

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.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Alternative Requirements for Licensure in Mental Health Practitioner Professions

I.D. No. EDU-02-06-00013-EP
Filing No. 1541
Filing date: Dec. 27, 2005
Effective date: Dec. 27, 2005

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

Action taken: Amendment of sections 79-9.6, 79-10.6, 79-11.6 and 79-12.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6507(2)(a) and (3)(a), and 8411(2)(a) and (b)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to permit practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. The amendment will provide additional time

for current practitioners to remedy deficiencies in applications for licensure in these professions.

In addition to establishing requirements for those first entering the mental health practitioner professions, Article 163 of the Education Law authorizes the State Education Department to establish alternative requirements for the licensure of those already practicing prior to the licensure requirement (grandparenting applicants). Under regulations adopted in January 2005, such applicants are required to satisfy all alternative requirements on or before January 1, 2006.

Due to the complexity of creating four new professions, the statutory provision that permits applicants to apply for licensure under the alternative requirements through January 1, 2006, the number of applications received, and the need to carefully review each application for education and experience, the Department will be unable to complete the processing of grandparenting applications in time for applicants to complete any identified deficiencies in meeting licensure requirements by January 1, 2006, the date by which the current regulation requires all requirements to be met. The proposed amendment will afford applicants who are current practitioners an additional year, until December 31, 2006, to meet the alternative requirements. This extension will enable the Department to continue to take the time necessary to review the applications in a manner which protects the public, while affording applicants the opportunity to remedy deficiencies.

Currently, there are about 4,400 pending applications for licensure in these professions. The State Education Department expects that an equal number of additional applications will be submitted between now and the end of the grandparenting application period (January 1, 2006). Based upon our experience to date, it is estimated that approximately one-half of the applications received by the Department will require further actions by the applicants to cure deficiencies in meeting the alternative requirements. Thus, an estimated 4,400 practitioners will need additional time to cure deficiencies. If they are not afforded an opportunity to meet the alternative requirements, this will mean that they will not be able to practice their profession until they meet the regular requirements for licensure. In addition to severely impacting the careers of these practitioners, many of whom have been providing mental health services for many years, the discontinuance of their practices would have a serious impact on many patients who rely on them for mental health services.

The recommended action is proposed as an emergency measure because such action is necessary for the preservation of the general welfare to ensure that there are adequate numbers of individuals licensed in the mental health practice professions to meet the mental health care needs of residents of New York State. This emergency action is necessary in order to prevent delays in the licensing of thousands of mental health practitioners.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its March 2006 meeting.

Subject: Alternative requirements for licensure in the mental health practitioner professions.

Purpose: To permit practitioners in the new mental health practitioner professions to have until Dec. 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by Jan. 1, 2006.

Text of emergency/proposed rule: 1. Section 79-9.6 of the Regulations of the Commissioner of Education is amended, effective December 27, 2005, as follows:

79-9.6 Special provisions.

(a) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a mental health counselor as prescribed in section 8402(3) of the Education Law, may qualify for a license as a mental health counselor through meeting the alternative requirements prescribed in either paragraph (1), (2) or (3) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.*

- (1) . . .
- (2) . . .
- (3) . . .

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a mental health counselor, as prescribed in section 8402(3) of the Education Law, except for the examination requirement, may qualify for a license as a mental health counselor through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

2. Section 79-10.6 of the Regulations of the Commissioner of Education is amended, effective December 27, 2005, as follows:

79-10.6 Special provisions.

(a) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a marriage and family therapist as prescribed in section 8403(3) of the Education Law, may qualify for a license as a marriage and family therapist through meeting the alternative requirements prescribed in either paragraph (1), (2) or (3) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.*

- (1) . . .
- (2) . . .
- (3) . . .

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a marriage and family therapist as prescribed in section 8403(3) of the Education Law, except for the examination requirement, may qualify for a license as a marriage and family therapist through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

3. Section 79-11.6 of the Regulations of the Commissioner of Education is amended, effective December 27, 2005, as follows:

79-11.6 Special provisions.

(a) . . .

(b) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a creative arts therapist as prescribed in section 8404(3) of the Education Law, may qualify for a license as a creative arts therapist through meeting the alternative requirements prescribed in either paragraph (1) or (2) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.* [The applicant shall:]

- (1) . . .
- (2) . . .

(c) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a creative arts therapist, as prescribed in section 8404(3) of the Education Law, except for the examination requirement, may qualify for a license as a creative arts therapist through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

4. Section 79-12.6 of the Regulations of the Commissioner of Education is amended, effective December 27, 2005, as follows:

(a) Alternative requirements. In accordance with section 8411(2)(a) of the Education Law, an applicant who does not meet the requirements for licensure as a psychoanalyst as prescribed in section 8405(3) of the Education Law, may qualify for a license as a psychoanalyst through meeting the alternative requirements prescribed in either paragraph (1) or (2) of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets all [such] of the other requirements on or before [January 1, 2006] December 31, 2006.* [The applicant shall:]

- (1) . . .
- (2) . . .

(b) In accordance with section 8411(2)(b) of the Education Law, an applicant who meets all requirements for licensure as a psychoanalyst, as prescribed in section 8405(3) of the Education Law, except for the examination requirement, may qualify for a license as a psychoanalyst through meeting the requirements of this subdivision, provided that the applicant *files the licensure application with the department and pays the required fees by January 1, 2006 and meets [these] all of the other requirements on or before [January 1, 2006] December 31, 2006.* The applicant shall:

- (1) . . .
- (2) . . .
- (3) . . .

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 26, 2006.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

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

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (2) of section 8411 of the Education Law provides that the State Education Department may establish in regulation alternative criteria for licensure in mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis, for applicants who apply by January 1, 2006.

Paragraph (b) of subdivision (2) of section 8411 of the Education Law establishes alternative requirements that permit an applicant to be licensed in mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis without having to pass an examination, for applicants who apply by January 1, 2006.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it will, as directed by statute, establish alternative requirements for licensure in mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to permit practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. The amendment will provide additional time for current practitioners to remedy deficiencies in applications for licensure in these professions.

In addition to establishing requirements for those first entering the mental health practitioner professions, Article 163 of the Education Law authorizes the State Education Department to establish alternative requirements for the licensure of those already practicing prior to the licensure requirement (grandparenting applicants). Under regulations adopted in January 2005, such applicants are required to satisfy all alternative requirements on or before January 1, 2006.

Due to the complexity of creating four new professions, the statutory provision that permits applicants to apply for licensure under the alternative requirements through January 1, 2006, the number of applications received, and the need to carefully review each application for education and experience, the Department will be unable to complete the processing of grandparenting applications in time for applicants to complete any identified deficiencies in meeting licensure requirements by January 1, 2006, the date by which the current regulation requires all requirements to be met. The proposed amendment will afford applicants who are current practitioners an additional year, until December 31, 2006, to meet the alternative requirements. This extension will enable the Department to continue to take the time necessary to review the applications in a manner which protects the public, while affording applicants the opportunity to remedy deficiencies.

4. COSTS:

(a) Costs to State government: The proposed change will not impose any additional cost on State government, including the State Education Department. The change in the date by which applicants must meet alternative requirements for licensure will not increase costs for implementing the alternative requirements for licensure.

(b) Cost to local government: The proposed amendment changes requirements for licensure in mental health practitioner professions. The regulation will not impose costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose additional costs on regulated parties. The proposed amendment simply provides applicant additional time to meet alternative requirements for licensure.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment does not impose additional reporting or recordkeeping requirements on regulated parties.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no Federal standards for licensure in mental health practitioner fields.

10. COMPLIANCE SCHEDULE:

The amendment is permissive in nature in that the change gives applicants additional time to meet alternative licensure requirements. Applicants will be required to comply with the regulation on the stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment concerns alternative requirements that an individual must meet to become licensed in the new mental health practitioner professions. The amendment does not regulate small businesses or local governments. The regulation will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the rule that it will not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply to individuals who are current practitioners who seek licensure in the four new mental health practitioner professions under alternative requirements for individuals who are practicing these professions prior to the licensure requirement, including that who live or work in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The amendment permits practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet the alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. The amendment establishes no additional reporting, recordkeeping, or other compliance requirements and does not require applicants for licensure to hire professional services in order to comply.

3. COSTS:

The proposed regulation will not impose additional costs on applicants for licensure in the four new mental health practitioner fields, including those who live or work in rural areas of the State. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule extends a deadline for meeting alternative requirements for the licensure of those already practicing the mental health practitioner professions prior to the licensing requirement. The change is permissive in nature in that it will provide such applicants additional time to meet the alternative licensing requirements. Accordingly, there is no need to minimize an adverse impact on applicants who may live or work in rural areas of the State.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Mental Health Practitioners and professional associations representing individuals practicing the four mental health practitioner professions. These groups have members who live or work in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to permit practitioners in one of the new mental health practitioner professions to have until December 31, 2006 to meet alternative requirements for licensure, provided that they have applied for licensure by January 1, 2006. Currently, the regulation requires such applicants to apply for licensure by January 1, 2006 and also meet all of the alternative requirements by that date. The amendment will provide additional year for current practitioners to remedy deficiencies in applications for licensure in these professions. Consequently, the amendment will ease the transition to licensure for individuals who already practicing prior to the licensure requirement. The amendment will have no impact on the number of jobs and employment opportunities in these new licensed professions.

Because it is evident from the nature of this regulation that it will have only a positive impact or no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensing Examination in Certified Shorthand Reporting

I.D. No. EDU-02-06-00014-P

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

Proposed action: Amendment of section 71.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6504 (not subdivided); 6506(1); 6507(2)(a) and (3)(a); and 7504(4)

Subject: Licensing examination in certified shorthand reporting.

Purpose: To make a change in an examination requirement for licensure in certified shorthand reporting to partially eliminate the option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination.

Text of proposed rule: Section 71.3 of the Regulations of the Commissioner of Education is amended, effective April 13, 2005, as follows:

(a) . . .

(b) . . .

(c) . . .

(d) [Materials. Candidates shall be responsible for bringing to the examination materials that they plan to use during the examination, which shall include any of the following materials: notepaper or notebooks, stationery, medical dictionary, shorthand writing machines, pens, pencils, typewriters and transcription equipment. Transcription] *Creation of a transcript. Transcripts created during the examination* shall be on paper 8½ inches by 11 inches and all transcripts shall be double-spaced. Candidates may write shorthand with either pen or pencil, or may use shorthand writing machines, and shall transcribe their shorthand notes [in longhand,] on a typewriter or on transcription equipment which is acceptable to the State Board for Certified Shorthand Reporting based upon a determination that such transcription equipment uses technology and/or software in common usage in the practice as a certified shorthand reporter and would not provide the candidate with an unfair advantage over other candidates who would use during the examination transcription equipment that uses technology and/or software in common usage in the practice as a certified shorthand reporter. *Transcription of shorthand notes in longhand shall be acceptable only in the event that a candidate's transcription equipment fails or malfunctions during the administration of the examination.*

(e) *Materials. Candidates shall be responsible for bringing to the examination materials that they plan to use during the examination, which shall include any of the following materials: notepaper or notebooks, stationery, medical dictionary, shorthand writing machines, pens, pencils, typewriters and transcription equipment.*

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

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

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

Paragraph (a) of subdivision (3) of section 6507 of the Education Law authorizes the State Education Department, assisted by the board for each profession, to establish standards for licensing examinations.

Subdivision (4) of section 7504 of the Education Law provides that an applicant for a license as a certified shorthand reporter must pass an examination satisfactory to the State Board for Certified Shorthand Reporting and in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that applicants for licensure as a certified shorthand reporter must pass an examination in accordance with the Commissioner's regulations. The amendment makes a change in the examination requirement for licensure in this field.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to make a change in an examination requirement for licensure in certified shorthand reporting to partially eliminate the option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination. The amendment is needed to align examination requirements with standard practice in this field, which requires certified shorthand reporters to produce transcripts of their shorthand notes through the use of typewriters or other transcription equipment. The State Board for Certified Shorthand Reporting has approved this change.

4. COSTS:

(a) Cost to State government: The amendment will not impose any additional cost on the State government. The proposed change will not require the State Education Department to spend additional resources for administering the examination or processing applications for licensure.

(b) Cost to local government: None.

(c) Cost to private regulated parties: With very few exceptions, candidates already use typewriters or other transcription equipment to transcribe their shorthand notes during the licensing examination. The only additional cost would be to the candidate who would otherwise do the transcription by longhand. Such candidate would have to bear the cost of a typewriter or transcription equipment. The State Education Department estimates that the average cost of a typewriter is \$200 and the average cost of transcription equipment and accompanying software is \$6,000.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to examination requirements that candidates must meet for licensure as a certified shorthand reporter and does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of this amendment, standards for examinations for New York State licensure as a certified shorthand reporter. Therefore, the amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no Federal standards regulating the licensure of shorthand reporters.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

The proposed amendment would change an examination requirement for licensure in certified shorthand reporting. It would partially eliminate the option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination.

The proposed amendment concerns an examination requirement that individuals must meet to be licensed as a certified shorthand reporter. The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments, or have any adverse economic effect on them.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect candidates who sit for the licensure examination in certified shorthand reporting, including those that live in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Each year, about 20 candidates take this examination. Based upon the percentage of licensees in this field who report an address of record to be in a rural county of New York State, the State Education Department estimates that about 11 percent of candidates who take the licensure examination in certified shorthand reporting each year (about 2) will come from a rural county of New York State.

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

The amendment makes a change in an examination requirement for licensure in certified shorthand reporting to partially eliminate the option that permits a candidate to transcribe shorthand notes in longhand during the examination. It preserves the option only in the event that the candi-

date's transcription equipment fails or malfunctions during the examination. The proposed amendment does not impose a need for professional services and does not establish additional reporting or recordkeeping requirements on applicants for licensure in certified shorthand reporting, including those located in rural areas of New York State.

