

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Licensed Cashers of Checks

I.D. No. BNK-17-06-00002-E

Filing No. 430

Filing date: April 6, 2006

Effective date: April 10, 2006

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

Action taken: Amendment of Part 400 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 37(3), 369, 371 and 372

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

Specific reasons underlying the finding of necessity: Chapter 432 of the Laws of 2004 amended article 9-A of the Banking Law to provide an appropriate regulatory regime for entities engaged in cashing commercial checks. The amendments to Part 400 are necessary to conform the regulations governing check cashers to the changes in the law, which were approved on September 14, 2004 and were effective immediately.

Subject: Licensed cashers of checks.

Purpose: To regulate commercial check cashing.

Text of emergency rule: The title of Part 400 is amended to read as follows:

Part 400

LICENSED CASHERS OF CHECKS

(Statutory authority: Banking Law, §§ 37[3], 367, 369, 371, 372)

Paragraphs (a) and (b) of Section 400.1 of the Superintendent's Regulations are amended to read as follows:

(a) Application [form]. *No person shall engage in the business of cashing checks, drafts or money orders, as principal, broker, agent or otherwise, for a consideration, without first obtaining a license from the superintendent. This licensing requirement applies whether such activities are conducted for customers who are natural persons or for any business, corporation, partnership, limited liability company or partnership, association, or sole proprietorship, or any other entity.* Application for a new license or for a change of control of a licensee shall be made upon forms issued by the superintendent. These forms may be obtained at Banking Department offices [located at Two Rector Street, 21st Fl., New York, NY 10006 and 194 Washington Ave., Albany, NY 12210.] *at the locations specified in Supervisory Policy G-1.* For purposes of this Part, the term person shall include a[n individual,] *natural person or a partnership, corporation, association or any other entity.* The term control shall mean having the power directly or indirectly to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of a licensee, the ownership of voting stock of any corporation which possesses such power or otherwise and shall be presumed to exist if any person, directly or indirectly, owns, controls, or holds with power to vote 10 percent or more of the voting stock of any licensee or any person owning, controlling or holding with power to vote 10 percent or more of the voting stock of any licensee.

(b) Application procedure. Completed applications should be delivered to the Licensed Financial Services Division of the Banking Department [, Two Rector Street, 21st Fl., New York, NY 10006.] *at the New York City office location specified in Supervisory Policy G-1.* An application for a new license for a fixed location or for a mobile unit must be accompanied by a check for the investigation and license fees specified in Banking Law, section 367. An application by a licensee to operate a limited station must be accompanied by a check for the license and investigation fees required by Banking Law, section 370. An application for change of control of a licensee must be accompanied by a check for the investigation fee specified in Banking Law, section 370-a. In each case, the check must be made payable to the order of "Superintendent of Banks of the State of New York". Applicants for a new license seeking to conduct business under a trade name must file a certificate in the office of the county clerk as required by General Business Law, section 130. A certificate of the county clerk stating that such a document has been filed must be submitted with an application for a new license.

A new Subsection (g) is added to Section 400.1 of the Superintendent's Regulations as follows:

(g) *The license of a restricted location authorized pursuant to subdivision 1 of the Banking Law shall not be affected by a change of control, pursuant to Section 370-a of the Banking Law, pertaining solely to such restricted location of such licensee, provided that the licensee continues thereafter to engage at that location in the cashing of checks, drafts or money orders only for payees that are other than natural persons and provided further that such license shall bear a legend stating that such location is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons.*

Paragraph (1) of Subsection (a) of Section 400.6 of the Superintendent's Regulation is amended to read as follows:

(a) Every licensee shall:

(1) Post and display at all times in a conspicuous place on the premises the license. [and also] *Every licensee that cashes one or more checks, drafts or money orders for any payees that are natural persons must post the schedule of rates to be charged with respect to such transactions involving payees that are natural persons. The schedule shall be made of [plastic or metal] durable material, be no less than 30 inches wide and 36 inches high with letters at least 3/4 inch in size and indicate the fee applicable to the full amount of the check to be cashed that corresponds to the amount of the check. The schedule shall indicate the fee that corresponds to the amount of the check. The amount of the check shall be set forth on the schedule in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule shall also indicate the percentage charge imposed on all checks and the minimum charge of \$1.00 per check. The schedule shall be in English and in Spanish and posted in the customer's area.*

Section 400.12 of the Superintendent's Regulations is amended to read as follows:

[The] *Except with respect to the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons, [licensee] a licensee shall be permitted to charge or collect a fee for cashing a check, draft or money order not to exceed (a) 1.5 per centum of the amount of the check, draft or money order, or (b) \$1, whichever is greater. Effective January 1, 2005, and annually thereafter, the maximum percentum fee specified in clause (a) of this section, shall be increased by a percentum amount, based upon an increase in the annual consumer price index for the New York—Northern N.J.—Long Island, NY—NJ—CT—PA area for all urban consumers (annual CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum percentum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed percentum amount and the result added to such maximum percentum fee. The resulting sum shall be the revised maximum percentum fee, which shall be posted upon the internet site of the Banking Department (www.banking.state.ny.us) by the Superintendent not later than forty-five days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum percentum fee shall be calculated and posted to the nearest one-hundredth of a percentum. Such revised maximum percentum fee shall be effective not later than forty-five days after the Superintendent shall have notified the Majority Leader of the Senate, the Speaker of the Assembly, and the Chairperson of both the Senate and Assembly Committees on Banks of his/her intention to change the maximum percentum fee pursuant to the provisions of Section 372.3 of the Banking Law and shall continue in effect until revised and increased in the next succeeding year based upon an increase in such annual index. If such annual CPI-U does not increase in any one year, the maximum percentum fee in effect during the year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the Superintendent from setting, by regulation, a different maximum percentum fee at any time where the Superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers. No maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.*

Paragraph (3) of Subsection (h) of Section 400.13 of the Superintendent's Regulations is amended to read as follows:

(3) that the check casher is licensed and regulated by the New York State Banking Department located at [Two Rector Street, New York, NY 10006] *the New York City office location specified in Supervisory Policy G-1; and*

Section 400.15 of the Superintendent's Regulations is amended to read as follows:

