with disabilities. Furthermore, the no action alternative would result in sites not being available for use by the person's for whom they were designed or conflicts between the users and confusion by the public.

The inclusion of a time after which a person without a disability could occupy a campsite designated for a persons with disabilities was considered. This alternative has a great potential for creating conflict between users and was unacceptable from a management and enforcement standpoint.

#### 9. Federal standard

The Americans with Disabilities Act (ADA) is a comprehensive law prohibiting discrimination against people with disabilities in employment practices, use of public transportation, use of telecommunication facilities and use of public accommodations. Title II of the ADA applies to the Department and requires, in part, that reasonable modifications must be made to its services and programs, so that when those services and programs are viewed in their entirety, they are readily accessible to and usable by people with disabilities. This regulation is an effort to ensure that persons with disabilities have access to the Department's programs and services.

Section 504 of the Rehabilitation Act of 1973 (PL 93-112) states " No otherwise qualified individual with a disability in the United States shall solely by reason of his disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, or under any program or activity conducted by an Executive Agency."

#### 10. Compliance schedule

The proposed rule with respect to primitive campsite availability for persons with disabilities will become effective on the date of publication of the rulemaking in the New York State Register. No time is needed for regulated persons to achieve compliance with the regulations since compliance consists of not undertaking prohibited activities, as opposed to undertaking required activities. Once the regulations are adopted, they are effective immediately.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for small Businesses and Local Government is not submitted with these regulations because the proposal will impose no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal.

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

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, recordkeeping or other compliance requirements on rural areas. The proposed rule solely relates to the designation of a limited number of primitive campsites for the exclusive use of persons with disabilities.

#### **Job Impact Statement**

A job impact statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed rule solely relates to the designation of a limited number of primitive campsites for the exclusive use of persons with disabilities.

## Insurance Department

### EMERGENCY RULE MAKING

#### **Standards for the Use of Credit Information to Underwrite and Rate Personal Lines Insurance**

**I.D. No.** INS-36-05-00001-E

**Filing No.** 922

**Filing date:** Aug. 18, 2005

**Effective date:** Aug. 18, 2005

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

**Action taken:** Addition of Part 221 (Regulation 182) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201 and 301 and art. 28.

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

**Specific reasons underlying the finding of necessity:** Article 28 of the Insurance Law, which goes into effect on April 23, 2005, requires an insurer that uses credit information to underwrite or rate risks for personal lines insurance to comply with certain requirements and limitations. Chapter 215 of the Laws of 2004, which enacted Article 28, requires the Superintendent to promulgate regulations necessary to effectuate the provisions of Article 28.

It is essential that this regulation be promulgated on an emergency basis to assure that consumers are afforded certain protections with respect to the use of credit information by an insurer in connection with personal lines insurance. Therefore, it is essential that insurers be made aware of the limitations upon and requirements for the use of credit information in the underwriting and rating of personal lines insurance as soon as possible. Insurers that use such information are required to file scoring models (or other scoring processes) with the Superintendent. Insurers must be given sufficient time to review the requirements with respect to such filings prior to the date Article 28 becomes effective.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

**Subject:** Standards for the use of credit information to underwrite and rate personal lines insurance.

**Purpose:** To establish limitations upon, and requirements for, the permissible use of credit information by insurers to underwrite and rate risks for personal lines insurance business.

**Substance of emergency rule:** Section 221.0 provides that Chapter 215 of the Laws of 2004 added new Article 28 to the Insurance Law. Article 28 establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite or rate risks for personal lines insurance business.

Section 221.1 provides that this regulation applies to the use of credit information to underwrite and rate personal lines insurance policies applied for, or renewed, on or after April 23, 2005. It also provides that this regulation or Article 28 will not alter the requirements or limitations contained in the Insurance Law, Title 11 of the NYCRR, or the rules of the New York Automobile Insurance Plan or the New York Property Insurance Underwriting Association.

Section 221.2 provides definitions applicable to the regulation.

Section 221.3 provides prohibitions on the use of credit information and permissible use of credit information.

Section 221.4 provides the requirements for obtaining current credit information.

Section 221.5 provides standards for the disclosure of the use of credit information in the underwriting and rating of personal lines insurance policies.

Section 221.6 provides standards for notification when an insurer takes an adverse action based upon credit information.

Section 221.7 provides for dispute resolution and error correction if it is determined that the credit information used by an insurer to underwrite or rate a current insured was incorrect or incomplete.

Section 221.8 provides standards for the filing of credit scoring models (or other scoring processes) and revisions thereto, to the superintendent.

Section 221.9 provides standards for filings by the insurer.

Section 221.10 provides that an insurer that uses credit information in the underwriting and rating of personal lines insurance is required to complete and submit to the superintendent an Insurer Credit Information Compliance Certification. The Insurer Credit Information Compliance Certification shall be in a form prescribed by the superintendent.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 15, 2005.

**Text of emergency rule and any required statements and analyses may be obtained from:** Mike 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: Sections 201 and 301 of the Insurance Law, and Article 28 of the Insurance Law, as enacted by Chapter 215 of the Laws of 2004. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Article 28, as enacted by Chapter 215 of the Laws of 2004, establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business. Further, the Superintendent is directed to provide, by regulation, rules governing the use of credit information.

2. Legislative objectives: The Legislature, in enacting Chapter 215 of the Laws of 2004, wanted to assure that consumers are afforded certain protections with respect to the use of credit information for personal lines insurance. The Superintendent was directed to promulgate a regulation to establish limitations on, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business.

3. Needs and benefits: Most insurers currently use credit information in the underwriting and initial tier placement of consumers for personal lines insurance. The purpose of this regulation is to establish rules to implement the provisions of Article 28. In accordance with Article 28, the regulation establishes and clarifies limitations upon, and requirements for, the permissible use of credit information by insurers doing business in New York State to assure that consumers are afforded certain protections when credit information is used to underwrite and rate risks for personal lines insurance business. The regulation clarifies prohibited and permitted uses of credit information in the underwriting and rating of personal lines insurance. The regulation sets forth whose credit information can be used, the form of the disclosure of the use of credit information and when the disclosure must be provided. The regulation sets forth standards for the notification when an insurer takes an adverse action based upon credit information. The regulation also requires an insurer to take corrective action within thirty days after it receives notice that the insured has obtained a determination pursuant to the process for dispute resolution and error correction under the federal Fair Credit Reporting Act that the credit information used by the insurer was incorrect or incomplete. The regulation also establishes rules for, and provides guidance to, insurers when filing their credit information requirements with the Superintendent.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. This rule does not impose additional costs upon insurers. If an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producer or other entity will incur additional costs in producing and mailing these documents. However, the designation of an insurance producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agreement between an insurer and its insurance producer(s) or other entities and will be used when it has an overall cost benefit. The notification requirements and submission of filings are required by the statute and the regulation is only implementing the statutory requirement.