3. COSTS:

With very few exceptions, candidates already use typewriters or other transcription equipment to transcribe their shorthand notes during the licensing examination. The only additional cost would be to the candidate who would otherwise do the transcription by longhand. Such candidate would have to bear the cost of a typewriter or transcription equipment. The State Education Department estimates that the average cost of a typewriter is \$200 and the average cost of transcription equipment and accompanying software is \$6,000.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes changes to the examination requirement for licensure as a certified shorthand reporter. The amendment makes no exception for individuals who live or work in rural areas of New York State. The Department has determined a uniform requirement should apply to help ensure the quality of individuals who are licensed as certified shorthand reporters regardless of their geographic origin, while maintaining fairness in the examination process. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Board for Certified Shorthand Reporting approved this change in the regulation. This Board includes members who live and work in rural areas of New York State. The State Education Department solicited comments on the proposed amendment from the New York State Court Reporters Association, which includes members who live and work in all areas of New York State, including rural areas of the State.

Job Impact Statement

The proposed amendment makes a change in an examination requirement for licensure in certified shorthand reporting. It partially eliminates an option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination.

This change is expected to affect very few candidates because almost all candidates already use typewriters or other transcription equipment to prepare transcripts during the examination. This change in the examination requirement will have no effect on the number of jobs or employment opportunities in the field of certified shorthand reporting. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Department of Environmental Conservation

ERRATUM

A Notice of Proposed Rule Making, I.D. No. ENV-52-05-00027-P, pertaining to Sportfishing Regulations printed in the December 28, 2005 issue of the *State Register* contained errors in item 16 of the Substance of Proposed Rule Making and item 10 of the Summary of Regulatory Impact Statement. The corrected items follow:

Substance of Proposed Rule Making

16. Add a catch and release, artificial lures only season from October 16 through March 31 to the existing 5/2 trout regulation in the following stream segments:

- (a) Cattaraugus Creek upstream of Springville Dam (Cattaraugus, Erie and Wyoming Counties);
- (b) Elm Creek, Elton Creek, and Mansfield Creek, Cattaraugus County;
- (c) East Koy Creek, Allegany and Wyoming Counties.

Summary of Regulatory Impact Statement

10. Compliance Schedule:

These regulations, if adopted, will become effective on October 1, 2006. It is anticipated that regulated persons will be able to immediately comply with these regulations upon their taking effect.

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

Environmental Facilities Corporation

NOTICE OF ADOPTION

New York State Beginning Farmer Loan Program

I.D. No. EFC-39-05-00001-A
Filing No. 1542
Filing date: Dec. 28, 2005
Effective date: Jan. 11, 2006

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

Action taken: Addition of Part 2607 to Title 21 NYCRR.

Statutory authority: Public Authorities Law (PAL), section 1285-r(8)

Subject: New York State Beginning Farmer Loan Program.

Purpose: To enable the New York State Environmental Facilities Corporation (EFC) to carry out its responsibilities pursuant to PAL section 1285-r(8), including establishing criteria and standards for evaluating projects to be financed under the New York State Beginning Farmer Loan Program and the eligibility of beginning farmers.

Substance of final rule: The proposed rule establishes the New York State Beginning Farmer Loan Program (NYBFLP). This rule includes criteria and standards for evaluating projects to be financed by the New York State Environmental Facilities Corporation (EFC) under the NYBFLP and eligibility of beginning farmers. It also sets forth standards for loan eligibility and procedures for application by beginning farmers. A summary of these express terms is as follows:

- 1) Section 2607.1 concerns the purpose, scope and eligibility of the NYBFLP.
- 2) Section 2607.2 concerns definitions in connection with the NYBFLP.
- 3) Section 2607.3 concerns project eligibility determination.
- 4) Section 2607.4 concerns beginning farmer eligibility.
- 5) Section 2607.5 concerns loan eligibility.
- 6) Section 2607.6 concerns procedures for application by beginning farmers.

EFC has determined that this is a consensus rulemaking under SAPA Section 202(1)(b)(i) and, therefore, no person is likely to object to the rule as written.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2607.1(a), 2607.2, 2607.5(a), (e) and 2607.6(f).

Text of rule and any required statements and analyses may be obtained from: Jeffrey M. Lanigan, Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997, (518) 402-6969, e-mail: lanigan@nysefc.org

Job Impact Statement

Nonsubstantive changes were made to the beginning farmer regulations. However, these changes will not have impact on our previously submitted Job Impact Statement.

Assessment of Public Comment

1. Written comment was received from Farm Credit of Western New York, ACA, 4363 Federal Drive, Batavia, New York 14020-4105, which expressed support for the proposed rule 21 NYCRR Part 2607.

Agency's response: the Agency agrees.

2. Written comment was received from the New York Farm Bureau, 159 Wolf Road, Albany, New York 12205, which expressed support for the proposed rule 21 NYCRR Part 2607.

Agency's response: the Agency agrees.

3. Written comment was received from First Pioneer Farm Credit, ACA, 174 South Road, Enfield, Connecticut 06082-4414, which expressed support for the proposed rule 21 NYCRR Part 2607.

Agency's response: the Agency agrees.

Department of Health

ERRATUM

A Notice of Adoption, I.D. No. HLT-32-04-00007-A, pertaining to Part-Time Clinics, published in the November 23, 2005 issue of the *State Register* failed to reference a previously published Revised Rule Making.

A Revised Rule Making, I.D. No. HLT-32-04-00007-RXC, pertaining to Part-Time Clinics, was published in the August 17, 2005 issue of the *State Register*.

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

Insurance Department

EMERGENCY RULE MAKING

Rules for Key Person Corporate-Owned Life Insurance

I.D. No. INS-02-06-00002-E

Filing No. 1536

Filing date: Dec. 22, 2005

Effective date: Dec. 22, 2005

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

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

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

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

Specific reasons underlying the finding of necessity: Corporate-owned life insurance covering rank-and-file employees, also called "janitors insurance" or "dead peasant insurance," has been the focus of numerous negative press articles and public commentaries over the last several years. In many cases, the covered employees were not notified and did not consent to such insurance. In addition, the Internal Revenue Service has pursued litigation against some companies using corporate-owned life insurance as a means of evading taxes.

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

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

Since the notice, consent and termination rights only apply in the case of Section 3205(d) COLI and not key person COLI under Section 3205(a)(1)(B), it is imperative that insurers only insure key employees

under Section 3205(a)(1)(B). This will also ensure that rank and file employees and other non-key employees receive the notice, consent and termination rights prescribed by Section 3205(d) and to curb some of the reported abuses associated with COLI on rank-and-file employees. This will serve to ensure that employees insured pursuant to the insurable interest provisions of Section 3205(a)(1)(B) are key employees.

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

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

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

Text of emergency rule: A new Part 48 of Title 11 NYCRR is adopted to read as follows:

§ 48.0 Preamble and Purpose.

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

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

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

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

§ 48.1 Underwriting Guidelines.

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

§ 48.2 Standards.

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 21, 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 180 (11 NYCRR 48) is derived from Sections 201, 301, and 3205 of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him (under the provisions of the Insurance Law) to prescribe forms or otherwise to make regulations.

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

2. Legislative objectives:

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

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

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

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

3. Needs and benefits:

As noted in the Federal Standard section below, the definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate's proposal is intended to eliminate well-publicized abuses of COLI. The proposal also recognizes the legitimate business need for employers to use corporate owned policies as a funding vehicle for employee benefits, and specifically provides that COLI death benefits would not be taxable if the covered employee meets the definition of a key employee.

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

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

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

employee standard created by this proposed regulation will help ensure that the covered employees will in fact be key employees.

4. Costs:

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

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

5. Local government mandates:

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

6. Paperwork:

The proposed regulation imposes no new reporting requirements.

7. Duplication:

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

8. Alternatives:

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

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Small businesses:

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

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

3. Costs:

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

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

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

Department of Labor

NOTICE OF ADOPTION

Protection of Public Health and Safety Relating to the Handling of Asbestos

I.D. No. LAB-29-05-00021-A

Filing No. 1539

Filing date: Dec. 23, 2005

Effective date: To ensure a smooth transition for implementation of its provisions, the amended Part 56 will become effective in its entirety on Sept. 5, 2006. A transition period is established from Jan. 11, 2006 to Sept. 5, 2006 whereby either version of Part 56 can be used, however, on Sept. 5, 2006, the department will enforce only the Jan. 11, 2006 promulgated Part 56 Rule as amended.

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

Action taken: Amendment of Part 56 of Title 12 NYCRR.

Statutory authority: Labor Law, art. 30, section 906

Subject: Protection of the public health and safety relating to the handling of asbestos.

Purpose: To incorporate Federal standards and streamline and clarify the regulation.

Substance of final rule: 12 NYCRR Part 56 Asbestos (Code Rule 56)

Why were Code Rule 56 revisions necessary?

To ensure the regulation is in compliance with current federal Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) regulations;

To clarify many provisions of the existing regulation and incorporate existing Applicable Variances (AVs);

To streamline the organization of the document to be user-friendly. The revised regulation accurately reflects the consecutive steps of how an asbestos project is performed.

Supplemental Documents

Guidance Document—Since the revised regulation cannot address every specific situation, the Department of Labor is developing a guidance document that will supplement the regulation and assist stakeholders in meeting its requirements. This guidance document will be available on the Department's website for easy review and access along with the new Code Rule 56.

Site-Specific Variances - Site-Specific Variances will still be required for projects that deviate from Part 56. Existing Site-Specific Variances will remain in effect until their assigned expiration date. Procedures to requesting site specific variances have not changed.

Applicable Variances (AVs)—Most of the current Applicable Variances (AV) were incorporated into the revised Code Rule 56. New Applicable Variances could be generated in the future, if the same type of site-specific variance is repeatedly granted.

Blanket Variances, System-Wide Variances, Statewide Variances—Current Blanket Variances, System-Wide Variances and Statewide Variances will expire on the effective date of this regulation. Affected parties should contact the Department of Labor to request new variances. However, under the new regulation, there may no longer be a need for variances for some members of the regulated community.

ICR 56 Major Changes

Responsibility of Contractors (Asbestos and Non-asbestos) on Multi-Employer Worksites

Responsible for general supervisory authority on projects their firms are supervising.

Must require asbestos contractors on their projects to come into compliance with Code Rule 56 and must prohibit the disturbance of asbestos by non-asbestos contractors.

Supervisory requirements are consistent with OSHA.

Cleanup of Uncontrolled Asbestos Containing Material Disturbance

Defines who is responsible for cleanup.

Property Owner must contract with licensed asbestos contractor for immediate isolation and cleanup of both incidental and uncontrolled intentional disturbance of asbestos containing material. The property owner may pursue legal options for repayment of cleanup costs from the responsible party, but the owner is ultimately responsible for completion of all necessary cleanup by a licensed asbestos contractor.

Definitions

Asbestos Project Phasing chart has been added with identification of the various sub-phases of an asbestos project (Phase IA-IB & IIA-IID).

Other major definitions were added for consistency with federal regulation terminology.

Recordkeeping

Additional recordkeeping category added for non-abatement asbestos contractors.

Project Record requirements for documents to be available on-site during the active portion of an asbestos project.

Notifications

Notification requirements clarified for non-continuous asbestos projects.

Project Air Sampling

Asbestos Abatement Contractor must be independent of air monitoring firm (must be contracted separately by owner).

Quantity of asbestos containing material in work area determines air sampling requirements for work area.

Air Sampling Technician is required to be on-site for duration of sample collection.

Asbestos Project Air Sampling Requirements—Major Changes:

Air sample log requirements included.

Reduced turnaround time for air sample results.

Defines requirements and criteria for background air samples.

Pre-abatement air samples - replaced with work area preparation samples for large project friable asbestos containing materials.

Negative air exhaust - banking allowed (up to 5 exhaust tubes terminating at one common location - one sample required).

Clearance for Minor Work Areas—required for incidental disturbance and if part of small or large project.

Allow Transmission Electron Microscopy (TEM) instead of Phase Contrast Microscopy (PCM) for clearance.

TEM clearance - Asbestos Hazard Emergency Response Act (AHERA) protocols for clearance air sampling and analysis, unless TEM analysis of failed PCM air samples.

Clarify procedures to follow for re-cleaning and re-sampling of work areas with unsatisfactory clearance air sample results.

Asbestos Survey/Inspection

When is a survey required and by whom?

Prior to Building/structure demolition, remodeling, renovation or repair for non-agricultural buildings/structures with construction commencement before 1974, unless condemned and structurally unsound.

Portion of Building/structure impacted by project shall be inspected/ surveyed for asbestos containing material by an asbestos contractor with appropriately certified personnel.

Survey Exemptions and what they mean:

Not required for agricultural building.

Not required for structurally unsound structure, but demolition shall be an asbestos project (as per Section 56-11.5).

Not required for owner of one or two-family dwelling, when the owner contracts for but does not control the demolition, renovation, remodeling or repair work.

NOTE: Survey is still required by owner's agent.

All contractors hired by the owner must still comply with OSHA and EPA regulations, so even if no survey is required by Code Rule 56, all Presumed Asbestos Containing Materials and resilient flooring materials installed prior to 1981 are treated and handled as asbestos containing materials and are assumed to be asbestos containing materials until proven otherwise by appropriate laboratory analyses.

Bidding - Concurrent bidding requirements included.

Work Area Preparation

Asbestos Abatement Contractor Daily Project Log—summary has been added of required entries by Asbestos Abatement Contractor's Supervisor.

Decontamination Units:

Eliminate airlock at work area.

Define Clean room minimum size.

Include remote personal decontamination system enclosure, as well as when and how they may be used (some special projects, non-friables and tent with glovebag).

Remote waste decontamination system enclosure eliminated.

Small project personal decontamination system enclosure revised to 3-chambers.

Electric shutdown/isolation - shutdown exemption procedures included.

Engineering Controls:

Modify negative air requirements.

Eliminate piggy-back air unit (AV-109).

Reduce 50 foot exhaust requirement to 15 foot, or if exhaust directly to exterior, then seal openings within 15 feet of exhaust location.

Exemption added for some special projects.

Requirement for use of Manometer on OSHA Class I Large and Small asbestos projects.

Exhaust Termination Location protected/surrounded by construction fencing (minimum of 10' from exhaust point).

Barriers and Exemptions:

Floor, Wall & Ceiling plastic sheeting - eliminate sheeting on removal surfaces.