Background. Chapter 546 of the Laws of 1994 altered the licensing criteria applicable to check cashers by substantially amending section 369 of the Banking Law to require, among other things, that the superintendent determine whether there is a community need for a new licensee in the proposed area to be served and to prohibit entirely the granting of a license at a location which is less than three-tenths of a mile from an existing licensee. In so acting, the Legislature adopted a specific statutory finding of legislative intent, to wit, "The legislature hereby finds and declares that check cashers provide important and vital services to New York citizens; that the business of check cashers shall be supervised and regulated

through the Banking Department in such a manner as to maintain consumer confidence in such business and protect the public interest; that the licensing of check cashers shall be determined in accordance with the needs of the communities they are to serve; and that it is in the public interest to promote the stability of the check cashing business for the purpose of meeting the needs of the communities that are served by check cashers." However, the legislation left unamended Banking Law, section 370 which permits a licensee to apply to the superintendent for leave to change its place of business to any other location and which does not make explicit the standards to be applied by the superintendent in granting permission to relocate. A licensee must obtain a new license to conduct business at another location. In order to [preserve the bar against issuance of new licenses within three-tenths of a mile of existing licensees] *promote and maintain the stability of the check cashing business* while accommodating the reasonable needs of current licensees to relocate, [and to prevent evasions of the legislative intent behind chapter 546 of the Laws of 1994.] the following standards shall be applied by the superintendent in determining whether to approve applications for relocation to any site which is within three-tenths of a mile of another licensed location:

Paragraph (a) of Section 400.15 of the Superintendent's Regulations is amended to read as follows:

(a) No relocation shall be permitted to a site within three-tenths of a mile of another *existing* licensee location from a location greater than three-tenths of a mile from such *existing* licensee location [], *unless such other existing licensee engages in the cashing of checks, drafts or money orders only for payees of such checks, drafts or money orders that are other than natural persons at a restricted location authorized pursuant to subdivision 1 of Section 369 of the Banking Law or at any other licensed location whereat the licensee engages solely in the cashing of checks, drafts or money orders only for payees that are other than natural persons.*

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 4, 2006.

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

Regulatory Impact Statement

1. Statutory authority:

Banking Law Section 37[3] authorizes the Superintendent to require any licensed casher of checks to make such special reports to her at such times as she may prescribe. Section 369 describes the circumstances under which the Superintendent shall issue a license to permit the cashing of checks, drafts and money orders at a specified location or in a specified area. Section 371 authorizes the Superintendent to make such rules and regulations, and such specific rulings, demands and findings, not inconsistent with Article 9-A of the Banking Law, as she may deem necessary for the proper conduct of the business authorized and licensed under, and for the enforcement of, that Article. Section 372 authorizes the Superintendent to establish by regulation the maximum fees which may be charged by a licensed check casher for cashing a check, draft or money order.

2. Legislative objectives:

As more fully described in response to Item 3, "Needs and benefits" below, the amendments to Part 400 of the Superintendent's Regulations implement, or conform to the regulations of the Banking Department to, recently enacted legislation amending the provisions of the Banking Law governing check cashers. The objective of this legislation was to provide for the regulation of the business of check cashing regardless of whether such check cashing was performed for customers that are natural persons or business or other entities. The amendments to Part 400.6 regarding signage requirements for retail check cashing carry out the legislative objective of consumer protection embodied in the provisions of Section 372 of the Banking Law that require a schedule of the fees and charges permitted under that section to be conspicuously and continuously posted in every licensed location.

3. Needs and benefits:

While the Banking Department has had the authority to regulate check cashers under Article 9-A of the Banking Law, an interpretive policy dating back to the initial regulation of check cashers in 1944 applied such regulation only to the cashing of checks for payees that are natural persons (that is, retail or consumer check cashing). However, the Attorney General recently issued a formal opinion (#2004-F5) that commercial check cashers are subject to licensing and regulation under Article 9-A of the Banking Law. At about the same time, a grand jury impaneled by the New York County Supreme Court issued a report calling on the Legislature to

ensure that commercial check cashers are subject to licensing and regulation.

In response to these developments, Chapter 432 of the Laws of 2004, which was approved on September 14, 2004, amended the Banking Law in relation to the cashing of checks for payees who are other than natural persons. The new legislation provides for the regulation of the business of check cashing by the Banking Department, whether performed for customers who are natural persons or business entities.

The changes to Part 400 all implement, or conform the regulations of the Banking Department to, specific changes made by the Legislature in Chapter 432, except for certain of the amendments to Part 400.6, which incorporate the provisions of an existing emergency regulation amending the signage requirements of Part 400.6 (BNK-38-04-00001-E). Specifically:

Amendments to Section 400.1(a) make it clear that the requirement that any person engaging in the business of check cashing must first obtain a license from the Superintendent applies whether such activities are conducted for customers who are natural persons or for any business or entity.

New Section 400.1(g) relates to the requirement in Banking Law Section 369 that no license shall be issued for a location which is closer than three tenths of a mile from an existing licensee. Chapter 432 amended Section 369 to make it clear that the Superintendent may permit a location to be licensed which is closer than three tenths of a mile from an existing licensee, so long as the newly licensed location is a "restricted location" as described in subsection 1 of Section 369 of the Banking Law – that is, a location which is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons. New Section 400.1(g) makes it clear that this exemption will not be affected by a change of control of such restricted location, provided that the licensee continues to engage only in commercial check cashing.

Amendments to Section 400.6(a)(1) deal with the requirement that licensees post a schedule of rates. These amendments make it clear that the signage requirement applies only to retail check cashers, and that the posted rate schedule need only cover transactions involving payees that are natural persons.

The amendments to Part 400.6 also incorporate the provisions of a current emergency regulation amending that section. Previously adopted amendments to Part 400.12 of the Superintendent's Regulations increased the maximum fee that licensed check cashers may charge and provide for an annual fee adjustment thereafter based on the increase in the consumer price index for the New York metropolitan area, if any. As a result of the amendments to Part 400.12, licensed check cashers need to revise their posted schedules of fees and charges.

In addition to amending the disclosure of the amount of the check cashing fee, the amendment changes the structure of the disclosure to provide more useful information. Previously under Part 400.6, the signage was required to disclose the fee charged in five cent increments. As a result, the corresponding check amounts were often atypical amounts. Under the amendment to Part 400.6, the disclosure will be governed by the amount of the check and the corresponding check cashing fee set forth on the signage according to the amount of the check in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule will also indicate the percentage charge imposed on all checks and the \$1.00 minimum.

Moreover, since the fee may change in the future due to increases in the Consumer Price Index, the amendment allows signs to be made of durable material instead of specifying that the signs must be made of plastic or metal.

Chapter 432 amended Section 372(1) of the Banking Law to make it clear that while the Superintendent shall establish the maximum fees which may be charged by licensees for cashing checks, such maximum fees shall not apply to the cashing of checks for payees that are other than natural persons. The amendments to Part 400.12 provide for a comparable exception in the relevant regulation.

In addition to the foregoing, the amendments revise Part 400.1(a) and (b) and Part 400.15 to update references to the location of the New York City office of the Department.

4. Costs:

Except as noted below, the amendments to Part 400 of the Superintendent's Regulations are not projected to impose any costs on regulated persons or the state government.

