

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Farm Wineries

I.D. No. AAM-08-06-00002-A
Filing No. 624
Filing date: May 22, 2006
Effective date: June 7, 2006

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

Action taken: Addition of Part 197 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 18(6); and Alcoholic Beverage Control Law, section 76-a

Subject: Farm wineries.

Purpose: To establish a form for farm wineries to use to make certifications and submit applications to the commissioner for authorization to manufacture or sell wine produced from grapes grown outside New York State.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-08-06-00002-P, Issue of February 22, 2006.

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

Text of rule and any required statements and analyses may be obtained from: William Kimball, Director of Agricultural Protection and

Development, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235

Assessment of Public Comment

The agency received no public comment.

State Board of Elections

NOTICE OF ADOPTION

Voting Systems Standards

I.D. No. SBE-49-05-00016-A
Filing No. 626
Filing date: May 23, 2006
Effective date: June 7, 2006

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

Action taken: Repeal of Part 6209 and addition of new Part 6209 to Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 7-201, 7-203, 7-204; and L. 2005, ch. 181

Subject: Voting systems standards.

Purpose: To establish testing procedures for new voting systems to assure they meet all statutory requirements.

Substance of final rule: This rule details the application and contracting process, as well as the criteria for certification of voting systems to be used in elections in this State.

The changes between the proposed rule and the rule that was finally adopted involve the clarification of terms and definitions, and the articulation of various testing requirements and standards. None of these changes alter the meaning or effect of the rule.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 6209.1, 6209.2, 6209.4, 6209.6, 6209.9 and 6209.11.

Text of rule and any required statements and analyses may be obtained from: Patricia L. Murray, Deputy Counsel, Board of Elections, 40 Steuben St., Albany, NY 12207-2109, (518) 474-6367, email: pmurray@elections.state.ny.us

Regulatory Impact Statement

A) Statutory Authority

Election Law § 3-102 gives general rule making authority. Election Law §§ 7-201, 7-202, 7-203 and 7-204 give specific rule making authority with regard to the examination of voting systems, the requirements of voting systems, the required use of voting systems and the purchase of voting systems. Specific rule making authority for all these purposes is included in Chapter 181 Laws of 2005.

B) Legislative Objectives

The State Board of Elections is required by statute to certify voting machines and systems for use in New York State. This is a process whereby the SBOE affirmatively ascertains that a voting system or voting machine meets all the statutory requirements and can be relied upon to accurately configure ballots and record votes in an election. Voting ma-

chines and systems which are purchased and delivered for use in this state must also be tested to assure they meet the specifications of the machine or system as certified.

C) Needs and Benefits

The statute mandates both the certification process, and the promulgation of rules and regulations to govern the process. To assure that the certification procedure is fair and accurate, and open, there must be objective standards which apply to everyone. The promulgation of these regulations assures that all stakeholders: vendors, the voting public, county boards of elections, have access to the steps in the certification process. And can be assured that all machines and systems certified by the State Board of Elections can indeed be relied upon to accurately configure ballots and record votes, assuring fair elections.

D) Costs

All costs for the certification process are borne by the vendors, per statute. There will be no additional costs to state or local governments as a result of the enforcement of these regulations.

E) Local Government Mandate

There is a statutory mandate that only voting machines and systems certified by the State Board of Elections may be used for elections in the state. These regulations aid in the implementation of that mandate without adding to the burden it already imposes.

F) Paperwork

These regulations do not require any additional paperwork or record-keeping by county boards of elections or any other governmental entity.

G) Duplication

These regulations do not duplicate existing regulations or statutes. There are federal regulations governing voting system standards; New York's regulations go beyond what is required in the federal standards.

H) Alternatives

New York State Law requires voting systems be certified as meeting statutory standards in order to be used for elections here. Our statutory standards include federal voting system standards, and add several that are specific to NYS. These regulations require certification of compliance with federal standards be obtained prior to submission for NYS certification. The state certification process will test for state-specific standards. The alternative would be for New York State to test for both federal and state standards.

I) Federal Standards

There are federal voting system standards and a federal certification process. These regulations do not duplicate the federal process. They incorporate the federal standards, by requiring and accepting federal certification to federal standards prior to certification to NYS standards.