Negative Pressure Tents:

Allowed for any quantity non-friables.

Allowed for any quantity friable thermal system insulations (TSI) w/glovebag abatement.

Allowed for minor and small quantity gross removal of friable asbestos containing material, with attached decontamination system enclosure for small quantity tent work areas.

Fire-retardant Spray Plastic:

Allowed in lieu of 2 layers floor, wall and ceiling plastic sheeting.

Must be applied by trained personnel.

Special Projects Exemptions—See Subpart 11.

Removal of ceilings and components to access asbestos containing material—similar to former AV-86.

Handling

Pre-abatement settling period reduced to 4 hours and eliminated for exterior work where negative air ventilation is not required.

Sequential Abatement of multiple types of asbestos containing materials within a single regulated abatement work area is allowed as follows:

Top-down abatement and most friable to least friable For example, ceiling friables (OSHA class I), then other class I friables (thermal system insulations, wall plasters) and class II friables (ceiling tile), then class II non-friables other than flooring, ending with class II non-friable flooring.

One complete cleaning at conclusion of each abatement type, clearance at conclusion of all abatement and cleanings.

When is Dry Removal allowed – never, according to the regulation. This will be addressed in guidance - obtain written EPA approval first then submit for site-specific variance with EPA approval.

Final Cleaning Procedures

Process and settling periods:

Still 3 cleans, but exemption from multiple cleans when no layers or reduced layers of plastic sheeting is required, or when tent enclosure is used.

Reduction in some of the settling/drying periods.

Visual Inspections required following final cleaning and settling/drying period.

Small and Large size work area visual inspections are to be performed by project monitor hired by building owner independent of asbestos abatement contractor.

Clearance Procedures

Exemption for exterior asbestos projects without negative pressure enclosures:

A satisfactory visual inspection shall serve as the clearance for these asbestos projects - exception included for one-two family owner-occupied residential building/structures, when owner accepts asbestos abatement contractor supervisor's visual inspection.

Once appropriate clearance has been obtained for an asbestos project, remaining work area preparation shall be removed, concluding with the decontamination system enclosures.

Waste Removal from Site

All waste to be removed from work site within ten calendar days after successful completion of Phase IIC clearance procedures for all work areas. All waste removed from site shall be documented, accounted for and disposed of in compliance with EPA National Emission Standards for Hazardous Air Pollutants (NESHAP).

Special Projects

In-Plant Operation changes and what they mean:

Same as before, but now allowed asbestos containing material to include any quantity non-friable organically bound (NOB) asbestos containing material, currently in a non-friable intact condition, by outside asbestos abatement contractors.

Note—Only labs currently accredited by the New York State Department of Health Environmental Laboratory Approved Program (ELAP) are allowed to make the NOB asbestos containing material determination from bulk samples of non-friable suspect miscellaneous ACM.

Emergency projects-must call for approval to proceed with project. Site-specific variance may be necessary.

Incidental Disturbance Asbestos Project—(less than 10 sq. ft. or 25 lin. ft. incidentally disturbed ACM) corrective action procedures included.

Minor Projects—isolated Operations and Maintenance event.

Pre-demolition projects - less stringent requirements from normal Code Rule 56 projects:

Non-porous salvage items may be removed prior to abatement—no disturbance of friable or non-friable asbestos containing material allowed during salvage operations.

Porous walls and floors - one layer of plastic sheeting required instead of two layers. Non-porous walls, floors and ceilings don't require plastic sheeting.

Demolition with asbestos containing material in place - similar to AV-106 & AV-107 conditions.

Exterior Non-friable roofing, siding, caulking, glazing compound, transite, tars, sealers, coatings and other NOB asbestos containing materials - similar to AV-84, AV-89, AV-119 and typical exterior caulking/glazing site-specific variance. Non-friable flooring and mastic - similar to AV-120.

Note - Beadblaster or other abrasive abatement methods require asbestos project abatement as per full requirements of Code Rule 56.

Abandoned pipe/duct/conduit wrap and cut - similar to AV-87, only with less limitations.

Final rule as compared with last published rule: 56-1.4, 56-1.5, 56-2.1, 56-3.2(d)(8), (e), 56-3.4(b)(2)(v), (4)(iii), 56-3.6(e)(2), 56-4.3, 56-4.4, 56-4.5(e), 56-4.6, 56-4 (Table 2), 56-5.1(f)(1), (g)(2), (h), (h)(1), (j), 56-

7.1(c), 56-7.2(c), (i), (o), 56-7.3(f), (j), (k), 56-7.4(c), 56-7.5(b)(1), (6), (d), (d)(4), (e)(1), (6), (8), (9), 56-7.7, 56-7.8(a)(5), (10), (12), (b)(1)(iii), 56-7.11(f)(1)(i), (ii)(d), (iii), (4), 56-8.2(b), (g)(4), 56-8.3(a)(1)(iii), (2)(iii), (iv), 56-8.4(c), 56-8.5(d), 56-8.6(b)(2)(ii)(e), (vi), 56-8.8(d)(i), 56-8.9(b)(1), (c)(2), (3), (d), (g), (i), 56-9.1(b), (d), (f), 56-9.2(b)(2), (e), 56-11.1(c)(6)(v)(a), 56-11.2(f)(1)(i), 56-11.3(b), (d), (e), 56-11.4(b)(3), 56-11.5(b), (c)(2), (6), (7), (10), (12), (14), 56-11.6(b)(3), 56-11.7(d) and 56-11.8(b)(4).

Text of rule and any required statements and analyses may be obtained from: Marianne Davidson, Department of Labor, Bldg. 12, State Campus, Rm. 154, Albany, NY 12240, (518) 457-7056, e-mail: usamps@labor.state.ny.us

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

There were no changes to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. The effect of the regulation remains the same.

Assessment of Public Comment

On July 20, 2005, the Department of Labor (DOL) requested public comment on the proposed amendment of Code Rule 56 through the State Administrative Procedure Act (SAPA) sixty day public comment period. Comments were received from AAC Contracting Inc., ATC Associates, Inc., The Business Council of NYS, Consolidated Edison, New York State Division of Industries, IEEE, General Building Contractors of NYS, Keyspan, Lachase Construction Services, Lozier Environmental Consulting, Inc., MTA NYC Transit, NYS OGS, DASNY, NYS DOH, NYS DOT, NYS Public Employees Federation, O'Brien & Gere, PSI, The Safety & Health Training Center, Watervliet Arsenal, Yu & Associates, Gerald Schwartz and Jack Eisenbach.

DOL prepared a Public Comment/Response Spreadsheet which lists all comments received and provides the Department's responses. Most comments requested clarification of entries made in the Spreadsheet and did not result in any significant revisions to the proposed regulation. This spreadsheet will be used by DOL to develop a "Guidance Document" that will allow those regulated by the Code Rule to obtain important clarification on specific circumstances and situations that cannot possibly be delineated in the Code Rule. In the below discussion, DOL used the term "CLARIFICATION COMMENT" to designate that the comment was a request for clarification and did not result in a revision to the Code Rule. All such comments will be further clarified in the Guidance Document.

The following is a summary of general comments received:

--Several comments were submitted regarding DOL procedures for variances and enforcement. These issues will be carefully addressed through Department policies, guidance documents and staff directives that will be developed to supplement the regulation. A comment was submitted on the intent of the regulation. An explanation of the intent of the regulation was included in the published Regulatory Impact Statement. Also, two comments were submitted concerning the need for ample opportunity for public comment. Following SAPA requirements, the Department obtained comments through the sixty day public comment period and continued to discuss and clarify comments after that expiration date. As requested, Department staff met with the commenters to resolve areas of concern and provide additional information on the intent of changes to the Rule. A comment was also made requesting that the Department provide accompanying commentary that articulates the purpose of each provision in order to aid those who must comply with the regulation. The Department agrees with the recommendation and will supplement the regulation with guidance documents and other compliance assistance tools that will address the purpose of the provisions of the regulation.

--Several comments were submitted regarding the cost implications of the Code Rule. As originally stated in the Regulatory Impact Statement, most cost impacts are not new, since many procedures and processes are already required within federal regulations and, therefore, are already applicable to asbestos abatement projects in New York State. The proposed changes will, however, result in an additional cost to building owners due to the requirement for the use of an independent Project Monitor for visual inspections to ensure abatement is properly completed. Since the majority of the proposed changes clarify the regulation and incorporate Applicable Variances and typical site specific variance conditions wherever possible, overall, any additional costs incurred for compliance will likely be offset by savings acquired by precluding the need for many site-specific variances (\$350/variance) and shortening time frames for asbestos abatement due to limited need for subsequent re-cleaning of non-compliant abatements. Additional cost savings to the building owner would be expected if the building owner uses the same independent firm

for the air monitor and the project monitor with a dually certified individual performing both roles.

--Several comments were submitted in support of the Code Rule changes. The Department appreciates these comments of support and believes that the open process used to obtain input and comments was instrumental in amending the Code Rule.

--Several comments were submitted regarding Sections 56-1.2(b) and 56-1.4, the responsibilities of general contractors and construction managers who supervise and employ persons in aspects of an asbestos project. Comments questioned whether the statement does or should include general contractors and construction managers and if general contractors and owners who subcontract out asbestos work will be required to have DOL asbestos certifications and licenses? Commenters requested further clarification of this section. In response, Section 56-1.4 was revised to clarify contractor responsibilities (delineating between asbestos and non-asbestos contractors) at multi-employer work sites. Any contractor performing a general supervisory role on any renovation, remodeling, demolition, or repair project is responsible for informing all contractors under their direct supervision and control that any disturbance to ACM, PACM and asbestos material (known or assumed) at the site is prohibited by any contractor other than the asbestos contractor. Also, the contractor performing the general supervisory role shall require all asbestos contractors under their direct supervision and control to be in compliance with Code Rule 56. (This does not include entering asbestos project work areas to check on the asbestos contractor.) Revised Section 56-1.4 includes contractor notification requirements to the building/structure owner or their representative for newly discovered materials and any disturbances to ACM, PACM or suspect miscellaneous materials. Also, only entities who engage in any portion of an asbestos project or employ persons engaged in any portion of an asbestos project, must be licensed as per the Code Rule. A property owner or prime contractor who hires an asbestos contractor, but does not directly control the work, is not required to be a licensed asbestos contractor. In addition, if employees of the general contractor or construction manager perform the duties of any of the nine asbestos handler categories as listed in Section 56-3.2 of the Code Rule, the individual should be appropriately trained and DOL asbestos handler certified, as well as the firm being currently DOL licensed as an asbestos contractor. These requirements will also be further addressed in the supplemental guidance documents.

--One commenter suggested that the regulation address fire and evacuation alarm systems and other safety requirements. No revision was made in response to this comment. Appropriate reference to application of the NYS Uniform Fire Prevention & Building Code, or its successor, is already included in Sections 56-1.6.

The following is a summary of minor revisions due to comments and "CLARIFICATION COMMENTS", which will be dealt with in more detail in the Guidance Document:

--Comments on Section 56-1.5 requested clarifications of "intentional disturbance." The Section was revised to eliminate the term "intentional" and will be further addressed in supplemental guidance documents.

--Several comments requested clarification of definitions in Section 2.1. Section 2.1 was revised to clarify several definitions and a definition was added for building/structure owner's authorized representative. Several comments requested an explanation of the definitions.

--Comments on Section 56-3 requested clarification of the requirements and corrections. As a result, minor changes were made to Sections 56-3.2(e), 56-3.4(b)(2)(v), 56-3.4(b)(4)(iii), 56-3.6(e)(2). Section 56-3.2(d)(8) was revised to add the previous exemption for supervisors of the asbestos abatement contractor.

Most comments on Section 56-4 requested clarification. Several comments were also submitted on Section 56-4.3 (requiring all compliance air monitoring to be independently contracted for by the building/structure owner). One commenter noted that while this provision will increase costs and management efforts, it will eliminate conflict of interest concerns derived from asbestos abatement contractors arranging and paying for compliance air monitoring subcontractors. As a result, the commenter agreed with the provision and generally supported the amendment.

--Several comments requested clarification of the term "completely independent."

--Minor revisions were made in Sections 56-4.3, 56-4.4, 56-4.5(e), 56-4.6, and 56-4 (Table 2) in response to comments.

--Many comments on Section 56-5 requested clarification of the requirements.

--Comments on Section 56-5.1 suggested informing zoning/code/building inspectors in municipalities that issued demolition permits must

comply with Code Rule 56 relating to Pre-Demolition asbestos survey rules and removal of asbestos containing materials. The Department will inform local municipal building/fire code enforcement officials of the amended Code Rule 56.

--Some comments questioned the extent of survey requirements and whether the Department will allow limited bulk sampling, assumption that a material is ACM, or historical records in lieu of requiring a full survey and other reporting requirements under 56-5.1.

--Comments on Section 56-5.1(b) questioned the cut off date in the requirement that owners of buildings or structures built prior to January 1, 1974 engage an asbestos contractor to conduct a survey every time they seek to engage in any renovation, repair or remodeling work on the building or structure. This date is stipulated by the New York State Labor Law.

--Minor revisions were made to Sections 56-5.1(f)(1), 56-5.1(g)(2), 56-5.1(h), 56-5.1(h)(1), 56-5.1(j) in response to comments.

--Two comments were submitted on Section 56-6 Phase 1B Background Air sampling. Both comments requested clarification of the requirements.

--Several comments were submitted on Section 56-7. Comments were submitted regarding the Section 56-7.8(a) requirement for unfiltered booster fans downstream of the HEPA-filtered negative air unit to maintain the required flow. This requirement was replaced with a 25 foot limit for the exhaust tube. An applicable variance may be granted in the future with appropriate procedures for installing exhaust ducting in excess of 25 feet, depending upon the number of site-specific variances received for this issue. Many of the comments were suggestions for clarifying the work area preparation requirements and resulted in revisions to Sections 56-7.1(c), 56-7.2(c), 56-7.2(i), 56-7.2(o), 56-7.3(f), 56-7.3(j), 56-7.3(k), 56-7.4(c), 56-7.5(b)(1), 56-7.5(b)(6), 56-7.5(d), 56-7.5(d)(4), 56-7.5(e)(1), 56-7.5(e)(6), 56-7.5(e)(8), 56-7.5(e)(9), 56-7.7, 56-7.8(a)(10), 56-7.8(b)(1)(iii), 56-7.11(f)(1)(i), 56-7.11(f)(1)(ii)(d), 56-7.11(f)(1)(iii), 56-7.11(f)(4).