As noted in "Needs and Benefits" above, licensed check cashers will be required periodically to revise their posted schedule of fees and charges as a consequence of previously adopted amendments to Part 400.12. No additional costs will be incurred in complying with the requirement that the new signs reflect the new disclosure structure. Indeed, the new regulations

may reduce the costs of compliance by specifying only that the signs be made of a durable material, rather than requiring that they be made of plastic or metal.

5. Local government mandates:

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

6. Paperwork:

Under Chapter 432 of the Laws of 2004, the existing licensing and regulatory requirements in Article 9-A apply to commercial check cashers, except insofar as they are specifically exempted. These requirements include certain reporting and examination requirements applicable to all check cashers. In addition, Chapter 432 added a new subsection (7) to Section 372 of the Banking Law, requiring a licensee to submit to the Superintendent a copy of any suspicious activity reports or currency transactions reports as are required to be submitted to the federal authorities.

7. Duplication:

The rule making will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments. While Chapter 432 of the Laws of 2004 added a new subsection (7) to Section 372 of the Banking Law, requiring a licensee to submit to the Superintendent a copy of any suspicious activity report or currency transactions report that is required to be submitted to the federal authorities, a licensee may submit a copy of the report filed with the federal authorities in satisfaction of this requirement.

8. Alternative approaches:

Except as noted with respect to certain of the changes in Part 400.6, the changes in Part 400 are necessary to conform the regulations to the changes in the Banking Law effected by Chapter 432 of the Laws of 2004. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative. The Banking Department did communicate with the commercial check cashing industry during the process of making recommendations during the legislative process leading to the adoption of Chapter 432.

Consideration was given to leaving the retail check cashing signage provisions Part 400.6 unchanged. However, as the schedule of permissible fees has changed, failing to require changes in the signage would result in inaccurate fee disclosure. Moreover, as noted in "Needs and Benefits" above, it was determined that the need for licensed check cashers to make signage changes to reflect the new fee schedule imposed by the previously adopted amendments to Part 400.12 meant that simultaneously promulgating the changes in the signage requirements contained in the proposed amendments to Part 400.6 would provide an opportunity to improve the quality of disclosure to customers and provide greater flexibility in signage materials without imposing additional costs on licensed entities.

9. Federal standards:

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendments to Part 400 of the Superintendent's Regulations. The federal government does not license or regulate check cashers.

10. Compliance schedule:

The amendments to Part 400 reflect changes to the Banking Law effected by Chapter 432 of the Laws of 2004. Section 6 of that Chapter contains certain transitional provisions for the licensing of commercial check cashers. Except as therein provided, check cashers are currently required to comply with the statutory changes, which have already come into effect.

Regulatory Flexibility Analysis

1. Effect of Rule

The amendments to Part 400 all implement the legislative determination, embodied in Chapter 432 of the Laws of 2004, that commercial check cashers, as well as retail check cashers, shall be subject to licensing and regulation.

The amendments make it clear that the existing regulatory requirements applicable to retail check cashers are generally also applicable to commercial check cashers. The amendments also reflect the statutory intent to modify the regulatory scheme applicable to retail check cashers to accommodate certain unique aspects of commercial check cashing.

Commercial check cashers service small business entities and are themselves small businesses. Customers of commercial check cashers typically are such small business entities as construction sub contractors, food and sundry suppliers, and garment industry vendors that receive payment in check for goods and services. These businesses many times operate on a cash basis, and the commercial check cashers facilitate the conduct of these businesses. This service enables owners of such busi-

nesses to forego the use of fixed banking facilities, which may be far removed from their place of business and operations, in order to convert payment checks to cash. There is no basis upon which to make a meaningful estimate of the number of small business entities serviced by commercial check cashers.

With respect to the commercial check cashing entities themselves, there exists no definitive list of such entities, essentially because such businesses have not heretofore been regulated. The most comprehensive list is provided by the Financial Crimes Enforcement Network (FinCEN), a federal regulatory entity within the Department of Treasury dedicated particularly to enforcement of federal anti-money laundering and related criminal statutes. Under the US PATRIOT Act requirements, money service businesses, such as check cashers, whether or not regulated by any federal or state government, must register with FinCEN. A list provided to the Department's Criminal Investigation Bureau shows 245 entities. This number includes numerous markets, pharmacies, and educational facilities in addition to a few entities already licensing as retail check cashers. The commercial and educational entities would not be subject to licensing and regulation under Part 400 if they cash checks incidental to their businesses and for a fee not exceeding \$1 per check. (It is noted, however, that if such retail vendors are engaging in commercial check cashers with supplier vendors that service these industries, and the activity is more than incidental and the fees charged in excess of the exempted maximum fee of \$1, these retail entities may be potentially subject to licensing by the Department.) Removing these entities from the FINCEN list leaves approximately 120 entities that indicate either by name they are engaged in check cashing or for which no description of the business activity is provided. (In certain instances, these entities may be payment agents for billers and would be exempt from the licensing requirements pursuant to Article 9-A.)

Based upon Department's experience from licensing retail check cashers, it may be assumed these commercial check cashing entities are virtually all small businesses, constituted as sole proprietorships, partnerships, Chapter S corporations or limited liability companies or partnerships. The Department does not believe any of these entities are publicly traded corporations.

In addition to this relatively identifiable universe, it is noted that historically in many instances commercial check cashers have not dealt directly with commercial customers, but rather operated through "agents" or series of agents. These agents engage in "intermediate" check cashing, taking checks from commercial entities in exchange for the face amounts minus a fee, subsequently aggregating the checks, and ultimately cashing the checks with a commercial check casher that deposits the checks in a bank account. At that moment, the checks first enter the formal bank payment and clearance process. How many of these "agents" exist is unknown and cannot be meaningfully estimated at this time. However, the Department assumes all such agents would be small businesses. Under the statutory requirements, these agents would either need to be licensed as check cashers or be employed by a licensed check casher.

The regulatory scheme set forth in the amendments to Part 400 will impose a burden upon commercial check cashers, since these entities have heretofore not been subject to licensing and regulation. However, these amendments all implement, or conform the regulations to, specific changes made by the Legislature in Chapter 432. Retail check cashers already operate under this same basic regulatory scheme, and the statutory amendments made by Chapter 432 included provisions intended to accommodate unique aspects of commercial check cashing.

Certain of the amendments to Part 400 also apply to retail check cashers, including the signage amendments in Part 400.6. However, these amendments will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on such entities. Indeed, by improving the structure of the required disclosures and providing additional flexibility regarding signage materials, these amendments provide an economic benefit and reduce regulatory burden.

The amendments to Part 400 will not impose any adverse economic impact, or reporting, recordkeeping or other compliance requirements on local governments.