5. Local government mandates: None.

6. Paperwork: Paperwork associated with the submission of a filing by an insurer should already be in place. The insurer is required to complete an Insurer Credit Information Compliance Certification for the scoring model (or other scoring processes) filing and any filing of revisions thereto. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur

additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

7. Duplication: None.

8. Alternatives: In developing this rule, the Department reviewed the National Conference of Insurance Legislators (NCOIL) model for the use of credit information in personal insurance and various provisions of the Federal and Fair Credit Reporting Act and the Department did outreach with trade associations, consumer groups, and a third party modeler.

There are several provisions of the rule for which alternatives were considered by the Department, as follows.

An insurer who chooses to consider, for any given program of insurance, an absence of credit information or an inability to calculate an insurance score to underwrite or rate risks must choose one of the three options specified in Section 2803(e) of the law to apply to all of the consumers in that program of insurance who have no credit information or whose insurance score cannot be calculated. The three options have been incorporated into the rule. The language used in Section 221.3(a)(5)(iii) of the rule clarifies the parameters of the third option which requires that a filing be made with, and be subject to the prior approval of, the Superintendent, with respect to an individual consumer. An alternative that has been suggested by some insurers is to permit such a filing to be made for a class of insureds. The Department considered this approach but rejected it because the law contemplates that such filing be made as to "the consumer" and not to a class of consumers. To further demonstrate the intention of the law not to treat all insureds who have no credit information or an insurance score as a class, Section 2802(d) prohibits an insurer from taking an adverse action against a consumer solely because he or she does not have a credit card account. Clearly, such insureds would fall into a "class" of insureds that could be defined as having an absence of credit information or an inability to calculate an insurance score but such a class would be violative of Section 2802(d) of the law.

Section 2802(g) of the law gives an insured, where an insurer has chosen to use credit information the right to request, not more often than once every 36 months, that the insurer re-underwrite and re-rate the policy based upon a current credit report or insurance score. Section 221.4(b)(1) of the rule requires that the insurer make any necessary adjustments including moving the insured to the appropriate tier, effective as of the date of the updated report or score. An alternative that has been suggested by the industry is that the insurer be permitted to delay implementation of the re-underwriting and re-rating until the next policy renewal date. The Department considered this approach but rejected it because the law does not provide that re-underwriting and re-rating can be delayed until some future date. It is clear that the Legislative intent was that the remedy be implemented as soon as possible in order to immediately provide the insured with an opportunity to get a lower premium based on current credit information. Some insurers indicated they might have problems with updating credit information mid-term. In order for them to avoid any problems, insurers are not precluded from choosing to automatically re-run credit scores every 36 months or more frequently, without the insured or the insured agent's request, to determine if the insured is eligible for a lower premium, more favorably priced tier, or placement with an affiliate of the insurer at a lower rate. It is noted that the NCOIL model differs from Article 28 of the Insurance Law in that the model requires that the insurer re-underwrite and re-rate the policy based upon a current credit report or insurance score no later than every 36 months and, if requested, on every renewal date.

Sections 221.4 and 221.7 of the rule require that an insurer, when re-underwriting or re-rating an insured based upon corrected, completed or updated credit information, consider not only whether the insured qualifies for placement in a lower-priced tier within the company, but also whether the insured qualifies for placement in an affiliate of the insurer at a lower rate (*i.e.*, if the affiliate would write the policy). In addition, when determining the amount of the refund due based on the correct credit information, Section 221.7 of the rule requires that the refund be calculated based on the appropriate tier/affiliate the insured would have been written in (assuming that the affiliate is still in the group and is still writing this business) if the insurer had used the correct credit information. This approach recognizes that when an insured applies for insurance from one company within a group of affiliated insurers, it is actually often applying to more than one company in the group. The alternatives the Department considered would have been to require re-underwriting and re-rating based only upon the filed rates and underwriting rules of the current insurer. The Department rejected this because where there is a group of affiliated insurers that includes insurers that do not have tiers the insureds of such insurers would not be able to benefit from a refund. Such a result would

render the required statutory remedies for the use of incorrect or outdated credit information meaningless. Even where affiliate insurers each have more than one tier, the insured will not fully benefit by the re-rating and re-underwriting unless the insurer considers its affiliates' tiers as well. The Department believes that this approach is consistent with the law, which makes reference to the relationship between insurers and their affiliates in underwriting and rating. For example, under Section 2802(b) of the law, a placement with an affiliate on the basis of credit information does not constitute a denial of coverage.

Insurers operate in many different organizational structures. A trade association has expressed concern that some of these organizational structures may make it infeasible or inequitable for an insurer to offer a coverage with an affiliate and comply with Sections 221.4 and 221.7 of the proposed rule. An example of a different organizational structure is when an insurer within the group uses agents but it has an affiliate that is a direct writer. The applicant applies for insurance and is placed with the insurer that uses agents. However, upon re-underwriting and re-rating the insured, Sections 221.4 and 221.7 of the proposed rule would not require the direct writer affiliate to offer the insured coverage. These sections were intended to address insurer-group underwriting where an applicant that applies for insurance with one insurer is also considered for coverage with other insurers within the group without the need to apply separately to each insurer. Under the example, the insured would not have to be offered coverage with the direct writer since the direct writer is not a part of the group underwriting done with the insurer that uses agents. Further, the direct writer requires the applicant to apply directly with that company. Sections 221.4 and 221.7 reflect clarifications suggested by the industry of the intent of the proposed rule.

Some insurers use credit information as an underwriting factor for initial tier or company placement. A trade association expressed concern that the use of the tier or company placement as an underwriting factor upon renewal would be considered to be using credit information upon renewal even if the insurer does not look at the insured's credit score upon renewal. The trade association suggested adding language similar to Section 2802(c) of the Insurance Law which states "nothing in this section shall be construed to prohibit an insurer from considering an insured's tier placement pursuant to Section 2349 of this chapter or placement with a company within a group of affiliated companies in conjunction with factors other than credit information as part of its renewal process." The proposed rule effectuates the provisions of Article 28 of the Insurance Law and does not supersede the provisions in the law. The proposed rule is not meant to restate every provision of the law and the Department believes that the proposed rule is clear in the permissible uses of credit information.