--Several comments on Section 56-8 suggested clarification to the asbestos abatement procedures. These suggestions resulted in clarifications in Section 56-8.2(b), 56-8.2(g)(4), 56-8.3(a)(1)(iii), 56-8.3(a)(2)(iii), 56-8.3(a)(2)(iv), 56-8.4(c), 56-8.5(d), 56-8.6(b)(2)(ii)(b), 56-8.6(b)(2)(vi), 56-8.8(d)(i), 56-8.9(b)(1), 56-8.9(c)(2), 56-8.9(c)(3), 56-8.9(d), 56-8.9(g), 56-8.9(i).

--Many comments were submitted on Section 56-9. One commenter noted that the new requirement for a certified project monitor to perform all final visual inspections will promote an overall increase in quality assurance/control of asbestos abatement work. Many commenters asked for clarification of project monitor requirements. Commenters also proposed that project monitors use ASTM Standard E1368 to confirm acceptable visual inspections. Sections 9.1(d) and 9.2(e) were revised to incorporate ASTM E1368 and minor revisions were made to Sections 56-9.1(b), 56-9.1(d), 56-9.1(f), 56-9.2(b)(2) and 56-9.2(e).

--Commenters stated that Section 10.4 imposes financial hardship on building and property owners who would otherwise accumulate asbestos waste from multiple asbestos projects in a central location for subsequent disposal at an approved landfill. DOL will clarify this issue in supplemental guidance documents. If the asbestos abatement contractor turns over the asbestos project generated asbestos waste bags/containers to the property owner for disposal by appropriate legal method, the asbestos abatement contractor is considered to have complied with section 56-10.4.

--Most of the comments on Section 56-11, Special Projects Section, were requests for clarification. One comment suggested that Section 56-11, "In-Plant Operations" be eliminated. "In-Plant Operations" requirements are set forth by the New York State Labor Law and cannot be rescinded by the amended Code Rule. Minor revisions were made to Sections 56-11.1(c)(6)(v)(a), 56-11.2(f)(1)(i), 56-11.3(b)(d) and (e), 56-11.4(b)(3), 56-11.5, 56-11.5(b) and (c), 56-11.6(b)(3), 56-11.7, 56-11.7(d) and 56-11.8(b)(4) to address glovebag use requirements, decontamination system/area requirements for various types of minor projects and 25 foot buffer zone requirements for special projects as well as other clarifications suggested. Section 11.5(b)(2) was revised, Applicable Variance 107 for municipally owned vacant residential building/structures will be re-evaluated, and a new AV will be issued by the Department by the effective date of the Code Rule.

Effective Date: Amended Code Rule 56 will be adopted on January 11, 2006 as published in the *State Register*. However, to ensure there is a smooth transition for implementation of its provisions, the amended Code Rule will become effective in its entirety on September 5, 2006. A transition period is established from January 11, 2006 to September 5, 2006, whereby either version of the Code Rule can be used. However, on Sep-

tember 5, 2006, the Department will enforce only the January 11, 2005 promulgated Code Rule as amended.

Long Island Power Authority

NOTICE OF ADOPTION

Charitable Contributions Program

I.D. No. LPA-24-05-00002-A

Filing No. Dec. 22, 2005

Filing date: Dec. 22, 2005

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

Action taken: The authority continued a charitable contributions program.

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

Subject: Tariff for electric services.

Purpose: To continue a charitable contributions program.

Text or summary was published in the notice of proposed rule making, I.D. No. LPA-24-05-00002-P, Issue of June 15, 2005.

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

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

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.

Office of Mental Health

EMERGENCY RULE MAKING

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-02-06-00005-E

Filing No. 1538

Filing date: Dec. 23, 2005

Effective date: Dec. 23, 2005

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: These amendments increase the medicaid rate schedule associated with clinic treatment programs and day treatment programs serving children and makes certain other changes consistent with the enacted 2005-2006 state budget. These changes will avoid a reduction in services that would otherwise take place.

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase the medicaid rate schedule associated with certain clinic treatment and children's day treatment programs licensed under art. 31 of the Mental Hygiene Law.

Text of emergency rule: Part 588 of 14 NYCRR is amended as follows:

New subdivisions (e) and (f) are added to § 588.7 to read as follows:

(e) *The need for continuing day treatment benefits beyond 156 visits per benefit year shall be subject to the medical care utilization threshold requirements of 18 N.Y.C.R.R. Part 511, and shall be determined, in*

accordance with subdivision (f) of this section, no later than the 156th visit during the benefit year. Such determination shall include an estimate of the number of visits beyond 156 required for the recipient within the remaining benefit year. The need for continued continuing day treatment benefit beyond this estimated number of visits shall be determined at or prior to the provision of the estimated number of visits during the benefit year. The need for any additional revised estimates shall be determined accordingly.

(f) Determinations required in accordance with subdivision (e) of this section shall be:

- (1) completed by the treating clinician;
- (2) documented in the case record; and
- (3) reviewable by the Office of Mental Health or its designated agent.

Subdivision (a) of Section 588.13 is amended to read as follows:

(a) Reimbursement under the medical assistance program for outpatient programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title which serve adults with a diagnosis of mental illness and children with a diagnosis of emotional disturbance shall be in accordance with the following fee schedule. This section shall not apply to programs licensed by both the Office of Mental Health and the Department of Health.

(1) Reimbursement under the medical assistance program for clinic treatment programs operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to [Section 579.7] subdivisions (i), (j) and (k) of this [Title] Section.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

Regular at least 30 minutes [\$66.00] \$71.94
 Brief at least 15 minutes [33.00] 35.97
 Group at least 60 minutes [23.10] 25.18
 Collateral at least 30 minutes [66.00] 71.94
 Group Collateral at least 60 minutes [23.10] 25.18
 Crisis at least 30 minutes [66.00] 71.94

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates counties:

Regular at least 30 minutes [\$59.40] \$64.75
 Brief at least 15 minutes [29.70] 32.37
 Group at least 60 minutes [20.79] 22.66
 Collateral at least 30 minutes [59.40] 64.75
 Group Collateral at least 60 minutes [20.79] 22.66
 Crisis at least 30 minutes [59.40] 64.75

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Regular at least 30 minutes [\$58.30] \$63.55
 Brief at least 15 minutes [29.15] 31.77
 Group at least 60 minutes [20.41] 22.25
 Collateral at least 30 minutes [58.30] 63.55
 Group Collateral at least 60 minutes [20.41] 22.25
 Crisis at least 30 minutes [58.30] 63.55

(2) Reimbursement under the medical assistance program for clinic treatment programs operated by providers of services which did not receive State aid under article 41 of the Mental Hygiene Law during fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Regular at least 30 minutes [\$58.30] \$63.55
 Brief at least 15 minutes [29.15] 31.77
 Group at least 60 minutes [20.41] 22.25
 Collateral at least 30 minutes [58.30] 63.55
 Group Collateral at least 60 minutes [20.41] 22.25
 Crisis at least 30 minutes [58.30] 63.55

(3) The minimum duration of a group or group collateral visit at a school-based clinic program shall consist of the duration of a scheduled

class period at the school in which the program is based, or 60 minutes, whichever is less.

Sub-paragraphs (4) and (5) of § 588.13(a) are renumbered sub-paragraphs (5) and (6) are amended to read as follows:

(4) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$13.20 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.88 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours for any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.88 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

[(4)] (5) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [\$66.00] \$70.01
 Half day at least 3 hours [33.00] 35.01
 Brief day at least 1 hour [22.00] 23.34
 Collateral at least 30 minutes [22.00] 23.34
 Home at least 30 minutes [66.00] 70.01
 Crisis at least 30 minutes [66.00] 70.01
 Preadmission - full day at least 5 hours [66.00] 70.01
 Preadmission - half day at least 3 hours [33.00] 35.01

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours [\$63.80] \$67.68
 Half day at least 3 hours [31.90] 33.84
 Brief day at least 1 hour [21.23] 22.52
 Collateral at least 30 minutes [21.23] 22.52
 Home at least 30 minutes [63.80] 67.68
 Crisis at least 30 minutes [63.80] 67.68

Preadmission - full day at least 5 hours [63.80] 67.68

Preadmission - half day at least 3 hours [31.90] 33.84

[(5)] (6) Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which did not receive State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Full day at least 5 hours [63.80] \$67.68

Half day at least 3 hours [31.90] 33.84

Brief day at least 1 hour [21.23] 22.52

Collateral at least 30 minutes [21.23] 22.52

Home at least 30 minutes [63.80] 67.68

Crisis at least 30 minutes [63.80] 67.68

Preadmission - full day at least 5 hours [63.80] 67.68

Preadmission - half day at least 3 hours [31.90] 33.84

[(6)] (7) Providers whose reimbursement under the medical assistance program for clinic, continuing day treatment, and/or day treatment has been supplemented in accordance with subdivision (g) of this section will have this additional reimbursement limited in total to an amount established by the Commissioner which shall be subject to the availability of appropriations in the Office of Mental Health's budget. Supplemental reimbursement received in excess of this threshold will be recovered in a succeeding year through the medical assistance recovery process authorized pursuant to Section 368-c of the Social Services Law.

Section 588.13 is amended by adding new subdivisions (i), (j), and (k) to read as follows:

(i) *Clinic treatment programs for which an operating certificate has been issued shall receive an adjustment to the fee schedules set forth in paragraph (1) of subdivision (a) of this Section if they are enrolled in a continuous quality improvement initiative implemented by the Commissioner. In order to be enrolled in such continuous quality improvement initiative, the program shall execute an agreement with the Office of Mental Health under which the provider agrees to participate in such initiative, and undertake such quality improvement measures as shall be developed by the Commissioner.*

(j) *Any program eligible to receive supplemental medical assistance reimbursement pursuant to subdivision (i) of this Section, and which fails at any time to meet the requirements set forth in the agreement executed pursuant to such subdivision, shall have its continuous quality improvement adjustment suspended until such time as the program meets such requirements, as determined by the Commissioner.*

(k) *A clinic treatment program that has been approved by the Office of Mental Health to provide services to children and adolescents during evening and weekend hours shall receive a rate enhancement for regular or collateral clinic visits provided to recipients under the age of 18 years, when such services are provided during weekdays commencing 6 p.m. or later, or on a Saturday or Sunday, provided, however, that an enhanced rate shall only be paid for one visit provided for a recipient on any given day.*

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 March 22, 2006.

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

Regulatory Impact Statement

1. Statutory Authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the provision of services for persons with mental illness.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and Benefits: These amendments increase the medicaid reimbursement associated with certain outpatient treatment programs consistent with the enacted 2005-2006 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers, as well as improve the quality and availability of services. They will also effectuate the provision of the 2005-2006 state budget that eliminates the exemption from medicaid utilization thresholds for continuing day treatment programs, and clarifies the minimum duration of a group or group collateral visit for a school-based clinic is the shorter of 60 minutes or the duration of a scheduled class period at the school.

4. Costs:

(a) Costs of regulated parties: There are no costs to providers associated with these amendments.

(b) Costs to State and Local government and the agency: Implementation of the children's day treatment initiatives has been budgeted to cost New York State \$200,000 annually, and appropriations for the state share of medicaid are included on page 273, line 20, of Chapter 54 of the Laws of 2005. Implementation of clinic fee initiatives has been budgeted to cost New York State \$6,000,000 annually, and appropriations for the state share of medicaid are included in the \$609,468,000 Aid to Localities Local Assistance Account 001, which is set forth on page 268, line 29 of Chapter 54 of the Laws of 2005. The costs to local governments, for the local share of medicaid, will be equal to the state costs listed above.

5. Local Government Mandates: Other than the required local share of medicaid, noted in Section 4, these regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. This alternative was rejected as inconsistent with statutory requirements of the enacted budget.

9. Federal Standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: These regulatory amendments will be effective upon their adoption, and shall be deemed to have been effective on and after April 1, 2005.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increase associated with this rule is required by state statute, the enacted state budget for state fiscal year 2005-2006.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule impacts outpatient treatment program rates of reimbursement. The impact of the rate change will be to increase the medicaid reimbursement rates associated with outpatient programs in rural and non-rural areas. This will support the continued provision of these vital programs which serve children, adolescents and adults.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Criminal History Record Checks

I.D. No. MRD-02-06-00001-E

Filing No. 1534

Filing date: Dec. 27, 2005

Effective date: Dec. 27, 2005

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

Action taken: Addition of sections 633.22 and 633.98; and amendment of sections 635.5, 633.99, 635-10.5, 679.6, 680.12, 681.14, 687.4, 687.8 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.33; and Executive Law, section 845-b

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

Specific reasons underlying the finding of necessity: The regulations require fingerprinting and criminal history record checks for various individuals who provide services to people with developmental disabilities in the OMRDD system. The regulations are necessary to keep certain convicted criminals, including violent felons and sexual predators, out of positions that include regular and substantial contact with people with developmental disabilities. If regulations were not adopted as an emergency measure, convicted criminals could have unrestricted and unsupervised contact with consumers as new employees or volunteers or family care providers, which would endanger the health, safety and general welfare of people receiving services. Consumers could be unnecessarily victimized by people with criminal history records for the period of time between April 1, 2005 and the earliest date that regulations could be finalized using the regular regulatory process.

Subject: Requirements related to criminal history record checks.

Purpose: To promulgate regulations necessary to implement L. 2004, ch. 575 concerning criminal history record checks. The regulations require that agencies, sponsoring agencies and providers of services request history record checks for specified employees, volunteers, family care providers and parties who are to reside in a family care home.

Substance of emergency rule: • Effective December 27, 2005. Replaces similar emergency regulations that were effective April 1, June 30, and September 28, 2005.

• Changes in regulatory provisions (compared to September 28 emergency regulations)

- Removes date-specific references that are no longer needed.