2. Compliance Requirements

As noted above, under the amendments to Part 400, commercial check cashers will be subject to the same licensing and regulation as retail check cashers, except insofar as modifications in the regulatory scheme set forth in Chapter 432 are reflected in the Part 400 amendments. The compliance requirements thus imposed on commercial check cashers are entirely new.

3. Professional Services

Part 400 imposes extensive reporting and recordkeeping requirements upon check cashers. Commercial check cashers may need to obtain in-

creased services from accountants, attorneys and data processing entities in order to meet these requirements.

4. Compliance Costs

Since the compliance requirements imposed on commercial check cashers are entirely new, such commercial check cashers will experience increased compliance costs. The amount of such costs will depend on the ease with which the existing business operations and recordkeeping systems of each entity can be adapted to meeting the operational, recordkeeping and reporting requirements imposed by Article 9-A and Part 400. The amount of such costs cannot be estimated per entity or in the aggregate.

5. Economic and Technological Feasibility

Commercial check cashers presumably have in place a business operational infrastructure that includes an electronic data processing and recordkeeping capability sufficient to meet federal and state tax reporting requirements as well as US PATRIOT Act requirements. Thus, while compliance with the Part 400 regulatory scheme may require some modification of existing programs in order to meet the reporting and recordkeeping requirements, compliance is expected to be technologically and economically feasible.

6. Minimizing Adverse Impact

To the extent the amendments to Part 400 modify the current regulatory scheme, these modifications are made in recognition of certain peculiar operational characteristics of commercial checking that are not pertinent to retail check cashing or, in the case of the signage amendments to Part 400.6, do address regulatory standards whose modification is of interest to the retail check cashers.

The amendments affecting commercial check cashers conform Part 400 to the statutory modifications to Article 9-A contained in Chapter 432. The statutory amendments accomplish the following: (i) permits both existing and new commercial check cashing locations that are within 3/10s of a mile of an existing licensed check casher, provided such locations engage only in commercial check cashing; (ii) removes the maximum fee per check limitation upon the cashing of commercial checks, whether the cashing is performed by retail or commercial check cashers; (iii) removes the cap on the amount of a check that may be cashed with respect to commercial checks and increases the cap amount for retail checks from \$6,000 to \$15,000; and (iv) authorizes a temporary license for commercial check cashers upon initial application to permit such cashers to continue to operate as their applications are processed and prior to the issuance of a permanent license. Finally, since Chapter 432 excludes commercial checks from the maximum fee per check limitation, Part 400 is amended to limit the signage requirements relating to fees charged by licensed check cashers only to retail checks.

7. Small Business and Local Government Participation

The Department had numerous discussions with the Financial Service Centers of New York, Inc., the state check casher trade association, which primarily represents retail but also a certain number of commercial check cashers, during the development of the legislative proposal which became Chapter 432. There is no trade association which represents the commercial cashers as a group. The Department communicated with a number of identified commercial check cashers during the two (?) years in which it was developing the legislative proposal in order to determine how the industry operates. In addition, the Department has been contacted by individual commercial check cashers that were concerned about the potential recommendations of a Grand Jury empanelled by the New York County Supreme Court regarding commercial check cashing and the possible resulting enforced activities by the New York County District Attorney. These commercial check cashers expressed an interest in obtaining regulation by the Department.

Because of the need to impose the regulatory regime upon commercial check cashers immediately, the Department adopted the amendments to Part 400 as an emergency rule. The Department expects that the experience of check cashers under the emergency rule may lead to further input from the commercial check cashing industry during the rule making process.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted. The amendments to Part 400 will impose no additional regulatory requirements upon public entities in rural communities.

Upon an examination of the addresses of the commercial check cashing entities culled from the FinCEN list, it appears all such entities are located in either large metropolitan areas or small cities of this state. Based on the experience of the Department in licensing and regulating retail check cashers, in virtually all cases they operate in the same types of urban areas. Therefore, it is anticipated that the emergency rule will not impose any

additional regulatory requirements upon private entities in rural communities.

Job Impact Statement

A job impact statement is not submitted. The imposition of the regulatory regime for licensed check cashers upon currently non-regulated commercial check cashers can be expected to cause changes in the business operations of such cashers and this may affect employment within the industry. However, it is impossible to estimate the number of potential licensed commercial check cashers at this time, and therefore the size of the work force in this industry. Consequently, there is no way to meaningfully estimate the effect of any changes in business operations on employment within the industry.

A case in point is the “agent” population, discussed Section 1 of the Regulatory Flexibility Analysis relating to these amendments. The Department has no data at this time as to how many individuals are engaged in this intermediate check cashing activity between commercial customers and commercial check cashers. Under the amendments to Part 400, all such persons would either need to be licensed as check cashers or be employed by a licensed check cashier. The extent to which such requirements may adversely affect the size of the agent population cannot be meaningfully estimated.

With respect to existing licensed retail check cashers, the proposed regulations should be economically beneficial and may induce business expansion and job growth.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-05-00002-A

Filing No. 432

Filing date: April 7, 2006

Effective date: April 26, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Family Assistance.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-05-00002-P, Issue of February 1, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-05-06-00005-A

Filing No. 433

Filing date: April 7, 2006

Effective date: April 26, 2006

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Civil Service.

Text was published in the notice of proposed rule making, I.D. No. CVS-05-06-00005-P, Issue of February 1, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-05-06-00006-A

Filing No. 434

Filing date: April 7, 2006

Effective date: April 26, 2006

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-05-06-00006-P, Issue of February 1, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-05-06-00009-A

Filing No. 435

Filing date: April 7, 2006

Effective date: April 26, 2006

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete positions from the non-competitive class in the Department of State and the State University of New York.

Text was published in the notice of proposed rule making, I.D. No. CVS-05-06-00009-P, Issue of February 1, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-05-06-00010-A

Filing No. 436

Filing date: April 7, 2006

Effective date: April 26, 2006

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-05-06-00010-P, Issue of February 1, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-05-06-00011-A

Filing No. 437

Filing date: April 7, 2006

Effective date: April 26, 2006

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt and non-competitive classes in Westchester County.

Text was published in the notice of proposed rule making, I.D. No. CVS-05-06-00011-P. Issue of February 1, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the more recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to consumers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standards will help to ensure that such insurers remain financially capable of paying claims as they come due.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on December 31, 2005. The filing date for the June 30, 2006 quarterly statement is August 15, 2006. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

Subject: Rules governing individual and group accident and health insurance reserves.

Purpose: To prescribe rules and regulations for valuation of minimum individual and group accident and health insurance reserves including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

Substance of emergency rule: The following is a summary of the substance of the rule:

Section 94.1 lists the main purposes of the regulation including implementation of sections 1303, 4117, 4217(d), 4517(d) and 4517(f) of the Insurance Law and prescribing rules for valuing certain accident and health benefits in the life insurance policies.

