

# RULE MAKING ACTIVITIES

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

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

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

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## Banking Department

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### EMERGENCY RULE MAKING

#### Licensed Cashers of Checks

**I.D. No.** BNK-04-06-00001-E

**Filing No.** 21

**Filing date:** Jan. 5, 2006

**Effective date:** Jan. 9, 2006

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

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

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

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

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

**Subject:** Licensed cashers of checks.

**Purpose:** To regulate commercial check cashing.

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

#### Part 400

#### LICENSED CASHERS OF CHECKS

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

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

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

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

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

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

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

(a) Every licensee shall:

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

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

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

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

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

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

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

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

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

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

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

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

##### 2. Legislative objectives:

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

##### 3. Needs and benefits:

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

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

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

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

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

New Section 400.1(g) relates to the requirement in Banking Law Section 369 that no license shall be issued for a location which is closer than three tenths of a mile from an existing licensee. Chapter 432 amended Section 369 to make it clear that the Superintendent may permit a location to be licensed which is closer than three tenths of a mile from an existing licensee, so long as the newly licensed location is a "restricted location" as described in subsection 1 of Section 369 of the Banking Law – that is, a location which is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons.

New Section 400.1(g) makes it clear that this exemption will not be affected by a change of control of such restricted location, provided that the licensee continues to engage only in commercial check cashing.

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

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

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

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

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

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

#### 4. Costs:

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

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

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

#### 5. Local government mandates:

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

#### 6. Paperwork:

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

#### 7. Duplication:

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

#### 8. Alternative approaches:

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

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

#### 9. Federal standards:

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

#### 10. Compliance schedule:

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

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule

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

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

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

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

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

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

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

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

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

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

## 2. Compliance Requirements

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

## 3. Professional Services

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

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

## 4. Compliance Costs

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

## 5. Economic and Technological Feasibility

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

## 6. Minimizing Adverse Impact

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

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

## 7. Small Business and Local Government Participation

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

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

## Rural Area Flexibility Analysis

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

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

any additional regulatory requirements upon private entities in rural communities.

**Job Impact Statement**

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

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

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

for the renewal of a provisional certificate in the administrative and supervisory service submitted to the commissioner after September 1, 2007.

**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 Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner of Education to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by establishing requirements for the renewal of provisional certificates in the pupil personnel service and administrative and supervisory service, authorizing service in the public schools of New York State.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to restore the opportunity for candidates to renew expired provisional certificates in the pupil personnel service and in the title school administrator and supervisor (authorizing service as a school building principal) and establish requirements for the renewal of these certificates. The amendment will provide individuals holding such expired provisional certificates a one-time opportunity to renew these certificates for a five-year term to enable them to meet the experience requirement for the permanent certificate. The opportunity to renew provisional certificates was removed effective February 2, 2004. The Department believes that this opportunity should be restored because otherwise these individuals have no way to qualify for employment in the public schools for the purpose of meeting the experience requirement for the permanent certificate.

Except for school counselors, candidates will be required to have completed all requirements for the permanent certificate, except the experience requirement, before the renewed provisional certificate will be issued. For school counselors, the renewed provisional certificate will enable the candidate to complete both the experience requirement and additional graduate study required for the permanent certificate. For the permanent certificate in this title, the candidate must complete two years of experience and 30 semester hours of graduate study in the field of school counseling, above the 30 semester hours required for the provisional certificate. Because of the extensive education requirement, the candidate will be permitted to obtain a renewal of the provisional certificate to meet either the education or experience requirement for the permanent certificate, or both.

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## Education Department

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

**Renewal of a Provisional Certificate**

**I.D. No.** EDU-04-06-00008-P

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

**Proposed action:** Amendment of section 80-1.7 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 305(1) and (7); 3001(2); 3004(1); 3006(1)(b); and 3009(1)

**Subject:** Requirements for the renewal of provisional certificates in the pupil personnel service and administrative and supervisory service.

**Purpose:** To restore the opportunity for candidates to renew expired provisional certificates in the pupil personnel service and in the title school administrator and supervisor (authorizing service as a school building principal) and establish requirements for the renewal of these certificates.

**Text of proposed rule:** Section 80-1.7 of the Regulations of the Commissioner of Education is repealed and a new section 80-1.7 is added, effective April 13, 2006, as follows:

*80-1.7 Renewal of a provisional certificate.*

(a) (1) *By application to the commissioner by the holder of the certificate, the commissioner may renew an expired provisional certificate in the administrative and supervisory service or the pupil personnel service on one occasion only for a period of five years from the date the renewed provisional certificate is issued, provided that the candidate has met all requirements for the permanent certificate in the certificate title of the provisional certificate, except the experience requirement. The requirements of this paragraph shall not apply to the renewal of a provisional certificate in the title school counselor. The requirements of paragraph (2) of this subdivision shall apply to the renewal of a provisional certificate in the title school counselor.*

(2) *By application of the holder of the certificate, the commissioner may renew an expired provisional certificate in the title school counselor on one occasion only for a period of five years from the date the renewed provisional certificate is issued in order to permit the candidate to meet the experience and/or education requirement for the permanent certificate in the title school counselor.*

(b) *The requirements for the permanent certificate shall be those in effect at the time the renewed provisional certificate is issued.*

(c) *The commissioner shall not renew a provisional certificate in the classroom teaching service. The commissioner shall not accept an appli-*

The amendment will also address regional shortages of school principals and pupil personnel professionals by expanding the pool of qualified candidates for such positions. A shortage of school administrators is evidenced by the fact that each year the State Education Department issues about 65 permits to allow retired school administrators to return to employment in the public schools. Also, in 2004-2005, the Department issued 454 permits to retirees for permits to serve as school psychologists, up from 359 the previous year, evidencing a shortage in this pupil personnel area. There appears to be a shortage of qualified personnel to provide counseling services to students in New York City public schools (e.g., school psychologists, school counselors, and school social workers). In 2005, the New York City School District, reported that 71,898 students were receiving counseling services, but that an additional 17,307 students were on waiting lists for these services.

The opportunity to renew provisional certificates in the title school administrator and supervisor will sunset on September 1, 2007. After this date, candidates will be subject to the new requirements for certificates in the educational leadership service.

#### 4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government. The amendment prescribes certification requirements pertaining to individuals. The amendment does not impose requirements upon local governments, including school districts and Boards of Cooperative Educational Services (BOCES).

(c) Cost to private regulated parties. The amendment does not impose any additional costs on regulated parties. Candidates will have to pay the existing application fee of \$100 for the renewed provisional certificate.

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

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

#### 6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements above and beyond the existing application requirements for a certificate.

#### 7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

#### 8. ALTERNATIVES:

The Department considered alternative requirements for the renewal of the provisional certificate. A proposal was considered to permit renewal of provisional certificates upon successful completion of the New York State Certification Examination in the liberal arts and science test and written assessment of teaching skills. However, passing these examinations is not required for certification in the administrative and supervisory service or pupil personnel service. Consequently, the Department determined not to include this examination requirement.

#### 9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment, the renewal of provisional certificates authorizing employment in the public schools as administrators and pupil personnel professionals.

#### 10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its stated effective date. The amendment provides a new opportunity for holders of expired provisional certificates to renew them. Because of the nature of the amendment, it is unnecessary to afford regulated parties additional time to comply.

#### **Regulatory Flexibility Analysis**

The proposed amendment concerns requirements that individuals must meet to have their expired provisional certificates in the pupil personnel and administrative and supervisory service renewed. The amendment pertains to certification requirements applicable to individuals. It does not regulate small businesses or local governments, including school districts or boards of cooperative educational services (BOCES).

The amendment will not impose any adverse economic impact, record-keeping, reporting, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

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

##### 1. Types and estimate of number of rural areas:

The proposed amendment will affect holders of provisional certificates in the title school administrator and supervisor (authorizing service as a school building principal) and pupil personnel service titles in all areas of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed amendment restores the opportunity for candidates to renew expired provisional certificates in the pupil personnel service and in the title school administrator and supervisor (authorizing service as a school building principal) and establishes requirements for the renewal of these certificates.

The amendment will provide individuals holding expired provisional certificates in the pupil personnel service and administrative and supervisory service a one-time opportunity to renew these certificates for a five-year term to enable them to be employed in the public schools while completing the requirements for the permanent certificate. Except for school counselors, the amendment will require the candidate to have completed all requirements for the permanent certificate, except the experience requirement, in order to be issued a renewed provisional certificate. The renewed provisional certificate will permit candidates to obtain relevant employment in the public schools to meet the experience requirement for the permanent certificate. For school counselors, the renewed provisional certificate will enable the candidate to meet both the experience and education requirements for the permanent certificate.

The amendment establishes a sunset provision for the renewal of a provisional certificate in the administrative and supervisory service. The State Education Department will not accept an application for the renewal of a provisional certificate in the administrative and supervisory service submitted after September 1, 2007.

The proposed amendment does not impose any additional paperwork requirements above and beyond the existing application requirements for certification. The amendment does not impose recordkeeping requirements or require applicants for certificates to retain professional services in order to comply.

##### 3. Costs:

The amendment does not impose any costs on regulated parties, over and above existing application costs for certification. The application fee for a renewal of a provisional certificate is \$100. The amendment will not impose any capital costs on regulated parties.

##### 4. Minimizing adverse impact:

The amendment establishes requirements for the renewal of provisional certificates in the pupil personnel service and administrative and supervisory service. These requirements relate to certification requirements to provide professional services in the public schools of New York State. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard helps to ensure the quality of administrators and pupil personnel staff in the public schools throughout the State.

##### 5. Rural area participation:

Comments on a draft of the proposed amendment were solicited from the Rural Education Advisory Committee. This is a group that advises the Department on issues of concern to rural areas of New York State and includes representatives of school districts located in rural areas of the State. The Department also requested comments on the proposed amendment from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and Boards of Cooperative Educational Services (BOCES). Comments were also solicited from State's district superintendents and school superintendents, representing BOCES and school districts across the State, including rural areas. In addition, comments were solicited from all postsecondary institutions in the State that offer programs preparing teachers, including institutions located in rural areas of New York State.

#### **Job Impact Statement**

The purpose of the proposed amendment is to restore the opportunity for candidates to renew expired provisional certificates in the pupil personnel service and in the title school administrator and supervisor (authorizing service as a school building principal) and establish requirements for the

renewal of these certificates. The amendment will provide individuals holding such expired provisional certificates a one-time opportunity to renew these certificates for a five-year term to enable them to meet the experience requirement for the permanent certificate.

The amendment will have the effect of increasing the pool of candidates qualified for positions as school building principals and pupil personnel professionals in the State's public schools. However, the amendment will have no effect on the number of jobs or the number of employment opportunities for school building principals and pupil personnel professionals in New York State public schools.

Because it is evident from the nature of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative 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

### Certification of Teaching Assistants

**I.D. No.** EDU-04-06-00009-P

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

**Proposed action:** Amendment of section 80-5.6(b)(2)(ii) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 305(1), (2) and (7); 3001(2); 3004(1); 3006(1)(b) and 3009(1) and (2)

**Subject:** Requirements for the certification of teaching assistants.

**Purpose:** To establish requirements for the certification of teaching assistants for service in the State's public schools: extending the time validity of the level I and II teaching assistant certificates, specifying additional requirements for the renewal of the level I teaching assistant certificate, requiring additional collegiate study for the level II teaching assistant certificate, and clarifying coursework requirements.

**Text of proposed rule:** 1. Subclause (2) of clause (a) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective April 13, 2006, as follows:

(2) Time validity. The certificate shall be valid for [one year] *three years* from its effective date [and shall not be renewable, unless the certificate holder submits adequate evidence of the need to renew the certificate for one additional year to meet the experience requirement for the level II teaching assistant certificate]. *The certificate shall be renewable on one occasion only for three years, except for a certificate that already has been renewed once for a one-year term which may be renewed on one additional occasion only for three years, provided that for a certificate to be renewed the candidate must submit to the department adequate evidence substantiating that the candidate has a commitment for employment in a teaching assistant position under the level I teaching assistant certificate.*

2. Item (i) of subclause (1) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective April 13, 2006, as follows:

(i) Education. The candidate shall have attained a high school diploma or its equivalent [and] . *In addition, the candidate who applies for the certificate on or before February 1, 2007, shall be required to have successfully completed a total of at least six semester hours of collegiate study acceptable toward meeting the requirements for [a] an associate or baccalaureate degree, and the candidate who applies for the certificate after February 1, 2007 shall be required to have successfully completed a total of at least nine semester hours of such collegiate study.*

3. Subclause (2) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective April 13, 2006, as follows:

(2) Time validity. The certificate shall be valid for [two] *three years* from its effective date and shall not be renewable.

4. Item (i) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective April 13, 2006, as follows:

(i) Education. The candidate shall have attained a high school diploma or its equivalent and successfully completed a total of at

least 18 semester hours of collegiate study acceptable toward meeting the requirements for [a] *an associate or baccalaureate degree.*

5. Item (i) of subclause (1) of clause (d) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective April 13, 2006, as follows:

(i) Education. The candidate shall have attained a high school diploma or its equivalent, successfully completed a total of at least 18 semester hours of collegiate study acceptable toward meeting the requirements for [a] *an associate or baccalaureate degree*, and be matriculated in a program registered as leading to teacher certification pursuant to section 52.21 of this Title, or its equivalent, or in a program with an articulation agreement with such a program.