- Extends the length of time in which during an applicant who receives notice of pending denial can submit a written explanation to OMRDD, from 10 days to 30 days.

• Applies to all providers, including residences (ICFs, IRAs, and CRs), family care homes, day programs (day treatment, day habilitation, day training, sheltered workshops, prevocational services), HCBS waiver services, Article 16 clinics, family support services, and individualized support services.

• Applies to some entities that have a contract with OMRDD.

• Establishes a requirement that providers of services apply to become "approved providers" if they contract with a voluntary agency or DDSO and provide transportation services or staff.

• Requires agencies to appoint an "authorized party" to request criminal history record checks and receive the results.

• Requires that prospective employees, volunteers, and operators that have regular and substantial unsupervised or unrestricted physical contact with people receiving services consent to a criminal history record check.

• Requires that agencies ask applicants about pending criminal charges, in addition to convictions.

• Defines employees of the provider that are subject to a criminal history record check to include people that are directly employed by the provider and other people providing similar services for the provider who

are employed by other entities, such as temporary employment agencies or contractors.

• Includes a list of jobs that are presumed to include this type of contact.

• Provides that while the results of criminal history record checks are pending, employees and volunteers may not have unsupervised physical contact with people receiving services. Regulations specify restrictions placed on "temporarily approved provisional" employees and volunteers.

• Provides that oversight of temporarily approved provisional employees and volunteers can be provided by an employee who has completed required training in incidents and abuse, and who was not subject to a criminal history record check or whose criminal history record check has been completed.

• Provides that temporarily approved provisional employees and volunteers may not be assigned personal care activities which require privacy unless the employee providing oversight is in the same room.

• Provides that temporarily approved provisional employees and volunteers may not work the night shift in a residence.

• Requires that requests for criminal history record checks be made through OMRDD. If a person has already had a check through OMRDD, providers may be able to use an expedited process without additional fingerprinting if OMRDD criteria are met.

• Provides that OMRDD will make a determination in each case either to issue a denial (or direct the provider to issue a denial) or not to issue a denial (or not direct the provider to issue a denial). The determination process is put on hold for pending felony charges and may be put on hold for misdemeanor charges.

• Establishes standards for OMRDD determinations that replicate the standards in the statute, with certain specified crimes that are presumptive disqualifying crimes. A new section 633.98 lists these crimes.

• Provides that OMRDD will send a summary of the criminal history record information to agencies, which can assist in further decision-making by the agency (such as evaluating whether the applicant provided false information about convictions or pending charges). Approved providers will not receive the summary unless OMRDD is issuing a denial.

• Provides that once a person has had a criminal history record check, OMRDD will let the provider know about future arrests. When they are notified, providers must take appropriate steps to protect people receiving services.

• Requires that providers notify OMRDD when employees and volunteers separate from service, so that OMRDD can remove the name from its database.

• Includes a requirement that agencies and providers of services submit an annual criminal history record check statement to OMRDD.

• Identifies actions that OMRDD may take for non-compliance.

• Makes minor changes in current requirements to assess applicant backgrounds.

Family care homes.

• Includes family care respite providers, and adults living in homes where respite is provided.

• Requires prospective family care providers and people who are to reside in a family care home and who are age 18 years and older to consent to a criminal history record check (except for individuals receiving family care services).

• Requires current family care providers and residents of a family care home to consent to a criminal history record check, at the time of recertification.

• Establishes that checks related to family care homes are requested by the sponsoring agency (DDSOs for most family care homes) and information is received by the sponsoring agency.

• Requires criminal history record checks for current residents at the time of their 18th birthday.

• Requires that a criminal history record check be conducted prior to or shortly after a new adult moves into the family care home. Additional processes are specified to safeguard people receiving services before the results of the criminal history record check are received.

• Requires notifications to OMRDD about residency and provider status so that names can be removed from the OMRDD database.

• Requires additional notifications by family care providers about changes in residents of the family care home and arrests of household members.

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 March 26, 2006.

Text of emergency 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.

Regulatory Impact Statement

1. Statutory authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in Section 13.07 of the New York State Mental Hygiene Law.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in Section 13.09(b) of the Mental Hygiene Law.

c. OMRDD's authority, as stated in Section 16.33 of the Mental Hygiene Law, to require providers of services to request that a criminal history record check be conducted in specified situations.

d. OMRDD's responsibility, pursuant to section 845-b of the Executive Law, to promulgate regulations concerning criminal history record checks.

2. Legislative objectives: These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law. The promulgation of these amendments will enhance the safety of people with developmental disabilities who receive services certified, authorized, approved or funded by OMRDD. Providers of services, with some exceptions, are required to comply, including certified residences and day programs, HCBS waiver services, Medicaid Service Coordination, family support services, and individual support services.

3. Needs and benefits: The new law and these implementing regulations require fingerprinting and criminal history record checks for prospective employees and volunteers, family care providers and adults who are to reside in a family care home.

Based on the results of the criminal history record check, individuals who have been convicted of certain types of crimes will be denied positions which involve regular and substantial unsupervised or unrestricted physical contact with people receiving services. The results of the check will also enable providers (except for "approved providers") to verify criminal history record information provided in applications and make their own determinations about employment suitability, when OMRDD has not directed the denial of the application for the "subject party."

The regulations also include measures that can be used at the discretion of the provider (except for "approved providers") to temporarily approve new applicants while the results of the criminal history record check are pending. During this time, the activities of these employees and volunteers must be monitored. In this manner, new employees can be hired while people receiving services are safeguarded.

The new law and regulations will enhance consumer safety by keeping certain known offenders who have been convicted of certain crimes out of jobs that involve regular and substantial unsupervised or unrestricted physical contact with people receiving services.

The regulations extend requirements to employees of entities under contract with provider agencies.

In addition, the regulations establish mechanisms for some providers of services to become "approved providers." Providers of services that contract with agencies to provide transportation services or staff are required to apply to OMRDD to become "approved providers."

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD estimates that the new requirements will result in approximately 39,305 requests for a criminal history record check on an annual basis. The total annual cost is estimated to be approximately \$6,950,000. This cost includes the costs of the processing fee charged by the Division of Criminal Justice Services, which is \$75 per check, and the related costs, including administrative costs, which are incurred by OMRDD.

OMRDD estimates that approximately 79 percent of the annual aggregate cost will be eligible for Medicaid funding. Therefore, approximately

\$5,500,000 of the total costs will be subject to a 50 percent Federal share, and approximately \$1,452,000 will be borne entirely by the State. The new requirements will therefore result in the expenditure of approximately \$2,750,000 in Federal funds, and approximately \$4,202,000 in costs to the State.

There will be no cost to local governments as a result of the new requirements.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. The new requirements will not generally result in any costs to private regulated parties.

For programs eligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be a state-paid item, so that providers will not be incurring out-of-pocket expenses. These expenses will be considered an allowable cost in the rates and fees established for the programs.

For programs ineligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be borne by the State.

OMRDD will make facilities available for fingerprints to be taken at no out-of-pocket cost to the provider or subject party. However, OMRDD is permitting the provider or subject party to choose to use another entity to take the fingerprints (e.g., a local police department or some voluntary agencies) which may charge for that service. OMRDD is not providing reimbursement for those charges, so this cost must be borne by the provider.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Chapter 575 of the Laws of 2004 requires two forms to be developed for use in the process of requesting criminal history record information. The forms are an informed consent form to be completed by the subject party and the request form to be completed by the authorized party designated by the provider. Temporarily approved employees and volunteers are required to complete an attestation regarding incidents/abuse. Adults who are to reside in a family care home must provide an attestation regarding convictions and pending charges. In addition, other forms will be required by OMRDD, such as a form to designate an authorized party, forms to be completed when someone who has had a criminal history record check is no longer subject to the check, and an annual statement completed by the chief executive officer.

The regulations also contain a requirement to keep a current roster of subject parties.

7. Duplication: The regulatory amendment does not duplicate existing State or federal requirements.

It should be noted that the Office of Mental Health (OMH) has a similar statutory requirement and is promulgating its own regulations on this subject, as required via Chapter 575. Staff from OMRDD and OMH have met to explore opportunities to share fingerprint technology across both Agencies. In terms of technology, OMH and OMRDD hope to integrate systems at a later date to arrive at a single technology solution. In anticipation of that effort, OMRDD and OMH selected the same vendor, which was already under contract to provide a LiveScan solution for a joint project between other state agencies. To facilitate future integration, a common, consistent hardware and software platform was purchased by OMH and OMRDD. In addition, OMRDD has begun efforts with the Fingerprint technology vendor to electronically share between OMRDD and OMH. This would facilitate staff from OMRDD providers being printed at OMH locations, as well as staff from OMH providers being printed at OMRDD locations. OMRDD has had preliminary discussions with the vendor as to the architecture, software and connectivity required to accomplish this goal.

With the release of enhanced LiveScan stations and software, the capability exists to share fingerprints electronically through the NyeNet. As all NYS Agencies utilize the NyeNet, this capability provides for future expansion beyond OMH for State Agencies who also utilize this technology. In addition, this will also allow voluntary agencies that serve both OMH and OMRDD consumers to forward prints to the appropriate State Agency for processing.

OMRDD has also expanded the number of sites available for electronic fingerprinting by implementing fingerprint technology at a limited number of voluntary agencies. The technology utilized is equivalent to that being used at OMRDD DDSOs and increases the number of locations to serve large population centers, as well as more remote locations where there are no DDSO Livescan stations. Support is being provided by OMRDD to ensure the success of these new sites. Additional expansion in the future is

anticipated in response to the numerous requests from voluntary agencies for this capability.

8. Alternatives: OMRDD had considered standards requiring that the oversight provided for temporarily approved provisional employees and volunteers could only be provided by a supervisor or someone with one year's experience. However, OMRDD determined that this requirement might be difficult for some providers to implement and would not enhance consumer safety.

9. Federal standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: OMRDD filed a similar emergency regulation on April 1, 2005 to implement Chapter 575 of the Laws of 2004, which became effective on April 1, 2005. Subsequent emergency regulations were filed June 30, 2005 and September 28, 2005.

OMRDD intends to finalize the proposed amendments within the time frames provided for by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Effect on small business: These regulatory amendments will apply to providers of services that operate all programs certified, authorized, approved or funded through contract by OMRDD, except for the State and some other specified entities. In addition, small businesses providing transportation services or staff that contract with voluntary agencies or NYS are required to comply with provisions related to "approved providers."

OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: The new law and implementing regulations require a variety of compliance activities. These activities include: developing policies and procedures, designating authorized parties, completing criminal history record check request forms, denying employment at the direction of OMRDD, reviewing the summary of criminal history record information, evaluating the safety of consumers when a subject party is subsequently arrested, developing and maintaining records, and notifying OMRDD when employees separate from service.

3. Professional services: No additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no costs to local governments.

For programs eligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be a state-paid item, so that providers will not be incurring out of pocket expenses. These expenses will be considered an allowable cost in the rates and fees established for the programs.

For programs ineligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be borne by the State.

OMRDD will make facilities available for fingerprints to be taken at no out-of-pocket cost to the provider or subject party. However, OMRDD is permitting the provider or subject party to choose to use another entity to take of the fingerprints (e.g., a local police department or some voluntary agencies) which may charge for that service. OMRDD is not providing reimbursement for those charges, so this cost must be borne by the provider.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: These amendments impose no adverse economic impact on local governments. As mentioned in the Regulatory Impact Statement, OMRDD had considered requiring that oversight could only be provided by supervisors or employees with at least one year of experience. OMRDD determined that this requirement might be difficult for some providers to implement and would not enhance consumer safety, and has minimized any related adverse economic impact on providers of services by not incorporating these qualifications for the employees providing oversight.

7. Small business and local government participation: OMRDD convened a Criminal Background Check Advisory Group which included consumer representatives, family members, and provider representatives. The group met on Nov. 8, 2004 and on March 22, 2005. In addition, the

OMRDD Criminal Background Check Regulations Workgroup included provider representatives, and met on four occasions beginning in December, 2004. Presentations were made to various affected groups including the Family Care Advisory Council and the Family Support Services Advisory Council. A series of informational mailings were sent to affected providers beginning in January, 2005. OMRDD also held a series of twelve Executive Overview sessions in February and March in various locations from Buffalo to Long Island and also presented six video conferences to locations throughout the State. A series of training sessions was conducted in September, 2005 related to contractors. OMRDD has also posted relevant information on its website at www.omr.state.ny.us.

OMRDD distributed similar emergency regulations in April, June, and September and posted the regulations on the OMRDD website. No comments were received regarding the emergency regulations.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, recordkeeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). The amendments are concerned with requiring that providers of services request criminal history record checks for prospective employees and volunteers, and that checks are requested for family care providers and adult household members of family care homes. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Job Impact Statement

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and/or employment opportunities. It is expected that the amendments will have a modest positive impact on jobs/employment opportunities because OMRDD anticipates creating new employment opportunities to take fingerprints, to process the results of the criminal history record check, and to make determinations based on the results.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Erie County Motor Vehicle Use Tax

I.D. No. MTV-02-06-00003-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 add section 29.12(bb) to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Erie County motor vehicle use tax.

Purpose: To impose an Erie County motor vehicle use tax.

Text of proposed rule: Section 29.12 is amended by adding a new subdivision (bb) to read as follows:

(bb) Erie County. The Erie County Legislature adopted a resolution on November 15, 2005, to establish an Erie County Motor Vehicle Use Tax. The County Executive of Erie County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after April 1, 2006 and upon the renewal of registrations expiring on and after June 1, 2006. The County Budget Director and Commissioner of Finance is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Erie County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (b) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum

on such motor vehicles weighing 3500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Erie County, except for vehicles used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Supervising Attorney, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871

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

Consensus Rule Making Determination

This proposed regulation would create a new 15 NYCRR Part 29.12(bb) to provide for the collection of an Erie County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On November 15, 2006, the Erie County Legislature enacted a resolution requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this resolution, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, *i.e.*, it must be collected per the mandate of the Erie County resolution. The merits of the tax may have been debated before the Erie County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this rule making, because it will not have any impact on job creation or development in New York State.