Section 94.2 is the applicability section. This section applies to both individual policies and group certificates. The regulation applies to all insurers, fraternal benefit societies, and accredited reinsurers doing business in the State of New York. It applies to all statutory financial statements filed after its effective date.

Section 94.3 is the definitions section.

Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

Section 94.5 sets forth the general requirements and minimum standards for unearned premium reserves.

Section 94.6 sets forth the general requirements and minimum standards for contract reserves.

Section 94.7 concerns increases to, or credits against reserves carried, arising from reinsurance agreements.

Section 94.8 prescribes the methodology of adequately calculating the reserves for waiver of premium benefit on accident and health policies.

Section 94.9 provides that a company shall maintain adequate reserves for all individual and group accident and health insurance policies that reflect a sound value being placed on its liabilities under those policies.

Section 94.10 provides the specific standards for morbidity, interest and mortality.

Section 94.11 allows for a four-year period for grading into the higher reserves beginning with year-end 2003 for insurers for which higher reserves are required because of this Part.

Section 94.12 establishes the severability provision of the regulation.

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 July 3, 2006.

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

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the adoption of Regulation No. 56 (11 NYCRR 94) is derived from sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him

Insurance Department

EMERGENCY RULE MAKING

Rules Governing Individual and Group Accident and Health Insurance Reserves

I.D. No. INS-17-06-00001-E

Filing No. 429

Filing date: April 5, 2006

Effective date: April 5, 2006

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

Action taken: Repeal of Part 94 and addition of new Part 94 (Regulation 56) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517

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

Specific reasons underlying the finding of necessity: Regulation No. 56 was originally effective August 18, 1971 in its present form and has not been substantively amended since that time. In the intervening 31 years, the National Association of Insurance Commissioners has adopted new reserving tables for individual and group disability income insurance policies, popularly referred to as the Commissioners' Disability Tables ("CDT"). The current CDT was adopted in 1986 and is used widely across the country as the standard for holding reserves for individual and group disability insurance policies. It reflects both modern morbidity and claims experience and the judgement of actuaries and regulators who are knowledgeable about the current state of the disability insurance market.

However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, e.g., 11 NYCRR Part 94.1(a)(4)(iii)(A)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance

under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1303 covers loss or claim reserves for insurers.

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

Section 1305 covers unearned premium reserves for insurers.

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

Section 4117 covers loss reserves for Property and Casualty (P&C) insurers.

Section 4217(d) provides that reserves for all individual and group accident and health policies shall reflect a sound value placed on the liabilities of such policies and permits the superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for these types of policies.

Section 4310 covers investments, financial conditions, and reserves for non-profit health plans.

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the superintendent to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

2. Legislative objectives:

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

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of insurers doing business in New York. The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the current regulation, absent the proposed rule, provides no guidance related to certain coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

Additionally, the current regulation, absent the proposed rule, requires higher reserves than necessary for certain individual accident and health insurance policies. This proposed rule, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

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

5. Local government mandates:

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

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

The Department considered allowing an additional grade-in period, beyond the grade-in period currently cited in the emergency rule, for health and property and casualty insurers. The Department has decided against allowing an additional grade-in period since during an outreach effort to the property and health industries, only one insurer notified the Department that a material reserve increase would result. That insurer was notified of the proposed change to the rule during 2004 and has had ample time to prepare for the reserve change. Additionally, it is important that all insurers hold the correct amount of reserves as soon as possible and therefore be held to the same grade-in period.

The only other significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this proposed rule, which would result in different reserve requirements for those insurers licensed in New York.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

Beginning with year-end 2003, where the requirements of this regulation produce reserves higher than those calculated at year-end 2002, the insurer may linearly interpolate, over a four year period, between the higher reserves and those calculated based on the year-end 2002 standards. Insurers must be in full compliance with this Part by year-end 2006. This allows insurers subject to the regulation ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

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

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

The regulation establishes reserve requirements for individual and group accident and health policies and establishes standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted

the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge \$5,000 to \$10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

4. Minimizing adverse impact:

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

5. Rural area participation:

The regulation was drafted after consultation with member companies of the Life Insurance Council of New York (LICONY). A copy of the draft was distributed to LICONY in November, 2002. Additional changes were made to the text of the regulation based on changes made to the NAIC's Health Insurance Reserves Model Regulation in December 2003 and a revised draft of the regulation was distributed to LICONY in January 2004. The draft was sent to American Insurance Association (AIA), Property Casualty Insurers Association of America (PCI) and National Association of Mutual Insurance Companies (NAMIC) for property and casualty insurers and to selected health insurers during late 2004 and early 2005. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 4, 2006 issue of the *State Register*.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting reserves for insurers. Most insurers will be able to reduce reserves and a few may need to increase reserves but this is unlikely to impact jobs and employment opportunities.

Categories and number affected:

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

Regions of adverse impact:

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

Minimizing adverse impact:

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

Self-employment opportunities:

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

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Tariff for Electric Service

I.D. No. LPA-17-06-00015-P

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

Proposed action: The authority is considering a proposal to adopt revisions to LIPA's tariff for electric service that would involve moving into the fuel and purchased power cost adjustment fuel and purchased power costs that are embedded in LIPA's base rates. The revisions would be revenue and bill neutral.

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

Subject: Tariff for electric service.

Purpose: To adopt revisions to the authority's tariff for electric service that are revenue and bill neutral.

Public hearing(s) will be held at: 11:00 a.m., June 14, 2006 at Huntington Town Hall, 100 Main St., Huntington, NY; and 2:00 p.m., June 14, 2006 at Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to adopt revisions to LIPA's Tariff for Electric Service that would involve moving into the Fuel and Purchased Power Cost Adjustment fuel and purchased power costs that are embedded in LIPA's base rates. The revisions would be revenue and bill neutral. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Richard M. Kessel, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700

Data, views or arguments may be submitted to: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Division of the Lottery

NOTICE OF ADOPTION

Mega Millions Multi-State Lottery Game

I.D. No. LTR-08-06-00001-A

Filing No. 440

Filing date: April 11, 2006

Effective date: April 26, 2006

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

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

Statutory authority: Tax Law, section 1604(a)

Subject: Mega Millions Multi-State Lottery game.

Purpose: To add a new state in the Mega Millions game, amend the game matrix and clarify existing regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. LTR-08-06-00001-P, Issue of February 22, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Rate/Fee Setting

I.D. No. MRD-07-06-00007-A

Filing No. 439

Filing date: April 11, 2006

Effective date: April 26, 2006

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

Action taken: Amendment of sections 635-10.5 and 681.14 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services and intermediate care facilities for persons with developmental disabilities.