Section 221.8(f) requires a third party that files scoring models on behalf of many insurers to provide the Department with certain information that would identify which insurer is using which scoring model. The Department also originally required the third party to provide the Superintendent with the name of each insurer's contact person and the person's telephone number. A trade association commented that such requirements would establish procedures that could lead to some confusion. The identification of the insurers and the scoring model they are using would assist the Department in evaluating the insurance company's decision on which version they choose to use. However upon further evaluation, the requirement for providing the contact person and the person's telephone number has been deleted from the rule as the third party may not necessarily have this information and the Department has this information from other sources.

The Department also considered some suggestions made by a consumer group. However, most of the suggestions conflict with the statute. For example, the consumer group wanted to amend the Regulation to require that all filed scoring models include loss experience to justify the use of credit information. The statute clearly does not require such information if scoring models are only used in initial underwriting.

The consumer group commented that when re-underwriting and re-rating the policy based upon new, updated or corrected credit information, the rate adjustment should be the "lowest rate possible" among all affiliates and tiers and not simply a "lower rate." Sections 221.4(b)(2) and 221.7(b)(2) states that the insured is eligible for placement in an affiliate at a lower rate in accordance with the affiliates' current underwriting rules. The insurer will have to follow its underwriting rules to determine which company to place the insured. An insurer cannot arbitrarily place an insured in a higher premium company if the insured is also eligible to be placed in a company with lower premiums if everything else remains the same. The purpose of the underwriting rules is to provide guidelines so that insureds with similar characteristics are placed in the same company.

The consumer group commented about disclosures regarding that not all insurers use credit information and that the insureds may wish to consider other options. The Department considers this to be more appropriately addressed in the Department's Consumer Guide to Automobile Insurance (Guide). The Department will add reference to insurers' use of credit information for the next updated version of the Guide.

The rule requires the submission of an Insurer Credit Information Compliance Certification for the scoring model (or other scoring processes) filing and any filing of revisions thereto. This will facilitate the review of the filings and enhance compliance with the statute and rule. The alternative of not requiring an Insurer Credit Information Compliance Certification was considered and rejected because it would provide the Department less assurance that insurers are complying with the law and increase the time needed to review scoring model filings and might result in the need for more market conduct reviews.

9. Federal standards: The provisions of the federal Fair Credit Reporting Act referred to in Article 28 of the Insurance Law are also referred to in the regulation.

10. Compliance schedule: The effective date of the enabling legislation, Chapter 215 of the Laws of 2004, is April 23, 2005. Pursuant to the law, insurers are required to file their scoring models (or other scoring processes) with the Superintendent. The Regulation further provides that on or after August 15, 2005 insurers shall file their scoring models (or other scoring processes) at least 45 days prior to use.

#### **Regulatory Flexibility Analysis**

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State, none of which fall within the definition of "small business".

The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and believes that none of them would fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none which are independently owned and have under 100 employees.

The Insurance Department finds that this rule will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

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

1. Types and estimated numbers of rural areas: This rule applies to property/casualty insurers licensed to do business in New York State. The insurers do business in every county in this state including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: There are requirements for the insurer under certain circumstances to provide written disclosure of the use of credit information and adverse action notifications when an adverse action has been taken. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

3. Costs: Regulated persons under these regulations are insurers. Insurance producers or other entities may be designated by the insurer to issue disclosure notices and adverse notices, in which case the producer or other entity will incur costs in producing and mailing these documents. However, the designation of a producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agreement and will be used when it has an overall cost benefit. The submission of filings and notification requirements are required by the statute and the regulation is only implementing the statutory requirement. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. This rule does not impose any additional burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's January 2005 Regulatory Agenda.

#### **Job Impact Statement**

This rule should not have any adverse impact on jobs and employment opportunities in this state since it merely implements the provisions of Article 28 of the Insurance Law. The rule sets forth standards that the insurers must follow when using credit information for underwriting and rating purposes. The rule also sets forth guidelines that insurers must follow when submitting filings to the Superintendent.

### NOTICE OF ADOPTION

#### Minimum Standards for the Form, Content and Sale of Medicare Supplement Insurance

**I.D. No.** INS-27-05-00005-A

**Filing No.** 924

**Filing date:** Aug. 23, 2005

**Effective date:** Sept. 7, 2005

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

**Action taken:** Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

**Statutory authority:** Federal Social Security Act (42 U.S.C. section 1395ss) and Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 4235, 4237 and art. 43

**Subject:** Minimum standards for the form, content and sale of Medicare supplement insurance.

**Purpose:** To adopt revised minimum standards for the form, content and sale of Medicare supplement insurance as a result of changes to the federal minimum standards for Medicare supplement insurance enacted by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Public Law, 108-173).

**Substance of final rule:** The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) included a number of changes to the standardized Medicare supplement insurance plans. The Act charged the NAIC, specifically the Senior Issues Task Force, with the task of updating the standards for Medicare supplement insurance. This was done through adoption of a revised Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act on September 8, 2004. The states are required to adopt the revised standards by September 8, 2005.

The revised standards include the addition of two new standardized plans K and L. These plans introduce a cost-sharing feature which distributes costs between the plan and the insured. The plans also have out-of-pocket expenditure maximums. These types of plans offer Medicare beneficiaries a new option to supplement their coverage. A full description of the plans and a new outline of coverage has been added detailing the benefits of each plan.

As a result of the introduction of the new Medicare Part D, the Medicare supplement insurance standards also required revision to remove reference to outpatient prescription drug coverage. Medicare Part D enrollees may not have any other type of prescription drug coverage. As of January 1, 2006, insureds enrolled in Plans H, I, or J (the prescription drug plans) and Part D, must either have the outpatient prescription drug coverage stripped from their Medicare supplement insurance plan or enroll in a different plan that does not include the drug coverage. However, if an insured is enrolled in plan H, I, or J and opts not to enroll in Part D, he/she may keep the Medicare supplement outpatient prescription drug coverage. Amendments to New York's regulations are proposed to include these changes.