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

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

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

### Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner of Education to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

Subdivision (2) of section 3009 authorizes public school districts to employ teaching assistants, provided that they are under the general supervision of a certified teacher.

#### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by establishing requirements for the certification of teaching assistants for employment in New York State public schools.

#### 3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish requirements for the certification of teaching assistants for service in the State's public schools: extending the time validity of the level I and II teaching assistant certificates, specifying additional requirements for the renewal of the level I teaching assistant certificate, requiring additional collegiate study for the level II teaching assistant certificate, and clarifying coursework requirements.

Under existing regulations, teaching assistants advance through three levels of certificates (level I through level III), and level I and II certificates are time-limited. The amendment will extend the validity of the entry-level certificate for teaching assistants, the level I teaching assistant certificate, from one to three years. To meet the requirements for the level II certificate, the candidate must have one year of experience as a teaching assistant

while under a level I certificate, and meet additional education requirements. The proposed change is needed to allow holders of the level I teaching assistant additional time to meet the experience and education requirements for the level II teaching assistant certificate.

The amendment provides that with one exception the level I certificate may be renewed on only one occasion, and extends the duration of the renewed level I teaching assistant certificate from one to three years. It also establishes a new requirement for the renewal of the level I certificate: the candidate must submit to the State Education Department adequate evidence substantiating that the candidate has a commitment for employment in a teaching assistant position under the level I teaching assistant certificate. These changes will allow candidates who were unable to find employment during the first term of the level I certificate, or have decided to delay entry into this field, the opportunity to obtain employment and meet the experience requirement for the level II certificate. It will also ensure that candidates for the renewed level I certificate will be on track for meeting the experience requirement for the level II certificate.

The amendment is needed to strengthen the education requirement for the level II teaching assistant certificate. After February 1, 2007, the candidate must have completed a total of nine semester hours of collegiate study for this certificate, instead of the current requirement of six semester hours. Candidates will have sufficient time to complete the additional coursework because of the change in the duration of the level I certificate. It should be noted that this does not represent an increase in the overall number of semester hours that a candidate must ultimately complete for certification as a teaching assistant because the level III certificate will still require a total of 18 semester of collegiate study.

The amendment also increases the validity period of the level II teaching assistant certificate from two to three years. This is needed to give candidates additional time to earn the remaining semester hours of collegiate study required for the level III teaching assistant certificate. A remaining nine semester hours of collegiate study are required for the level III certificate, for a total of 18 semester hours.

Finally, the amendment is needed to clarify that the education requirement for each certificate level may be met by completing collegiate coursework creditable to an associate degree, as well as the baccalaureate degree. This is needed because teaching assistants often attend two-year colleges, which do not offer baccalaureate study.

#### 4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government including the State Education Department. The State Education Department will use existing staff and resources to process applications for teaching assistant certificates.

(b) Costs to local governments: The amendment will not impose any direct costs on local governments, including school districts and Boards of Cooperative Educational Services (BOCES). However, for school districts and BOCES that wish to employ candidates on a renewed level I teaching assistant certificate, there will be a minimal cost associated with confirming a commitment for employment on the candidate's renewal application.

(c) Cost to private regulated parties: The proposed amendment will not impose costs on private regulated parties, over and above existing costs for certification. The application fee for certification as a teaching assistant at each level will continue to be \$35.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

#### 5. LOCAL GOVERNMENT MANDATES:

Candidates who apply for the renewal of a level I teaching assistant certificate will have to submit documentation of a commitment for employment in a teaching assistant position under the level I teaching assistant certificate. This requirement will indirectly affect school districts and BOCES who wish to hire a teaching assistant under a renewed level I certificate. They will have to confirm a commitment for employment on the candidate's renewal application.

#### 6. PAPERWORK:

Candidates seeking teaching assistant certification will be required to meet the existing requirement of making written application with the State Education Department. As stated above, the amendment establishes a new requirement for the renewal of the level I certificate: the candidate must submit to the State Education Department adequate evidence substantiating that the candidate has a commitment for employment in a teaching assistant position under the level I teaching assistant certificate. This information must be included on the application for the renewal of the

level I certificate. The amendment does not establish any other additional paperwork requirements.

#### 7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

#### 8. ALTERNATIVES:

After staff discussion, the State Education Department added a requirement to the preliminary proposal: the candidate for the renewed level I certificate must show a commitment for employment under that certificate. This requirement was added to ensure that such candidates are on track for meeting the experience requirement for the level II certificate. There were no other significant alternatives considered.

#### 9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teaching assistants authorizing service in the public schools of New York State.

#### 10. COMPLIANCE SCHEDULE:

The amendment establishes a phase-in period for the additional coursework requirement for the level II teaching assistant certificate. Candidates who apply for the level II teaching certificate after February 1, 2007 will have to complete nine instead of six semester hours of collegiate study. Candidates will have to meet all other requirements on the amendment's effective date. No additional period of time is needed to meet these other requirements.

#### **Regulatory Flexibility Analysis**

##### (a) Small Businesses:

The proposed amendment concerns requirements that individuals must meet to be certified as teaching assistants authorizing employment in New York State public schools. The amendment pertains to certification requirements applicable to individuals. It does not regulate small businesses. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

##### (b) Local Governments:

###### 1. Effect of the rule:

The proposed amendment concerns requirements that an individual must meet to be certified as a teaching assistant for service in the State's public schools. Any affect on school districts and board of cooperative educational services (BOCES) will be indirect because the amendment regulates applicants for certification, not school districts and BOCES.

###### 2. Compliance requirements:

Candidates who apply for the renewal of a level I teaching assistant certificate will have to submit adequate evidence of a commitment for employment in a teaching assistant position under the level I teaching assistant certificate. This requirement will indirectly affect school districts and BOCES who wish to hire a teaching assistant under a renewed level I certificate. They will have to confirm a commitment for employment on the candidate's renewal application.

###### 3. Professional services:

The proposed amendment will not require school districts or BOCES to employ additional professional services in order to comply.

###### 4. Compliance costs:

The amendment will not impose any direct costs on local governments, including school districts and BOCES. However, for school districts and BOCES that wish to employ candidates under a renewed level I teaching assistant certificate, there will be a minimal cost associated with confirming a commitment for employment on the candidate's renewal application.

###### 5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in "Compliance costs," the amendment will impose only minimal indirect costs on school districts and BOCES.

###### 6. Minimizing adverse impact:

The amendment will not adversely impact school districts or BOCES in the State of New York. The amendment will increase the pool of candidates for teaching assistant positions in New York State public schools by extending the duration of level I and level II teaching assistant certificates. Because of the nature of the proposed amendment, it is unnecessary to minimize an adverse impact on school districts and BOCES.

###### 7. Local government participation:

Comments of the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on

matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES. Comments were also solicited from State's district superintendents and school superintendents, representing BOCES and school districts across the State.

**Rural Area Flexibility Analysis**

1. Types and estimate of the number of rural areas:

The proposed amendment will affect candidates for teaching assistant certification and will indirectly affect school districts and Boards of Cooperative Educational Services (BOCES) in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The purpose of the proposed amendment is to establish requirements for the certification of teaching assistants for service in the State's public schools: extending the time validity of the level I and II teaching assistant certificates, specifying additional requirements for the renewal of the level I teaching assistant certificate, requiring additional collegiate study for the level II teaching assistant certificate, and clarifying coursework requirements.

The amendment will extend the validity of the entry-level certificate for teaching assistants, the level I teaching assistant certificate, from one to three years. The amendment provides that the level I certificate may be renewed on one occasion only, with one exception, and extends the duration of the renewed level I teaching assistant certificate from one to three years. It also establishes a new requirement for the renewal of the level I certificate: the candidate must submit to the State Education Department adequate evidence substantiating that the candidate has a commitment for employment in a teaching assistant position under the level I teaching assistant certificate.

The amendment increases the validity period of the level II teaching assistant certificate from two to three years and increases the education requirement for the level II teaching assistant certificate. After February 1, 2007, the candidate must have completed a total of nine semester hours of collegiate study for this certificate, instead of the current requirement of six semester hours.

The amendment clarifies that the education requirement for each certificate level. It provides that the education requirement may be met by completing collegiate coursework creditable to an associate degree as well as a baccalaureate degree.

Candidates seeking teaching assistant certification will be required to meet the existing requirement of making written application with the State Education Department. As stated above, the amendment establishes a new requirement for the renewal of the level I certificate that the candidate must submit adequate evidence substantiating a commitment for employment in a teaching assistant position. This information must be included in the renewal application. The amendment does not establish any other reporting or recordkeeping requirement and does not require regulated parties to hire professional services in order to comply.

3. Costs:

The proposed amendment will not impose costs on private regulated parties, over and above existing costs for certification. The application fee for certification as a teaching assistant at each level will continue to be \$35. The amendment will not impose any direct costs on local governments, including school districts and BOCES. However, for school districts and BOCES that wish to employ candidates on a renewed level I teaching assistant certificate, there will be a minimal cost associated with confirming a commitment for employment on the candidate's renewal application. The amendment will not impose any capital costs on regulated parties.

4. Minimizing adverse impact:

The amendment establishes requirements for the certification of teaching assistants, authorizing employment in the State's public schools. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of certified teaching assistants in all parts of the State.

5. Rural area participation:

Comments on the proposed rule were solicited from the Department's Rural Education Advisory Committee. This is a group that advises the State Education Department on issues of concern to rural areas of New York State and includes representatives of school districts located in rural areas of the State. The Department also requested comments from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on

matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State. Comments were also solicited from State's district superintendents and school superintendents, representing BOCES and school districts across the State, including rural areas. In addition, comments were solicited from all postsecondary institutions in the State that offer programs preparing teachers and teaching assistants, including institutions located in rural areas of New York State.

**Job Impact Statement**

The proposed amendment establishes requirements for the certification of teaching assistants for service in the State's public schools. Under existing regulations, teaching assistants must advance through three levels of certificates (level I through level III). Level I and II certificates are time-limited certificates. The amendment will extend the duration of level I and II teaching assistant certificates, thereby permitting teaching assistants holding these certificates additional time to remain certified and employed while meeting the requirements for the next level certificate. Consequently, the State Education Department expects that the amendment will increase the pool of available teaching assistants who are authorized to be employed in the State's public schools. The amendment will have no impact on the number of jobs and employment opportunities in this field.

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.

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## Department of Health

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### EMERGENCY RULE MAKING

**Nursing Home Pharmacy Regulations**

**I.D. No.** HLT-50-05-00004-E

**Filing No.** 28

**Filing date:** Jan. 9, 2006

**Effective date:** Jan. 9, 2006

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

**Action taken:** Amendment of section 415.18(g) and (i) of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2803

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

**Specific reasons underlying the finding of necessity:** There is an increasing need to have available to nursing home residents a wider number of antibiotic and pain management medications to respond quickly in the event of a health crisis to these medically fragile residents. Presently, emergency medication kits are limited as to their content and facilities are not permitted to have certain medications including controlled substances in the emergency kits. Delay in responding to resident needs because a medication is not immediately available in the facility, and has to be secured from the pharmacy, is resulting in needless suffering on the part of nursing home residents.

**Subject:** Nursing home pharmacy regulations.

**Purpose:** To make available in nursing home emergency medication kits, a wider variety of medications to respond to the needs of residents and allow verbal orders from a legally authorized practitioner.

**Text of emergency rule:** Subdivisions (g) and (i) of Section 415.18 are amended to read as follows:

Section 415.18 Pharmacy Services.

\* \* \* \* \*

(g) Emergency medications. The facility shall ensure the provision of (an) emergency medication kit(s) as follows:

(1) The contents of each kit shall be approved by the medical director, pharmacist and director of nursing.

(2) [Controlled Substances shall be prohibited in emergency kits.] *Limited supplies of controlled substances for use in emergency situations may be stocked in sealed emergency medication kits.*

(i) *Each such kit may contain up to a 24 hour supply of a maximum of ten different controlled substances in unit dose packaging, three of which may be injectable drugs.*

(ii) *Controlled substances contained in emergency medication kits may be administered by authorized personnel pursuant to an order of an authorized practitioner to meet the immediate need of a resident. Personnel authorized to administer controlled substances shall include registered professional nurses, licensed practical nurses or other practitioners, licensed/registered under Title VIII of the Education Law and authorized to administer controlled substances.*

(iii) *The facility shall maintain all records of controlled substances furnished or transferred from the pharmacy and the disposition of all controlled substances in emergency kits, as required by article 33 of the Public Health Law and corresponding regulations.*

(3) *For medications other than controlled substances [The] the medication contents of each kit shall be limited to injectables except that the kit may also include:*

(i) sublingual nitroglycerine; and

(ii) up to five noninjectable, prepackaged medications not to exceed a 24-hour supply; which are the same noninjectable, prepackaged medications in all emergency kits throughout the facility]. *The total number of noninjectables may not exceed 25 medications for the entire facility;*

(4) Each kit shall be kept and secured within or near the nurses' station.

