

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Compost

I.D. No. AAM-46-05-00009-A

Filing No. 226

Filing date: Feb. 16, 2006

Effective date: March 8, 2006

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

Action taken: Addition of section 153.1(c), (d) and (e) to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6) and 146-d

Subject: Compost.

Purpose: To exempt certain compost from the definition of commercial fertilizer for certain purposes; establish a label format for setting forth compost characteristics; provide for the filing of analytical test results for such compost with license applications and prior to the distribution of products; and provide for analytical testing of such compost using the Test Methods for the Examination of Composting and Compost published by the United States Department of Agriculture and the United States Composting Council, Aug. 12, 2001 or equivalent methods.

Text of final rule: 1 NYCRR section 153.1 is amended by adding new subdivisions (c), (d) and (e) to read as follows:

(c) *Compost consisting entirely of animal (other than human) manure, vegetative matter and animal bedding, for which plant nutrient claims are made, shall be exempt from the definition of commercial fertilizer for purposes of the fee requirements of Agriculture and Markets Law sections 146 and 146-c and the guaranteed analysis requirements of sections 144 and 145(4) of said Law and Part 153 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Any such compost, for which plant nutrient claims are made, which is distributed in this State in containers shall have placed on or affixed to the containers a clearly legible label setting forth total nitrogen (N), total phosphorous (P) and total potassium (K). Other compost characteristics may also be set forth. Any other compost characteristics stated for such compost shall appear in the format set forth in subdivision (d) of this section. If distributed in bulk, a statement, in such format, setting forth any compost characteristics stated for such compost shall accompany the compost and be supplied to the purchaser at the time of delivery.*

(d) *The format for setting forth compost characteristics stated for composted animal manure, composted vegetable manure and composted animal bedding, for which plant nutrient claims are made, shall be as follows:*

(1) *General Characteristics*

- (i) *Feedstock*
- (ii) *Maturity*
- (iii) *Organic matter*
- (iv) *Weed Seeds/Liter*
- (v) *Density*
- (vi) *Solids*
- (vii) *CN Ratio*
- (viii) *pH*
- (ix) *Conductivity*

(2) *Nutrients*

- (i) *Total nitrogen (N)*
- (ii) *Total phosphorous (P)*
- (iii) *Total potassium (K)*
- (iv) *Total Calcium (Ca)*
- (v) *Total magnesium (Mg)*

(3) *Metals*

- (i) *Copper*
- (ii) *Iron*
- (iii) *Zinc*
- (iv) *Arsenic*
- (v) *Cadmium*

(e) *Analytical test results supporting compost characteristics stated for composted animal manure, composted vegetable manure and composted animal bedding, for which plant nutrient claims are made, shall be filed with the Department with any license application and prior to the distribution of such products. The values of such compost characteristics may be stated as average values based upon such analytical test results. Analytical tests shall be conducted using the methods in Test Methods for the Examination of Composting and Compost, edited by Wayne H. Thompson and published August 12, 2001 by the United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 and the Composting Council Research and Education Foundation, 4250 Veterans Memorial Highway, Suite 275, Holbrook, NY 11741 or equivalent methods. Copies of Test Methods for Examination of Composting and Compost are maintained at the Department of Agriculture and Markets, Division of*

Plant Industry, 10B Airline Drive, Albany, N.Y. 12235, and at the New York State Department of State, 41 State Street, Albany, N.Y. 12231 and are available for public inspection and copying during regular business hours.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 153.1(e).

Text of rule and any required statements and analyses may be obtained from: Robert Mungari, Director Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

Job Impact Statement

The nonsubstantive changes made in 1 NYCRR § 153.1 add the name of the editor of the material incorporated by reference, the addresses of the publishers and the locations where it is available for public inspection and copying.

Assessment of Public Comment

Comment was received supporting the regulation and stating that it will support profitable and environmentally sound agricultural operations.

Agency response: The Department agrees with this comment.

Comment: Comment was received supporting the regulation and stating that it appropriately ensures consumer protections while recognizing the variable nature of compost product and will enhance the ability of farms to market compost thereby increasing business sustainability.

Agency Response: The Department agrees with this comment.

Education Department

NOTICE OF ADOPTION

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

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

Filing No. 224

Filing date: Feb. 16, 2006

Effective date: March 9, 2006

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

Action taken: Repeal of sections 3.27 and 3.30 and addition of new sections 3.27 and 3.30 to Title 8 NYCRR.

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

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

Purpose: To provide chartered museums, historical societies and cultural agencies with criteria they must meet to be incorporated and registered by the Board of Regents; require boards to adopt mission statement and a code of ethics; obtain IRS tax-exempt status; require audit committee reviews; provide new protections for facilities and collections; and allow historical societies without collections to exchange a charter for a Regents certificate of incorporation.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-28-05-00009-P, Issue of July 13, 2005.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

School Health Services

I.D. No. EDU-49-05-00017-A

Filing No. 225

Filing date: Feb. 16, 2006

Effective date: March 9, 2006

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

Action taken: Amendment of section 136.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 901(1) and (2); 902(1), (2) and (3); 903(1) and (2); 904(1) and (2); 905(1), (2), (3) and (4); 906(1) and (2); 911(1); 913 (not subdivided); 914(1) and L. 2004, ch. 477

Subject: School health services.

Purpose: To clarify the accommodation for religious beliefs provision to ensure consistency with Public Health Law, section 2164 and the regulations of the Commissioner of Health and L. 2004, ch. 477.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-49-05-00017-P, Issue of December 7, 2005.

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

Text of 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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on December 7, 2005, the State Education Department received the following public comment.

1. COMMENT:

A recommendation was received to restore the previous September 29, 2005 regulation in order to protect families' privacy and prevent them from being subjected to intrusive inquiries regarding the nature of their religious beliefs. A written statement from the parent or guardian that he or she holds sincere and genuine religious beliefs which are contrary to immunization should be accepted without further inquiry.

DEPARTMENT RESPONSE:

Based on comments received from the Department of Health and others after adoption of new section 136.3(f) in September, the Department has determined that the prior regulation that was in effect from September 29, 2005 through December 11, 2005 conflicted with statute by including immunizations with the examinations, health histories, appraisals and screening examinations that are subject to the religious exemption language in section 136.3(f). Chapter 477 of the Laws of 2004 amended sections 903, 904 and 905 of the Education Law to provide that examinations for a health certificate or health history or screening examinations for sickle cell anemia, vision, hearing or scoliosis shall not be required where the parent or student objects on the grounds that such examinations conflict with their genuine and sincere religious beliefs. Chapter 477 did not add similar language to section 914 of the Education Law, which relates to immunizations and mandates that schools require proof of immunization in accordance with section 2164 of the Public Health Law. Subdivision 9 of section 2164 of the Public Health Law contains the religious exemption language that applies to immunizations. Under Public Health Law section 2164(9), the parent, parents or guardians may object to immunization of their child based on their genuine and sincere religious beliefs, but the student may not. Chapter 477 of the Laws of 2004 did not amend Public Health Law section 2164(9), and therefore did not provide statutory authority for extending the religious exemption language from sections 903, 904 and 905 of the Education Law to cover immunizations. Accordingly, the proposed amendment, which was adopted by emergency action effective December 12, 2005, deletes references to immunizations in section 136.3(f).