The MMA also added changes to the Medicare benefit package. As a result, the Medicare supplement benefit plans must be restructured to accommodate these changes. For example, preventive testing was added to the Medicare benefit package. Therefore, the preventive care benefits in Medicare supplement insurance Plans E and J required modification.

As CMS has changed the name of the Medicare managed care plans from Medicare + Choice to "Medicare Advantage", all references to the plans must also be revised.

The above changes also necessitate changes to the requirements for Medicare supplement insurance application forms and disclosure notices.

The changes required by the MMA necessitate amendments to the following sections of Regulation 62: 52.11, 52.14, 52.22, and 52.63.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 52.63.

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

Non-substantive changes were made to the proposed amendment to Regulation 62 to correct a typographical error in the original proposal. The correction will not necessitate revision to the previously published JIS or publication of an RIS, RFA or RAFA, which were not previously created because the amendment was proposed on a consensus basis.

#### Assessment of Public Comment

The agency received no public comment.

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## Long Island Power Authority

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### NOTICE OF ADOPTION

#### Tariff for Electric Services

**I.D. No.** LPA-11-05-00005-A

**Filing date:** Aug. 18, 2005

**Effective date:** Aug. 18, 2005

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

**Action taken:** The Long Island Power Authority has adopted revisions to its tariff for electric services for remote meter reading charges.

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)

**Subject:** Tariff for electric services.

**Purpose:** To adopt certain revisions for electric service for remote meter reading charges.

**Text or summary was published** in the notice of proposed rule making, I.D. No. LPA-11-05-00005-P, Issue of March 16, 2005.

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

**Text of rule and any required statements and analyses may be obtained from:** Richard M. Kessel, Chairman, Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY 11553, (516) 222-7700

#### 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.

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## Niagara Frontier Transportation Authority

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

#### Weapons Policy

**I.D. No.** NFT-36-05-00005-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 repeal section 1151.6 and add new section 1151.6 to Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1299-e(5), (14) and 1299-f(7)

**Subject:** Weapons policy.

**Purpose:** To clarify existing weapons policy.

**Text of proposed rule:** Section 1151.6 is repealed and a new section 1151.6 is adopted to read as follows:

§ 1151.6 *Weapons and dangerous instruments.*

*No weapon, dangerous instrument, or any other item intended for use as a weapon may be carried in or on any transportation facility or motor vehicle and/or rail car owned by the Authority or a subsidiary corporation. This provision does not apply to law enforcement personnel and persons to*

whom a license for such weapon has been duly issued and is in force (provided in the latter case the weapon is concealed from view). For the purposes hereof, a weapon or dangerous instrument shall include, but not be limited to, a firearm, switchblade knife, gravity knife, boxcutter, straight razor or razorblades that are not wrapped or enclosed in a protective covering, sword, shotgun, rifle, stun gun or bow and arrow.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, NY 14203, (716) 855-7398, e-mail: Ruth\_Keating@nfta.com

**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

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being repealed or the rule as written for the following reasons:

1. Most of the changes are explanatory and/or are technical in nature.
2. None of the changes are controversial.

#### Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule are clarifications to the NFTA's existing weapons policy. Changes to the rules will not impact the level of service provided by the NFTA, and therefore will not impact jobs or employment opportunities.

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## Public Service Commission

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

**Intercarrier Agreement between ALLTEL New York, Inc. and KMC Telecom Holdings, Inc. d/b/a KMC Telecom V, Inc.**

**I.D. No.** PSC-36-05-00014-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, a modification filed by ALLTEL New York, Inc. and KMC Telecom Holdings, Inc. d/b/a KMC Telecom V, Inc. to revise the interconnection agreement effective on Aug. 20, 2001.

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

**Subject:** Interconnection of telephone networks for the provisioning of local exchange service.

**Purpose:** To amend the interconnection agreement.

**Substance of proposed rule:** The Commission approved an Interconnection Agreement between ALLTEL New York, Inc. and KMC Telecom Holdings, Inc. d/b/a KMC Telecom V, Inc. in November 2001. The companies subsequently have jointly filed amendments to clarify the Unbundled Network Elements. The Commission is considering these changes.

**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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(01-C-1199SA2)

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

**Interconnection of Networks between Nextel of New York, Inc. and Delhi Telephone Company, et al.**

**I.D. No.** PSC-36-05-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Nextel of New York, Inc. and Delhi Telephone Company, Margaretville Telephone and Warwick Valley Telephone Company for approval of a mutual traffic exchange agreement executed on Jan. 1, 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:** Nextel of New York, Inc. and Delhi Telephone Company, Margaretville Telephone Company, Inc. and Warwick Valley Telephone Company have reached a negotiated agreement whereby Nextel of New York, Inc. and Delhi Telephone Company, Margaretville Telephone Company, Inc. and Warwick Valley Telephone Company will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

**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. Brilling, 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-0956SA1)

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

**Composition of the Telephone Relay Service Advisory Board by Targeted Accessibility Fund of New York, Inc.**

**I.D. No.** PSC-36-05-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, an Aug. 5, 2005 proposal of the Targeted Accessibility Fund of New York, Inc. for certain modifications to the composition and eligibility requirements of the advisory board of the telephone relay service.

**Statutory authority:** Public Service Law, section 66(1)

**Subject:** Composition of the Telephone Relay Service Advisory Board.

**Purpose:** To modify the composition.

**Substance of proposed rule:** The New York State Public Service Commission is considering whether to accept, reject or modify, in whole or in part, an August 5, 2005 petition of the Targeted Accessibility Fund of New York, Inc. to expand the membership of the Advisory Board of the Telephone Relay Service and to change certain eligibility requirements thereof.

**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. Brilling, 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-0985SA1)

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

**Competitive Provision of Metering and Metering Services**

**I.D. No.** PSC-36-05-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, modifications to its competitive metering policy as proposed in a report by Department of Public Service staff on Sept. 7, 2005.

**Statutory authority:** Public Service Law, sections 43, 65(1), 66(1) and (12)

**Subject:** Issues associated with competitive provision of metering and metering services, including limitations on utility investment in advanced metering hardware and implications for the commission's vision of extending the availability of time-differentiated rates, increasing demand elasticity in energy markets, and increasing opportunities for competitors in the energy commodity markets.