\* \* \*

(i) Verbal orders. All medications administered to residents shall be ordered in writing by a legally authorized practitioner unless unusual circumstances justify a verbal order, in which case the verbal order shall be given to a licensed nurse, or to a licensed pharmacist, immediately reduced to writing, authenticated by the nurse or registered pharmacist and countersigned by the prescriber within 48 hours. In the event a verbal order is not signed by the prescriber or a *legally* designated alternate [physician] *practitioner* within 48 hours, the order shall be terminated and the facility shall ensure that the resident's medication needs are promptly evaluated by the medical director or another legally authorized prescribing practitioner.

***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 proposed rule making, I.D. No. HLT-50-05-00004-P, Issue of December 14, 2005. The emergency rule will expire March 9, 2006.

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

#### **Regulatory Impact Statement**

##### Statutory Authority:

These regulation revisions of 10 NYCRR Section 415.18, Pharmacy Services, in nursing homes, are proposed under the authority granted to the Commissioner of Health under PHL Section 2803. The PHL outlines the responsibility to conduct inspections of health care facilities to determine compliance with statutes and regulations promulgated under the provisions of those statutes and authorizes the commissioner to propose rules, regulations and amendments thereto for consideration by the State Hospital Review and Planning Council "the Council". The Council, by a majority vote of its members, shall amend rules and regulations, subject to the approval of the commissioner, to effectuate the provisions and purposes as stated in the PHL.

##### Legislative Objectives:

The Department of Health possesses the comprehensive responsibility for the development and administration of programs, standards and methods of operation, and all other matters of policy with respect to nursing home services. Furthermore, through the Social Security Act, the federal government authorizes the State to administer programs and services through Medical Assistance (*i.e.*, Medicaid). This includes responsibility for standards of care within those settings, in order to ensure the health needs of recipients are met. These amended regulations will enable nursing homes to respond more quickly and efficiently to the health care needs of residents requiring emergency medications. The regulation will ensure the protection of the nursing home resident and promote the highest quality of care.

##### Needs and Benefits:

This proposal to amend 10 NYCRR sections 415.18(g) and 415.18(i) responds to the fact that current regulations for nursing home emergency medication kits and verbal orders are outdated and not in keeping with actual practice.

The State's nursing homes provide a variety of clinical services which were not anticipated when the current pharmacy services regulations were promulgated. The Rug-II case mix reimbursement methodology which began in 1986, has allowed nursing homes to open their doors to residents who require resources which were previously unavailable. Currently, nursing homes accept residents whose clinical needs at one time were met in a hospital. In addition, some nursing homes have units that address the unique needs of special populations such as HIV, traumatic brain injury (TBI), or ventilator residents.

The present regulation, section 415.18(g), provides for emergency medication kits but limits the contents to injectables. It also provides for the kit to contain sublingual nitroglycerine and up to five noninjectable prepackaged medications. At the time this regulation was promulgated, the extensive array of oral medications currently available did not exist and emergency medications were primarily viewed in terms of injectable medications. With the greater complexity of clinical conditions often seen in today's nursing home, resident issues of pain management have taken on greater significance. The availability of oral medications for pain and the wide range of antibiotics that did not exist at the time the regulations were written would significantly affect how nursing homes could respond to an emergency need of a resident.

The present regulations call for the contents of the emergency medication kits to be identical on every unit throughout the facility. At a time when the needs of residents were similar in terms of clinical management, this made sense. However, with nursing homes providing care to special populations including HIV, TBI and ventilator care, this requirement inhibits the most efficient use of emergency medications kits to best meet the unique clinical needs of special populations. When promulgated, these regulations were seeking to address concerns that facilities would establish "mini" pharmacies by having a wide range of noninjectables in the emergency medication kit and that the presence of a high number of medications may result in administration errors. With safe product packaging that is present today, safety concerns have been significantly reduced. In addition, the proposed regulation changes would limit the total number of noninjectables that would be available in emergency kits to no more than twenty-five. This would further ensure resident safety and eliminate the concern that nursing homes might stock an unlimited amount of noninjectables in the emergency kits. The proposed revisions would also allow for the presence of controlled substances in nursing home emergency kits. This would allow for the nursing home to respond quickly to pain management concerns that are a major issue for some residents.

Regulations at 415.18(i) provide that all medications administered to residents shall be ordered in writing by a legally authorized practitioner unless unusual circumstances justify a verbal order. At the time the original regulations were promulgated only physicians could order medications. The proposed changes would insert the phrase designated alternate practitioner in place of designated alternate physician. This change would be reflective of current practices in which other prescribers, such as a nurse practitioner can order medications.

##### Costs:

##### Costs to Regulated Parties:

There will be no additional costs to regulated parties.

##### Costs to State and Local Government:

There will be no additional costs to State or local governments.

##### Costs to the Department of Health:

There will be no additional costs to the Department.

##### Local Government Mandates:

The proposed regulation imposes no program, duty, service, or other responsibility upon any city, town, village, school, fire or other special district.

##### Paperwork:

The regulation imposes no additional reporting requirements, forms or other paperwork.

##### Duplication:

The regulation does not duplicate any federal or state regulation.

##### Alternatives:

No alternative approaches were considered, since all nursing homes would be allowed flexibility in determining the contents of the emergency medication kit in their facility.

##### Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

The proposed regulation will be effective upon filing with the Secretary of State.

**Regulatory Flexibility Analysis**

Effect on Small Business and Local Government:

For the purposes of this Regulatory Flexibility Analysis, small businesses are considered any nursing home within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes would therefore be considered "small businesses".

Compliance Requirements:

The regulation would impose no additional record keeping or other affirmative acts.

Professional Services:

The regulation would impose no additional professional services.

Compliance Costs:

The regulation would impose no additional costs.

Economic and Technological Feasibility:

The proposed regulation would impose no compliance requirements which would raise technological or feasibility issues.

Minimizing Adverse Impact:

The agency considered the approaches listed in section 202-b(1) of SAPA and found them inapplicable. The regulation would impose no adverse impact on small businesses or local governments.

Small Business and Local Government Participation:

The regulation would have no impact on small businesses and local governments. The regulation is supported by provider and consumer groups and feedback from these groups have been gathered. The proposed revisions have been sent to the Codes and Regulations Committee of the Council and have appeared on the agenda of the Codes and Regulations Committee which is made up of representatives of groups that have as their members representatives of small business and local government.

**Rural Area Flexibility Analysis**

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

The regulation would impose no additional reporting, recordkeeping or other affirmative acts.

Professional Services:

The regulation would not require additional professional services.

Compliance Costs:

The regulation would not impose additional costs.

Minimizing Adverse Impact:

The regulation would not result in any adverse economic impact on providers. The agency considered the approaches listed in section 202-bb(2) of SAPA and found them inapplicable.

Opportunity for Rural Area Participation:

The following groups are in support of the modification of 10 NYCRR 415.18:

- New York Association of Homes and Services for the Aging
- Nursing Home Community Coalition
- New York State Health Facilities Association
- New York State Office for Aging Long Term Care Ombudsman
- Health Facility Association of New York
- New York State Board of Pharmacy

New York Chapter of the American Society of Consulting Pharmacists

The proposed revisions will be sent to the Code Committee of the Council and appear on the agenda of the Code Committee which is made up of representatives of groups that have as their members representatives of rural areas.

**Job Impact Statement**

A Job Impact Statement is not necessary because it is apparent from the nature and purpose of the proposed regulation that it will not have a substantial adverse impact on jobs or employment opportunities. The proposal simply clarifies what drugs can be stocked in emergency medication kits, as well as who may sign verbal orders.

**EMERGENCY  
RULE MAKING**

**Controlled Substances in Emergency Kits**

**I.D. No.** HLT-50-05-00005-E

**Filing No.** 29

**Filing date:** Jan. 9, 2006

**Effective date:** Jan. 9, 2006

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

**Action taken:** Amendment of sections 80.11, 80.47, 80.49 and 80.50 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3308(2)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety. Having consulted closely with administrators, nursing personnel and consultant pharmacists of Class 3a health care facilities (nursing homes, and other long-term facilities), the Department has determined that the current Part 80 and Part 400 regulations do not ensure timely access to controlled substances by practitioners and patients when immediate administration is medically necessary. However, for purposes of this emergency justification, Class 3a institutional dispenser, Class 3a facility, and Class 3a health-care facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490. The proposed regulations exempt such adult care facilities from its provisions.

Current regulations require controlled substances to be administered to patients in Class 3a facilities only pursuant to a prescription. On urgent occasions, such as when a patient suffers a sudden seizure or onset of acute pain, the severity of the situation may make it impossible for a practitioner to first issue a prescription to promptly treat the condition. Even if a practitioner is able to first issue a prescription in an emergency, the prescription may not immediately be dispensed by a pharmacy. In these situations, a patient is deprived of timely relief from severe symptoms and suffering.

The proposed amendments will allow controlled substances to be maintained in an emergency medication kit in a Class 3a facility and administered to a patient in an emergency situation. To simultaneously protect the public health against the potential for diversion of such drugs, the amendments also specify limitations on their quantities, recordkeeping requirements for their administration, and security requirements for their safeguarding. Immediate adoption of these regulations is necessary to enhance and ensure the quality of health care of every patient in a long-term care facility. Ensuring timely access to controlled substances for immediate administration during medical emergencies will result in substantial benefit to the public health and safety.

**Subject:** Controlled substances in emergency kits.

**Purpose:** To allow class 3a facilities to obtain, possess and administer controlled substances in emergency kits.

**Text of emergency rule:** Paragraph (6) of subdivision (b) of Section 80.11 is amended to read as follows:

(6) [be] not *be*, and not have been, a habitual user of narcotics or any other habit-forming drugs.

Paragraph (6) of subdivision (c), of Section 80.11 is amended to read as follows:

(6) [be] not *be*, and not have been, an habitual user of narcotics or other habit-forming drugs; and

Subdivision (f) of Section 80.11 is amended to read as follows:

(f) Persons conducting distributing activities of controlled substances within the State of New York shall obtain a class 2 license from the department, *except that*;

(1) *Except in an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490, a pharmacy may distribute a controlled substance to a practitioner in a Class 3a institutional dispenser limited solely for stocking in sealed emergency medication kits. Such distribution shall be pursuant only to a written request by the Class 3a facility indicating the name and address of the facility, the name and address of the pharmacy, the date of the request, the type and quantity of the drug requested and the signature of the authorized person making the request. With each distribution, the pharmacy shall provide the Class 3a facility with an itemized list indicating the name and address of the pharmacy, the name and address of the Class 3a facility, the date of the distribution, the type and quantity of the drug distributed, and the signature of the pharmacist.*

Section 80.47 is amended by creating subdivisions (a), (b) and (c) and new subdivision (b) is amended to read as follows:

Section 80.47 Institutional dispenser, limited. (a) Nursing homes, convalescent homes, health-related facilities, *adult care facilities subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490* [homes for the aged], dispensaries or clinics not qualifying as institutional dispensers in license class 3 shall apply for an institutional dispenser, limited license. Such institutional dispensers qualifying for controlled substances privileges shall obtain a class 3a license from the department.

(b) An institutional dispenser licensed in class 3a may administer controlled substances to patients only pursuant to a prescription issued by an authorized physician or other authorized practitioner and filled by a registered pharmacy; except that [an] *controlled substances in emergency medication kits may be administered to patients as provided in Section 80.49(d) of this Part, except in an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.*

(c) An institutional dispenser, limited, licensed in class 3a, which is operated as an integral and physical part of a facility licensed as a class 3 institutional dispenser may be provided with bulk stocks of controlled substances obtained pursuant to such class 3 institutional dispenser license. Records of distribution and administration of such bulk stocks of controlled substances shall be kept as provided in section 80.48(a) of this Part.

Subdivision (c) of section 80.49 is amended and a new subdivision (d) is added to read as follows:

(c) A separate record shall be maintained of the administration of prescribed controlled substances indicating the date and hour of administration, name and quantity of controlled substances, name of the prescriber, patient's name, signature of person administering and the balance of the controlled substances on hand after such administration.

(d) *In an emergency situation, a controlled substance from a sealed emergency medication kit may be administered to a patient by an order of an authorized practitioner. An oral order for such controlled substance shall be immediately reduced to writing and a notation made of the condition which required the administration of the drug. Such oral order shall be signed by the practitioner within 48 hours.*

(1) *For purposes of this subdivision, emergency means that the immediate administration of the drug is necessary and that no alternative treatment is available.*

(2) *A separate record shall be maintained of the administration of controlled substances from an emergency medication kit. Such record shall indicate the date and hour of administration, name and quantity of controlled substances, name of the practitioner ordering the administration of the controlled substance, patient's name, signature of the person administering and the balance of the controlled substances in the emergency medication kit after such administration.*

(3) *The institutional dispenser limited shall notify the pharmacy furnishing controlled substances for the emergency medication kit within 24 hours of each time the emergency kit is unsealed, opened, or shows evidence of tampering.*

Subdivision (e) of section 80.50 is amended and a new paragraph (1) is added to read as follows:

(e) *Except as provided in paragraph (1) of this subdivision, [I]nstitutional dispensers limited may only possess controlled substances prescribed for individual patient use, pursuant to prescriptions filled in a registered pharmacy. These controlled substances shall be safeguarded as provided in subdivision (d) of this section.*

(1) *Except for adult care facilities subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490, institutional dispensers limited may possess limited supplies of controlled substances in sealed emergency medication kits for use as provided in section 80.49 (d) of this Part. Each kit may contain up to a 24-hour supply of a maximum of ten different controlled substances in unit dose packaging, no more than three of which may be in an injectable form. Each kit shall be secured in a stationary, double-locked system or other secure method approved by the Department.*

**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 proposed rule making, I.D. No. HLT-50-05-00005-P, Issue of December 14, 2005. The emergency rule will expire March 9, 2006.