In addition, the Department has determined that the provision in section 136.3(f) that would deem submission of a signed, written statement to constitute sufficient proof of genuine and sincere religious beliefs is inconsistent with the Legislative intent of Chapter 477 of the Laws of 2004. Chapter 477 extended the legal standard for religious exemptions that applies to immunizations – a genuine and sincere religious belief – to health examinations, health histories and screening examinations. However, requiring that school districts accept a written statement without being able to question the sincerity of the parent's and student's religious beliefs is inconsistent with the provisions in the Regulations of the Depart-

ment of Health (10 NYCRR section 66-1.3), and established decisional case law, for determining such beliefs for purposes of obtaining an exemption from the immunization requirements in Public Health Law section 2164.

There is no indication in the language of Chapter 477 that religious exemptions for examinations were intended to be treated differently than religious exemptions for immunizations in this regard. In fact, it is the Department's understanding that the legislative intent was to have the same legal standard apply to both examinations and immunizations. Requiring school officials to accept a written statement as proof of a conflict with genuine and sincere religious beliefs without the ability to request additional proof of the sincerity of those religious beliefs, would not strike an appropriate balance between the state's interest in protecting the health of children by requiring that they submit to examinations and screenings and the rights of parents and students to object to such examinations on religious grounds. As with immunizations, school officials should have discretion to question the sincerity of the religious beliefs asserted by the student or parent, and to deny exemptions where the request is not based on religion but merely on personal preference.

Therefore, the proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004, and restoration of the September 29, 2005 regulation is neither feasible nor appropriate.

2. COMMENT:

The proposed amendment of section 136.3 would leave school districts to interpret how to implement the provisions of the religious exemption to the immunization law. A concern was raised that some districts have been overreaching in their inquiries into religious beliefs of families, thus violating First Amendment rights to freedom of religion.

If the December emergency amendment is adopted as a permanent rule at the February Regents meeting, then it was recommended to incorporate consistent requirements for districts to follow in order to judiciously implement requests for religious exemptions to immunization requirements. These include: prohibiting questions regarding family health care history, change of religious beliefs, religious affiliation and non-religious beliefs; establishing standards of education and training to qualify school officials to review and implement exemption requests; and establishing an appeal procedure for family use when religious exemptions are denied. There should also be requirements relating to the process for determining whether a person's asserted religious belief is sincere and genuine, including the standard of proof and burden of proof.

DEPARTMENT RESPONSE:

These concerns can be more appropriately addressed in guidance to be issued by the Department. In order to ensure consistent implementation, the Department will provide a field memo to school districts that contains guidance on how to implement requests for religious exemption to immunization law.

3. COMMENT:

Concern was expressed regarding the effect of the previous amendment to section 136.3, which was in effect from September 29, 2005 through December 11, 2005, on requests for religious exemptions that were denied prior to September 29, 2005. It was recommended that if an applicant's request for a religious exemption was denied prior to September 29, 2005 that applicant may not be allowed to resubmit the same exemption request during the September 29, 2005 through December 11, 2005 time frame.

DEPARTMENT RESPONSE:

The proposed amendment does not address the applicability of the provisions of section 136.3 that were in effect during the September 29, 2005 through December 11, 2005 timeframe to requests and/or determinations regarding religious exemptions made before September 29, 2005. Issues concerning applicability can be more appropriately addressed in guidance to be issued by the Department. In order to ensure consistent implementation, the Department will provide a field memo to school districts that contains guidance on how to implement requests for religious exemption to immunization law.

4. COMMENT:

The designated individual in the school who is responsible for deciding whether to approve a religious exemption should be the building principal and not the school nurse. The role of the school nurse is to educate parents about the importance of immunization.

DEPARTMENT RESPONSE:

The proposed amendment does not specify that the designee must be the school nurse. Generally speaking, the appropriateness of particular designees is best left to local school authorities to reasonably determine.

5. COMMENT:

Schools need guidance about how the religious exemption from immunization impacts sports participation.

DEPARTMENT RESPONSE:

Issues concerning the effect of religious exemptions from immunization on school district sports participation are beyond the scope of the proposed rule making which is intended to merely conform the Commissioner's Regulations regarding religious exemptions for immunizations and other school health services to the regulations of the Department of Health, consistent with the legislative intent of Chapter 477 of the Laws of 2004. At present, there are no plans to issue formal guidance concerning these types of issues. However, Department staff can provide assistance to school authorities inquiring about a specific situation or set of circumstances, where appropriate.

Office of General Services

NOTICE OF ADOPTION

Parking Regulations for Office of General Services (OGS) Parking Facilities

I.D. No. GNS-37-05-00002-A

Filing No. 228

Filing date: Feb. 17, 2006

Effective date: March 8, 2006

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

Action taken: Amendment of Part 296 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200

Subject: Parking regulations for Office of General Services (OGS) parking facilities.

Purpose: To provide specific guidance concerning what is expected of a person who parks a vehicle in an OGS controlled parking lot.

Text of final rule: SECTION 296-1.1 PARKING IN OGS [PAID] PARKING FACILITIES.

Any *State* employee desiring to park in an OGS [paid] parking facility in the Albany area must register for such privilege with their agency employer and/or the OGS Bureau of Parking Services. Those *State* employees outside of the Albany area should contact the OGS building superintendent or the equivalent. [Registered employee permit holders must properly affix and display any issued tag/decals.] *A registered State employee must conspicuously display his or her valid permit, tag, and/or decal in the vehicle as directed by the issuing office.*

Section 296-1.8 Permit sales.

(a) Each permit holder will be issued a permanent parking permit tag and decal(s) for their authorized vehicle(s). Payment for the permit will either be by voluntary automatic payroll deduction, or through periodic billing to the permit holder except where other arrangements are made with the Bureau of Parking Services. A Parking Permit Registration form must be submitted prior to the issuance of the permit tag and decal(s).

(b) Permit holders are required to submit a Parking Permit Update form for any of the following reasons:

- (1) name change;
- (2) agency change;
- (3) change of office phone;
- (4) change of office address for those eligible for payroll deduction;
- (5) change of home or office address for those ineligible for payroll deduction;
- (6) change/add/delete permit holders license plate number;
- (7) change/add/delete car pool member; [or]
- (8) assignment of a new or replacement employee identification card; or [(8)](9) cancel payroll deduction.

Completed forms must be returned to the parking lot attendant or to the Bureau of Parking Services. Registration and update forms are available from [parking attendants] *the OGS web site*, the Bureau's Central Office or the agency Parking Coordinator. All forms must be submitted through the Bureau's [c]Central [o]Office.

(c) The permit holder will be assessed a replacement fee of \$10.00 if it becomes necessary to issue an additional tag or Empire State Plaza access card due to the negligence or fault of the permit holder.

(d) The Bureau of Parking Services reserves the right to refuse to accept personal checks from any permit holder who issues two or more checks which are returned for insufficient funds. In addition, a permit holder will be assessed a \$20.00 fee for any dishonored checks returned to OGS.

Section 296-1.10 State Employee Parking.

(a) State employees may park their vehicles in assigned parking areas provided that such vehicles are first registered with the OGS Bureau of Parking Services or other agency as provided in this section and section 302 and a valid parking permit for such vehicle has been issued. State employees may not park in areas other than those top which they are specifically assigned without the authorization of the OGS Bureau of Parking Services, i.e., parking areas that have been designated for visitors, handicapped employees or in pre-designated spaces marked by official signs.

(b) Whenever a vehicle is parked in an area set aside for State employees, a valid permit for such area must be conspicuously displayed in the vehicle as directed by the Office of General Services.