Public Service Commission

NOTICE OF ADOPTION

Retail Access Plan by New York State Electric and Gas Corporation

I.D. No. PSC-19-05-00016-A

Filing date: Dec. 27, 2005

Effective date: Dec. 27, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the joint proposal for the purchase of account receivable program.

Statutory authority: Public Service Law, sections 5(1)(b), (2); 65(1), (2), (3); 66(1), (2), (3), (5) and (12)

Subject: Retail access plan filed by New York State Electric & Gas Corporation.

Purpose: To consider New York State Electric and Gas Corporation's retail access plan.

Substance of final rule: The Commission approved the terms and conditions of a joint proposal for the purchase of account receivable program for

New York State Electric & Gas Corporation, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-M-0453SA1)

NOTICE OF ADOPTION

Federal Income Tax Refunded by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-20-05-00034-A

Filing date: Dec. 21, 2005

Effective date: Dec. 21, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order approving Consolidated Edison Company of New York, Inc.'s petition for rehearing of the commission's decision concerning the allocation of a Federal income tax refund of approximately \$121,000,000.

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

Subject: Consolidated Edison Company of New York, Inc.'s accounting for the Federal income tax refund it received.

Purpose: To consider Consolidated Edison Company of New York Inc.'s petition for rehearing.

Substance of final rule: The Commission adopted an order approving Consolidated Edison Company of New York Inc.'s petition for rehearing of the Commission's decision concerning the allocation of a Federal income tax refund, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-M-1148SA1)

NOTICE OF ADOPTION

Water Rates and Charges by James V. Lettiere, Jr. d/b/a Lettiere Water System

I.D. No. PSC-26-05-00011-A

Filing date: Dec. 27, 2005

Effective date: Dec. 27, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order approving the request of James V. Lettiere, Jr. d/b/a Lettiere Water System to make various changes in the rates, charges, rules and regulations contained in its schedule for water service—P.S.C. No. 1.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues.

Substance of final rule: The Commission approved the request of James V. Lettiere, Jr. d/b/a Lettiere Water System for an increase in annual revenues of \$4,855 or 8.7% and directed the company to file, on not less than one day's notice, Second Revised Leaf 12, to become effective January 1, 2006 to its tariff schedule PSC No. 1—Water, setting forth the

approved recommended rates, 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-W-0696SA1)

NOTICE OF ADOPTION

Billing Systems by New York State Electric & Gas Corporation

I.D. No. PSC-32-05-00006-A

Filing date: Dec. 23, 2005

Effective date: Dec. 23, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the proposal filed by New York State Electric & Gas Corporation to make changes in the rates, charges, rules and regulations contained in its schedule for electricity service—P.S.C. Nos. 119, 120 and 121.

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

Subject: Billing systems.

Purpose: To establish an itemized (unbundled) list of electricity charges on bills and establish revised electricity billing procedures to conform to New York State Electric & Gas's new billing system.

Substance of final rule: The Commission approved New York State Electric & Gas Corporation's tariff filing to establish an itemized (unbundled) list of electricity and gas charges on customer bills and establish revised electricity and gas billing procedures to conform to its new billing system subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-0876SA1)

NOTICE OF ADOPTION

Billing Systems by New York State Electric & Gas Corporation

I.D. No. PSC-32-05-00009-A

Filing date: Dec. 23, 2005

Effective date: Dec. 23, 2005

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

Action taken: The commission, on Dec. 14, 2005, approved the proposal filed by New York State Electric & Gas Corporation to make changes in the rates, charges, rules and regulations contained in its schedules for gas service—P.S.C. Nos. 87, 88 and 90.

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

Subject: Billing systems.

Purpose: To establish revised gas billing procedures to conform to New York State Electric & Gas's new billing system.

Substance of final rule: The Commission approved New York State Electric and Gas Corporation's (NYSEG) tariff filing to establish gas billing procedures to conform to the specifications NYSEG's new billing system, and granted a waiver to permit proration of the Gas Supply Charge for the heating load of gas heating customers based on degree days rather

than calendar days, 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-G-0878SA1)

NOTICE OF ADOPTION

Energy Services Company Referral Programs

I.D. No. PSC-32-05-00011-A

Filing date: Dec. 22, 2005

Effective date: Dec. 22, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order regarding a standard-form customer agreement for energy services company referral programs.

Statutory authority: Public Service Law, section 5

Subject: A statewide energy services company referral program.

Purpose: To establish a standardized set of program attributes and guidelines, and a standard-form customer agreement, for an energy services company referral program.

Substance of final rule: The Commission approved a statewide Energy Services Company (ESCO) Referral Program, and a standard-form customer agreement for such program, 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-M-0858SA1)

NOTICE OF ADOPTION

Capital Reserve Fee by Emerald Green Lake Louise Marie Water Company, Inc.

I.D. No. PSC-32-05-00012-A

Filing date: Dec. 23, 2005

Effective date: Dec. 23, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order to set the appropriate level of rates for flat rate residential service provided by Emerald Green Lake Louise Marie Water Company, Inc.

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

Subject: Temporary rates and charge contained in Original Leaf No. 12.

Purpose: To set an appropriate level of permanent rates as per commission order dated July 29, 2004.

Substance of final rule: The Commission adopted an order directing Emerald Green Lake Louise Marie Water Company, Inc. (company) to reduce its annual rate base for water service and put the reduced rate into effect on a permanent basis and directed the company to refund excess earnings over a three-year period, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0349SA3)

NOTICE OF ADOPTION

Competitive Transition Charges by Niagara Mohawk Power Corporation

I.D. No. PSC-33-05-00013-A

Filing date: Dec. 27, 2005

Effective date: Dec. 27, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order regarding a tariff filing by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedules for electric service—P.S.C. Nos. 207 and 214.

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

Subject: Competitive transition charges.

Purpose: To reset competitive transition charges in retail delivery rates and to adjust delivery rates associated with deferral recoveries for calendar years 2006 and 2007.

Substance of final rule: The Commission authorized Niagara Mohawk Power Corporation to reset competitive transition charges and to recover a portion of the amounts in its deferral account for years 2006 and 2007 of its ten year rate plan, 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. (01-M-0075SA25)

NOTICE OF ADOPTION

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

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

Filing date: Dec. 21, 2005

Effective date: Dec. 21, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order approving an extension of the system benefits charge (SBC) and the SBC-funded public benefit programs.

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

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

Purpose: To extend the SBC and SBC-funded public benefit programs.

Substance of final rule: The Commission adopted an order extending the System Benefits Charge and the System Benefits Charge-funded public benefit programs for an additional five years from July 1, 2006 to June 30, 2011, 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-M-0090SA1)

NOTICE OF ADOPTION

Economic Development Programs by Niagara Mohawk Power Corporation

I.D. No. PSC-41-05-00014-A

Filing date: Dec. 27, 2005

Effective date: Dec. 27, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order allowing Niagara Mohawk Power Corporation to continue and expand its low-income rate discount program.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12-b)

Subject: Economic development programs.

Purpose: To approve economic development programs.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's request to continue and expand its low-income rate discount program, 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. (01-M-0075SA26)

NOTICE OF ADOPTION

Allocation of an Income Tax Refunded by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-41-05-00016-A

Filing date: Dec. 21, 2005

Effective date: Dec. 21, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order approving Consolidated Edison Company of New York, Inc.'s petition for allocating a Federal income tax refund of approximately \$8.9 million.

Statutory authority: Public Service Law, sections 5(b) and (c), 65, 66 and 113(2)

Subject: Allocation of an income tax refund received by Consolidated Edison Company of New York, Inc.

Purpose: To allocate an income tax refund among ratepayers and shareholders.

Substance of final rule: The Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s petition for the disposition of an \$8.9 million Federal income tax refund, 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-M-0407SA2)

NOTICE OF ADOPTION

Water Rates and Charges by Wellesley Island Water Corp.

I.D. No. PSC-42-05-00009-A

Filing date: Dec. 23, 2005

Effective date: Dec. 23, 2005

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

Action taken: The commission, on Dec. 14, 2005, adopted an order allowing Wellesley Island Water Corporation to adopt the tariff of The Thousand Islands Club Water Company, Inc. and to authorize a surcharge mechanism to collect \$108,000 for capital improvements.

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

Subject: Water rates and charges.

Purpose: To adopt the tariff of The Thousand Islands Club Water Company, Inc. and assess a surcharge to collect \$108,000 for the capital work including the bypass of the existing water storage tank.

Substance of final rule: The Commission adopted an order filed by Wellesley Island Water Corporation to adopt the tariff of The Thousand Islands Club Water Company, Inc. and authorized the mechanism to collect \$108,000 for capital work, 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-W-1121SA1)

NOTICE OF ADOPTION

Transfer of Ownership Interests between Great Lakes Holding America Company, et al.

I.D. No. PSC-44-05-00025-A

Filing date: Dec. 21, 2005

Effective date: Dec. 21, 2005

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

Action taken: The commission approved the joint petition of Great Lakes Holding America Company, et al., and Carr Street Generation Station, L.P. et al., to transfer ownership interests in a 105 MW combined cycle cogeneration facility located in East Syracuse, NY.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interests in a 105 MW combined cycle electric generation facility located in East Syracuse, NY.

Purpose: To approve the transfer.

Substance of final rule: The Commission adopted an order approving the joint petition of Great Lakes Holding America Company, et al., and Carr Street Generating Station, L.P. et al., to transfer ownership interests in a 105 MW combined cycle cogeneration facility located in East Syracuse, New York, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-E-1217SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Pac-West Telecom, Inc.

I.D. No. PSC-02-06-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Pac-West Telecom, Inc. for approval of an interconnection agreement executed on Nov. 22, 2005.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Pac-West Telecom, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Pac-West Telecom, 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 November 21, 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: 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-C-1544SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and CommPartners, LLC

I.D. No. PSC-02-06-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and CommPartners, LLC for approval of an interconnection agreement executed on Oct. 7, 2005.

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

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

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

Substance of proposed rule: Verizon New York Inc. and CommPartners, LLC have reached a negotiated agreement whereby Verizon New York Inc. and CommPartners, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties

will interconnect their networks lasting until December 7, 2006, or as extended.

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

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

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

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

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

(05-C-1545SA1)

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

Interconnection Agreement between Verizon New York Inc. and Broadwing Communications LLC

I.D. No. PSC-02-06-00008-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 Broadwing Communications LLC for approval of an interconnection agreement executed on Nov. 30, 2005.

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

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

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

Substance of proposed rule: Verizon New York Inc. and Broadwing Communications LLC have reached a negotiated agreement whereby Verizon New York Inc. and Broadwing Communications LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 29, 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.

(05-C-1546SA1)

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

Interconnection Agreement between Frontier Communications of AuSable Valley, Inc. and RCC Atlantic, Inc.

I.D. No. PSC-02-06-00009-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 Frontier

Communications of AuSable Valley, Inc. and RCC Atlantic, Inc. for approval of an interconnection agreement executed on July 28, 2005.

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

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

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

Substance of proposed rule: Frontier Communications of AuSable Valley, Inc. and RCC Atlantic, 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 October 27, 2006, or as extended.

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

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

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

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

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

(05-C-1547SA1)

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

Lightened Regulation by Noble Ellenburg Windpark, LLC

I.D. No. PSC-02-06-00010-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, or modify a request by Noble Ellenburg Windpark, LLC (Noble Ellenburg) for an order providing for lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Request by Noble Ellenburg for lightened regulation as an electric corporation.

Purpose: To consider Noble Ellenburg's request in connection with the construction and operation of an electric generating facility.

Substance of proposed rule: By petition filed December 22, 2005, Noble Ellenburg Windpark, LLC (Noble Ellenburg) seeks an Order from the Commission providing for lightened regulation of it as an electric cooperation selling electricity exclusively at wholesale. Noble Ellenburg's petition also seeks a Certificate of Public Convenience and Necessity authorizing the construction and operation of an electric generating facility in the Town of Ellenburg, Clinton County.

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-E-1633SA1)

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

Lightened Regulation by Noble Clinton Windpark, LLC

I.D. No. PSC-02-06-00011-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, or modify a request by Noble Clinton Windpark, LLC (Noble Clinton) for an order providing for lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Request by Noble Clinton for lightened regulation as an electric corporation.

Purpose: To consider Noble Clinton's request in connection with the construction and operation of an electric generating facility.

Substance of proposed rule: By petition filed December 22, 2005, Noble Clinton Windpark, LLC (Noble Clinton) seeks an Order from the Commission providing for lightened regulation of it as an electric corporation selling electricity exclusively at wholesale. Noble Clinton's petition also seeks a Certificate of Public Convenience and Necessity authorizing the construction and operation of an electric generating facility in the Town of Clinton, Clinton County.

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-E-1634SA1)

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

Franchising Procedures by the Town of Eagle

I.D. No. PSC-02-06-00012-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, a petition by the Town of Eagle (Wyoming County) for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Franchising procedures.

Purpose: To allow the Town of Eagle to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Eagle (Wyoming County) for a waiver of 16 NYCRR Part 894.1 through 894.4(b)(2) pertaining to the franchising process.

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-V-1493SA1)

Racing and Wagering Board

**EMERGENCY
RULE MAKING**

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

I.D. No. RWB-40-05-00001-E

Filing No. 1540

Filing date: Dec. 23, 2005

Effective date: Dec. 23, 2005

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

Action taken: Amendment of sections 4043.2 and 4120.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 902

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

Specific reasons underlying the finding of necessity: Required to conform regulations pertaining to the minimum permissible dosage of furosemide (Lasix/Salix) to national model rules, and to respond to concerns for the welfare of certain race horses who experience negative side effects from the current mandated dosage of five cubic centimeters, but not on the proposed dosage of three cubic centimeters. Since furosemide is a relatively potent diuretic, the low-end dose may be necessary in some horses to prevent dehydration and electrolyte imbalances.

Subject: Minimum dosage level of furosemide (Lasix/Salix) in race horses.

Purpose: To lower the minimum dosage level of furosemide (Lasix/Salix) in race horses from five cubic centimeters to three cubic centimeters in order to promote and protect the health of certain race horses who experience improved medical outcomes from the lower dosage.