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

#### **Regulatory Impact Statement**

##### Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purposes and intent.

Section 3321(1)(b) authorizes the commissioner to make regulations that exempt a pharmacy from the licensing requirements of article 33 for the sale of controlled substances to a practitioner for the immediate needs of the practitioner receiving such substances.

##### Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering, and distribution of licit controlled substances within New York. Section 3300-a expressly states that one of the statute's purposes is to allow the legitimate use of controlled substances in health care.

##### Needs and Benefits:

This regulation effectuates the above stated legislative purpose of section 3300-a of the New York State Controlled Substances Act. It will ensure timely access to controlled substances by practitioners and patients for emergency situations in extended care facilities and other health care facilities licensed by the Department as Class 3a, institutional dispenser limited. (See section 3302(18) of the Public Health Law for the definition of "institutional dispenser".) However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Section 80.47 of Title 10 regulations requires that controlled substances be administered to patients in healthcare facilities licensed by the Department as Class 3a institutional dispensers limited (*i.e.*, nursing homes, convalescent homes, health-related facilities, adult homes, homes for the aged, correctional facilities) only pursuant to a prescription issued by an authorized practitioner. The regulation also requires that such prescriptions must be dispensed by a registered pharmacy.

Administrators, nursing personnel, and consultant pharmacists of Class 3a facilities have expressed their concern to the Department that the prescription requirements of Section 80.47 are a restriction to timely access to controlled substances by practitioners and patients when immediate administration is medically necessary. On urgent occasions such as a sudden seizure or onset of intractable pain, the severity of the situation may make it impossible for a practitioner to first issue a prescription for the drug in order to promptly treat the condition. Further, Class 3a facilities do not have onsite pharmacies. Even if a practitioner is able to first issue a prescription for a controlled substance to treat a patient in an emergency, that prescription may not immediately be dispensed by an outside pharmacy because the pharmacy may be too distant from the Class 3a facility or the emergency may have occurred during the pharmacy's non-business hours. These situations can, and do, result in needed medications not being administered in a timely fashion to relieve a patient's severe symptoms or suffering.

The proposed amendment to Section 80.47 of the regulations authorizes the administration of a controlled substance from an emergency medication kit to a patient in an emergency situation in a Class 3a health-care facility. Necessary complements to this amendment are the proposed amendments to Sections 80.11(f), 80.49 and 80.50(e) of Title 10 regulations. The proposed changes to Section 80.11(b)(6) is merely grammatical.

The amendment to Section 80.11(f) authorizes a licensed pharmacy to supply controlled substances to a practitioner in a Class 3a facility for stocking in emergency medication kits. The amendments to Section 80.50(e) authorize a Class 3a health-care facility to possess a limited supply of controlled substances in an emergency medication kit and specify limitations on the quantities of such substances and requirements for their safeguarding. The amendment to Section 80.49 specifies recordkeeping requirements for controlled substances administered from emergency kits. When instituted together, these amendments will provide for timely access to controlled substances by practitioners and patients in the long-term care facility environment while simultaneously requiring adequate measures to ensure the security of such substances.

The federal Drug Enforcement Administration (DEA) also recognizes the need for storing controlled substances in emergency kits for administration to patients during urgent situations in long-term care facilities that are not eligible to hold a DEA registration. Since 1980, the DEA has issued a Statement of Policy containing guidelines for state regulatory agencies to follow when authorizing long-term care facilities to maintain such kits. Such guidelines have been incorporated in the proposed regulatory amendments.

The proposed regulatory amendments will enhance the quality of care of every patient in a long-term care facility licensed by the Department of Health. Such regulation will result in substantial benefit to the public health, which the Department has both a civic and legislative responsibility to ensure.

#### Costs:

##### Costs to Regulated Parties

Healthcare facilities licensed as Class 3a institutional dispensers limited already possess required secure cabinets for safeguarding controlled substances. Such secure cabinets can also safeguard emergency kits containing controlled substances. Those facilities choosing to maintain such emergency kits will incur minimal costs to do so. These costs will be reflected in the purchase of the limited supplies of controlled substances and the sealable emergency kits required to secure and store them.

##### Costs to State and Local Government

There will be no costs to state or local government.

##### Costs to the Department of Health

There will be no additional costs to the Department.

##### Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

##### Paperwork:

Class 3a healthcare facilities are currently required by regulations to keep records of the receipt of all controlled substances prescribed for individual patients. Such facilities are also required to record all controlled substances dispensed and administered to such patients. These recordkeeping requirements would include the requisition and receipt of controlled substances for stocking in emergency medication kits.

Practitioners authorized to prescribe controlled substances are required by regulations to make a notation in a patient record of all controlled substances prescribed for that patient. The amendment to Section 80.47 requires that the administration of a controlled substance to a patient from an emergency kit in a Class 3a facility be pursuant to the written or oral medical order of a practitioner.

The Department anticipates a minimal increase in paperwork documenting the requisition, distribution, medical order, and administration of controlled substances contained in emergency medication kits. Such increase will be more than offset by the enhancement of healthcare for patients in the long term care environment.

##### Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

##### Alternatives:

The intent of the proposed regulation is to ensure access to controlled substance medications when urgently needed. The department believes it is in the best interest of the public health to authorize such accessibility to relieve pain or suffering. There are no alternatives that would ensure accessibility to controlled substances by practitioners and patients for

emergency situations in long term care facilities and other health care facilities licensed as Class 3a, institutional dispenser limited.

#### Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government. This amendment achieves consistency with existing federal and New York State laws and regulations promulgated to authorize the legitimate use of controlled substances in health care.

#### Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State. At that time, in order that the public health derive maximum benefit from this regulatory amendment, all Class 3a license holders will be authorized to possess and administer controlled substances in an emergency medication kit to meet the immediate, legitimate need of a patient.

#### Regulatory Flexibility Analysis

##### Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, and nursing homes and other healthcare facilities licensed by the Department as Class 3a institutional dispensers limited. Local government will only be affected if it operates one of the above facilities.

According to the New York State Department of Education, Office of the Professions, as of April, 2003, there were 113,666 licensed and registered practitioners authorized to prescribe and order the administration of controlled substances. However, this rule will affect only those practitioners who prescribe or order the administration of controlled substances for patients and residents of long term care facilities or supply such facilities with controlled substances for emergency medication kits.

According to the New York State Board of Pharmacy, as of June 30, 2003, there were a total of 4,521 pharmacies in New York State. Of these, 60 are sole proprietorship, 297 are partnerships, 73 are small chains (fewer than 3 pharmacies per chain) and the rest are large chains or other corporations (some of which may be small businesses) or located in public institutions. According to the New York State Education Department's Office of the Professions, as of April 1, 2003, there were 18,950 licensed and registered pharmacists in New York. However, this rule will affect only those pharmacies and pharmacists that dispense prescriptions for controlled substances to patients and residents of long term care facilities or supply such facilities with controlled substances for emergency medication kits.

Of the 1,282 healthcare facilities licensed by the department as Class 3a institutional dispensers limited, the rule will affect only those facilities that choose to maintain controlled substances in emergency medication kits. However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

##### Compliance Requirements:

There are no compliance requirements. While the proposed amendment authorizes Class 3a facilities to possess and administer controlled substances from emergency medication kits, the regulation does not require such facilities to do so.

##### Professional Services:

No additional professional services are necessary.

##### Compliance Costs:

Other than the cost of the controlled substances and sealable emergency medication kits for those Class 3a facilities choosing to possess such kits, there are no compliance costs associated with the proposed regulation.

##### Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Class 3a healthcare facilities that choose to possess and administer controlled substances from emergency medication kits will use existing equipment for security and recordkeeping requirements.

The Department anticipates that these facilities will incur minimal expenditures for limited supplies of controlled substances and the sealable emergency kits in which to store them. Such expenditures will be more than offset by the enhancement of medical care for patients in Class 3a healthcare facilities.

##### Minimizing Adverse Impact:

The agency considered the approaches in section 202-b(1) of SAPA and found them inapplicable. The proposed regulation minimizes any adverse impact by not requiring pharmacies to supply controlled substances to Class 3a facilities for emergency medication kits. Pharmacies are authorized to engage in such activity strictly on a voluntary basis.

##### Small Business and Local Government Participation:

To ensure that small businesses were given the opportunity to participate in this rule making, the Department met with the pharmacy societies representing independent pharmacies. Local governments are not affected.

During the drafting of this regulation, the Department met with the Pharmaceutical Society of the State of New York (PSSNY), the Chain Pharmacy Association of New York State, the New York Council of Health Systems Pharmacists, and the New York State Chapter of American Society of Consultant Pharmacists.

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

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to participating pharmacies and Class 3a healthcare facilities located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain widespread rural areas. These can range in extent from small towns and villages, and their surrounding areas, to locations that are very sparsely populated.

Compliance Requirements:

There are no compliance requirements. The proposed amendment authorizes pharmacies to distribute limited supplies of controlled substances to Class 3a facilities for maintaining in emergency medication kits. The regulation also authorizes those healthcare facilities to possess and administer controlled substances to patients from such kits in an emergency situation. However, these actions are undertaken on a voluntary basis by both pharmacy and healthcare facility. The regulation does not require either party to participate.

Present regulations require pharmacies and Class 3a facilities to maintain specified records of dispensing, receipt, and administration of controlled substances. The proposed regulation requires a minimum of additional recordkeeping to ensure limited access to emergency medication kits and safeguarding of the controlled substances contained therein. However, for the purpose of this impact statement, Class 3a institutional dispenser, Class 3a facility, and Class 3a healthcare facility shall not mean an adult care facility subject to the provisions of Title 18 NYCRR Parts 487, 488 and 490.

Professional Services:

Pharmacies already employ the professional services of licensed and registered pharmacists. Class 3a healthcare facilities employ the services of practitioners, nurses, and consultant pharmacists. The proposed regulation would require no additional professional services, either public or private, in rural areas.

Compliance Costs:

Compliance costs to pharmacies opting to distribute limited supplies of controlled substances to Class 3a facilities will be negligible, since these pharmacies already maintain an existing inventory of such controlled substances. Other than the cost of the controlled substances and the sealable medication kits in which to store them, the compliance cost to Class 3a facilities choosing to possess such kits will be minimal.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Class 3a healthcare facilities that choose to possess and administer controlled substances from emergency medication kits will use existing equipment for security and recordkeeping requirements.

The Department anticipates that these facilities will incur minimal expenditures for limited supplies of controlled substances and the sealable emergency kits in which to store them. Such expenditures will be more than offset by the enhancement of medical care for patients in Class 3a healthcare facilities.

Minimizing Adverse Impact:

The agency considered the approaches in Section 202-bb(2) of SAPA and found them inapplicable.

In ensuring access to controlled substances for legitimate medical treatment by practitioners and patients in Class 3a healthcare facilities, the proposed amendment does not impose any adverse impact upon rural areas. In fact, because in a rural setting pharmacies supplying prescriptions for controlled substances may be located at increased distances from long term care facilities, it is anticipated that these healthcare facilities would derive maximum benefit for their patients by being authorized to maintain limited supplies of controlled substances in sealed medication kits for use in emergency situations.

Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comment from consultant pharmacists to Class 3a facilities, many of which are located in rural areas. It was the overwhelming consensus that pharmacists could better meet and greatly enhance the healthcare of the patients they serve in such facilities by being authorized to supply con-

trolled substances for emergency medication kits. Administrative and nursing personnel in such facilities have also voiced to the Agency their need for emergency access to controlled substances for administration to patients to alleviate suffering in urgent situations. The agency addressed many of these concerns in the proposed regulation.

#### **Job Impact Statement**

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring access to controlled substances for legitimate healthcare needs, the proposed amendment is not expected to either increase or decrease jobs overall.

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## Insurance Department

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### EMERGENCY RULE MAKING

#### **Rules Governing Individual and Group Accident and Health Insurance Reserves**

**I.D. No.** INS-04-06-00004-E

**Filing No.** 22

**Filing date:** Jan. 6, 2006

**Effective date:** Jan. 6, 2006

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

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

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

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

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

However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, e.g., 11 NYCRR Part 94.1(a)(4)(iii)(A)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the more recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to consumers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standards will help to ensure that such insurers remain financially capable of paying claims as they come due.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on December 31, 2005. The filing date for the March 31, 2006 quarterly statement is May 15, 2006. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner. For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

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

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

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

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

Section 94.3 is the definitions section. Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

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

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

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

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

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

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

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

Section 94.12 establishes the severability provision of the regulation.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 5, 2006.