Section 296-1.[11]I2 Violations of rules: parking

(a) The owner and/or operator of any vehicle found in violation of this Part or the parking rules of the Division of Facilities Planning and Operation in Chapter IV, Subchapter B of this Subtitle will receive a parking citation for parking violation. [In addition, the procedures and penalties prescribed in Chapter IV, Subchapter B, section 302.4 of this Subtitle, shall be applicable to any violator of said rules.]

(b) [In addition to the instances prescribed in Chapter IV, Subchapter B, section 302.4, subdivision (c) of this Title.] Any vehicle that does not display a valid permit to park in such area and that any future violation will result in the installation of a "booting" device by the Office of General Services, in accordance with the following procedures:

(1) Upon the first violation, vehicle owners will be given written notice placed in a conspicuous location on the vehicle that the vehicle is not authorized to park in such area and that any future violation will result in the imposition of fines, the installation of a booting device, and towing of the vehicle without further notice.

(2) Any vehicle that has been the subject of a previous written notice of violation shall have a booting device installed on the vehicle, until such time as the vehicle can be later towed. If the vehicle operator arrives before the tow operator arrives, the OGS representative will remove the boot only upon payment of a \$50.00 service charge and any outstanding parking fees owed to the OGS.

(c) [t]The towing of vehicles is permissible when a vehicle is found park[ing]ed in a [paid] parking facility other than the one for which it has a permit (unless prior approval has been received from the Bureau of Parking Services).

(1) A vehicle may be removed to a garage, automobile pound or other place of safety under the following circumstances:

(i) when a vehicle is found unattended which constitutes an obstruction to traffic; or

(ii) when a vehicle is found stopped, standing or parked in violation of this Part; or

(iii) when a vehicle is found parked displaying an altered parking permit; or

(iv) when a vehicle is under suspension and found in violation of such suspension.

[(1)](2) The contents of all vehicles towed away by or on behalf of the appropriate OGS officials may be inventoried, and any contraband material found in the vehicle will be confiscated. The list of the contents of the vehicle will be signed by the tow-truck operator and the OGS official.

[(i)] Valuable items may be removed and secured and will be returned upon presentation of proper identification by the driver.]

[(ii)] Any contraband material found in the vehicle will be confiscated.]

[(2)](3) The owner or other person lawfully entitled to the possession of such vehicle may be charged a reasonable cost for its removal and storage, payable before the vehicle is released.

(d) Suspension of parking privileges (applicable to administrative citations only.)

(1) Persons who receive three citations for parking violations within a six-month period shall have their parking privileges suspended for a period not to exceed 30 calendar days.

(2) Any suspension will begin three days after service of a notice of suspension.

(3) Persons found in violation of suspension will receive a citation of parking violation and have their vehicle towed from the parking facility as described under section 296-1.12 (c).

(4) If, after the completion of a 30-day suspension period, a person receives three or more citations within a six-month period, that person will be suspended for a 45-day period.

(5) Any person subject to a third suspension within an 18-month period shall be considered a habitual violator and will be suspended for 60 days for such suspension and 60 days for all subsequent suspensions.

When a vehicle is found parked displaying an altered parking permit, the permit holder and/or operator of the vehicle shall have their parking privileges suspended for a period of 60 days beginning on the day the vehicle is found in violation. An altered parking permit is defined as any authorized parking permit which has been duplicated, or a portion of which has been altered, erased, obliterated, removed or covered in order to conceal its original design and purpose.

[(c)](e) For administrative citations or suspensions issued at OGS [paid] parking facilities, appeals may be made to the following officials in this order:

(1) In the Albany area, the supervisor of parking operations; outside the Albany area the OGS building superintendent or equivalent.

(2) Chief of parking services.

(3) Director, Division of Support Services. Section 296-1.[12]I3 Parking permits for the disabled.

(a) Employees who are disabled and require special parking considerations due to their condition must take the following steps in order to obtain a special permit:

(1) The employee must complete the "Application for Medical Parking Permit" and the "Employee Health Service Release of Medical Information for Parking Eligibility."

[(1)](2) The employee must obtain a physician's statement outlining the disability.

[(2)](3) The employee must request his/her [personnel office] agency parking coordinator to arrange for an examination with the Employee Health Service.

[(3)](4) The employee must submit the physician's statement to the Employee Health Service at the examination.

(b) The Employee Health Service will then supply copies of their recommendation to the applicant's personnel office and the Bureau of Parking Services. If the Employee Health Service recommends special parking arrangements and the employer agency approves the application, the [Bureau of Parking Services] agency parking coordinator will contact the employee to coordinate the appropriate arrangements.

SUBPART 296-2 VISITOR PARKING AT [PAID] PARKING FACILITIES

Section 296-2.1 Visitor parking in OGS [paid] parking facilities

(a) Parking areas for visitors are maintained by OGS at the Empire State Plaza in Albany and other locations throughout the State. Visitors may park only in areas designated specifically as visitor parking. In most instances there will be hourly or daily fees assessed for visitor parking. Fees will be conspicuously posted at the entrance of all visitor-parking areas. Use of the paid parking facilities operated by OGS is by invitation and temporary revocable permit, which may be rescinded or withheld, where an individual operator violates any applicable rule or fails to promptly remit payment of those fees imposed by OGS.

(b) In the case of special visitors and/or group visitors (workshop participants, etc) appropriate arrangements must be made for temporary parking privileges. Applications must be made in advance with the OGS Bureau of Parking Services.

Section 296-2.3 Payment of daytime visitor parking fees.

(a) Where a visitor has not left the visitor area at the time the lot is closed, a pay envelope will be left on their vehicle, specifying the amount owed and giving directions for payment.

(b) Accounts that are unpaid for more than seven days are referred for collection. If an account [includes fees for three or more separate visits] remains unpaid, the vehicle registrant may be subject to having their vehicle immobilized and impounded if found in any OGS parking facility, prior to payment of the outstanding account.

(c) Once a vehicle has been immobilized, it will not be released to the owner or any other person until all sums due and owing have been paid, either in cash or by bank check.

(d) Where payment of visitor parking fees is made by personal check, any returned check will subject the visitor [patron] to an additional fee of

\$20.00. In addition, the Bureau of Parking Services reserves the right to refuse to accept personal checks from persons issuing two or more checks, which are returned for insufficient funds.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 296-1.1.

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

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

After receiving comments during the public comment period, it was determined that OGS would remove the definition of "state employee" from Part 296-1.1, as requested from a number of organizations. The definition was newly proposed language. Revised supporting documents are not required or necessary because the removal of that one definition does not cause any changes to be made to those documents.

Assessment of Public Comment

OGS received three comments regarding the proposed rule making that would amend 296 of Title 9 NYCRR relative to parking of vehicles at OGS parking facilities. The three comments were received from the Civil Service Employees Association (Local 1000 AFSCME, AFL-CIO), the New York State Public Employees Federation (AFL-CIO) ("PEF") and The Organization of NYS Management Confidential Employees. All three organizations expressed the same general concern. Each objected to the inclusion of a definition for the term state "employee". After reviewing each comment, OGS has decided to respond by removing the definition from the proposed regulations. Each organization has expressed their satisfaction in OGS's response.

PEF also commented that they oppose any penalties imposed on State Employees for violating the parking regulations. OGS has continuously provided for penalties for parking violations in the parking regulations and finds that they are the only way of guaranteeing that the appropriate employees have spaces to park their vehicles.