Specific New York State statutory requirements include but are not limited to: full face ballot requirement, the ability to allow for cross endorsement of candidates, and the provision of a voter verifiable paper trail for audit purposes. The certification process tests for those NYS specific requirements only after a voting machine or system has been federally certified for those requirements the state has in common with the federal standards.

J) Compliance Schedule

These regulations will have to be pre-cleared by the Department of Justice, pursuant to section 5 of the Voting Rights Act, 1964, in order for machines certified under these regulations to be used in New York City.

Regulatory Flexibility Analysis

The statute requires vendors to bear the costs of certification of their voting systems. We considered alternatives for small New York businesses, but are limited by the statutory mandate. The \$5,000 escrow requirement is an industry minimum for certification testing.

Pursuant to statute, these regulations require training on the newly certified voting systems. The vendor is responsible for providing that training for elections personnel. The county boards of election will be responsible for providing that training to the general public, and there are federal HAVA funds available to cover those costs. Amendments to the proposed regulations to not change this analysis.

None of the changes in these regulations require a change in this statement.

Rural Area Flexibility Analysis

Pursuant to statute, these regulations require training on the newly certified voting systems. The vendor is responsible for providing that training for elections personnel. The county boards of election will be responsible for providing that training to the general public, and there are federal HAVA funds available to cover those costs. Amendments to the proposed regulations to not change this analysis.

None of the changes in these regulations require a change in this statement.

Job Impact Statement

These regulations neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State. Amendments to the proposed regulations to not change this analysis.

None of the changes in these regulations require a change in this statement.

Assessment of Public Comment

The State Board of Elections received over 2000 comments to the proposed Rules and Regulations. Four public hearings were conducted around the State, at which 86 speakers provided testimony. In addition, the State Board of Elections posted drafts of the proposed rules on its website, and invited additional public comment during the months of February and March.

The vast majority of the comments and testimony received did not go to the substance of the proposed regulations. However, there were comments in several areas that resulted in changes to the proposed regulations. Those changes serve to clarify identified areas of confusion, and to establish uniform standards for procedures of all county boards of elections. None of the amendments change the substance or nature of the proposed regulations. A brief summary of the comments and testimony received follows.

AREAS IN WHICH COMMENTS RESULTED IN AMENDMENTS TO REGULATIONS:

1. Require system to notify voter of an undervote.
2. Provide vendor with an opportunity to correct any non-compliant features prior to rescinding certification, when a voting system fails to fulfill the criteria prescribed by statute subsequent to certification.
3. Standards for determining sufficiency of VVPAT.
4. General clarification of following sections of the Rules and Regulations

- environmental standards
- who is responsible for routine maintenance testing of equipment
- who will re-examine software when a change is made to the software
- that a federal standard which prohibits testing of equipment during tabulation of votes is standard for state
- testing of factory products
- several definitions were revised to provide greater clarity
- county boards of elections as purchasers of voting systems

5. Clarification of standards and procedures for use of voting systems and tabulation of ballots.

COMMENTS WHICH DID NOT GO TO SUBSTANCE OF PROPOSED REGULATIONS

- Re-interpret statutory definition of full-face ballot.
- A preference for paper-based voting systems.
- Failure to adequately address needs of persons with disabilities.
- Additional contract provisions which are within the purview of the county boards of elections, and the contracting process, not the subject of regulations.
- Individual preference for specific types of assistive devices.
- Displeasure with the testing for other than certification purposes, of a specific type voting system, at the request of the vendor.
- Belief that DREs can be "hacked into".
- SBOE's obligation to protect the needs of the voters of the state, and not the interests of the vendors.

Department of Health

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Nursing Home Pharmacy Regulations

I.D. No. HLT-50-05-00004-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. HLT-50-05-00004-P was published in the *State Register* on December 14, 2005.

Subject: Nursing home pharmacy regulations.

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

Substance of rule: 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. Therefore, the proposed regulation eliminates the cap of up to five noninjectable prepackaged medications per each kit. In addition, the proposed regulation changes would limit the total number of noninjectables that would be available in emergency kits for the entire facility 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.

Changes to rule: No substantive changes.

Expiration date: December 14, 2006.

Text of proposed rule and changes, if any, 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

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

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

Controlled Substances in Emergency Kits

I.D. No. HLT-50-05-00005-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. HLT-50-05-00005-P was published in the *State Register* on December 14, 2005.

Subject: Controlled substances in emergency kits.