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs. More specifically, the amendments are concerned with establishing supplemental trend factors to be applied within the context of the referenced reimbursement methodologies, effective February 1, 2006 to cover prior period costs not recognized in the previous year.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. MRD-07-06-00007-EP, Issue of February 15, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Article 16 Clinic Service Authorization Levels

I.D. No. MRD-44-05-00021-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. MRD-44-05-00021-P was published in the *State Register* on November 2, 2005.

Subject: Article 16 clinic service authorization levels.

Purpose: To notify article 16 clinics of their service authorization levels; authorize billing disallowances if clinics significantly exceed their service authorization levels; and allow clinics to submit preliminary authorization requests to increase their service authorization levels, augmenting current certificate of need procedures.

Substance of rule: The amendment requires OMRDD to notify Article 16 clinics of their service authorization levels, and authorizes billing disallowances if clinics significantly exceed the service authorization levels. Procedures are also established to allow clinics to submit preliminary authorization requests to increase service authorization levels, augmenting current certificate of need procedures.

Changes to rule: No substantive changes.

Expiration date: November 2, 2006.

Text of proposed rule and changes, if any, may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us
Data, views or arguments may be submitted to: Same as above.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Revision of an Incorporation by Reference

I.D. No. MRD-17-06-00005-P

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

Proposed action: This is a consensus rule making to amend sections 606.4, 635-6.4 and 635-6.6 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Revision of an incorporation by reference.

Purpose: To update an incorporation by reference to reflect the 2004 Edition of the Estimated Useful Lives of Depreciable Hospital Assets.

Text of proposed rule: 606.4, 635-6.4 and 635-6.6

- Section 606.4(k) is amended as follows:

Estimated Useful Lives of Depreciable Hospital Assets (2004 Edition) [1978 Edition]. This document is published by [the] *Health Forum, Inc, an American Hospital Association company*, [840 Lake Shore Drive, Chicago, IL 60611] *One North Franklin, 28th Floor, Chicago, IL 60606-3421*. Reference to this document may be found in:

(1) [section 681.12(c) of 14 NYCRR Part 681.] *section 635-6.4(d) of 14 NYCRR Part 635.*

(2) *section 635-6.6(a)(3) of 14 NYCRR Part 635.*

- Section 635-6.4(d) is amended as follows:

Useful life and amortization period. (1) The useful life of depreciable assets shall be the higher of the reported useful life or the useful life from the Estimated Useful Lives of Depreciable Hospital Assets [(current edition)] (2004 Edition), published by [the] *Health Forum, Inc, an American Hospital Association company, One North Franklin, 28th Floor, Chicago, IL 60606-3421*. This document is available from:

- Section 635-6.6(a)(3) is amended as follows:

The useful life is the higher of the reported useful life or the useful life as reported in the Estimated Useful Lives of Depreciable Hospital Assets [(current edition)] (2004 Edition), published by [the] *Health Forum, Inc, an American Hospital Association company, One North Franklin, 28th Floor, Chicago, IL 60606-3421*. A provider or consumer may use a different useful life if such different useful life is approved by OMRDD. OMRDD shall base such approval upon historical experience and documentary evidence.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Consensus Rule Making Determination

The primary purpose of the amendment is to update an incorporation by reference to reflect the 2004 Edition of the Estimated Useful Lives of Depreciable Hospital Assets in OMRDD regulations. Thus, OMRDD has determined due to the nature and purpose of the amendments that no person is likely to object to the rule as written.

Job Impact Statement

A JIS for these amendments was not submitted because it is apparent from the nature and purpose of the amendments that they will not have an impact on jobs and/or employment opportunities. The finding is based on the fact that the proposed rule making is to update an incorporation by reference in OMRDD regulations to reflect the 2004 Edition of the Esti-

mated Useful Lives of Depreciable Hospital Assets. The proposed revisions will not have any effect on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Telecommunications Issues

I.D. No. PCS-37-05-00006-A

Filing date: April 11, 2006

Effective date: April 11, 2006

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

Action taken: The commission, on April 11, 2006, approved a statement of policy on further steps toward competition in the intermodal telecommunications market.

Statutory authority: Public Service Law, sections 5, 90, 91(1), 92, 94, 97, 99, 100, 101, 105, 110 and 119-a

Subject: Review of telecommunications policies, practices and rules.

Purpose: To review telecommunications policies, practices and rules.

Substance of final rule: The Commission adopted an order approving the review of its telecommunications policies, practices and rules. The Commission examined rates, service quality, infrastructure, corporate structure, rules on affiliated transactions, directory, ownership and asset and stock transfers, pole attachments, and level playing field issues and related matters and make the appropriate changes designed to effectuate its policy objectives, 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-C-0616SA2)

NOTICE OF ADOPTION

Loan Agreement between Fishers Island Water Works Corporation and Bank of Rhode Island

I.D. No. PSC-08-06-00014-A

Filing date: April 11, 2006

Effective date: April 11, 2006

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

Action taken: The commission, on April 11, 2006, adopted an order approving the request by Fishers Island Water Works Corporation for authority to enter into a loan agreement with the Bank of Rhode Island for an amount up to \$525,000.

Statutory authority: Public Service Law, section 89-f

Subject: Issues of stock, bonds and other forms of indebtedness.

Purpose: To approve Fishers Island Water Works Corporation to obtain a loan up to \$525,000.

Substance of final rule: The Commission approved Fishers Island Water Works Corporation's request for authority to enter into a loan agreement with the Bank of Rhode Island for an amount up to \$525,000, 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. (06-W-0146SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and AmeriMex Communications Corp.

I.D. No. PSC-17-06-00006-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 modification filed by Verizon New York Inc. and AmeriMex Communications Corp. to revise the interconnection agreement effective on Nov. 1, 2004.

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

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

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and AmeriMex Communications Corp. in November 2002. The companies subsequently have jointly filed amendments to clarify the provisions regarding the reciprocal compensation rates. 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. Brillings, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(02-C-1024SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mutual Traffic Exchange Agreement between Citizens Telecommunications Company of New York, Inc. and Choice One Communications of New York, Inc.

I.D. No. PSC-17-06-00007-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 modification filed by Citizens Telecommunications Company of New York, Inc. and Choice One Communications of New York, Inc. to revise the mutual traffic exchange agreement effective on Dec. 13, 2005.

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

Subject: Interconnection of the networks at mutually agreed upon points of interconnection to exchange local traffic.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved a Mutual Traffic Exchange Agreement between Citizens Telecommunications Company of New York, Inc. and Choice One Communications of New York, Inc. in October 2004. The companies subsequently have jointly filed amendments to clarify the local/EAS interconnection network arrangements table. 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. (04-C-0972SA2)

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

Interconnection Agreement between Verizon New York Inc. and Lincoln Communications, Inc.