Additionally, PEF commented that the proposed rules fail to protect the rights of disabled employees who, because of physical limitations, require parking accommodations. OGS has continuously had a procedure in place for employees to request and obtain disabled parking permits. The new form required under the proposed regulations ensures that those employees in need of a special disability parking permit will receive one. OGS has determined that having a procedure in place has been an effective way to prevent any attempts to gain a disability parking place through fraudulent means.

term rehabilitation services, as defined by the Commissioner of Health, are allowed to attest to the amount of their resources.

The proposed regulation would provide the definition of the term "short-term rehabilitation" required by Chapter 1 of the Laws of 2002 and necessary to implement the provisions of such Chapter. The sooner the provisions of the statute can be implemented, the sooner the statutory goal of simplifying Medicaid enrollment and recertification will be achieved, with a consequent benefit to public health in terms of easier access to necessary health care. Therefore, complying with the normal rule making requirements would be contrary to the public interest, and the immediate adoption of the rule is necessary.

Subject: Self attestation of resources for Medicaid applicants and recipients.

Purpose: To allow an applicant or recipient to attest to the amount of his or her resources unless the applicant or recipient is seeking Medicaid payment for long term care services.

Text of emergency rule: Paragraph (3) of subdivision (c) of Section 360-2.3 is amended to read as follows:

(3) Verification of resources. (i) *The applicant may attest to the amount of his or her resources, unless the applicant is seeking coverage for long-term care services. For purposes of this paragraph, long-term care services shall include those services defined in subparagraph (ii) of this paragraph, with the exception of short-term rehabilitation as defined in subparagraph (iii) of this paragraph.* The applicant must provide documentation of all available or potentially available resources when applying for long-term care services. The social services district must record the documentation provided and determine the availability of such resources.

(ii) *Long-term care services shall include, but not be limited to care, treatment, maintenance, and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided in an intermediate care facility certified under article sixteen of the mental hygiene law; provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of mental hygiene law; provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; provided by a home care services agency, certified home health agency or long-term home health care program as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the department of health; provided by a personal care provider licensed or regulated by any other state or local agency; provided in a hospital that is equivalent to the level of care provided in a nursing facility; and provided by an assisted living program in accordance with regulations of the department of health. Long-term care services also shall include: private duty nursing; limited licensed home care services; hospice services including services provided by the hospice residence program in accordance with the regulations of the department of health; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.*

(iii) *Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.*

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 May 17, 2006.

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

Regulatory Impact Statement

Statutory Authority:

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363-a(2) of the SSL requires the Department to establish such regulations as may be necessary to implement the program of medical assistance for needy persons (Medicaid). Section 366-a(2)(a) of the SSL provides that a Medicaid applicant must provide infor-

Department of Health

EMERGENCY RULE MAKING

Self Attestation of Resources for Medicaid Applicants and Recipients

I.D. No. HLT-10-06-00003-E

Filing No. 229

Filing date: Feb. 17, 2006

Effective date: Feb. 17, 2006

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

Action taken: Amendment of section 360-2.3(c)(3) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 366-a(2)

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

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity to adopt as an emergency rule: Chapter 1 of the Laws of 2002 provides that Medicaid applicants and recipients seeking coverage of long-term care services, other than short-term rehabilitation, must provide adequate documentation to verify the amount of their accumulated resources. Persons who are not seeking coverage of long-term care services, or who are seeking coverage of short-

mation and documentation necessary for the determination of initial and ongoing eligibility. A new section 366-a(2)(b) of the SSL, as enacted by the Health Care Reform Act of 2002, provides that an applicant may attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term care services. An exception is made for short-term rehabilitation. For purposes of this provision, section 366-a(2)(b) of the SSL references the long-term care services described in paragraph (b) of section 367-f(1) of the SSL and authorizes the Commissioner of the Department to define the term "short-term rehabilitation".

Legislative Objectives:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State, and requires the Department to promulgate any necessary regulations which are consistent with federal and State law. The proposed regulatory amendment is necessary to define long-term care services and short-term rehabilitation for purposes of attestation of resources.

Needs and Benefits:

The purpose of the proposed regulatory amendment is to revise section 360-2.3(c)(3) of the Medicaid regulations concerning verification of resources. Currently, in determining whether an applicant is financially eligible for Medicaid, the applicant must provide documentation of all available or potentially available resources. A new subdivision (2) of section 366-a of the SSL, as enacted by the Health Care Reform Act of 2002, allows an applicant to attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term services. The section also allows an applicant to attest to the amount of his or her resources if Medicaid coverage is needed for short-term rehabilitation. The proposed regulatory amendment to section 360-2.3(c)(3) allows certain applicants to attest to the amount of their resources and to define the long-term care services for which resource documentation will still be required. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

As required by section 366-a(2)(b) of the SSL, the proposed regulatory amendment includes in the definition of long-term care services, those services described in section 367-f (1)(b) of the SSL. These services include care, treatment, maintenance and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the Department of Health; or provided by a personal care provider licensed or regulated by any other state or local agency. In addition, the proposed regulatory amendment designates as long-term care services, for purposes of resource attestation, the following: a level of care provided in a hospital which is equivalent to the level of care provided in a nursing facility ("alternate level of care"); services provided in an intermediate care facility certified under article sixteen of the mental hygiene law; services provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of the mental hygiene law; services provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; services provided by an assisted living program; private duty nursing; limited licensed home care services; hospice care including the hospice residence program; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.

Section 366-a(2)(b) of the SSL allows attestation of resources by applicants seeking Medicaid coverage of short-term rehabilitation as defined by the Commissioner of the Department. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

Costs:

There should be no additional costs associated with this regulatory amendment. An analysis of several eligibility simplification proposals was performed in 2001 and it was concluded that while a fiscal impact could occur if applicants provided inaccurate information about their resources, this was unlikely. Since neither the Child Health Plus (CHP) nor the Family Health Plus (FHP) program have resource tests, it was determined

that those Medicaid applicants who had excess resources would most likely still be eligible for either CHP or FHP. Therefore, this proposal has been considered to be cost neutral.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates. The amendment would remove the requirement that a Medicaid applicant submit proof of his or her resources for purposes of determining Medicaid eligibility, if the applicant is not seeking Medicaid coverage of long-term care services. The change simplifies the documentation requirements for local departments of social services administering the Medicaid program at the county level.

Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment. Currently, in determining Medicaid eligibility for long-term care services, social services districts must review resource documentation.

Duplication:

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

Alternatives:

Section 366-a(2)(b) of the SSL requires that the services specifically listed in Section 367-f(1)(b) of the SSL be included in the definition of long-term care services. No alternatives were considered to the inclusion of these services in the definition.

In addition, in accordance with the authority granted in Section 367-f(1)(b) of the SSL, the proposed regulatory amendment designates a number of services as long-term care services for purposes of resource attestation: hospice care; private duty nursing; alternate level of care in a hospital; assisted living program; intermediate care facility; residential treatment facility; developmental center; the Care at Home Waiver program; the Traumatic Brain Injury Waiver program; the Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program; limited licensed home care services; personal emergency response services; and the consumer directed personal assistance program. Alternatives were considered with respect to the inclusion or exclusion of particular services in this list. However, given the nature, duration, and cost of these services, as well as the fact that many of these services are delivered by the same providers who furnish the long-term care services specifically listed in SSL Section 367-f(1)(b), the Department determined that the best alternative was to require documentation of resources by applicants seeking coverage of these services.