**Purpose:** To consider revisions to the commission's competitive metering policy and related matters.

**Substance of proposed rule:** The Public Service Commission (the Commission) is considering whether to approve, modify or reject, in whole or in part, proposals in a report issued by the Department of Public Service Staff on September 7, 2005 (the Report) in connection with three on-going proceedings, Cases 02-M-0514, 00-E-0165 and 94-E-0952.

The Commission previously ordered that electric metering services for customers with electric demand over 50 kilowatts be opened to competition. The Commission established that new utility investment in enhanced metering equipment and metering infrastructures should provide cost savings, not create additional stranded costs, nor be anticompetitive in nature. The Report proposes, among other things, a number of modifications to the Commission's competitive metering policy that will continue the development of competitive metering opportunities and expand the market for alternative suppliers of meter data services, in support of the Commission's vision and goals for competitive energy markets. If approved by the Commission, the proposed changes to the Commission's competitive metering policy would require certain amendments to the Metering Manual.

**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.  
(00-E-0165SA5)

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

**Uniform Business Practices and Related Matters**

**I.D. No.** PSC-36-05-00018-P

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

**Proposed action:** The New York State Public Service Commission is considering, at a minimum, modifications to sections 4 and 5 of the Uniform Business Practices to revise procedures governing access to a customer's utility account number for the purpose of processing an ESCO/marketer request for customer history information and/or customer enrollment for commodity service. These changes are necessary to achieve certain policy objectives identified in an order issued in Case 00-M-0504 which outlines further steps toward competition in retail energy markets.

**Statutory authority:** Public Service Law, sections 65 and 66(12)

**Subject:** Uniform business practices and related matters.

**Purpose:** To revise sections 4 (Customer Information) and 5 (Changes in Service Providers) of the Uniform Business Practices, or any other section(s) which may be necessary to authorize an ESCO to receive history information or enroll a customer following access to the customer's utility account number from a source other than the customer; and to direct distribution utilities to provide, in response to an ESCO request, a customer's account number on an immediate retail time basis.

**Substance of proposed rule:** The Uniform Business Practices (UBP or the Practices) is a compilation of business rules and operating procedures governing the interrelationships between utilities, Energy Service Companies (ESCOs) and end use customers participating in retail access programs in New York. The Practices, initially published on January 22, 1999, were designed to foster competition in New York State by establishing standardization in basic statewide business procedures and, thereby, minimize barriers to entry and reduce operating costs for ESCOs who choose to participate in retail access programs in multiple service territories. If various orders the Commission has recognized that it may be necessary to revise the Practices as more becomes known about actual market conditions.

By this notice, the Commission seeks comments on a petition filed by Accent Energy LLC requesting that the Practices be modified to permit ESCOs ready access to a customer's utility account for the purpose of requesting customer's history information and/or enrolling a customer for commodity service. These proposed changes are in support of the Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, issued August 25, 2004, which recognized that it is important to make the process of switching to an ESCO as easy as possible for consumers. The Policy Statement envisioned a process that would permit a utility to provide an ESCO that had obtained proper authorization with access to a customer's utility account number.

Specifically, Accent Energy requests that the Commission authorize modifications in Sections 4 (Customer Information) and 5 (Changes in Service Providers), or any other Section(s) of the Uniform Business Practices that may be necessary to authorize an ESCO to receive history information or enroll a customer following access to the customer's utility account number from a source other than the customer; and to direct distribution utilities to provide, in response to an ESCO request, a customer's utility account number on an immediate real time basis.

**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.  
(98-M-1343SA13)

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

**Long-Term Debt by New York Water Service Corporation**

**I.D. No.** PSC-36-05-00019-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 petition of New York Water Service Corporation for authority to issue \$12,590,000 of long-term debt.

**Statutory authority:** Public Service Law, section 89-f

**Subject:** Authority for New York Water Service Corporation to issue \$12,590,000 in long-term debt.

**Purpose:** To issue \$12,590,000 in long-term debt.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, the petition of New York Water Service Corporation to issue, through December 31, 2005, up to \$12,590,000 in Water Utilities Revenue Bonds. If approved by the Commission, \$5,520,000 of the debt would be used to refinance existing debt that matures in December 2005 and \$7,070,000 of the debt would be tax-exempt securities used to finance new construction.

**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-W-0986SA1)

## Office of Temporary and Disability Assistance

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

#### Enforcement of Support Obligations and Issuance of Income Executions

**I.D. No.** TDA-36-05-00003-P

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

**Proposed action:** Amendment of section 347.9 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 111-a

**Subject:** Enforcement of support obligations and issuance of income executions.

**Purpose:** To implement State and Federal laws concerning the process for issuing income execution orders in child support cases and change the method for calculating the amount of any additional deductions to be withheld from an employee's income if the employee owes child support arrears or past due child support.

**Text of proposed rule:** Section 347.9 is amended to read as follows:

§ 347.9 Enforcement of support obligations and issuance of income executions.

(a) Immediate issuance of income executions. For any child support or child and spousal support court order issued under the provisions of [article 3-A or] section 236 or 240 of the Domestic Relations Law, or article 4, 5, [or] 5-A or 5-B of the Family Court Act, which directs payments to the Support Collection Unit (SCU), the local child support enforcement unit through its SCU must:

(1) immediately issue and process an income execution for support enforcement *within 15 calendar days of the date the support order is received if the employer's address is known or, if unknown, within two business days of the date the Child Support Management System (CSMS)*

*receives notice of the income source from the State New Hire Directory or other source, unless:*

(i) the court finds and sets forth in writing the reasons that there is good cause not to require immediate income withholding. For purposes of this paragraph, good cause means substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income execution does not constitute good cause; or

(ii) when the child is not in receipt of public assistance, a written agreement providing for an alternative arrangement has been executed by the parties. A written agreement may include an oral stipulation made on the record in court which results in a written order.