I.D. No. PSC-17-06-00008-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 Lincoln Communications, Inc. for approval of an interconnection agreement executed on Feb. 3, 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 Lincoln Communications, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Lincoln Communications, 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 February 3, 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-0263SA1)

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

Interconnection Agreement between Verizon New York Inc. and USA Easy Phone, Inc.

I.D. No. PSC-17-06-00009-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 proposal filed by Verizon New York Inc. and USA Easy Phone, Inc. for approval of an interconnection agreement executed on Jan. 5, 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 USA Easy Phone, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and USA Easy Phone, 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 April 27, 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-0264SA1)

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

Mutual Traffic Exchange Agreement between Time Warner Telecom-NY, L.P. and Germantown Telephone Company, Inc.

I.D. No. PSC-17-06-00010-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 proposal filed by Time Warner Telecom-NY, L.P. and Germantown Telephone Company, Inc. for approval of a mutual traffic exchange agreement executed on March 20, 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: Time Warner Telecom-NY, L.P. and Germantown Telephone Company, Inc. have reached a negotiated agreement whereby Time Warner Telecom-NY, L.P. and Germantown Telephone Company, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0383SA1)

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

Interconnection Agreement between Frontier Telephone of Rochester and PWT of New York, Inc. d/b/a Pac-West Telecomm, Inc.

I.D. No. PSC-17-06-00011-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 or reject, in whole or in part, a proposal filed by Frontier Telephone of Rochester and PWT of New York, Inc. d/b/a Pac-West Telecomm, Inc. for approval of an interconnection agreement executed on Feb. 6, 2005.

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

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

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

Substance of proposed rule: Frontier Telephone of Rochester and PWT of New York, Inc. d/b/a Pac-West Telecomm, Inc. have reached a negotiated agreement whereby Frontier Telephone of Rochester and PWT of New York, Inc. d/b/a Pac-West Telecomm, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the terms of an underlying agreement.

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-0394SA1)

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

Waiver of Regulatory Provisions by N.E.A. Cross of N.Y., Inc.

I.D. No. PSC-17-06-00012-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 or reject (in whole or in part) or modify a request by N.E.A. Cross of N.Y., Inc. (N.E.A. Cross) for waiver of regulatory provisions requiring records to be kept in New York State, to permit the transfer of records to Pennsylvania.

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

Subject: Request by N.E.A. Cross for waiver of regulatory provisions.

Purpose: To consider the waiver of 16 NYCRR sections 255.17(c) and 311.2, so that the transfer of records may be approved pursuant to 16 NYCRR Part 293.

Substance of proposed rule: By petition filed March 20, 2006, N.E.A. Cross of N.Y., Inc. seeks an Order from the Commission waiving regulatory provisions requiring that its records be kept in New York and approving the transfer of such records to an office in Pennsylvania.

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-0357SA1)

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

Agreement for the Provision of Water Service by Saratoga Water Services, Inc.

I.D. No. PSC-17-06-00013-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, in whole or in part, or modify, a petition filed by Saratoga Water Services, Inc. requesting approval of an agreement for the provision of water service and requesting a waiver of certain tariff provisions and 16 NYCRR Parts 501 and 502.

Statutory authority: Public Service Law, section 89-b

Subject: Agreement for the provision of water service, waive certain tariff provisions and 16 NYCRR Parts 501 and 502.

Purpose: To approve an agreement for the provision of water service, waive certain tariff provisions and 16 NYCRR Parts 501 and 502.

Substance of proposed rule: On April 5, 2006, Saratoga Water Services, Inc. (Saratoga) filed a petition requesting approval of an agreement between Saratoga and Boss Enterprises of Saratoga, LLC (Boss) for the provision of water service by Saratoga to a proposed development consisting of two commercial properties known as Orthopedic Associates of Saratoga in the Town of Malta, Saratoga County. The petition also requested waiver of the requirements of inconsistent tariff provisions and 16 NYCRR Sections 501 and 502, concerning water main extensions. The agreement takes into account that all costs and associated charges arising out of the company's expansion will be borne by Boss. Saratoga currently provides water service to approximately 2,029 customers and is located in the Towns of Malta and Stillwater, Saratoga County. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(05-W-0192SA1)

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

Agreement for the Provision of Water Service by Saratoga Water Services, Inc.

I.D. No. PSC-17-06-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Saratoga Water Services, Inc. requesting approval of an agreement for the

provision of water service and requesting a waiver of certain tariff provisions and 16 NYCRR Parts 501 and 502.

Statutory authority: Public Service Law, section 89-b

Subject: Agreement for the provision of water service, waive certain tariff provisions and 16 NYCRR Parts 501 and 502.

Purpose: To approve an agreement for the provision of water service, waive certain tariff provisions and 16 NYCRR Parts 501 and 502.

Substance of proposed rule: On April 5, 2006, Saratoga Water Services, Inc. (Saratoga) filed a petition requesting approval of an agreement between Saratoga and The Enclave at Malta, LLC (Enclave) for the provision of water service by Saratoga to a proposed development consisting of 60 single family homes, 238 apartments/condominiums and 3 commercial buildings in the Town of Malta, Saratoga County. The petition also requested waiver of the requirements of inconsistent tariff provisions and 16 NYCRR Sections 501 and 502, concerning water main extensions. The agreement takes into account that all costs and associated charges arising out of the company's expansion will be borne by Enclave. Saratoga currently provides water service to approximately 2,029 customers and is located in the Towns of Malta and Stillwater, Saratoga County. The Commission may approve or reject, in whole or in part, or modify the company'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: Jaelyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(05-W-0239SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Race Day Medications

I.D. No. RWB-17-06-00003-E

Filing No. 431

Filing date: April 5, 2006

Effective date: April 5, 2006

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

Action taken: Amendment of section 4005.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101

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

Specific reasons underlying the finding of necessity: This rule is necessary to allow veterinarians employed by the NYS Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. Recently, thoroughbred racing associations adopted procedures and policies whereby race horses are segregated into limited access security barns. This practice was adopted to prevent the administration of prohibited medications to the horse. The only veterinarians that are allowed into these limited access security barns are veterinarians employed by the Racing and Wagering Board or the thoroughbred racing association. This rule amendment would allow these veterinarians access to race horses in limited access security barns for the purpose of

administering medications which are authorized for race day administration per 9 NYCRR 4043.2.

Subject: Administration of race day medications by veterinarians employed by the NYS Racing and Wagering Board and licensed thoroughbred racing associations.