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

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

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

Section 1303 covers loss or claim reserves for insurers.

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

Section 1305 covers unearned premium reserves for insurers.

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

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

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

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

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the superintendent

to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

##### 2. Legislative objectives:

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

##### 3. Needs and benefits:

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

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

##### 4. Costs:

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

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

##### 5. Local government mandates:

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

##### 6. Paperwork:

The regulation imposes no new reporting requirements.

##### 7. Duplication:

The regulation does not duplicate any existing law or regulation.

##### 8. Alternatives:

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

The only other significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this proposed rule,

which would result in different reserve requirements for those insurers licensed in New York.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

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

**Regulatory Flexibility Analysis**

1. Small businesses:

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

2. Local governments:

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

**Rural Area Flexibility Analysis**

1. Types and estimated number of rural areas:

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the June 29, 2005 issue of the *State Register*.

**Job Impact Statement**

Nature of impact:

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

Categories and number affected:

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

Regions of adverse impact:

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

Minimizing adverse impact:

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

Self-employment opportunities:

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

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## Long Island Power Authority

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Fuel and Purchased Power Costs**

**I.D. No.** LPA-04-06-00005-P

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

**Proposed action:** The authority is considering a proposal involving the recovery of fuel and purchased power costs for the year 2006 and future years.

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

**Subject:** Fuel and purchased power costs.

**Purpose:** To provide for the recovery of fuel and purchased power costs.

**Public hearing(s) will be held at:** 10:00 a.m., March 15, 2006 at Huntington Town Hall, 100 Main St., Huntington, NY; and 2:00 p.m., March 15, 2006 at Long Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority (Authority) is considering a proposal to provide for recovery of 2006 and future years' excess fuel and purchased power costs on a current basis through the fuel and purchased power cost adjustment mechanism subject to a financial target, and related tariff revisions. The Authority may approve, reject, or modify, in whole or in part, the proposal.

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

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

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

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

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

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED**

**Tariff for Electric Service**

**I.D. No.** LPA-04-06-00007-P

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

**Proposed action:** The authority is considering a proposal to adopt provisions of a ratepayer protection plan.

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)  
**Subject:** Tariff for electric service.

**Purpose:** To adopt provisions of a ratepayer protection plan.

**Public hearing(s) will be held at:** 10:00 a.m., March 15, 2006 at Huntington Town Hall, 100 Main St., Huntington, NY; and 2:00 p.m., March 15, 2006 at Long Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority ("Authority") is considering a proposal to adopt provisions of a Ratepayer Protection Plan affording customers with rebates in the form of checks or bill credits funded from the resolution of certain issues relating to the Authority's operating agreements with KeySpan Energy. The Authority may approve, modify, or reject, in whole or in part, the proposal.

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

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

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

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

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

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**Office of Mental Retardation  
and Developmental Disabilities**

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**NOTICE OF ADOPTION**

**Deletion of Obsolete Cross References**

**I.D. No.** MRD-47-05-00013-A

**Filing No.** 30

**Filing date:** Jan. 10, 2006

**Effective date:** Jan. 25, 2006

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

**Action taken:** Amendment of sections 602.1, 602.7, 603.1, 621.1, 624.1, 635-1.1, 635-10.1, 671.1, 671.2, 671.99, 679.3, 679.4, 686.1, 686.13, 690.5 and 690.6 of Title 14 NYCRR.

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

**Subject:** Deletion of obsolete cross references.

**Purpose:** To update regulations by removing obsolete cross references.

**Text of final rule:** Section 602.1 is amended as follows:

Applicability

[Notwithstanding sections 73.3 and 73.4 of this Title,] T[t]his Part shall apply [and be controlling] in the following appeal proceedings and requests for declaratory rulings brought by or before the Office of Mental

Retardation and Developmental Disabilities pursuant to the Mental Hygiene Law and/or regulations issued pursuant thereto:

Section 602.7(a) is amended as follows:

(a) Applicability. In addition to section 602.2 of this Part, this section shall apply to hearings held pursuant to any law or regulation giving a right to a hearing before OMRDD to appeal audit findings except that this section shall not apply to audit hearings requested pursuant to section 681.14 or 690.7 [681.12 or 690.12] of this Title. Where a conflict exists between this section and section 602.2 of this Part, the provisions of this section shall be controlling.

Section 603.1 is amended as follows:

Applicability

This Part [supersedes Part 8 of this Title as it] relates to public access to records of the Office of Mental Retardation and Developmental Disabilities (hereinafter referred to as OMRDD) and its operated and/or certified facilities.

Section 621.1 is amended as follows:

Applicability

This Part shall apply to applicants (see glossary, section 621.17 of this Part) that propose to develop or finance community facilities (see glossary) for persons with mental retardation and/or developmental disabilities, based on expenditures for those costs as set forth herein. This Part [supersedes Part 101 of this Title as it] relates to community facilities subject to certification by the Office of Mental Retardation and Developmental Disabilities. In addition this part is applicable to those applicants that propose to develop or finance community facilities for persons with mental retardation and/or developmental disabilities which may be subject to certification or licensure by another appropriate New York State Agency.

Section 624.1(a) is amended as follows:

(a) This Part [supersedes Part 24 of 14 NYCRR as it] relates to services for persons (see glossary) with developmental disabilities (see glossary) and applies to persons receiving services in any facility (see glossary) operated or certified by the Office of Mental Retardation and Developmental Disabilities, hereinafter referred to as OMRDD.

Section 635-1.1 is amended by the deletion of subdivision (c). The remainder of the subdivision is renumbered accordingly.

Section 635-10.1(c) is amended as follows:

(c) In addition, all authorized HCBS waiver providers shall comply with the requirements of Parts 624[,] and 633 [and 636] of this Title.

Section 671.1(m) is amended as follows:

(m) Nothing herein shall be interpreted as precluding the applicability of Parts 604, 624, 633[,] and 635 [and 636] of this Title to each setting as specified pursuant to each Part. In the event that there is a conflict between the requirements contained herein and any other applicable law or regulation, the commissioner shall resolve issues relative to the conflicting requirements.

Section 671.2(c) is amended as follows:

(c) In addition, all authorized HCBS waiver community residential habilitation providers shall comply with the requirements of Part 624[,] and 633 [and 636] of this Title.

Section 671.99(v) is amended as follows:

(v) Services, plan of. A written person-oriented record system, by whatever name known, maintained in accordance with this Part, which documents the process of developing, implementing, coordinating, reviewing and modifying that plan. It is maintained as the functional record indicating current assessments, all planning activities as well as all services (i.e., activities, therapies and interventions), and interventions provided to the person. It contains, at a minimum, person specific identification data, health information, assessment information, service plans, a general description of activities, program planning recommendations and reports, expected outcomes, and staff action records. It constitutes the main portion of the clinical record or "record" as such terms are used in [Parts 636 and 604 of this Title] sections 33.13 and 33.16 of the Mental Hygiene Law. The community residential habilitation services plan of service shall be incorporated into the annual case management plan which shall be considered functionally equivalent to the individualized service plan (ISP) as such term is used at section 635-10.4(b) of this Title.

Section 679.3(b) is amended as follows:

(b) The governing body shall be responsible for the operation of the clinic treatment facility according to the principles and standards established in this Part and other applicable rules, regulations and statutes. This includes, but is not limited to, Parts 620, 624, 633[,] and 635 [and 636] of this Title.

Section 679.4(g) is amended as follows:

(g) OMRDD shall verify that the facility has assigned a staff member to each person admitted for service, to perform the functions of treatment coordinator and who is the contact point for the person's [comprehensive Medicaid case manager] *service coordinator* (if applicable). The person's clinical record [(per Part 636 of this Title)] reflects the activities of this treatment coordination.

Section 686.1 is amended by the deletion of subdivisions (a), (b), (c) and (e). The remainder of the subdivision is renumbered accordingly.

Section 686.13(b)(ii) is amended as follows:

(ii) To be considered allowable, costs must be properly chargeable to necessary [client] care *for individuals* rendered in accordance with the requirements of *this section and sections 635.10-4 and 671.5* [Part 86] of this Title.

Section 690.5(a)(2) is amended as follows:

(2) The governing body shall be responsible for the operation of the day treatment facility according to the principles and standards established in this Part and other applicable rules, regulations, and statutes. This includes, but is not limited to, Parts 620, 624, 633[,] and 635 [and 636] of this Title. Further it shall:

Section 690.5(b)(2)(xiii)(d)

(d) maintaining the confidentiality of, and appropriate access to clinical records [consistent with the requirements of Part 636 of this Title];

Section 690.6(v)

(v) OMRDD shall verify that [, consistent with Part 636 of this Title.] before releasing information to parties who are otherwise not authorized to receive it, the facility had obtained written consent from the person, except that the written consent may have been obtained from the parent or guardian when the following applies:

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 671.99(v).

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

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

**Job Impact Statement**

Changes made to the last published rule do not necessitate revision of the previously published JIS as they do not materially alter the purpose, meaning or affect of the regulation.

**Assessment of Public Comment**

The agency received no public comment.

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

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

**Assessment of Public Comment**

The agency received no public comment.

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

**Driver License Requirements**

**I.D. No.** MTV-04-06-00002-P

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

**Proposed action:** Amendment of Part 3 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 501 and 501-a

**Subject:** Driver license requirements.

**Purpose:** To conform regulations to driver license requirements in the Vehicle and Traffic Law.

**Text of proposed rule:** Subdivisions (a) and (b) of section 3.2 are amended to read as follows:

(a) License classifications. Paragraph (a) of subdivision two of Section 501 of the Vehicle and Traffic Law establishes eight classes of driver licenses and sets forth the vehicles which may be operated with each such class subject to any required endorsements and any restrictions which may be made to any such license. The license classes are: A, B, C, D, E, DJ, M and MJ. Class A, class B and class C licenses which contain an H, P, S or X endorsement are commercial driver licenses or CDLs. Any other class license[ , including a class C license which does not contain an H, P, S or X endorsement] is not a CDL. No license may contain more than one class except that any license may contain a motorcycle M class in addition to its other class. A license which has both a motorcycle and a DJ class will be designated as a DMJ license.

(b) Endorsements. Paragraph (b) of subdivision two of Section 501 specifically establishes endorsements which may be added to one or more classes of licenses and further provides that the commissioner may by regulation establish additional endorsements. An endorsement is required on a license in order for the licensee to operate the type of vehicle or combination of vehicles or to transport passengers for the type of cargo specified in the endorsement. A license may contain multiple endorsements.

(1) Statutory endorsements. The endorsements established in statute are T, N, P, X, H, S, W, farm, and personal use vehicle endorsements. A farm endorsement or a personal use vehicle endorsement shall only be added to a license which is not a CDL. T, N, P, X, S or H endorsement shall only be added to a CDL. *A W endorsement may be added to a CDL license or to a license that is not a CDL.*

(i) CDL endorsements. A P endorsement which is needed to operate a bus requires passage of both a special knowledge test and a skills test in a representative vehicle. An S endorsement which is needed to operate a school bus requires passage of both a special knowledge test and a skills test in a representative vehicle. The holder of an S endorsement must also hold a P endorsement. T, N, H, W, or X endorsements which are needed to operate the following vehicles or combinations require only the passage of a knowledge test for each endorsement by the licensee:

T - double and triple trailers

N - tank vehicles

H - vehicles transporting hazardous materials which are required to be placarded

W - tow trucks

X - combines H & N endorsements

Paragraph 3 of subdivision (c) of section 3.2 is amended to read as follows:

(3) The following is a listing of restrictions and codes for each restriction:

Code	Restriction
A	ACCEL LEFT OF BRAKE
A3	SCHOOL BUS/MUNICIPAL VEHICLE
B	CORRECTIVE LENSES

**Department of Motor Vehicles**

**NOTICE OF ADOPTION**

**Freedom of Information Requests**

**I.D. No.** MTV-46-05-00007-A

**Filing No.** 23

**Filing date:** Jan. 9, 2006

**Effective date:** Jan. 25, 2006

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

**Action taken:** Amendment of Part 160 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 202(2); Public Officers Law, section 89(3) and (4)

**Subject:** Freedom of information requests.

**Purpose:** To make conforming amendments to the freedom of information regulation.

**Text or summary was published** in the notice of proposed rule making, I.D. No. MTV-46-05-00007-P, Issue of November 16, 2005.