For purposes of defining short-term rehabilitation, the Department formed a work group with representatives from local social services districts and solicited feedback from the local social services districts' provider community. It was reported that there is no durational difference between inpatient and community-based short-term rehabilitation. Therefore, the workgroup recommended that short-term rehabilitation not be defined solely by type of service. The workgroup recommended defining short-term rehabilitation as receipt of one annual episode of services lasting less than 30 days, because 30 days was the median length of stay for rehabilitation purposes according to information gathered from providers, and because this would eliminate cases that are subject to spousal impoverishment budgeting, which is not viewed as short-term care.

The workgroup recommended that alternate level of care in a hospital not be included in the definition, because the average alternate level of care stay extends beyond 30 days and because none of the providers viewed this as a short-term rehabilitation situation. Similarly, investigation by Department staff indicated that personal care services are provided to individuals who are chronically ill and require care on a long-term basis. Consequently, these services were not included in the definition of short-term rehabilitation.

Federal Standards:

The proposed regulatory amendment complies with federal statute.

Compliance Schedule:

Social services districts will be advised of the change when the amendment becomes effective.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would allow certain Medicaid applicants to attest to the amount of their

resources for purposes of determining Medicaid eligibility. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, recordkeeping or any other new compliance requirements on rural or non-rural areas.

Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining eligibility for Medicaid.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Licensed Social Worker Loan Forgiveness Program

I.D. No. ESC-10-06-00001-E

Filing No. 221

Filing date: Feb. 15, 2006

Effective date: Feb. 15, 2006

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

Action taken: Addition of section 2201.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-a

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

Specific reasons underlying the finding of necessity: This emergency rule is necessary because compliance with the requirements of the regular rule making process will adversely impact award recipients by delaying the processing of awards.

Subject: New York State Licensed Social Worker Loan Forgiveness Program.

Purpose: To implement the program.

Text of emergency rule: New section 2201.8 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.8 New York State Licensed Social Worker Loan Forgiveness Program

(a) *Purpose:* The legislature established the New York State Licensed Social Worker Loan Forgiveness Program (codified in section 679-a of the New York State Education Law) to provide incentives for the purpose of increasing the number of social workers practicing in critical human service areas within New York State. The purpose of these regulations is to implement and administer the program.

(b) *Authority:* The provisions contained within this regulation are made pursuant to authority granted to the Higher Education Services Corporation in sections 653, 655, and 679-a of the Education Law.

(c) *Statutory Definitions:*

(1) "Year" means one calendar year beginning January 1st and concluding on December 31st. Service for less than one year may be permitted in the first and last years of the program provided that the awards will be prorated to reflect the actual service provided.

(2) "Student Loan Debt" means New York State or federal governmental loans, or loans made by commercial entities subject to governmental examination. It does not, however, include parent PLUS loans, or loans that may be canceled under any other program, or private loans given for example by family or friends, or student loan debts paid via credit card.

(3) "Full-time" shall mean providing social worker services for a minimum of 35 hours in a calendar week.

(4) "Economically disadvantaged" shall be determined by ranking each applicant by their New York State combined net taxable income for the applicant and their spouse so that the applicant with the lowest net taxable income will receive the first award. Awards shall continue to be granted in such order until the funding is expended.

(d) *Administrative Requirements:* The following administrative requirements shall apply to this program:

(1) Applications for the New York State Licensed Social Worker Loan Forgiveness Program shall be postmarked or electronically transmitted no later than March 1st of each year, provided that this deadline may be extended at the discretion of the corporation;

(2) Applications shall be filed annually on forms prescribed by the corporation;

(3) The pool of applicants shall be those who have successfully met the filing deadline and who otherwise meet the eligibility requirements of the program;

(4) The corporation shall offset a loan forgiveness award if the recipient owes a debt to the corporation or is in default on a student loan guaranteed or owned by the corporation in an amount equal to the debt or defaulted loan, plus any fees, penalties, collection costs, interest or other monies allowable under state and federal law.

(e) *Disqualifications:* The applicant shall be disqualified from receiving an award for any of the following conditions:

(1) The applicant has a service obligation owed to any other state or federal program.

(2) The applicant has loans for which documentation is not available.

(3) The applicant has loans without a promissory note.

(4) The applicant is in default on a federally guaranteed student loan, except if the loan is guaranteed by the corporation.

(5) The applicant's loans are paid in full.

(f) *Priorities:* The priority of an award shall be that set forth in the enabling legislation.

(g) *Lottery Priorities:* If there are more applicants than award funds appropriated by the legislature in any fiscal year, the following provisions shall apply:

(1) If funding is insufficient to make awards to the group of applicants who must be given first priority under the statute, the corporation shall make awards to the members of this group having loans guaranteed by the corporation. Any remaining applicants in this group will be chosen by lottery.

(2) If funding is insufficient to make awards to the group of applicants that must be given second priority under the statute, the corporation shall make awards to the members of this group having loans guaranteed by the corporation. Any remaining applicants in this group will be chosen by lottery.

(3) If funding is insufficient to make awards to the group of applicants that must be given third priority under the statute, the corporation shall make awards to the members of this group having loans guaranteed by the corporation. Any remaining applicants in this group will be chosen by lottery.

(4) If for any given year the filing deadline of March 1 is extended by the corporation, the group of applicants filing after March 1 shall be given fourth priority. If funding is insufficient to make awards to this group, the corporation shall make awards to the members of this group having loans guaranteed by the corporation. Any remaining applicants in this group will be chosen by lottery.

(5) Lottery shall be conducted by random selection. Random selection shall be the preferred manner of tie-breaking.

(h) *Critical Human Service Areas*

(1) The president of the corporation may appoint one chairperson from among the members of the committee responsible for defining "critical human service areas" to facilitate meetings.

(2) The committee shall have no voting rights, and shall not be a public body subject to the open meetings law, and shall not need a quorum to meet.

(3) The committee may meet by electronic means, including but not limited to, teleconferencing and videoconferencing.

(4) The committee shall meet at least once annually to determine the critical human service areas for the upcoming calendar year, except at the first meeting the committee shall also determine the critical human service areas for the calendar year immediately prior thereto. Designation of critical human service areas shall be published by the corporation and provided on HESC's website.

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 May 15, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: David E. Reid, Higher Education Services Corp., 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: D Reid@hesc.com.

Regulatory Impact Statement

Statutory authority:

New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the New York State Licensed Social Worker Loan Forgiveness Program is codified in sections 653, 655 and 679-a of the Education Law.

A previous version of the New York State Licensed Social Worker Loan Forgiveness Program was created on April 12, 2005, by Chapter 57 of the Laws of 2005. This program, codified in section 605 of the education law, was complicated and contained an ostensible triple penalty for anyone who failed to live up to the requirements of the program.

On June 24, 2005, a repealer was introduced in the legislature as part of an omnibus chapter amendment which created a much simpler loan forgiveness program absent penalties and transferred the administration of the program to the Higher Education Services Corporation by adding new section 679-a to the Education Law. The bill received a message of necessity and was thereafter signed into law on July 3, 2005, in Chapter 161 of the Laws of 2005.

Legislative objectives:

The legislature established the New York State Licensed Social Worker Loan Forgiveness Program to entice licensed social workers to provide social work services in critical human service areas within New York State. Successful applicants can receive \$6,500.00 for each year that these services are provided up to a cumulative amount of \$26,000.00.

Priority in receiving such awards are as follows: 1) applicants who have received an award for service in a previous year and performed social work services in a critical human service area; 2) applicants who have not yet received an award but who performed service in a critical human service area in the previous year, and 3) applicants who are economically disadvantaged as defined by the corporation.