Purpose: To allow the administration of board-authorized race day medications to horses that are quartered in limited access security barns by board or association veterinarians. Currently, such veterinarians are prohibited from administering medications except in emergencies. Such security barns are designed to prohibit the unauthorized administration of certain medications. Nevertheless, the board has authorized the administration of certain medication on the day that a horse will race, including the medication known as furosemide. This amendment will allow the board veterinarian or association veterinarian to administer such race day medications and preserve the integrity of the limited access security barns.

Text of emergency rule: No veterinarian employed by the commission or by an association shall be permitted, during the period of his employment, to treat or prescribe for any horse for compensation or otherwise, except in case of emergency, or in the case of race day medication as authorized by Board Rule 4043.2.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire June 29, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Mark A. Stuart, Assistant Counsel, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: mstuart@racing.state.ny.us

Regulatory Impact Statement

Statutory authority: Section 101(1) of the Racing, Pari-Mutuel Wagering and Breeding Law vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State.

Legislative objectives: This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

Needs and benefits: This rule is necessary to allow veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. Recently, thoroughbred racing associations adopted procedures and policies whereby race horses are segregated into limited access security barns. This practice was adopted to prevent the administration of prohibited medications to the horse. The only veterinarians that are allowed into these limited access security barns are veterinarian employed by the New York State Racing and Wagering Board or the thoroughbred racing association. This rule amendment would allow these veterinarians access to race horses in limited access security barns for the purpose of administering medications which are authorized for race day administration per 9E NYCRR 4043.2.

The rule is intended to allow the administration of Board-authorized race day medications to horses that are quartered in limited access security barns by Board or association vets. Currently, such vets are prohibited from administering medications except in emergencies. Such security barns are designed to prohibit the unauthorized administration of certain medications. Nevertheless, the Board has authorized the administration of certain medication on the day that a horse will race, including the medication known as Lasix. This amendment will allow the Board vet or association vet to administer such race day medications and preserve the integrity of the limited access security barn.

Costs: There are no projected costs to regulated persons or state and local governments associated with the amendment of 9E NYCRR 4005.5. This amendment will create an exception to an existing rule to permit a veterinarian employed by the Racing and Wagering Board or a racing association to administer medications to horses. There are no costs associated with making such an exception.

Paperwork: There is no additional paperwork required by or associated with this rule amendment.

Local government mandates: This rule would impose no local government mandates.

Duplication: There are no other state or federal requirements similar to the provisions contained in the rule amendment.

Alternative approaches: There are no other significant alternatives to this rule, which was narrowly drafted to accomplish the stated benefits in thoroughbred races of significant merit and interest.

Federal standards: The rule does not exceed any minimum standards of the federal government because there are no applicable federal rules.

Compliance schedule: This emergency rule amendment is effective upon filing. Compliance can be accomplished immediately without need for modification of existing procedures.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely allows veterinarians employed by the New York State Racing and Wagering Board and thoroughbred racing associations to administer race day medications to thoroughbreds. The impact of this rule is limited to those two types of veterinarians. Other rules prohibit veterinarians from entering a security barn area where thoroughbreds are quartered prior to races. It is necessary for Board and association veterinarians to enter security barns to administer race day medications, and this rule would allow that. These amendments do not impact upon State Administrative Procedure Act § 102(8). Nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the rule is a permissive rule that will allow state and association veterinarians to administer race day medications.

www.appraisalfoundation.org

The [2005] 2006 edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from <http://www.appraisalfoundation.org/html/USPAP2006/toc.htm>

Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services

N.Y.S. Department of State

84 Holland Avenue

Albany NY 12208

tel: 518-473-2728

Division of Licensing Services

N.Y.S. Department of State

656 Court Street

Buffalo NY 14202

tel: 716-847-7110

Division of Licensing Services

N.Y.S. Department of State

123 William St.

New York NY 10038

tel: 212-417-5747

Division of Licensing Services

N.Y.S. Department of State

250 Veterans Memorial Highway

Hauppauge NY 11788

tel: 631-952-6579

Text of proposed rule and any required statements and analyses may be obtained from: Nathan A. Hamm, Office of Counsel, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

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

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule making. The New York State Board of Real Estate Appraisal does not expect that any person is likely to object to its adoption because the proposed rule merely implements a nondiscretionary statutory direction, *i.e.*, the adoption of these appraisal standards is mandated by § 160(d)(1)(d) of the Executive Law.

Section 160-d(1)(d) of the Executive Law provides, in part, that the New York State Board of Real Estate Appraisal shall adopt standards for the development and communication of real estate appraisals; provided, however, that those standards must, at minimum, conform to the uniform standards of professional appraisal promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Acting pursuant to Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.A. §§ 3310-3351), the Appraisal Standards Board has adopted and, from time to time, amended the Uniform Standards of Professional Appraisal Practice, which set forth national standards for developing an appraisal and for reporting its results. This proposal will adopt the 2006 edition of the Uniform Standards of Professional Appraisal Practice relating to real estate appraisals. Since § 160-d(1)(d) directs that the standards adopted by the State Board of Real Estate Appraisal conform, at a minimum, to the standards promulgated by the Appraisal Standards Board, the State Board does not expect that any person is likely to object to the adoption of the 2006 edition of the Uniform Standards of Professional Appraisal Practice. The State Board has previously adopted the 2002, 2003 and 2005 editions of the Uniform Standards of Professional Appraisal Practice.

Job Impact Statement

Licensed and certified real estate appraisers are currently subject to an 2005 edition of the Uniform Standards of Professional Appraisal Practice, which has been revised by the 2006 edition. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2006 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Uniform Standard of Professional Appraisal Practice

I.D. No. DOS-17-06-00004-P

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

Proposed action: This is a consensus rule making to amend section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Uniform Standards of Professional Appraisal Practice.

Purpose: To adopt the 2006 edition of the Uniform Standards of Professional Appraisal Practice.

Text of proposed rule: Section 1106.1 (Appraisal Standards) of Title 19 of the NYCRR is amended to read as follows:

§ 1106.1 Appraisal standards.

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2005] 2006 edition of the Uniform Standards of Professional Appraisal Practice:

- (1) Definitions;
- (2) Preamble;
- (3) Ethics rule;
- (4) Competency rule;
- (5) Departure rule;
- (6) Jurisdictional exception rule;
- (7) Supplemental standard rule;
- (8) Standard 1—Real Property Appraisal, Development;
- (9) Standard 2—Real Property Appraisal, Reporting;
- (10) Standard 3—Real Property and Personal Property Appraisal Review, Development and Reporting;
- (11) Standard 4—Real Property Appraisal Consulting, Development;
- (12) Standard 5—Real Property Appraisal Consulting, Reporting;

and

- (13) Standard 6—Mass Appraisal, Development and Reporting.

(b) The [2005] 2006 edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from:

The Appraisal Foundation
1029 Vermont Avenue, NW, Suite 900
Washington D.C. 20005
tel: 202-347-7722