*For the purposes of this paragraph (1), any finding that there is good cause not to require immediate income withholding must be based on at least:*

(a) *a written determination that, and explanation by the court why, implementing an immediate income withholding would not be in the best interests of the child; and*

(b) *proof of timely payment of previously ordered support in cases involving the modification of support orders.*

(2) issue and process an income execution as follows:

(i) use the income execution form developed by the State [Office] Division of Child Support Enforcement ([O] D CSE) and provided to the district through the [Child Support Management System (CSMS)] CSMS;

(ii) serve the income execution upon the debtor's employer or income payor, and provide a copy of the income execution to the debtor. Service must be by regular mail or in the same manner as a summons may be served; the debtor's copy may be mailed to the debtor's last known residence or such other place where the debtor is likely to receive notice;

(iii) correct any error made in the issuance of an income execution which is to the detriment of the debtor, within 30 days after notification by the debtor of such error; and

(iv) include the following information on the income execution form:

(a) the caption of the order of support;

(b) the date that the order of support was entered;

(c) the court in which the order of support was entered;

(d) the amount of the periodic payments specified in the order

of support;

(e) the total amount of any arrears;

(f) the names of the debtor and creditor;

(g) the name and address of the employer or income payor from

whom the debtor is receiving or will receive income;

(h) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;

(i) the amount of income to be deducted in accordance with subdivision (e) of this section, of any additional deduction to be made from the debtor's income, to satisfy any accrued arrears/past due support;

(j) a statement that:

(1) the deductions will apply to current and future income;

(2) the income execution will be served upon any current or subsequent employer or income payor; [and]

(3) the income execution is binding until further notice; and

(4) *the procedures available for contesting the withholding and that the basis for contesting the withholding is a mistake of fact.*

(k) a statement that:

(1) no employer is permitted to discharge, lay off or discipline an employee or refuse to hire a prospective employee because one or more wage assignment or income executions have been served upon such employer or a former employer against the employee's or prospective employee's wages, and that a violation of this provision is punishable as a contempt of court by fine or imprisonment or both;

(2) each payment remitted by an employer or income payor must include, in addition to the [identity] name and social security number of the debtor *and the debtor's CSMS account number*, the date and amount of each withholding of the debtor's income included in the payment. Date of withholding means the date on which the income would otherwise have been paid or made available to the debtor if it were not withheld by the employer or income payor.

(3) an employer or income payor served with an income execution is required to commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs 14 days after service of the execution, and is required to remit payments to the creditor within [10] *seven business* days of the date that the debtor is paid;

(4) an employer or income payor is liable to the creditor for failure to deduct the amounts specified; provided, however, that deduction

of the amounts specified by the employer or income payor does not relieve the debtor of the underlying obligation of support;

(5) if the employer or income payor fails to pay the creditor, the creditor or the debtor may commence a proceeding against such person for accrued deductions, together with interest and reasonable attorney's fees;

(6) if the money due to the debtor consists of salary or wages and the debtor's employment is terminated by resignation or dismissal at any time after service of the execution, the levy will thereafter be ineffective and the execution will be returned, unless the debtor is reinstated or reemployed within 90 days after such termination;

(7) an employer must notify the issuer promptly when the debtor terminates employment and provide the debtor's last known home address and the name and address of the new employer, if known, *and the reason for separation from employment*; and

(8) where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld are not permitted to exceed the following:

(i) where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld may not exceed 50 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld (hereinafter referred to as disposable earnings), except that if any part of such deduction is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 55 percent of disposable earnings;

(ii) where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deduction to be withheld may not exceed 60 percent of the disposable earnings, except that if any part of such deductions is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 65 percent of disposable earnings [.] ;

(9) *upon a finding by the family court that the employer or income payor failed to deduct or remit deductions as specified in the income execution, the court shall issue to the employer or income payor an order directing compliance and may direct the payment of a fine not to exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor noncompliance; and*

(10) *when an employer or income payor receives an income withholding issued by another state, the employer or income payor shall apply the income withholding law of the state of the debtor's principal place of employment in determining:*

(i) *the employer's fee, if any, for processing income withholding;*

(ii) *the maximum amount permitted to be withheld from the debtor's income;*

(iii) *the time periods within which the employer must implement the income withholding and forward the child support payments to the other state;*

(iv) *the priorities for withholding and allocating income withheld for multiple child support creditors; and*

(v) *any withholding terms or conditions not specified in the withholding instrument.*

(b) Issuance of income executions upon default. For any child support or child and spousal support court order issued prior to November 1, 1990 the local child support enforcement unit, through its support collection unit (SCU), must maintain an effective system for identifying those debtors who become delinquent in meeting their court-ordered support obligation(s). The following action must be taken against those respondents who have been identified as being delinquent:

(1) For those debtors who have failed to pay up to two required weekly court-ordered support payments or one biweekly court-ordered support payment, districts should attempt to obtain voluntary resumption of support payments.

(2) For those debtors who have failed to remit three payments when due in the full amount directed by an order of support, or if the accumulation of arrears is equal to or greater than the amount directed to be paid for one month, local district SCUs must issue and process an income execution as follows:

(i) Use the income execution form developed by [O] DCSE and provided through CSMS.

(ii) Serve a copy of the income execution upon the debtor, by regular mail or in the same manner as a summons may be served, at the debtor's last known residence or such other place where the debtor is likely to receive notice.

(iii) If a mistake of fact is alleged by the debtor, determine the validity of such claim and provide written notice of such determination within 45 days after notice to the debtor of the intent to serve the income execution on the employer or income payor. If the mistake of fact is disallowed, the written notice must state that the income execution will be served on the employer or income payor, and the time that deductions will begin.

(iv) If no mistake of fact is alleged by the debtor, or if a determination if made by the SCU that the alleged mistake of fact is not valid, proceed with the expeditious implementation of the income execution by serving the income execution upon the debtor's employer or income payor.

(v) Include the following information on the income execution form:

(a) the caption of the order of support;  
 (b) the date that the order of support was entered;  
 (c) the court in which the order of support was entered;  
 (d) the amount of the periodic payments specified in the order of support;

(e) the total amount of the arrears that gave rise to the implementation of the income execution;

(f) the nature of the default;

(g) the names of the debtor and creditor;

(h) the name and address of the employer or income payor from whom the debtor is receiving or will receive income;

(i) the amount of the deduction to be made from the debtor's income to satisfy the court-ordered support obligation;

(j) the amount, determined in accordance with subdivision (e) of this section, of the additional deduction to be made from the debtor's income, that is to be applied to the reduction of the arrears/past due support that gave rise to the income execution;

(k) a statement of the manner in which a mistake of fact may be asserted;

(l) a statement that:

(1) the deductions will apply to current and future income;

(2) the income execution will be served upon any current or subsequent employer or income payor, unless a mistake of fact is asserted within 15 days and;

(3) if the debtor claims a mistake of fact, a determination of the validity of such claim will be made within 45 days after notice to the debtor is provided and the debtor will receive written notice of:

(i) whether or not the income execution will be served; and

(ii) the date when deductions will begin;

(4) the income execution is binding until further notice;

(m) and the statements set forth in clause (k) of subparagraph (a)(2)(iv) of this section.