- C MECHANICAL AID
- D PROSTHETIC DEVICE
- E AUTOMATIC TRANS
- F HEARING AID OR FULL VIEW MIRROR
- G DAYLIGHT DRIVING ONLY
- H LIMITED TO EMPLOYMENT
- I LIMITED USE AUTO
- I1 LIMTD USE MCY MAX 40 MPH
- I2 LIMTD USE MCY MAX 30 MPH
- I3 LIMTD USE MCY MAX 20 MPH
- I4 THREE WHEEL MCY
- J OTHER
- K CDL INTRASTATE ONLY (DOES NOT PERMIT OPERATION OUTSIDE OF NYS IN INTERSTATE COMMERCE)
- L NO AIR BRAKES
- L1 NO AIR BRAKES CLASS A VEH
- L2 NO AIR BRAKES CLASS B VEH
- M PASS REST TO CLASS B VEH
- N PASS REST TO CLASS C VEH
- N1 NO VEHICLE WITH DESIGNED ADULT SEATING CAPACITY OF 15 OR MORE PASSENGERS
- N2 NO VEHICLE WITH DESIGNED ADULT SEATING CAPACITY OF 8 OR MORE PASSENGERS
- O TRK/TRLR COMBI ONLY
- O1 TRUCK/TRL COMBI/TRUCK
- [O2] [TRUCK/TRL COMBI/TRUCK]
- P POWER BRAKES
- Q POWER STEERING
- R BUILT UP SEAT/PED/SHOE
- S HAZMAT/SCHOOL VEHICLE
- T CMV TRACTOR ONLY
- U HAND OPERATED BRAKE
- V FOOT OPER PARKING BRAKE
- [W] [NO VEH OVER 18,000 LBS GVWR]
- X FULL HAND CONTROL
- Y SHOULDER HARNESS USE
- Z WHEEL SPINNER
- 3 TELESCOPIC LENS
- 5 NO LIMITED ACCESS ROADS

Paragraph (10) of paragraph (a) of section 3.5 is amended to read as follows:

(10) If a skills test is taken and passed in a motor vehicle not more than [18,000] 26,000 lbs. GVWR and no CDL general knowledge test has been passed, either a class E, D, or DJ license will be issued dependent upon the class for which application has been made and the age of the applicant. A class C license with an H endorsement [and a weight (W) restriction to vehicles not over 18,000 lbs. GVWR] will be issued if the CDL general knowledge and CDL hazardous material tests have been passed. A class C license with a [weight (W) restriction to vehicles not over 18,000 lbs. GVWR and a] passenger (P) endorsement will be issued if the CDL general knowledge and passenger endorsement tests have been passed. If the skills test is taken in a vehicle with a designed adult seating capacity of not more than seven passengers, an N2 restriction will be placed on the passenger endorsement. If the skills test is taken in a passenger vehicle with a designed adult seating capacity of from 8 to 14 passengers an N1 restriction will be placed on the passenger endorsement. If the skills test is taken on a passenger vehicle with a designed adult seating capacity of 15 or more passengers neither an N1 nor N2 restriction will be placed on the passenger endorsement.

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

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

**Regulatory Impact Statement**

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 501 of the VTL sets forth the driver's license classification system.

Section 501(2)(b) of the VTL authorizes the Commissioner to provide for driver license endorsements beyond those established in statute. Section 501(2)(c) authorizes the Commissioner to provide for driver license restrictions beyond those established in statute. Section 501-a of the VTL defines commercial motor vehicle.

2. Legislative objectives: Chapter 339 of the Laws of 2005 amended section 501(2)(a)(iv) of the Vehicle and Traffic Law to provide that a Class D license is valid to operate a vehicle weighing not more than 26,000 lbs. This proposal makes conforming amendments to comply with Chapter 339. Chapter 60 of the Laws of 2005 amended section 501(2)(b) of the VTL to provide that a tow truck endorsement shall be designated by the letter "W", not the letters "CT." This proposal makes conforming amendments. Finally, this proposed amendment establishes an "A3" restriction to conform to both Federal and State regulations that require certain commercial drivers to comply with specific medical requirements. This is explained fully below.

3. Needs and benefits: This proposed regulation is necessary to comply with three mandatory requirements. First, Chapter 339 of the Laws of 2005 amended Vehicle and Traffic Law section 501(2)(a)(iv) to provide that a class D license is valid for the operation of a motor vehicle weighing not more than 26,000. Previously, such a license was valid to operate a motor vehicle weighing not more than 18,000 lbs. As the result of this change, conforming amendments are made to Part 3. For example, the O2 restriction is eliminated because it applied to trucks not exceeding 18,000 pounds. Other language alluding to the 18,000 pound ceiling is eliminated.

Second, Chapter 60 of the Laws of 2005 provided that a tow truck endorsement would be designated with the letter "W," and not "CT" as previously designated. The "W" designation is set forth in this proposal to conform to Chapter 60.

Finally, the new "A3" restriction requirement necessitates some background. In 1999, the New York State Department of Transportation amended 17 NYCRR Part 721.3 to provide that a person who applied for commercial driver's license (CDL) on or after 9/9/99 and who did not meet the medical requirements set forth in 49 CFR Part 391.41 could not operate a commercial motor vehicle in this State. The DOT regulation incorporated this federal regulation by reference. Failure by State DOT to adopt this regulation could have resulted in the loss of Federal motor carrier safety funding. In accordance with the State and Federal regulations, albeit somewhat tardy, commencing in January of 2006, DMV will no longer issue original or renewal CDLs to persons who do not comply with the federal medical requirements. The renewal provision will only apply to those who received their original CDLs on or after 9/9/99. However, Federal regulations, at 49 CFR 390.3, exempt school bus operators and operators of municipally operated vehicles from the Federal medical requirement. Thus, DMV will continue to issue CDLs to school bus and municipal drivers who do not meet the federal requirements, but such CDLs will have an "A3" restriction indicating that such driver may use the CDL only to operate a school bus or municipally owned vehicle. This regulation amends Part 3 to add the "A3" restriction.

In sum, this regulation is necessary to comply with State and Federal law and will benefit motorists by notifying them of the valid uses of their driver licenses.

4. Costs: a. Costs to regulated parties: None. This regulation will actually benefit certain industries by allowing individuals with a class D license to drive motor vehicles weighing no more 26,000 pounds. Previously, persons who wanted to drive a vehicle weighing between 18,000 and 26,000 pound vehicle needed a "non-CDL C", which cost more and required a more extensive road test. Now, businesses can employ individuals with a class D license to drive vehicles weighing no more than 26,000 pounds. In addition, car dealers can now sell motor vehicles in this heavier class to individuals with a class D license.

b. Costs to the agency, the state and local governments: There are no costs to the State or to local governments. School districts and local municipal governments will benefit from the "A3" restriction, because they will be able to retain school bus and municipal drivers who do not meet the Federal medical requirements.

DMV will spend \$661 to issue a memo to police and magistrates in this State advising them of the changes to the Class D license and the tow truck endorsement.

c. Source: DMV's Office of Program Analysis provided this information.

5. Local government mandates: This regulation does not impose any mandates upon local government.

6. Paperwork: This regulation does not require any reporting requirements.

7. Duplication: This regulation does not duplicate any State or Federal rules or laws.

8. Alternatives: No alternatives were considered. A no action alternative was not considered.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government.

10. Compliance: Immediate.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not attached because this rule will not have a disproportionate impact on small businesses or local governments, nor will it impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

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

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### **Inspection Stickers**

**I.D. No.** MTV-04-06-00003-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 amend Part 79 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 301(d)(1), 302(a), (e) and 304(c)

**Subject:** Inspection stickers.

**Purpose:** To notify the public that inspection stickers may expire on the last day of the portion of a month.

**Text of proposed rule:** Paragraph (a) of 79.1 is amended to read as follows:

(a) Certificate of inspection (form VS-1082, VS-1082HV, VS1082.1, VS-1082SE, VS-1082D, or VS-1082E). A sticker, also referred to as an inspection certificate, secured from the Department of Motor Vehicles by an official inspection station, issued by such station and affixed to a vehicle as prescribed by these regulations to evidence the satisfactory completion of an inspection of that vehicle in compliance with article 5 of the Vehicle and Traffic Law and this Part. Such sticker, when properly issued, is valid until midnight of the expiration date printed on the sticker, or, if no expiration date is printed on the sticker, until midnight on the last day of the month *or portion of the month* punched thereon, of the indicated year.

Paragraph (a) of 79.3 is amended to read as follows

(a) Every motor vehicle and trailer registered in this State is required to be inspected prior to 12 midnight of the expiration date printed on its current inspection sticker. Provided, however, that if no expiration date is printed on the current inspection sticker, then it is required to be inspected within one year from the last day of the month *or portion of the month* in which said vehicle last successfully completed a prescribed inspection. Every motor vehicle and trailer also must be inspected upon change of registrant.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michele L. Welch, Department of Motor Vehicles, Counsel's Office, 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, 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

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

#### **Consensus Rule Making Determination**

This regulation informs inspection stations and motorists about changes to the safety/emissions sticker that are now being issued by official inspection stations. The Department of Motor Vehicles has implemented a new inspection procedure for safety, safety emissions and diesel emissions in New York beginning in 2007. The new process will ensure more convenience to the motoring public by staggering the motor vehicle

inspection due dates throughout the month, resulting in fewer lines and less wait times. This will also benefit the inspection stations, which will be able to offer more efficient and timely service to their customers.

New York State law requires the inspection of motor vehicles every 12 months. The new system, which takes effect in 2007, divides each month into three expiration segments. Beginning in January 2006, vehicle inspections completed between January 1 and January 10, 2006 will expire at midnight on January 10, 2007, inspections completed between January 11 and January 20, 2006 will expire at midnight on January 20, 2007 and inspections completed between January 21 and January 31, 2006 will expire at midnight on January 31, 2007. This process will continue for each month throughout the year. There is no change to the inspection dates for 2006, as all stickers without the variable expiration date will continue to expire at the end of the month in which they were issued.

Motorists must have their vehicles inspected before the timeframe has expired. Although a ten-day period is indicated on the sticker, motorists are not required to have the inspection done during that timeframe, as they can opt to have the inspection completed at any time prior to the designated expiration period.

This change will be most noticeable to Upstate residents as their previous stickers typically expired at the end of the month. Motorists in the New York Metropolitan Area are already familiar with the staggered inspection expirations as they have had this program for several years. Vehicles in the New York Metropolitan Area that are subject to the dynamometer test (1995 and older vehicles) will still be issued stickers with an exact expiration date.

There are no costs to the consumer, the inspection stations or the Department. The Department did not incur any costs in the printing and issuance of the new stickers because these are merely a substitute for the previously used stickers.

Since this is a minor rulemaking that benefits both stations and consumer, it is submitted as a consensus rule.

#### **Job Impact Statement**

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### **Electric Rate Order Modification of Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-41-05-00027-A

**Filing date:** Jan. 6, 2006

**Effective date:** Jan. 6, 2006

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 (Con Edison) request for modification to the commission's order adopting three-year rate plan, issued March 24, 2005.

**Statutory authority:** Public Service Law, sections 5(b), (c), 65, 66

**Subject:** Modification of the commission's order adopting three-year rate plan, issued March 24, 2005, as it relates to a retail migration-related incentive.

**Purpose:** To approve Con Edison's request to modify the commission's order adopting three-year rate plan, as it relates to a retail migration-related incentive.

**Substance of final rule:** The Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) request for modification to the Commission's Order Adopting Three-Year Rate Plan, issued March 24, 2005 to eliminate from the electric migration incentive the condition precedent that Con Edison implement a Retail Marketing Program, and determined that the date by which migration will be measured for purposes of the electric migration incentive is April 8, 2005, 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-E-0572SA7)

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

**Taxes and Surcharges on Customer Bills by Telecommunications Carriers**

**I.D. No.** PSC-04-06-00010-P

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

**Proposed action:** The commission is considering various issues associated with taxes and surcharges applied to telephone customers' bills.

**Statutory authority:** Public Service Law, section 92(1)

**Subject:** Taxes and surcharges on customer bills.

**Purpose:** To consider requiring telephone service providers to change or eliminate items on their customer bills.

**Substance of proposed rule:** On January 5, 2006, the Commission issued an "Order Initiating Proceeding and Seeking Comments" in Case 05-C-1455 – In the Matter of the Application of Taxes and Surcharges to Customer Bills by Telecommunications Carriers. That Order addresses various issues associated with taxes and surcharges applied to telephone customers' bills and invites comments on those issues. It also directs certain service providers to show cause why certain items should not be eliminated from their customer bills. The Commission is considering action on these and other issues related to customers' bills raised as a result of that Order in this proceeding.

**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-1455SA1)

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

**Interconnection Agreement between Dunkirk and Fredonia Telephone Company and Sprint Communications Company L.P.**

**I.D. No.** PSC-04-06-00011-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Dunkirk and Fredonia Telephone Company and Sprint Communications Company L.P. for approval of an interconnection agreement executed on Jan. 1, 2006.

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

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

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

**Substance of proposed rule:** Dunkirk and Fredonia Telephone Company and Sprint Communications Company L.P. have reached a negotiated agreement whereby Dunkirk and Fredonia Telephone Company and Sprint Communications Company L.P. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

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

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

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

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

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

(05-C-1632SA1)

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

**Interconnection Agreement between Frontier Communications of New York, Inc. and Nextel Partners of Upstate New York, Inc.**

**I.D. No.** PSC-04-06-00012-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 proposal filed by Frontier Communications of New York, Inc. and Nextel Partners of Upstate New York, Inc. for approval of an interconnection agreement executed on Sept. 15, 2005.