The statute requires HESC to administer the program including defining "economically disadvantaged," determining the manner in which awards will be distributed if funds are insufficient, and designating "critical human service areas" in consultation with a committee comprised of specific state agencies.

Needs and benefits:

According to statute, "critical human service areas" are geographic areas that exhibit social worker shortages in health, mental health, substance abuse, aging, HIV/AIDS, child welfare or communities with multi-lingual needs. This program will fill the need for more social workers by offering them student loan forgiveness incentives for each year of service performed.

The statute requires HESC to designate critical human service areas. HESC will need to collaborate with other state agencies possessing expertise in the health and human services industry to ensure fair and effective designations.

The proposal addresses administrative concerns by providing an annual application deadline, defining the terms "year," "student loan debt," "full time," and "economically disadvantaged" applicants, and by providing a structure for implementing the program.

Costs:

a. It is anticipated that there will be no costs to HESC for the implementation of, or continuing compliance with, this rule except for programmatic administration costs.

b. There are no application fees, processing fees, or other costs to the applicants of this program.

c. There are no costs to the collaborating state agencies possessing health and human services expertise because the expertise will be provided by state employees already on the state payroll during the regular workweek within the scope of their present duties.

d. The cost of this program to the State in the first year, FY 2005-06, shall not exceed \$1,000,000.00. Future costs to the State shall not exceed the annual appropriation for the program. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (b) above is derived from statute which limits the total awards under the program to amounts appropriated by the legislature, and appropriations bill S553-E (2005) which appropriated \$1,000,000.00 for the 2005-06 fiscal year.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require potential recipients of the New York State Licensed Social Worker Loan Forgiveness Program to submit an annual application and supporting documentation to establish their eligibility for this program. No additional paperwork will be required. The applications will become electronic in the foreseeable future.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

This proposal was finalized after meeting with the New York State and New York City chapters of the National Association of Social Workers (NASW) who lobbied for the legislation. This proposal is the fair and equitable result of these meetings.

As noted above, HESC is required to define "economically disadvantaged," which is the third statutory priority in distributing awards. The program was passed in an omnibus bill and there is no bill justification memo to guide the agency as to the meaning of the term, but in state practice it is a term of art indicating financial hardship. However, discussions with NASW made it clear that they did not intend the term to be synonymous with financial hardship. Rather, in proffering the term, the NASW merely meant to ensure that a mechanism existed so that the financial need of the applicant could be factored in at some point. Accordingly, HESC is proposing to rank applicants by the combined net taxable income for the applicant and their spouse, so that in the event the third statutory priority for awards is reached, the applicants with the lowest combined net taxable income will be given preference over those with the highest. This approach directly addresses NASW's concerns.

Information from NASW indicates that the social work industry in New York State considers 35 hours per week to be "full-time;" the proposal was drafted to adopt that standard.

The provisions of the proposal under the heading "disqualifications," as well as the definition of "student loan debt," are based on similar federal programs such as the U.S. Department of Education's Perkins Loan Forgiveness Program, the U.S. Health and Human Services Nursing Education Loan Repayment Program, as well as the New York State Nursing Faculty Loan Forgiveness Incentive Program. The term "year" is a calendar year inasmuch as this program does not take place in an academic setting as many of our other programs do. Based upon input from NASW, this definition will facilitate prorated awards.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of provisions similar to ones found in the above referenced federal loan forgiveness programs.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption, dated February 15, 2006, seeking to add a new section 2201.8 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments because it implements a statutory student loan forgiveness program funded by New York State and administered by a State agency.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption, dated February 15, 2006, seeking to add a new section 2201.8 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, and that there will be no costs for the implementation of, or continuing compliance with, this rule except for programmatic administration costs.

The program will have a positive impact on rural areas deemed "critical human service areas" by attracting social workers to those areas. The

program implements the New York State Licensed Social Worker Loan Forgiveness program.

For 2006, 24 of the 28 counties deemed critical human service areas are rural counties or contain rural areas as defined in section 481(7) of the Executive Law. They are: Allegany, Cattaraugus, Chautauqua, Chemung, Chenango, Clinton, Cortland, Jefferson, Lewis, Franklin, Fulton, Herkimer, Oswego, Steuben, St. Lawrence, Sullivan, Tompkins and Yates counties. The remaining 6 counties have rural areas in the form of townships with population densities of less than 150 people per square mile. They are Broome, Erie, Monroe, Niagara, Oneida and Onondaga counties.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Emergency Adoption, dated February 15, 2006, seeking to add a new section 2201.8 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it could only have a positive impact or no impact on jobs and employment opportunities. The proposal implements a statutory student loan forgiveness program funded by New York State and administered by a State agency. Licensed social workers will likely be attracted to fill jobs in critical human service areas by this incentive.

Insurance Department

NOTICE OF ADOPTION

Excess Line Placement Governing Standards

I.D. No. INS-52-05-00016-A

Filing No. 227

Filing date: Feb. 17, 2006

Effective date: March 8, 2006

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2105, 2118 and art. 21

Subject: Excess line placements governing standards.

Purpose: To restate section 2118(b)(6) of the Insurance Law regarding the duty of an excess line broker to deliver a stamped declarations page or cover note evidencing insurance that is stamped by the excess line association. Alternatively, the rule also permits a duplicate copy of the aforementioned document to be stamped by the excess line association. The rule updates the language on the notice that is required to be prominently displayed on written confirmations of placement of coverage with excess line insurers and the notice that is required on insurance policies issued by excess line insurers in the State. The two notices currently in use are different. The rule makes minor changes to both notices so that the language is the same on both notices. The rule also deletes the requirement that the notice be in red type and replaces it with the requirement that the notice be conspicuous.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-52-05-00016-P, Issue of December 28, 2005.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Public Employee Occupational Safety and Health Standards

I.D. No. LAB-51-05-00015-A

Filing No. 223

Filing date: Feb. 16, 2006

Effective date: March 8, 2006

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

Action taken: Amendment of section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a.4(a)

Subject: Public employees occupational safety and health standards.

Purpose: To incorporate by reference into New York State Occupational Safety and Health Standards, those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Sept. 13, 2005.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-51-05-00015-P, Issue of December 21, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: dianewehner@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

State Liquor Authority

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Increase in Amount of Retail Bonds

I.D. No. LQR-38-05-00001-C

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

The notice of proposed rule making, I.D. No. LQR-38-05-00001-P was published in the *State Register* on September 21, 2005.

Subject: Increase in amount of retail bonds.

Purpose: To impose a larger bond in situations where a licensee has defaulted and gone out of business after charges have been brought.

Substance of rule: Each licensee and each permittee of the kinds and classes hereinafter prescribed shall file with the Liquor Authority a bond to the people of the State of New York, issued by a surety company approved by the Superintendent of Insurance as to solvency and responsibility, and authorized to transact business in this state, in the penal sum hereinafter prescribed, conditioned that such licensee or permittee will not suffer or permit any violation of the provisions of the Alcoholic Beverage Control Law or the rules of the State Liquor Authority. All bonds shall undertake that any costs taxed or allowed in any action or proceeding will be paid to the extent of [\$1,000] \$2,500 in addition to the penal sums specified in this rule.

Changes to rule: No substantive changes.

Expiration date: September 21, 2006.