(3) With regard to debtors who have defaulted on their court-ordered support obligations and who are unemployed, social services districts should proceed as follows:

(i) If the amount in default is not sufficient for the implementation of an income execution, an attempt should be made to obtain a written voluntary agreement to support, whereby the Department of Labor would be authorized to withhold the amount agreed upon from the debtor's unemployment insurance benefits and remit such amount to the SCU[:]; or

(ii) If the amount in default is sufficient for the implementation of an income execution, action should be taken as set forth in paragraph (2) of this subdivision.

(c) In cases in which attempts to enforce a support order have been unsuccessful, the child support enforcement unit, at the time such attempts fail, must examine the reasons for the failure and determine when, in the future, it would be appropriate to take enforcement actions and, at that time, take such actions.

(d) Additional Enforcement Action. The child support enforcement unit, in addition to following the procedures set forth in subdivisions (a) and (b) of this section, must employ all appropriate statutory support enforcement remedies, within 30 calendar days of identifying a failure to comply with the support provisions of the order, or of locating the absent parent, whichever occurs later. If service of process is necessary prior to initiating an enforcement action, such service must be completed and enforcement action taken or the child support enforcement unit must document on CSMS unsuccessful diligent efforts to serve process, as

defined in section 347.7 of this Part, no later than 60 calendar days after identifying a failure to comply with the support provisions of the order or of locating the absent parent, whichever occurs later.

(e) Calculation of the amount of additional deduction for income execution. (1) When an income execution is issued under subdivision (a) or (b) of this section for a debtor who owes arrears/past due support, the SCU must set the amount of the additional deduction to be made from the debtor's income. Such deduction must be in addition to the amount withheld to ensure compliance with the support obligation directed in the order of support. The amount of the additional deduction must be set as follows:

(i) [If the current support obligation is \$50 per month or less, the amount of the additional deduction must be one-half the amount of the support obligation at the same frequency as that of the support obligation.] *If the income from which deductions are to be made represents wage, salary, commission, draws on commissions, pension, or retirement income, or other periodic payments, including but not limited to workers' compensation, disability, social security, or unemployment insurance benefits income, the amount of the additional deduction shall be one-half (50%) of the amount of the current support obligations, at the same frequency as the current support obligation. Where a support obligation no longer exists the additional amount shall be one and one-half (150%) of the amount of the most recent support obligation greater than zero, at the same frequency as the most recent support obligation. Where no support obligation ever existed for current support but support arrears were established by the court, the additional amount shall be the amount of the arrears divided by 12, payable in monthly installments.*

(ii) [If the support obligation is greater than \$50 per month, the amount of the additional deduction must be \$50 per week or one-half the support obligation at the same frequency as the support obligation, whichever is greater.] *If the income is from a source not identified in subparagraph (i) of this paragraph including, but not limited to, lump sum payments of bonuses, interest, dividends, workers' compensation, disability, Social Security, or unemployment insurance benefits income, the amount of the additional deduction shall be the total amount of arrears/past due support. Provided, however, that two or more periodic payments of workers' compensation, disability, Social Security, or unemployment insurance benefits income disbursed to a debtor as a single payment shall not be considered a lump sum payment, but shall be treated as separate periodic payments, each subject to deduction pursuant to subparagraph (i) of this paragraph.*

[(iii) Where no support obligation exists for current support, the amount of the additional deduction is \$50 per week.

(iv) Where an income execution is issued to the Department of Labor for deduction from the debtor's unemployment insurance benefits, the amount of the additional deduction is \$10 per week.

(v) Notwithstanding the above subparagraphs, the imposition of the additional deduction cannot cause the total amount to be withheld from the debtor's income to exceed 40 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld ("disposable income"). To the extent that the additional deduction would otherwise cause the total amount withheld to exceed 40 percent of the debtor's disposable income, the amount of the additional deduction must be adjusted so as to ensure that the amount withheld does not exceed 40 percent of the debtor's disposable income.]

(2) [The amount of the additional deduction for an income execution must be eliminated by the SCU upon satisfaction of the arrears/past due support. In addition, where] *Where the debtor provides documentary proof to the SCU that the imposition of the additional amount [SCU determined that the additional deduction] would reduce the debtor's remaining income below the self-support reserve, the SCU must eliminate or [modify] reduce the amount of the additional deduction as appropriate to ensure that the debtor's remaining income does not fall below the self support reserve. [When the debtor's remaining income would no longer be less than the self-support reserve, the amount of the additional deduction must be set in accordance with paragraph (1) of this subdivision. Social services districts must maintain on CSMS appropriate documentation of any action to eliminate or modify the amount of the additional deduction] Thereafter, the SCU must increase the amount of the additional deduction to the amount calculated pursuant to paragraph (1) of this subdivision at such time as its application would no longer reduce the debtor's remaining income below the self support reserve.*

(3) *Where the debtor provides documentary proof to the SCU that the debtor has custody of the children, and a current support obligation no longer exists, the SCU may modify the amount of the additional deduction*

*after taking into account the debtor's income and ability to support children in such debtor's custody.*

(4) *The amount of the additional deduction for an income execution must be eliminated by the SCU upon satisfaction of the arrears/past due support.*

(5) *The SCU must maintain on CSMS a record of any action to eliminate or modify the amount of the additional deduction.*

(f) Issuance of income executions upon request. Upon request of the debtor the SCU must issue an income execution pursuant to subdivision (a) of this section. Upon receipt of a written revocation of the debtor's request for an income execution, the SCU must notify the employer or income payor that the income execution is no longer effective and that it must be returned to the SCU.

**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.

##### 2. Legislative Intent:

It was the intent of the Legislature in enacting the above-referenced 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:

The proposed regulatory amendments implement Sections 314 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (P.L. 104-193) and the provisions of Chapter 398 of the Laws of 1997 that amended section 5241 of the Civil Practice Law and Rules (sections 20 through 28). The federal and State laws implemented by these amendments concern the process for issuing income execution orders in child support cases and the penalties to be imposed on employers for failing to comply with such orders.