Text of emergency rule: Paragraph (6) of subdivision (b) of Section 4043.2 is amended to read as follows:

Administration of furosemide. For the purposes of this rule, furosemide shall be administered only in the following manner: A single intravenous (IV) injection of no less than 150 [250] milligrams (3cc) [(5cc)] and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or corporation during the time period from 4 to 4 ½ hours before the scheduled post time of the race in which the horse is to compete.

To amend paragraph (6) of subdivision (b) of Section 4120.2 to read as follows:

Administration of furosemide. For the purposes of this rule, furosemide shall be administered only in the following manner: A single intravenous (IV) injection of no less than 150 [250] milligrams (3cc) [(5cc)] and no more than 500 milligrams (10cc) on the grounds of a licensed or franchised racing association or corporation during the time period from 4 to 4 ½ hours before the scheduled post time of the race in which the horse is to compete.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of propose rule making, I.D. No. RWB-40-05-00001-P, Issue of October 5, 2005. The emergency rule will expire January 4, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave., Ext., Albany, NY 12206, (518) 453-8460, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel and Breeding Law, sections 101 and 902, authorizes the New York State Racing and Wagering Board ("Board") to prescribe and promulgate regulations to specify the use and testing of drugs and substances in thoroughbred and harness race horses. Racing, Pari-Mutuel and Breeding Law sections 301 and 401 directs the Board to prescribe rules and regulations for the administration of drugs to harness horses and quarterhorses, respectively for the purpose of affecting the speed of such horses.

2. Legislative objectives: To enable the Board to assure the public's confidence and preserve the high degree of integrity of racing at pari-mutuel betting tracks by regulating the use of drugs and medications in race horses so that the horses are fit and healthy, but not running on substances that have the potential to affect the outcome of a given race.

3. Needs and benefits: This rule is necessary to ensure the safe and reliable administration of furosemide to horses involved in pari-mutuel races. This rule will benefit the public by ensuring that in the event furosemide is administered to a race horse, it is done so in a prudent and uniform fashion, which can be verified through post-race medication testing. Section 4043.2 of 9E NYCRR restricts the use of drugs, medications and other substances in race horses, and regulates the administration of furosemide (Lasix/Salix) to such horses. Furosemide is a permissible race day medication in New York and is used to prevent exercise induced pulmonary hemorrhaging (EIPH), a condition that involves respiratory tract bleeding. Furosemide is a diuretic that increases the excretion of sodium, chloride, potassium and water. Excessive diuresis and sweating due to excess dosage may contribute to dehydration, electrolyte depletion, and reduced blood volume, especially with a light horse exercising in a humid environment. Section 4043.2 was adopted in 1982, and since that time, racing jurisdictions across the country have developed and promoted model rules related to the use and control of medications in racing in order to foster uniformity across state jurisdictional lines. Regarding the administration of furosemide, the model rules currently advanced by the Association of Racing Commissioners International, the North American Pari-Mutuel Regulators Association, and the National Thoroughbred Racing Association's Racing Medication and Testing Consortium, set a minimum dosage of the drug at 150 mg (3 cubic centimeters) and a maximum dosage of 500 mg (10 cubic centimeters).

There are three reasons for establishing the minimum furosemide dosage limit at 3 cubic centimeters. First, there needs to be more flexibility in dosage than currently allowed under the 5 cubic centimeter minimum rule due to the fact that horses can have varied reactions to the administration of furosemide. Furosemide is a relatively potent diuretic and a low-end dose may be necessary in some horses to prevent dehydration and electrolyte imbalances. Second, the 3 cubic centimeter minimum is an amount that is still detectable in post-race samples. Such post-race samples are necessary to ensure that trainers have administered furosemide, thereby preventing a trainer of veterinarian from misrepresenting that the drug was administered to the horse and running without furosemide in an attempt to influence performance. Third, the Racing Medication and Testing Consortium based in Lexington, Kentucky has determined that performance cannot be manipulated by altering the dosage in between the 3 cubic centimeter minimum and the 10 cubic centimeter maximum from one race to the next. The Racing Medication and Testing Consortium is a national organization made up of 25 horse racing stakeholder groups in the racing industry and can be contacted through their internet webpage at www.rmtcnet.com.

Furthermore, since this rule was adopted, the veterinary community has recognized that certain horses are adversely affected under the current mandated minimum dosage of 5 cubic centimeters. Qualitative and quantitative response differences are due to inherited characteristics of the race-horses. It has been reported from on-track experience that biological variation shows some horses are at the higher end of the normal response distribution curve, and appear to be predisposed to a relative overdose if given 5 cubic centimeters. Clinical signs of an exaggerated response include muscle pain or cramps, gastrointestinal disturbances, hypotension, and arrhythmias. Equine veterinarians and the scientific community have stated that medical therapy should always be individualized according to

patient response to gain efficacy, and prescribed at the minimal dose needed to maintain that response.

4. Costs:

(i) There are no new or additional costs imposed by this rule upon regulated persons. The rule merely revises an existing rule in regards to allowable dosage of a medication.

(ii) There are no costs imposed upon the Racing and Wagering Board, the state or local government. The rule will be implemented using the Board's existing regulatory and medication testing program. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(iii) The Board has determined that no costs will be imposed based upon the fact that the rule does not create any new duty or obligation, utilizes an existing regulatory framework and medication testing program, and merely makes a quantitative modification to a medication rule.

(iv) Since the Board has determined that based upon the nature and subject of the amendment, the rule will not impose any new costs, the Board did not conduct an analysis of costs.

5. Paperwork: No new paperwork will be required. This rule will be implemented utilizing existing regulations and procedures.

6. Local government mandates: The supervision and regulation of pari-mutuel racing activities are the sole responsibility of the New York State Racing and Wagering Board, and do not involve local governments. Therefore, this rule will not impose any local government mandates.

7. Duplication: Since the New York State Racing and Wagering Board is exclusively responsible for the regulation of pari-mutuel racing activities in New York State, there are no other relevant rules or other legal requirements of the state or federal governments regarding the administration of furosemide to race horses.

8. Alternative approaches: The Board has considered alternative minimum dosages currently adopted in other racing jurisdictions. The Association of Racing Commission International, the NAPRA and the RMTTC, all of which are nationally recognized racing organizations, also considered alternative minimum dosages. The consensus among these groups supports a uniform dosage range between 3 cc minimum and 10 cc maximum. This range has been advocated by New York throughout the uniform model rule making process nationally. Currently, there is no equivalent to furosemide in its use as a prophylaxis to EIPH in race horse.

9. Federal standards: There are no federal standards applicable to the subject area of state-regulated pari-mutuel racing activities.

10. Compliance schedule: This rule will become effective upon filing with the New York State Department of State as an emergency rulemaking.

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

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

Department of State

EMERGENCY RULE MAKING

Manufacturer's and Installer's Warranty Seals

I.D. No. DOS-02-06-00004-E

Filing No. 1537

Filing date: Dec. 22, 2005

Effective date: Dec. 22, 2005

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

Action taken: Addition of Part 1210 to Title 19 NYCRR.

Statutory authority: L. 2005, ch. 729, section 4

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve the general welfare and because time is of the essence. This rule implements the provisions of new article 21-B (Manufactured Homes) of the Executive Law, which was added by chapter 729 of the Laws of 2005, and which will become effective on January 1, 2006. This rule establishes procedures for obtaining the manufacturer's warranty seals and installer's warranty seals required by article 21-B, establishes standards regarding the initial training, certification, and continuing education of manufacturers, retailers, installers, and mechanics of manufactured homes, establishes procedures for the resolution of disputes relating to manufactured homes, and otherwise implements the provisions article 21-B of the Executive Law. Adoption of this rule on an emergency basis preserves the general welfare by permitting the continuation of all aspects of the manufactured housing industry in this State without interruption.

Subject: Obtaining and attaching manufacturer's warranty seals and installer's warranty seals to manufactured homes; certification of manufacturers, retailers, installers and mechanics of manufactured homes; and administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes.

Purpose: To implement art. 21-B of the Executive Law, as added by chapter 729 of the Laws of 2005.

Substance of emergency rule: Chapter 729 of the Laws of 2005 added Article 21-B (Manufactured Homes) of the Executive Law. This emergency rule has been adopted to implement the provisions of the new Article 21-B. This rule establishes procedures for obtaining and the manufacturer's warranty seals and installer's warranty seals which must be attached to manufactured homes. This rule establishes the qualifications for certification of manufacturers, retailers, installers, and mechanics of manufactured homes. This rule establishes administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes. This rule also establishes fees relating to warranty seals, certifications, approval of instructional providers and approval of courses.

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 March 21, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: jball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

The statutory authority for this rule is section 4 of Chapter 729 of the Laws of 2005, which provides that the Department of State is authorized and empowered to take such steps, including the promulgation of rules and regulations, as may be necessary for the proper implementation of Article 21-B (Manufactured Homes) of the Executive Law on January 1, 2006. Article 21-B (Manufactured Homes) of the Executive Law was added by Chapter 729 of the Laws of 2005, and will take effect on January 1, 2006. This rule implements Article 21-B.

2. LEGISLATIVE OBJECTIVES.

Article 21-B of the Executive Law was enacted for the purpose of ensuring that manufactured homes are installed and serviced in a profes-

sional manner, ensuring that disputes regarding the manufacture, installation, and servicing of manufactured homes be resolved fairly and expeditiously, providing a degree of security for the payment of legitimate claims, and otherwise implementing the provisions of the federal Manufactured Housing Improvement Act of 2000 (PL 106-569). The Manufactured Housing Improvement Act of 2000 requires States to enact requirements for the licensing or certification of installers of manufactured homes, training, dispute resolution, and other matters relating to manufactured homes. Article 21-B of the Executive Law requires manufacturers and installers to attach warranty seals to manufactured homes installed in this State, requires manufacturers, retailers, installers, and mechanics to be certified by the Department of State, and requires the Department of State to provide administrative procedures for the resolution of disputes.

The rule now being adopted by the Department of State establishes procedures for obtaining and attaching the warranty seals required by Article 21-B; establishes standards for certification as a manufacturer, retailer, installer, or mechanic of manufactured homes; establishes administrative dispute resolution procedures; and establishes fees.

3. NEEDS AND BENEFITS.

This rule establishes procedures regarding manufacturer's and installer's warranty seals. These procedures are necessary to implement the warranty seal provisions of Article 21-B. These provisions permit manufacturers and installers to obtain the warranty seals, specify the manner in which and place where the warranty seals are to be attached, establish the fees to be paid by manufacturers and installers for obtaining the warranty seals, and establish the maximum fees that can be charged by manufacturers and installers for attaching the warranty seals. This rule establishes qualifications and procedures for obtaining certification as a manufacturer, retailer, installer, or mechanic. These qualifications and procedures are necessary to implement the certification provisions of Article 21-B. The qualifications established by this rule include minimum experience and education requirements for retailers, installers, and mechanics; initial training requirements for installers and mechanics; and continuing education requirements for all classes of certificate holders. By requiring certification, specifying minimum qualifications for certification, and specifying continuing education requirements, this rule will benefit purchasers of manufactured homes by helping to ensure that homes will be installed in a professional manner. In addition, this rule requires each certificate holder to file a surety bond (or to be covered by his or her employer's surety bond); this will benefit owners of manufactured homes by providing a measure of assurance that a legitimate claim relating to the delivered condition, installation, service, or construction of a manufactured home will be satisfied.

The rule establishes procedures for the resolution of disputes involving the delivered condition, installation, service or construction of manufactured homes. These procedures are necessary to implement the dispute resolution provisions of Article 21-B. The procedures established by this rule include an informal dispute resolution process and an administrative hearing process for disputes which cannot be resolved informally. These procedures will benefit manufacturers, retailers, installers, mechanics, lending entities, and manufactured home owners by permitting expeditious and cost-effective resolution of disputes.

The rule establishes fees, as required by Article 21-B. The fees will defray the cost of administering Article 21-B.

4. COSTS.

a. Cost to regulated parties for the implementation of and continuing compliance with this rule.

This rule will require manufacturers and installers to obtain warranty seals to be attached to manufactured homes. Manufacturers will pay \$125 per seal, and installers will pay \$35 per seal if they request 5 or fewer, or \$25 per seal if they request 6 or more. This rule will also permit manufacturers and installers to charge purchasers a fee for attaching such seals. The fee that manufacturers and installers will be permitted to charge for attaching the seals will cover their cost of obtaining the seals and provide an additional sum, between \$15 and \$25, to cover anticipated administrative expenses.

This rule will require manufacturers, retailers, installers, and mechanics to be certified by the Department of State. The fee for certification for a period of 2 years will be \$200 for manufacturers, retailers, and installers, and \$100 for mechanics.

A certified party must also file a surety bond with the Department of State (provided, however, that if a certified person is covered by the surety bond filed by his or her employer, he or she will not be required to file a surety bond). Based on discussions with a representative of the insurance industry, the Department of State estimates that the premiums to be paid

for surety bonds having terms of 2 years will be between \$800 and \$1,200 for the \$50,000 surety bond to be filed by a manufacturer, between \$400 and \$600 for the \$25,000 surety bond to be filed by a retailer, approximately \$200 for the \$10,000 surety bond to be filed by an installer, and approximately \$200 for the \$5,000 surety bond to be filed by a mechanic.

A person certified as an installer will be required to complete 16 hours of initial training prior to certification, and a business entity certified as an installer will be required to employ at least one person who has completed such initial training and who is certified by the Department of State. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department of State estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$200 and \$250.

A person certified as a mechanic will be required to complete 6 hours of initial training prior to certification, and a business entity certified as a mechanic will be required to employ at least one person who has completed such initial training and who is certified by the Department of State. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department of State estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$100 and \$125.

A person certified as a manufacturer, retailer, installer, or mechanic will be required to complete 3 hours of continuing education every 2 years, and a business entity certified as a manufacturer, retailer, installer, or mechanic will be required to employ at least one person who has completed such continuing education and who is certified by the Department of State. Based on discussions with a representative of a private trade organization that currently provides instructional courses in the manufactured housing industry, the Department of State estimates that the fees that will be charged by instructional providers who provide such continuing education will be approximately \$50.