Text of proposed rule and changes, if any, may be obtained from: Barbara J. Lord, Liquor Authority, 317 Lenox Ave., 4th Fl., New York, NY 10027, (212) 961-8342

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

Public Service Commission

NOTICE OF ADOPTION

New Types of Electricity Meters, Transformers and Auxiliary Devices by Trench Limited

I.D. No. PSC-26-05-00015-A
Filing date: Feb. 16, 2006
Effective date: Feb. 16, 2006

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

Action taken: The commission, on Feb. 8, 2006, adopted an order approving the petition filed by Trench Limited to permit the use of the combination current and voltage measuring transformers Type N5 and N5H.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of electricity meters, transformers and auxiliary devices.

Purpose: To approve electric utilities in New York State to use the Trench Limited current and voltage measuring transformers.

Substance of final rule: The Commission approved Trench Limited's petition to permit the use of the Trench Limited Transformers Type N5 and N5H.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-0607SA1)

NOTICE OF ADOPTION

Lightened Regulation by Cross-Sound Cable (New York), LLC

I.D. No. PSC-39-05-00003-A
Filing date: Feb. 15, 2006
Effective date: Feb. 15, 2006

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

Action taken: The commission, on Feb. 8, 2006, adopted an order approving the petition of Cross-Sound Cable Company (New York), LLC providing for lightened regulation of it as an electric corporation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 70 and 110

Subject: Request for lightened regulation as an electric corporation.

Purpose: To approve Cross-Sound Cable Company (New York), LLC's request for lightened regulation in connection with the construction and operation of an electric transmission facility.

Substance of final rule: The Commission approved the petition filed by Cross-Sound Cable Company (New York), LLC for an order providing for lightened regulation of it as an electric corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-1030SA1)

NOTICE OF ADOPTION

Renewable Portfolio Standard Program Funding by Boralex New York, Inc.

I.D. No. PSC-45-05-00010-A
Filing date: Feb. 16, 2006
Effective date: Feb. 16, 2006

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

Action taken: The commission, on Feb. 8, 2006, adopted an order in Case 03-E-0188 approving the request of Boralex New York Inc., on behalf of its Chateaugay, New York biomass facility, for Renewable Portfolio Standard (RPS) Program funding as a maintenance resource.

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

Subject: RPS Program funding as a maintenance resource.

Purpose: To approve Boralex's request for RPS Program funding.

Substance of final rule: The Commission approved a request of Boralex New York Inc., on behalf of its Chateaugay, New York biomass facility, for Renewable Portfolio Standard program funding as a maintenance resource, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-0188SA13)

NOTICE OF ADOPTION

Transfer of Ownership Interests by Orion Power Holdings, Inc., et al.

I.D. No. PSC-46-05-00014-A
Filing date: Feb. 15, 2006
Effective date: Feb. 15, 2006

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

Action taken: The commission, on Feb. 8, 2006, adopted an order approving the joint petition filed by Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions, LLC for approval of the transfer ownership interests in three generating facilities located in New York, NY, and authorization for the new owner to issue corporate debt.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Transfer of ownership interests in electric generation facilities located in New York, NY and the issuance of corporate debt.

Purpose: To approve the transfer of ownership interests in electric generation facilities.

Substance of final rule: The Commission approved the joint petition of Orion Power Holdings, Inc., Astoria Generating Company, L.P. and Astoria Generating Company Acquisitions LLC for the transfer of ownership interests in electric plant and the issuance of corporate debt that would encumber that plant, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-1341SA1)

NOTICE OF ADOPTION

Submetering of Electricity by American Metering & Planning Services, Inc.**I.D. No.** PSC-49-05-00020-A**Filing date:** Feb. 16, 2006**Effective date:** Feb. 16, 2006

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

Action taken: The commission, on Feb. 8, 2006, adopted an order in Case 05-E-1438 approving the petition filed by American Metering & Planning Services, Inc. to submeter electricity at 70 Washington St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To submeter electricity at 70 Washington St., New York, NY.

Substance of final rule: The Commission approved a request by American Metering & Planning Services, Inc. to submeter electricity at 70 Washington Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1438SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Sherwood 1600 Associates**I.D. No.** PSC-49-05-00024-A**Filing date:** Feb. 16, 2006**Effective date:** Feb. 16, 2006

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

Action taken: The commission, on Feb. 8, 2006, adopted an order in Case 05-E-1442 approving the petition filed by Sherwood 1600 Associates to submeter electricity at 1600 Broadway, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To submeter electricity at 1600 Broadway, New York, NY.

Substance of final rule: The Commission approved a request by Sherwood 1600 Associates to submeter electricity at 1600 Broadway, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-1442SA1)

PROPOSED RULE MAKING
HEARING(S) SCHEDULED**Major Rate Case by Corning Natural Gas Corporation****I.D. No.** PSC-10-06-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject or modify, in whole or in part, a proposal filed by Corning Natural Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service—P.S.C. Nos. 2, 3 and 4. The effective date of the filing is subject to suspension through Sept. 30, 2006.

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

Subject: Major rate case.

Purpose: To consider whether to increase annual gas revenues by approximately \$3.46 million or 16.2 percent.

Public hearing(s) will be held at: 7:00 p.m., March 20, 2006* (Public Statement Hearing) at Holiday Inn, 304 S. Hamilton St., Painted Post, NY; 7:00 p.m., March 21, 2006* (Public Statement Hearing) at Hammondsport High School, Lecture Hall, Rm. 134, 8272 Main St. Extension, Hammondsport, NY; 7:00 p.m., March 22, 2006* (Public Statement Hearing) at Pine City Elementary School, Cafeteria, 1551 Pennsylvania Ave., Pine City, NY; and 8:30 a.m., March 20-24, 2006* (Evidentiary Hearing) at Holiday Inn, 304 S. Hamilton St., Painted Post, NY.

*The dates for all hearings set forth in this notice are subject to postponement to late in the month of April 2006 if certain events occur prior to March 13, 2006. Please check the Commission's web site at <http://www.dps.state.ny.us/05G1359.html> or call 1-877-772-2789 toll-free between March 15 and March 19, 2006 to learn whether all of the March 2006 hearings have been postponed.

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

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

Substance of proposed rule: Corning Natural Gas Corporation (Corning) has filed proposed tariff amendments to produce an increase of about \$3.46 million or 16.2% in annual gas revenues. The Commission may approve, reject or modify, in whole or in part, Corning's proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

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

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

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

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

(05-G-1359SA1)

PROPOSED RULE MAKING
HEARING(S) SCHEDULED**Major Rate Case by Consolidated Edison Company of New York, Inc.****I.D. No.** PSC-10-06-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject or modify, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, changes, rules and regulations contained in its schedule for steam service—P.S.C. No. 3. The statutory suspension period of the filing runs through Sept. 30, 2006.

Statutory authority: Public Service Law, section 80(10)

Subject: Major rate case.

Purpose: To increase annual steam revenues by approximately \$67.6 million or 9.6 percent.

Public hearing(s) will be held at: 10:30 a.m., April 5, 2006* at 90 Church St., New York, NY.

*There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS web site (www.dps.state.ny.us) under Case No. 05-S-1376 or call 1-877-772-2789 toll free.

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

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

Substance of proposed rule: Consolidated Edison Company of New York, Inc. (Con Edison) has filed proposed tariff amendments to produce an increase of about \$67.6 million or 9.6% in annual steam revenues. The Commission may approve, reject or modify, in whole or in part, Con Edison's proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

Data, views or argument 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: five days after the last scheduled public hearing.