The proposed amendments also add provisions affecting the method for calculating the amount of any additional deductions to be withheld from an employee's income if the employee owes child support arrears or past due child support. These provisions will enable child support arrears or past due support to be collected faster than is currently the case and are consistent with the intent of the child support enforcement program. The proposed amendments give the persons owing the additional deductions the opportunity to present proof that the amount of the additional deductions should be reduced or eliminated.

##### 4. Costs:

The proposed amendments will not result in increased costs for the State or social services districts. The proposed amendments concerning the amount of any additional deductions to be taken from an employee's salary will enable the State to recover child support arrears or past due support at a faster pace than the State is currently able to recover such arrears or past due support. This could result in past due child support or child support arrears being collected that would otherwise not be collected because the debtor becomes disabled and is not able to work or dies.

##### 5. Local Government Mandates:

Social services districts will be required to comply with the proposed amendments concerning the issuance of income executions in child sup-

port enforcement cases and to issue a new form to employers to enable the employers to calculate the amount of any additional child support deductions to be withheld from an employee's salary.

6. Paperwork:

The proposed amendments will require OTDA to revise the form sent to employers to enable the employers to determine the amount of any additional deductions to be withheld from an employee's salary as a result of the employee owing past due support or the existence of child support arrears.

7. Duplication:

There would be no duplication of other State or federal requirements.

8. Alternatives:

The proposed regulatory amendments concerning the issuance of income execution orders are consistent with the provisions of section 314 of P.L. 104-193 and Chapter 398 of the Laws of 1997. Therefore, no alternatives were considered. The provisions concerning additional deductions for income executions are reasonable and consistent with the purpose of the child support enforcement program. Therefore, no alternatives were considered for these provisions.

9. Federal Standards:

The proposed regulatory amendments do not exceed federal standards concerning the process for withholding income in child support enforcement cases and would comply with section 314 of P.L. 104-193.

10. Compliance Schedule:

The proposed regulatory amendments will be implemented no later than 30 days after becoming effective.

**Regulatory Flexibility Analysis**

1. Effect on Small Business and Local Governments:

The regulatory amendments will have minimal impact on small businesses. The impact will relate to the calculation that must be made by employers to determine the amount of any additional deductions that must be withheld from an employee's salary as a result of any outstanding child support arrears or past due support. The 58 social services districts will be required to forward a new income execution form to employers. The form will have amended instructions on how to calculate the amount of any additional deductions from employee salaries as a result of an employee owing child support arrears or past due support.

2. Compliance Requirements:

Social services districts will be required to comply with the proposed amendments concerning the issuance of income executions in child support enforcement cases. Small businesses will use a different method to calculate the amount of any additional deductions to be taken from an employee's salary if the employee owes child support arrears or past due support based upon the new provisions. The amendments are necessary in order to implement section 314 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and section 5241 of the Civil Practice Law and Rules, as amended by Chapter 398 of the Laws of 1997. The federal statute concerns the process for withholding income in child support enforcement cases. The State statute concerns the process for obtaining income executions in such cases. The proposed regulations will not impose new reporting or recordkeeping requirements on small businesses or social services.

3. Professional Services:

The regulations will not require small businesses or social services districts to hire new staff or require them to obtain new professional services.

4. Compliance Costs:

The proposed amendments will not result in increased costs for small businesses social services districts. The proposed amendments concerning the amount of any additional deductions to be taken from an employee's salary will enable the State to recover child support arrears or past due support at a faster pace than the State is currently able to recover such arrears or past due support.

5. Economic and Technological Feasibility:

The social services districts and small businesses 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 or small businesses.

7. Small Business and Local Government Participation:

The regulatory amendments are necessary to implement section 314 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 and section 5241 of the CPLR. Although small businesses and social services districts were not involved in the development of the proposed regulations, social services districts have been informed of the

provisions of section 314 of P.L. 104-193 and section 5241 of the CPLR. The only impact the proposed regulations will have on small businesses is that they will be use a different method to calculate the amount of any additional deductions to be taken from employees' salaries as a result of the employees owing child support arrears or past due support. This Office currently has an employer outreach program and a helpline to assist employers determine the amount of any additional deductions owed by employees. The proposed changes to the provisions concerning the calculation of the additional deductions will not affect the ability of small businesses to obtain assistance from this Office in calculating the amount of the additional deductions.

**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 the proposed regulations. The number of businesses in rural areas that will be affected by the proposed amendments is unknown.

2. Reporting, Recordkeeping and other Compliance Requirements; and Professional Services:

Social services districts, including those in rural areas, will be required to comply with the proposed amendments concerning the issuance of income executions in child support enforcement cases. Businesses in rural areas will use a different method to calculate the amount of any additional deductions to be taken from an employee's salary if the employee owes child support arrears or past due support based upon the new provisions. The amendments are necessary in order to implement section 314 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) and section 5241 of the Civil Practice Law and Rules, as amended by Chapter 398 of the Laws of 1997. The federal statute concerns the process for withholding income in child support enforcement cases. The State statute concerns the process for obtaining income executions in such cases. The proposed regulations will not impose new reporting or recordkeeping requirements on social services districts or businesses in rural areas and will not require those social services districts or businesses to hire additional professional staff.

3. Costs:

The proposed regulations will not result in increased administrative costs for social services districts or businesses in rural areas. The proposed amendments concerning the amount of any additional deductions to be taken from an employee's salary will enable the State to recover from employees in rural areas child support arrears or past due support at a faster pace than the State is currently able to recover such arrears or past due support from such employees.

4. Minimizing Adverse Impact:

The proposed regulations will not have an adverse impact on social services districts or businesses in rural areas.

5. Rural Area Participation:

The regulatory amendments are necessary to implement section 314 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (P.L. 104-193) and the amendments made to section 5241 of the Civil Practice Law and Rules (CPLR) by Chapter 398 of the Laws of 1997. Although there was no rural area participation in the development of these regulatory amendments, social services districts, including those in rural areas, have been informed of the provisions of section 314 of P.L. 104-193 and section 5241 of the CPLR. The only impact the proposed regulations will have on businesses in rural areas is that they will be use a different method to calculate the amount of any additional deductions to be taken from employees' salaries as a result of the employees owing child support arrears or past due support. This Office currently has an employer outreach program and a helpline to assist employers determine the amount of any additional deductions owed by employees. The proposed changes to the provisions concerning the calculation of the additional deductions will not affect the ability of businesses to obtain assistance from this Office in calculating the amount of the additional deductions.

**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.