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

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

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

**Substance of proposed rule:** Frontier Communications of New York, Inc. and Nextel Partners of Upstate New York, Inc. have reached a negotiated agreement whereby Frontier Communications of New York, Inc. and Nextel Partners of Upstate New York, 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 September 1, 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-1640SA1)

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

**Interconnection Agreement between Frontier Communications of Seneca-Gorham, Inc. and Nextel Partners of Upstate New York, Inc.**

**I.D. No.** PSC-04-06-00013-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of Seneca-Gorham, Inc. and Nextel Partners of Upstate New York, Inc. for approval of an interconnection agreement executed on Sept. 1, 2005.

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

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

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

**Substance of proposed rule:** Frontier Communications of Seneca-Gorham, Inc. and Nextel Partners of Upstate New York, Inc. have reached a negotiated agreement whereby Frontier Communications of Seneca-Gorham, Inc. and Nextel Partners of Upstate New York, 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 September 1, 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-1641SA1)

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

**Interconnection Agreement between Ogden Telephone Company and Nextel Partners of Upstate New York, Inc.**

**I.D. No.** PCS-04-06-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Ogden Telephone Company and Nextel Partners of Upstate New York, Inc. for approval of an interconnection agreement executed on Sept. 1, 2005.

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

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

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

**Substance of proposed rule:** Ogden Telephone Company and Nextel Partners of Upstate New York, Inc. have reached a negotiated agreement whereby Ogden Telephone Company and Nextel Partners of Upstate New York, 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 September 1, 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-1642SA1)

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

**Interconnection Agreement between Frontier Communications of Sylvan Lake, Inc. and Nextel Partners of Upstate New York, Inc.**

**I.D. No.** PCS-04-06-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of Sylvan Lake, Inc. and Nextel Partners of Upstate New York, Inc. for approval of an interconnection agreement executed on Sept. 1, 2005.

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

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

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

**Substance of proposed rule:** Frontier Communications of Sylvan Lake, Inc. and Nextel Partners of Upstate New York, Inc. have reached a negotiated agreement whereby Frontier Communications of Sylvan Lake, Inc. and Nextel Partners of Upstate New York, 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 September 1, 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-1643SA1)

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

**Interconnection Agreement between Citizens Telecommunications Company of New York and Nextel Partners of Upstate New York, Inc.**

**I.D. No.** PSC-04-06-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications Company of New York, Inc. and Nextel Partners of Upstate New York, Inc. for approval of an interconnection agreement executed on Sept. 1, 2005.

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

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

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

**Substance of proposed rule:** Citizens Telecommunications Company of New York, Inc. and Nextel Partners of Upstate New York, Inc. have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Nextel Partners of Upstate New York, 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 September 1, 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. Brillig, 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-1644SA1)

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

**Interconnection Agreement between Frontier Communications of AuSable Valley, Inc. and Nextel Partners of Upstate New York, Inc.**

**I.D. No.** PSC-04-06-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of AuSable Valley, Inc. and Nextel Partners of Upstate New York, Inc. for approval of an interconnection agreement executed on Sept. 1, 2005.

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

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

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

**Substance of proposed rule:** Frontier Communications of AuSable Valley, Inc. and Nextel Partners of Upstate New York, Inc. have reached a negotiated agreement whereby Frontier Communications of AuSable Valley, Inc. and Nextel Partners of Upstate New York, 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 September 1, 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. Brillig, 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-1645SA1)

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

**Uniform System of Accounts by Corning Natural Gas Corporation**

**I.D. No.** PSC-04-06-00018-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 will review a request from Corning Natural Gas Corporation (Corning) for deferred accounting treatment of recovery costs remaining after the sale of its appliance business as well as the costs of preparing and filing the Aug. 20, 2004 petition and its supplemental petition.

**Statutory authority:** Public Service Law, section 66-9

**Subject:** Uniform system of accounts—request for accounting authorization.

**Purpose:** To allow the company deferred accounting treatment for expenses beyond the end of the year in which it occurred.

**Substance of proposed rule:** The Public Service Commission is considering a request from Corning Natural Gas Corporation (Corning) for the deferral of future recovery costs remaining after the sale of its appliance business for the period January 1, 2005 through December 31, 2005. In conjunction with the costs allocated to the appliance business, Corning is requesting to defer costs associated with the filing of the August 20, 2004 Petition as well as the Supplemental Petition. The Commission may approve, reject or modify, in whole or in part, the relief requested by Corning.

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

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

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

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

(04-G-1032SA2)

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

**Uniform System of Accounts by KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island**

**I.D. No.** PCS-04-06-00019-P

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

**Proposed action:** The Public Service Commission will review a request from KeySpan Energy Delivery New York (KEDNY) and KeySpan Energy Delivery Long Island (KEDLI) for deferred accounting treatment of certain incremental costs related to increased commodity gas costs expected for calendar years 2006 and 2007.

**Statutory authority:** Public Service Law, section 66-9

**Subject:** Uniform system of accounts—request for accounting authorization.

**Purpose:** To allow the company deferred accounting treatment for expenses beyond the end of the year in which it occurred.

**Substance of proposed rule:** The Public Service Commission is considering a request from KeySpan Energy Delivery New York (KEDNY) and KeySpan Gas East Corporation (KEDLI) for the deferral of incremental costs related to the expected increase of commodity gas costs for calendar years 2006 and 2007. The Commission may approve, reject or modify, in whole or in part, the relief requested by KEDNY and KEDLI.

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

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

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

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

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

(05-G-1575SA1)

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

**Gas Curtailment Procedures by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-04-06-00020-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 219.

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

**Subject:** Gas curtailment procedures.

**Purpose:** To revise Rule 3 which sets forth the company's rules regarding priority of service in the event the company is required to implement short term or long term curtailment; revise Rule 3.2.3 which sets forth the company's obligations regarding customers purchasing non-company gas supplies; and revise the rate applicable to unauthorized overrun usage during periods of curtailment.

**Substance of proposed rule:** The Commission is considering Niagara Mohawk Power Corporation's (the company) request to revise the company's Rule No. 3 regarding Priority of Service in the event the company is required to implement Short Term or Long Term Curtailment. The revisions also include changes to Rule No. 3.2.3 which sets forth the company's obligations regarding customers purchasing non-company gas supplies and revise the rate applicable to unauthorized overrun usage during periods of curtailment.

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

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

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

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

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

(06-G-0004SA1)

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

**Gas Curtailment Procedures by National Fuel Gas Distribution Corporation**

**I.D. No.** PSC-04-06-00021-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 National Fuel Gas Distribution Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 8.

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

**Subject:** Gas curtailment procedures.

**Purpose:** To revise its curtailment procedures to extend Energy Service Company (ESCO) daily citygate delivery requirements to apply even when the ESCO's customers are curtailed and to revise its short-term curtailment procedure by eliminating the clause that limits short-term curtailments to 96 hours.

**Substance of proposed rule:** The Commission is considering National Fuel Gas Distribution Corporation's request to revise the company's curtailment procedures by extending Energy Service Company (ESCO) daily citygate delivery requirements to apply even when the ESCO's customers are curtailed and eliminating the clause that limits short-term curtailment to 96 hours.

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

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

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

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

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

(06-G-0005SA1)

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

**Economic Development Programs by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-04-06-00022-P

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

**Proposed action:** In a filing dated Dec. 19, 2005, Niagara Mohawk Power Corporation requests approval of changes to its economic development plan, including increasing plan funding to meet increased costs.

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

**Subject:** Economic development programs.

**Purpose:** To approve changes to the economic development programs.

**Substance of proposed rule:** In a filing dated December 19, 2005, Niagara Mohawk Power Corporation requests approval of changes to its Economic Development Plan, including increasing Plan funding to meet increased costs. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(01-M-0075SA28)

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

**Exit Financing and Debtor-In-Possession Financing by Mirant Bowline, LLC, et al.**

**I.D. No.** PSC-04-06-00023-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 Mirant Bowline, LLC, Mirant Lovett, LLC, Mirant NY-Gen, LLC, and Hudson Valley Gas Corporation (petitioners) for authorization to enter into agreements for exit financing and debtor-in-possession (DIP) financing.

**Statutory authority:** Public Service Law, section 69

**Subject:** Request by petitioners for authorization to enter into agreements for exit financing and DIP financing.

**Purpose:** To consider petitioner's request.

**Substance of proposed rule:** By petition filed December 6, 2005, Mirant Bowline, LLC, Mirant Lovett, LLC, Mirant NY-Gen, LLC, and Hudson Valley Gas Corporation (petitioners) seek authorization to enter into agreements for exit financing and debtor-in-possession (DIP) financing. The proposed exit financing provides petitioners, through their direct parent, Mirant North America, LLC (MNA), access to bankruptcy exit financing consisting of: (i) a \$1,000,000,000 senior secured revolving credit facility and an up to \$500,000,000 senior secured term loan facility and (ii) up to \$1,350,000,000 (to be reduced dollar for dollar by the amount of the aforesaid term facility) in cash proceeds from an issue or placement of senior notes. The interim facility of no less than \$850,000,000 will be available to the debtors in the event the debtors are unable to issue all or some of the senior notes as of the effective date of a confirmed plan of reorganization. The senior secured facilities will be senior secured obligations of MNA and will be guaranteed by, among others, petitioners upon each of their emergencies from bankruptcy. If petitioners emerge from bankruptcy at a later time than the other Mirant debtors, they propose, either jointly or individually, to enter into an agreement for DIP financing with an affiliate entity not to exceed \$25,000,000.

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(05-M-1542SA1)

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

**Transfer of Ownership Interest by Mirant NY-Gen LLC and Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-04-06-00024-P

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

**Proposed action:** The Public Service Commission is considering a petition from Mirant NY-Gen LLC and Orange and Rockland Utilities, Inc.

requesting approval of the transfer of ownership interests in the approximately 18 MW Grahamsville hydroelectric generation facility.

**Statutory authority:** Public Service Law, section 70

**Subject:** Transfer of ownership interests in electric facilities.

**Purpose:** To approve the transfer.

**Substance of proposed rule:** The Public Service Commission is considering a petition from Mirant NY-Gen LLC and Orange and Rockland Utilities, Inc. requesting approval of the transfer of ownership interests in the approximately 18 MW Grahamsville Hydroelectric Generation Facility. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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

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

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

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

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

(06-M-0018SA1)

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

**Broadband Over Power Line Technologies**

**I.D. No.** PSC-04-06-00025-P

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

**Proposed action:** The commission is considering how to develop the appropriate regulatory framework for broadband over power line technologies.

**Statutory authority:** Public Service Law, sections 5(1)(b), (d), 65(1), 66(1), (2), (5), (13), 70, 71

**Subject:** Broadband over power line technologies.

**Purpose:** To develop an appropriate regulatory framework.

**Substance of proposed rule:** The Commission is considering how to develop an appropriate regulatory framework for Broadband over power line technologies. The Commission has issued an Order Initiating Proceeding and Inviting Comments for the purpose of examining regulatory issues related to broadband over power line.

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

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

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

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

(06-M-0043SA1)

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

**Line of Credit by Four Corners Water Works Corporation**

**I.D. No.** PSC-04-06-00026-P

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

**Proposed action:** The commission is considering the petition of Four Corners Water Works Corporation for approval to enter into a line of credit for \$40,000 and approval of a Tariff Statement No. 2 that will recover borrowings made under the line of credit.

**Statutory authority:** Public Service Law, sections 89-f and 89-c

**Subject:** Issues of stock, bonds and other forms of indebtedness and water rates and charges.

**Purpose:** To allow Four Corners Water Works to obtain a line of credit and approval of Tariff Statement No. 2.

**Substance of proposed rule:** The Commission is considering whether to approve, reject or modify the petition of Four Corners Water Works Corporation for approval to (a) enter into a Line of Credit agreement for \$40,000; and (b) file a proposed tariff leaf, Line of Credit Account, Statement No. 2. The Line of Credit would allow the company to pay for extraordinary repairs, emergency maintenance, and major improvements that are not covered in base rates. The tariff leaf would allow the company to recover the cost of the loans made under the Line of Credit.

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

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

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

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

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

(05-W-0615SA2)

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

**Water Rates and Charges by Saratoga Glen Hollow Water Supply Corp.**

**I.D. No.** PSC-04-06-00027-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by the Saratoga Glen Hollow Water Supply Corp. for permission to change an additional \$500 road-boring fee to prospective customers along its Rte. 9P main extension construction project.

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

**Subject:** Water rates and charges.

**Purpose:** To charge an additional \$500 road-boring fee to prospective customers.

**Substance of proposed rule:** On December 14, 2005, Saratoga Glen Hollow Water Supply Corp. (Saratoga Glen or the company) filed a petition for permission to charge an additional \$500 road-boring fee to prospective customers requesting service from its Route 9P main extension construction project. The company states the additional fee is due to increased construction costs. Saratoga Glen currently services 190 customers and located in the Saratoga Glen Hollow Subdivision, Town of Stillwater, Saratoga County. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(05-W-1601SA1)

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

**Transfer of Water Plant Assets from Lettiere Water System to Southside Water Inc.**

**I.D. No.** PSC-04-06-00028-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by James V. Lettiere, Jr., d/b/a Lettiere Water System for approval to transfer water plant assets to Southside Water Inc.