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

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

(05-S-1376SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. PSC-10-06-00004-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Global Link Communications, LLC for approval of an interconnection agreement executed on Jan. 17, 2006.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Global Link Communications, LLC have reached a negotiated agreement whereby Verizon New York Inc. and Global Link Communications, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 16, 2008, or as extended.

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

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

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

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

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

(06-C-0177SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Covista, Inc.

I.D. No. PSC-10-06-00005-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Covista, Inc. for approval of an interconnection agreement executed on Dec. 26, 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: Verizon New York Inc. and Covista, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Covista, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 25, 2007, or as extended.

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

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

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

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

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

(06-C-0178SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and CloseCall America, Inc.

I.D. No. PSC-10-06-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and CloseCall America, Inc. for approval of an interconnection agreement executed on Dec. 15, 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: Verizon New York Inc. and CloseCall America, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and CloseCall America, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which

the parties will interconnect their networks lasting until December 14, 2007, or as extended.

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

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

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

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

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

(06-C-0179SA1)

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

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

I.D. No. PSC-10-06-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Spectrotel Inc. for approval of an interconnection agreement executed on Oct. 10, 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: Verizon New York Inc. and Spectrotel Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Spectrotel Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 14, 2006 or as extended.

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

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

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

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

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

(06-C-0180SA1)

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

Interconnection Agreement between Verizon New York Inc. and Smart Choice Communications LLC

I.D. No. PSC-10-06-00008-P

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

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

York Inc. and Smart Choice Communications LLC for approval of an interconnection agreement executed on Nov. 30, 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: Verizon New York Inc. and Smart Choice Communications LLC have reached a negotiated agreement whereby Verizon New York Inc. and Smart Choice Communications LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 14, 2006, or as extended.

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

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

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

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

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

(06-C-0181SA1)

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

Interconnection Agreement between Verizon New York Inc. and Eureka Telecom Inc.

I.D. No. PSC-10-06-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and Eureka Telecom Inc. (f/k/a Gillette Global Network Inc.) to revise the interconnection agreement effective on Dec. 21, 2005.

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

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

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Eureka Telecom Inc. (f/k/a Gillette Global Network Inc.) in December 2005. The companies subsequently have jointly filed amendments to clarify the Hot Cut requirements. 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. 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-C-1944SA2)

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

Rehearing of the Commission's Order by Calpine Corporation

I.D. No. PSC-10-06-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Calpine Corporation seeking rehearing and reconsideration of the Public Service Commission's order approving staff proposal issued on Nov. 23, 2005 in dockets 03-G-1932, 03-G-1395, and 98-G-0122. The order approving staff proposal deals with the methodology used to calculate the value added charge, applicable to transportation of natural gas used for electric generation, which is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Calpine Corporation seeking rehearing and reconsideration of the Public Service Commission's Order Approving Staff Proposal issued on November 23, 2005 in dockets 03-G-1932, 03-G-1395, and 98-G-0122. The Order Approving Staff Proposal deals with the methodology used to calculate the value added charge, applicable to transportation of natural gas used for electric generation, which is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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-G-0122SA4)

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

Tariff Leaves by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York

I.D. No. PSC-10-06-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject tariff leaves filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 20—Transportation Service for Electric Generation. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, tariff leaves filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 20 — Transportation Service for Electric Generation. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

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

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

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

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

(03-G-1392SA2)

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

Tariff Leaves by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-10-06-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject tariff leaves filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 14—Transportation Service for Electric Generation. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

Subject: A proposed methodology to calculate the value added charge which is applicable to non-core transportation service for electric generators.

Purpose: To calculate the value added charge applicable to non-core transportation service for electric generators.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, tariff leaves filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island regarding the methodology used to calculate the value added charge which is applicable to Service Classification No. 14 — Transportation Service for Electric Generation. The value added charge is intended to provide a standard offer for generators while providing some benefit to gas utilities and their ratepayers and reflects increases or decreases in the wholesale market price of electricity relative to the changes in the cost of gas for electric generation.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-G-1395SA2)

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

Transmission and Distribution of Gas by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-10-06-00014-P

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

Proposed action: KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island has petitioned to amend a previously-granted waiver of 16 NYCRR section 255.123 regarding the maximum allowable operating pressure of plastic pipe and fittings. The commission may approve, deny or modify the waiver with or without public hearing.

Statutory authority: Public Service Law, section 66(2)

Subject: Transmission and distribution of gas.

Purpose: To modify the conditions of a previously-granted waiver allowing plastic pipe to operate at pressures above the maximum of 100 psig as specified in the rule. The conditions to be modified involve the frequency of conducting flame ionization leakage surveys and inspecting all plastic valves; requirements for identifying the geographic areas where such plastic pipe is installed; and maintaining written specifications identifying plastic materials qualified for use on a 124 psig system.

Substance of proposed rule: The Commission is considering a petition by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KEDLI) to amend a previously-granted waiver of 16 NYCRR 255.123, allowing plastic pipe to operate at pressures above the maximum of 100 psig as specified in the rule. The conditions to be modified involve the frequency of conducting flame ionization leakage surveys and inspecting all plastic valves; requirements for identifying the geographic areas where such plastic pipe is installed; and maintaining written specifications identifying plastic materials qualified for use on a 124 psig system. The Commission may approve, modify or reject in whole or in part, KEDLI's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-G-0126SA1)

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

ESCO Referral Programs and Guidelines by Orange and Rockland Utilities, Inc., et al.

I.D. No. PSC-10-06-00015-P

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

Proposed action: The commission is considering petitions for rehearing or clarification, from Orange and Rockland Utilities, Inc., New York State

Electric & Gas Corporation, Rochester Gas and Electric Corporation and the Public Utility Law Project, of its order adopting ESCO Referral Program guidelines and approving and ESCO Referral Program subject to modifications, issued Dec. 22, 2005 in Case 05-M-0858. The commission may adopt, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (10) and (12)

Subject: ESCO referral program and guidelines.

Purpose: To adopt revisions to ESCO referral programs and guidelines.

Substance of proposed rule: The Commission is considering petitions for rehearing or clarification, from Orange and Rockland Utilities, Inc., New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation and the Public Utility Law Project, of its Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications, issued December 22, 2005 in Case 05-M-0858. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-M-0858SA2)

**Department of Taxation and
Finance**

NOTICE OF ADOPTION

Timely Electronic Filing and Electronic Paying

I.D. No. TAF-52-05-00018-A

Filing No. 222

Filing date: Feb. 16, 2006

Effective date: March 8, 2006

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

Action taken: Amendment of sections 2399.1, 2399.2(a)(1) and (d); addition of sections 2399.2(e) and (f); amendment of the titles of Part 2399 and sections 2399.2 and 2399.3 of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subs. First and Fourteenth

Subject: Timely electronic filing and electronic paying.

Purpose: To update the department's procedural regulations concerning the timeliness of documents and payments that are filed and remitted by electronic means.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-52-05-00018-P, Issue of December 28, 2005.

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

Text of rule and any required statements and analyses may be obtained from: John W. Barlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Barlett@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-10-06-00002-P

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

Proposed action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

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

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

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning April 1, 2006, and ending June 30, 2006, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

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

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xli) January - March 2006					
18.3	26.3	42.2	19.5	27.5	41.65
(xlii) April - June 2006					
15.7	23.7	39.6	17.2	25.2	39.35

Text of proposed rule and any required statements and analyses may be obtained from: John W. Barlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Bartlett@tax.state.ny.us

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

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