A private trade association or other entity applying for approval as an instructional provider will be required to pay \$100 once every 2 years. An approved instructional provider applying for approval of a course it wishes to provide will be required to pay \$50 plus \$5 for each student who takes the course.

b. Costs to the Department of State:

The Department of State anticipates that the cost to the Department of State to administer the programs contemplated by Article 21-B will be approximately \$490,000 per year. Those costs include the costs associated with the 5 employees that the Department of State anticipates it will need to administer the programs. The costs of administering Article 21-B are largely attributed to the statute and not significantly to this implementing rule.

c. Costs to other State agencies:

This rule does not impose any costs on other State agencies.

d. Cost to local governments:

This rule does not impose any costs on local governments.

5. PAPERWORK.

Under this rule, manufacturers and installers will be required to file written requests for warranty seals; installers will be required to file quarterly reports of installations performed; manufacturers, retailers, installers, and mechanics will be required to file written applications for certification and for periodic renewal of certification; a private trade organization or other entity wishing to provide initial training or continuing education will be required to file a written application for approval as an instructional provider and for periodic renewals of such approval; approved instructional providers will be required to file written applications for approval or courses to be provided; and instructional providers will be required to file reports of each course presented. It is the intention of the Department of State to develop and implement request, application, and report forms, to post such forms on the Department of State's web page, and otherwise to make such forms freely available to regulated parties.

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any duty on local governments.

7. DUPLICATION.

The Department of State is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

8. ALTERNATIVES.

The Department of State has not considered any significant alternatives to this rule.

9. FEDERAL STANDARDS.

The Department of State is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE.

Article 21-B becomes effective on January 1, 2006, and many of its provisions will take effect on that date. However, Article 21-B does not require manufacturers, retailers, installers, and mechanics to be certified until July 1, 2006.

This rule can be complied with immediately. This rule permits manufacturers and installers to request warranty seals prior to July 1, 2006 even if they are not yet certified. Therefore, a manufacturer or installer need not wait until it has applied for and obtained certification before it can request warranty seals. This rule also establishes the qualifications for certification; these provisions provide regulated parties with the information necessary to apply for and obtain the required certification prior to July 1, 2006. This rule also includes transitional provisions, as required by section 3 of Chapter 729 of the Laws of 2005, that will permit installers and mechanics to obtain temporary certification prior to completion of the initial training requirements that otherwise would apply.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule applies to all persons and all business entities who manufacture, sell, install, or service manufactured homes, including all small businesses that manufacture, sell, install, or service manufactured homes. The Department of State estimates that this rule will apply to approximately 268 small businesses engaged in the retail selling of manufactured homes and approximately 100 small businesses engaged in the installation of manufactured homes for buyers. This rule will also apply to small businesses that "service" (*i.e.*, modify, alter or repair the structural systems of) manufactured homes; however, the Department of State is unable to determine at this time the number of small businesses that service manufactured homes. This rule will also apply to any small business that manufactures or produces manufactured homes. The Department of State estimates that this rule will apply to approximately 36 manufacturers; however, the Department of State believes that few, if any, of such manufacturers are small businesses.

This rule does not apply directly to local governments. However, this rule does specify that no certificate of occupancy shall be issued for any manufactured home installed on or after January 1, 2006 unless the required warranty seals have been attached to the home. This provision will affect every local government that issues certificates of occupancy.

2. COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacturer's warranty seal is not required.) The seals are to be requested in writing, on a form to be supplied by or otherwise acceptable to the Department of State.

This rule requires installers to file quarterly reports with the Department of State specifying, with respect to each manufactured home installed by the installer during the reporting period covered by such report, the location where such manufactured home was installed, the owner of such manufactured home at the time of installation, the type or model of such manufactured home, the manufacturer of such manufactured home; and the written certification of the installer that the installation of such manufactured home meets the standards of the New York State Uniform Fire Prevention and Building Code. The quarterly reports are to be filed on forms provided by or otherwise acceptable to the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. Applications for certification are to be in writing, on forms provided by or otherwise acceptable to the Department of State. The qualifications for obtaining and retaining certification are summarized as follows:

(a) Each certificate holder must file a surety bond, or be covered by a surety bond filed by the certificate holder's employer.

(b) A certified manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes.

(c) A person certified as a retailer, installer, or mechanic must have at least a high school education, or the equivalent. A business entity certified as a retailer, installer, or mechanic must employ at least one person who has at least a high school education, or the equivalent, and who is certified by the Department of State.

(d) A person certified as a retailer, installer, or mechanic must satisfy specified experience requirements prior to certification. A business entity certified as a retailer, installer, or mechanic must employ at least one person who satisfies the specified experience requirements and who is certified by the Department of State.

(e) A person certified as an installer or as a mechanic must satisfy specified initial training requirements prior to certification. (The rule includes transitional provisions which will permit a person who has not completed the initial training, but who otherwise qualifies for certification as an installer or mechanic, to obtain temporary certification, to be valid for a period of one year, prior to completion of the initial training.) A business entity certified as an installer or mechanic must employ at least one person who has satisfied the specified initial training requirements and who is certified by the Department of State.

(f) A person certified as an installer or mechanic must pass a written examination prior to certification. (This rule includes reciprocity provisions, which permit a person certified or licensed as an installer or mechanic by another State to obtain certification in this State without taking the written examination, provided that such person satisfies all other requirements for certification in this State.) A business entity certified as an installer or mechanic must employ at least one person who has passed the written examination and who is certified by the Department of State.

(g) A person certified as a manufacturer, retailer, installer, or mechanic must satisfy specified continuing education requirements every 2 years. A business entity certified as a manufacturer, retailer, installer, or mechanic must employ at least one person who satisfies the specified continuing education requirements and who is certified by the Department of State.

(h) Each certified business entity must employ at least one certified person.

(i) At least one person certified by the Department of State as an installer must be present at the home site during the installation or a manufactured home.

(j) At least one person certified by the Department of State as a mechanic must be present at the home site during the performance of any service.

(k) Any person or business entity owning or operating more than one manufacturing plant that manufactures, delivers, or sells manufactured homes in the State of New York shall be required to obtain a separate certification as a manufacturer for each such manufacturing plant.

(l) Any person or business entity owning or operating more than one retail sales location in the State of New York shall be required to obtain a separate certification as a retailer for each such retail sales location.

This rule requires any private trade association or other entity wishing to provide initial training courses or continuing education courses to apply to the Department of State for approval as an instructional provider. This rule requires approved instructional providers to apply to the Department of State for approval of each course it proposes to provide. All applications are to be submitted in writing, on forms provided by or otherwise acceptable to the Department of State. Instructional providers are required to keep records showing the date and location of each course presentation and the names and addresses of each student taking the course, and to file reports showing such information with the Department of State.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal required by this rule has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule), the installer's warranty seal required by this section has been attached to such manufactured home, and the governmental agency or department or other person or entity responsible for issuing certificates of occupancy has independently determined that such manufactured home has been installed in accordance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code.

3. PROFESSIONAL SERVICES.

Small businesses are not likely to require professional services in order to comply with the reporting, recordkeeping and other requirements of this rule.

Local governments are not likely to require professional services in order to comply with the requirements of this rule.

4. COMPLIANCE COSTS.

The cost of obtaining manufacturer's warranty seals will be \$125 per seal. A manufacturer will be permitted to charge up to \$150 for attaching each seal.

The cost of obtaining an installer's warranty seal will be \$35 per seal (if fewer than 6 are requested at one time) or \$25 per seal (if 6 or more are requested at one time). An installer will be permitted to charge up to \$50 for attaching each seal.

The initial cost of obtaining certification as a manufacturer will be \$200 for certification for 2 years, plus the cost of the surety bond. The Department of State estimates that the premium for a \$50,000 bond will be approximately \$800 to \$1,200 for 2 years. Therefore, the Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between \$1,000 and \$1,400. A certified manufacturer will be required to renew such certification every 2 years, to renew such surety bond every 2 years, and to take 3 hours of continuing education courses every 2 years. The Department of State estimates that the fee to be paid to the instructional provider for such continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as a manufacturer will be between \$1,050 and \$1,450 every 2 years, or between \$525 and \$725 per year.

The initial cost of obtaining certification as a retailer will be \$200 for certification for 2 years, plus the cost of the surety bond. The Department of State estimates that the premium for a \$25,000 bond will be approximately \$400 to \$600 for 2 years. Therefore, the Department of State estimates that the initial cost of obtaining certification as a retailer will be between \$600 and \$800. A certified retailer will be required to renew such certification every 2 years, to renew such surety bond every 2 years, and to take 3 hours of continuing education courses every 2 years. The Department of State estimates that the fee to be paid to the instructional provider for such continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as a retailer will be between \$650 and \$850 every 2 years, or between \$325 and \$425 per year.

The initial cost of obtaining certification as an installer will be \$200 for certification for 2 years, plus the cost of the surety bond, plus the cost of the required initial training. The Department of State estimates that the premium for a \$10,000 bond will be approximately \$200 for 2 years, and the Department of State estimates that the fee to be paid to the instructional provider for the required initial training courses will be between \$200 and \$250. Therefore, the Department of State estimates that the initial cost of obtaining certification as an installer will be between \$600 and \$650. A certified installer will be required to renew such certification every 2 years, to renew such surety bond every 2 years, and to take 3 hours of continuing education courses every 2 years. The Department of State estimates that the fee to be paid to the instructional provider for such continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as an installer will be \$450 every 2 years, or \$225 per year.

The initial cost of obtaining certification as a mechanic will be \$100 for certification for 2 years, plus the cost of the surety bond, plus the cost of the required initial training. The Department of State estimates that the premium for a \$5,000 bond will be approximately \$200 for 2 years, and the Department of State estimates that the fee to be paid to the instructional provider for the required initial training courses will be between \$100 and \$125. Therefore, the Department of State estimates that the initial cost of obtaining certification as a mechanic will be between \$400 and \$425. A certified mechanic will be required to renew such certification every 2 years, to renew such surety bond every 2 years, and to take 3 hours of continuing education courses every 2 years. The Department of State estimates that the fee to be paid to the instructional provider for such continuing education courses will be approximately \$50. Therefore, the Department of State estimates that the cost of maintaining certification as a mechanic will be \$350 every 2 years, or \$175 per year.

The foregoing compliance costs are not likely to vary significantly by reason of the size of the business. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the premium for a surety bond may be dependent, in part, on the size of the business for which the bond is issued.

Local governments are not likely to incur any costs in complying with this rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State will print the warranty seals required by this rule. The Department of State intends to prepare the application forms that will be required by this rule, and to posts such forms on the Department's web page and otherwise make such forms freely available to the regulated parties. The Department of State believes that it will be economically and technologically feasible for small businesses to comply with this rule.

6. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the size of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for small businesses than for it will be for larger businesses. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries.

The Department of State will contact local code enforcement officials to inform them of Article 21-B and this rule, and the impact of Article 21-B and this rule on the installation of manufactured homes in this State.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements Article 21-B of the Executive Law. Both Article 21-B and this rule apply uniformly throughout the State, including all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The reporting, recordkeeping and other compliance requirements of this rule are described in paragraph 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Professional services are not likely to be required in rural areas in order to comply with such requirements.

3. COSTS.

An estimate of the initial capital costs and an estimate of the annual cost of complying with this rule are set forth in paragraph 4 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Such costs are not likely to vary significantly for different types of public and private entities in rural areas. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the premium for a surety bond may be dependent, in part, on the location of the business for which the bond is issued.

4. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the location of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for regulated parties located in rural areas than for it will be for regulated parties located in suburban or metropolitan areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries, including representatives of those industries located in rural areas.

The Department of State will contact local code enforcement officials, including local code enforcement officials located in rural areas, to inform them of Article 21-B and this rule, and the impact of Article 21-B and this rule on the installation of manufactured homes in this State.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule establishes the procedures for obtaining and attaching the manufacturer's warranty seal and installer's warranty seal required by Article 21-B of the Executive Law, the fees to be paid by the manufacturer and installer to obtain the warranty seals, and the maximum fees that may be charged to the customer for attaching the warranty seals to the manufactured home. The maximum fee that may be charged to a customer for attaching the required seals will be \$200. The typical delivered and installed cost of a manufactured home in this State is approximately \$70,000. Therefore, the cost of the warranty seals will be less than 0.3% of the cost of a home, and the statutory requirement that warranty seals be attached, as implemented by this rule, should not have a substantial impact on the

market for manufactured homes or on jobs or employment opportunities in the manufactured home industry.

This rule also establishes procedures for determination of certain disputes regarding manufactured homes by the Department of State. Article 21-B directs the Department of State to establish such procedures. It is anticipated that by providing for administrative determination of disputes, this rule will reduce the litigation expenses for all parties involved in such disputes. Therefore, the statutory requirement that the Department of State provide for administrative resolution of disputes, as implemented by this rule, should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

This rule also established the qualifications for obtaining certification as a manufacturer, retailer, installer, or mechanic of manufactured homes. The cost of obtaining a certification will be \$100 per year in the case of a manufacturer, retailer, and installer, and \$50 per year in the case of a mechanic. In addition, installers and mechanics may be required to pay fees to the instructional providers who present the initial training courses required for certification, and all certificate holders may be required to pay fees to the instructional providers who present the continuing education courses required to maintain certified status. Finally, all certificate holders will be required to file a surety bond, and will be required to pay premiums to the insurance companies that issue such bonds. However, it is anticipated that the total cost of certification, instruction, and bonding will be relatively modest, particularly when these costs are spread over all the units manufactured by a certified manufacturer, sold by a certified retailer, installed by a certified installer, or serviced by a certified mechanic, during the course of a year. Therefore, the statutorily mandated certification process, as implemented by this rule, should not add a significant sum to the total cost of a manufactured home in this State, and should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

Thruway Authority

NOTICE OF ADOPTION**One-Way Traffic; Median Strips; Passing**

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

Filing No. 1535

Filing date: Dec. 21, 2005

Effective date: Jan. 11, 2006

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

Action taken: Amendment of sections 103.3, 103.4 and 103.6 of Title 21 NYCRR.

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

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

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

Text or summary was published in the notice of proposed rule making, I.D. No. THR-35-05-00001-P, Issue of August 31, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.