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

**Subject:** Transfer of water plants assets.

**Purpose:** To transfer water plant assets from Lettiere Water System to Southside Water Inc.

**Substance of proposed rule:** On December 29, 2005, James V. Lettiere, Jr., d/b/a Lettiere Water System (Lettiere) filed a petition requesting approval to transfer its system's water plant assets to the newly formed Southside Water Inc. Lettiere currently provides water service to 103 customers in a real estate subdivision known as Lettiere Tract, located in the Town of Watertown, Jefferson County. The Commission may approve or reject, in whole or in part, or modify the petition.

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

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

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

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

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

(06-W-0001SA1)

**Department of Taxation and  
Finance**

**NOTICE OF ADOPTION**

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel**

**I.D. No.** TAF-47-05-00002-A

**Filing No.** 31

**Filing date:** Jan. 10, 2006

**Effective date:** Jan. 10, 2006

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

**Action taken:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.

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

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

**Purpose:** To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Jan. 1, 2006, and ending March 31, 2006, and reflect the

aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

**Text or summary was published** in the notice of proposed rule making, I.D. No. TAF-47-05-00002-P, Issue of November 23, 2005.

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

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

**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.

**NOTICE OF CONTINUATION  
NO HEARING(S) SCHEDULED**

**Electronic Funds Transfer Program**

**I.D. No.** TAF-33-05-00002-C

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

**The notice of proposed rule making**, I.D. No. TAF-33-05-00002-P was published in the *State Register* on August 17, 2005.

**Subject:** Electronic Funds Transfer Program.

**Purpose:** To reflect the department’s enhanced electronic funds transfer system.

**Substance of rule:** This proposal contains amendments to Parts 2396 (withholding tax-Article 22 of the Tax Law) and 2397 (Articles 12-A, 13-A, 28 and 29 of the Tax Law) of the regulations of the Department of Taxation and Finance concerning electronic funds transfer (“EFT”). The EFT system is used by taxpayers to remit payments of taxes due and is the required mode of payment for large payors. The primary purpose of the amendments is to update the regulations to reflect the Department’s enhanced EFT system (under a new banking services contract) which is planned for implementation sometime in 2005.

Besides addressing the upcoming changes in the EFT program, the amendments include other updating changes. Also, some unnecessary provisions, and provisions which are better suited for inclusion in the program material which is sent to participants, have been deleted.

Some of the specific amendments contained in the proposal are the following:

- changing the definitions sections of both Parts 2396 and 2397 to remove those definitions already contained in the Tax Law and referring readers to the law for those terms;
- conforming the common definitions in the Parts to each other; for example, the term “business day” is defined to mean a day other than Saturday, Sunday or certain holidays, which is consistent with how the term has been defined in practice for the program for both withholding tax and the other taxes;
- allowing voluntary participants in the program to opt out of the program at a later date (10 days before the end of the program period, if done in writing, or the last day of the period, if done online) than is currently allowed;
- adding specific language providing that the Department may exercise its statutory authority and limit the selection of payment options available to voluntary participants; this is current Department policy (currently, only ACH credit and ACH debit are available to withholding tax voluntary participants) but was not addressed in the previous regulations;
- reflecting the current Department policy of keeping participants, whose status has changed and who are no longer required to participate, enrolled in the program unless they choose not to participate, instead of having a re-enrollment process;
- repealing the current provisions concerning the Department’s mailing of advices of deposit or payment and substituting provisions reflecting the enhanced system’s greater use of the program’s web site; acknowledgement of payment will be provided by a record of deposits in a participant’s online account but participants may also request that the Department mail an advice of deposit or payment to them;

- conforming the regulations to existing policy by providing that taxpayers in the program who pay by certified check can deliver their certified check to the Department by the due date instead of by the second business day prior to the due date (as provided in Part 2396); and
- repealing and replacing the provisions concerning changing payment options to reflect the greater flexibility allowed by the enhanced system; participants will be allowed to change their payment option at any time instead of at prescribed times.

**Changes to rule:** No substantive changes.

**Expiration date:** August 17, 2006.

**Text of proposed rule and changes, if any, may be obtained from:** John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: John\_Bartlett@tax.state.ny.us

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

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**Urban Development  
Corporation**

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

**Economic Development and Job Creation Throughout New York State**

**I.D. No.** UDC-04-06-00006-EP

**Filing No.** 24

**Filing date:** Jan. 9, 2006

**Effective date:** Jan. 9, 2006

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

**Action taken:** Amendment of Part 4243 of Title 21 NYCRR.

**Statutory authority:** New York State Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 1994, ch. 169; and L. 2001, ch. 471

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

**Specific reasons underlying the finding of necessity:** Effective provision of economic development assistance in accordance with the enabling legislation (including recent amendments thereto) requires clarification of the rule and elimination of inconsistencies in the rule.

**Subject:** Economic development and job creation throughout New York State.

**Purpose:** To provide the framework for administration of The Empire State Economic Development Fund, evaluation criteria, terms and conditions, the application and evaluation process, and reduce the categories of ineligible recipients.

**Substance of emergency/proposed rule (Full text is not posted on a State website):** The Empire State Economic Development Fund (the “Program”) was created pursuant to Chapter 309 of the Laws of 1996 as amended by Chapter 432 of the Laws of 1997 and Chapter 471 of the Laws of 2001 (the “Enabling Legislation”). The general purpose of the Program is to promote economic development in the State by encouraging economic and employment opportunities for the State’s citizen’s and stimulating development of communities throughout the State.

The Enabling Legislation creates Sections 16-m and 16-l of the New York State Urban Development Corporation Act (the “UDC Act”) which govern the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (the “Corporation”) to promulgate rules and regulations for the Program (the “Rules”) in accordance with the provisions of the State Administrative Procedure Act (“SAPA”). The Rules set forth the

framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

1. Program Assistance:

a) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

b) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

c) Competitiveness Improvement Program for Competitiveness Improvement projects.

d) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

e) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

f) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

g) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

h) Rural Revitalization Program to support community economic development programs and activities including value added small business growth, agricultural, agribusiness and forest products and those projects that promote the family farm, increase or retain employment opportunities and otherwise contribute to the revitalization of local rural areas which are economically distressed.

The proposed amended Rule reduces the number of ineligible recipients. Specifically, the proposed amended Section 4243.2(a)(23)(v) eliminates "other gambling establishments" from the list of ineligible recipients. **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 April 8, 2006.

**Text of rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, 633 Third Ave., 37th Fl., New York, NY 10017, (212) 803-3792, e-mail: apidedjian@empire.state.ny.us

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

**Public comment will be received until:** 60 days after publication of this notice.

**Regulatory Impact Statement**

1. Statutory Authority:

Chapter 84, Laws of 2002 (Unconsolidated Laws, Section 6266-m), which was originally enacted by Chapter 309, Laws of 1996 and amended by Part M1 Section 5 of the Article VII Bill of the Budget of 2003, authorized the Urban Development Corporation, d/b/a Empire State Development Corporation (the "Corporation") to implement The Empire State Economic Development Fund (the "Program") to promote economic development in the State by encouraging economic and employment opportunities for the State's citizens and stimulating development of communities throughout the State. The program, in furtherance of the foregoing, offers private businesses, government entities and not-for-profit entities various forms of assistance, including loans, loan guarantees and grants. Chapter 471, Laws of 2001, (Unconsolidated Laws, Section 6266-l) authorized the Corporation to extend this type of assistance to eligible beneficiaries in rural areas of the State. Section 5(4) of the New York State Urban Development Corporation Act (Unconsolidated Laws, Section 6255(4)), which was originally enacted as Chapter 174 of the Laws of 1968, authorizes the Corporation to make rules and regulations with respect to its projects, operations, properties and facilities, in accordance with Section 102 of the Executive Law.

2. Legislative Objective:

The objective of the statute authorizing the Program is to promote the economic health of New York State by facilitating the creation or retention of jobs or increasing business activity within municipalities or regions of the State.

3. Needs and Benefits:

Currently, the Program's legislation assists job creation throughout the State by providing the following types of assistance:

1) General Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; working capital; and feasibility or planning studies.

2) Federal and Urban Site Development Financing for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; and preliminary planning and the soft costs related to any of the above uses.

3) Competitiveness Improvement Program for Competitiveness Improvement projects.

4) Infrastructure Development Financing for construction or renovation of basic systems and facilities on public or privately-owned property including drainage systems, sewer systems, access roads, sidewalks, docks, parking, wharves, water supply systems, and site clearance, preparation, improvements and demolition; soft costs related to any of the above uses; and preliminary planning.

5) Regional and Economic Industrial Planning Studies and Economic Development Initiatives for the purpose of preparation of strategic plans for local and or regional economic development; the analysis of business sectors; marketing and promoting regional business clusters and feasibility studies. Grants for Economic Development Initiatives may be made for the identification of new business opportunities; planning for new enterprise development; and the management of economic development projects provided that the Corporation could not undertake such project.

6) Commercial Area Development Financing for new construction, renovation or leasehold improvements; the soft costs related to any of the above uses; and preliminary planning, including feasibility studies and surveys and reports.

7) Capital Access Program funds for Capital Access Projects provided through Flexible Financing Programs may be used for new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; soft costs related to any of the above uses; and working capital.

8) Rural Revitalization Assistance grants or contracts for services, on a competitive basis in response to requests for proposals, to eligible entities and organizations to support community economic development programs and activities which increase or retain employment opportunities in rural New York State and otherwise contribute to the revitalization of local rural areas which are economically distressed through innovative activities designed to generate economic alternatives and opportunities in rural areas.

The Program does not currently allow for assistance to gambling establishments. The proposed change will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule removes "and other gambling establishments" from Section 4243.2(a)(23)(v).

1. Evaluation Criteria – The Corporation, will continue to review and evaluate applications for assistance pursuant to eligibility requirements and criteria set forth in the UDC Act and the Rule.

2. Application procedure – Approval of applications shall be made only upon a determination by the Corporation:

(i) that the proposed project would promote the economic health of the State by facilitating the creation or retention of jobs or would increase business activity within a political subdivision or region of the State or would enhance or help to maintain the economic viability the State;

(ii) that the project would be unlikely to take place in the State without the requested assistance; and

(iii) that the project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs.

4. Costs:

The changes should not increase costs for the Program.

The funding source is appropriation funds. Savings will occur as a result of the use of standard applications which allow staff to efficiently assist in the application process.

## 5. Local Government Mandates:

There is no imposition of any mandates upon local governments by the amended rule.

## 6. Paperwork:

There are no additional reporting or paperwork requirements as a result of this amended rule. Standard applications used for most other Corporation assistance will be employed. This simplification and consolidation is part of the Corporation's overall effort to streamline all of its programs, and, thereby, facilitate, the application process for all of the Corporation's clients.

## 7. Duplication:

There are no duplicative, overlapping or conflicting rules or legal requirements, either federal or state.

## 8. Federal Standards:

There are no applicable federal government standards which apply.

## 9. Alternatives:

This Program was created by the Legislature in our representative form of government. The Corporation is implementing this legislation. It is not for the Corporation to say what harm would be caused by doing nothing. With respect to implementing legislation, doing nothing is NOT an option.

## 10. Compliance Schedule:

No significant time will be needed for compliance.

**Regulatory Flexibility Analysis**

## 1. Effect of Rule:

The Program does not currently allow for assistance to gambling establishments. The amended Rule will improve the accessibility of the program to eligible entities throughout the State and enable the Corporation to more effectively administer the Program. The goal of such improvements is to better achieve the Program's objectives, including the retention and creation of employment opportunities, and to otherwise contribute to the economic health of New York State.

The proposed amended Rule removes "and other gambling establishments" from Section 4243.2(a)(23)(v).

This should not affect the Program's accessibility to small business.

## 2. Compliance Requirements:

No affirmative acts will be needed to comply.

## 3. Professional Services:

No professional services will be needed to comply.

## 4. Compliance Costs:

No initial costs will be needed to comply with the amended rule.

## 5. Economic and Technological Feasibility:

The Rule makes The Empire State Economic Development Fund assistance feasible for small businesses, by expressly stating that small businesses are eligible for certain types of program assistance while permitting small businesses access to all other types of program assistance for which they may be eligible, notwithstanding the size of such businesses. The Rule also makes the program assistance feasible for local governments by expressly stating that government entities and municipalities are eligible for program assistance. It is also economically feasible for local governments to coordinate their respective economic development and job retention and attraction efforts with the program. There are no aspects of the Rule that make The Empire State Economic Development Fund assistance or the Rule technologically infeasible for small business or local government.

## 6. Minimizing Adverse Impact:

The revised rule will have no adverse economic impact on small business or local governments.

## 7. Small Business and Local Government Participation:

The Program is a product of the legislative process and, thereby, has had the input of all small businesses participating in the representative process of government. The Empire State Economic Development Fund emphasizes the effective provision of economic development throughout New York State. Small business may participate by requesting assistance when the requisite eligibility criteria are met. The Corporation will work with local governments to identify problem areas and make grant applications available.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis Statement is not submitted because the amended rule will not impose any adverse economic impact, reporting requirements, recordkeeping or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement**

A JIS is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. In fact, the proposed amended rule should have

a positive impact on job creation because it will facilitate administration of and access to the Empire State Economic Development Fund, which should improve the opportunities for the creation of jobs throughout the State by encouraging business expansion and attraction.