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

Substance of rule: 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 healthcare 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 change 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 healthcare 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.

Changes to rule: No substantive changes.

Expiration date: December 14, 2006.

Text of proposed rule and changes, if any, 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

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

**Higher Education Services
Corporation**

**EMERGENCY
RULE MAKING**

New York State Licensed Social Worker Loan Forgiveness Program

I.D. No. ESC-23-06-00001-E

Filing No. 622

Filing date: May 18, 2006

Effective date: May 18, 2006

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

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

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

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

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

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

Purpose: To implement the program.

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

Section 2201.8 New York State Licensed Social Worker Loan Forgiveness Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If for any given year the corporation extends the filing deadline of March 1, the group of applicants filing after March 1 shall be given fourth priority. If funding is insufficient to make awards to this group, the corporation shall make awards to the members of this group having loans

guaranteed by the corporation. Any remaining applicants in this group will be chosen by lottery.

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

(h) *Critical Human Service Areas:*

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 15, 2006.

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

Regulatory Impact Statement

Statutory authority:

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

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

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

Legislative objectives:

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

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

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

Needs and benefits:

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

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

The proposal addresses administrative concerns by providing an annual application deadline, defining the terms "year," "student loan debt," "full

time,” and “economically disadvantaged” applicants, and by providing a structure for implementing the program.

Costs:

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

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

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

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

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

Local government mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

In preparing this proposal, HESC met with the New York State and New York City chapters of the National Association of Social Workers (NASW). This proposal is a reflection of those meetings.

As stated above, HESC is required to define “economically disadvantaged,” (the third statutory priority in distributing awards). The New York State Licensed Social Worker Loan Forgiveness Program was passed in an omnibus bill, therefore there is no memo to clarify the meaning of “economically disadvantaged.” While in other New York State a program, “economically disadvantaged” is a term of art indicating financial hardship, NASW indicated that for the purposes of this proposal, “economically disadvantaged” was included to ensure that the financial need of an applicant would be considered. Accordingly, HESC’s proposal ranks applicants using the combined net taxable income for the applicant and their spouse. In the event the third statutory priority for awards is reached, applicants with the lowest combined net taxable income will be given preference over those with the highest.

Further, information from NASW indicates that “full time” for the social work industry in New York typically means 35 hours per week. The proposal reflects this.

The proposal’s definitions for “disqualifications” and “student loan debt,” are based on those of similar federal programs such as the U.S. Department of Education’s Perkins Loan Forgiveness Program and the U.S. Health and Human Services Nursing Education Loan Repayment Program, as well as the New York State Nursing Faculty Loan Forgiveness Incentive Program.

“Year” has been defined by the proposal as a calendar year inasmuch as this program does not take place in an academic setting, therefore using “academic year” as the definition for “year” would be inappropriate. Based upon input from NASW, the definition of “year” will allow for pro-rated awards.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Efforts were made to align this proposal with programs in similar federal subject areas.

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New

York State Higher Education Services Corporation’s Notice of Emergency Adoption and Notice of Proposed Rule Making seeking to add a new section 2201.8 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Rural Area Flexibility Analysis

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

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

The program will have a positive impact on rural areas deemed “critical human service areas” by attracting social workers to those areas. The program implements the New York State Licensed Social Worker Loan Forgiveness program.

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

Job Impact Statement

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

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

**EMERGENCY
RULE MAKING**

New York State District Attorney Loan Forgiveness Program

I.D. No. ESC-23-06-00003-E

Filing No. May 22, 2006

Filing date: May 22, 2006

Effective date: 625

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

Action taken: Addition of section 2201.9 to Title 8 NYCRR.

Statutory authority: L. 2004, ch. 50 and a Memorandum of Agreement entered into between the New York State Higher Education Services Corporation and the New York State Division of Criminal Justice Services dated March 2, 2006 and Education Law, sections 653 and 655

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

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

Subject: New York State District Attorney Loan Forgiveness Program.

Purpose: To implement the program.

Text of emergency rule: New section 2201.9 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.9 New York State District Attorney Loan Forgiveness Program

(a) **Purpose.** New York State District Attorney Loan Forgiveness Program awards are being offered to retain experienced attorneys employed in District Attorney Offices throughout New York State.

(b) **Authority.** The provisions contained herein are made pursuant to Chapter 50 of the Laws of 2004 and a Memorandum of Agreement entered into between the New York State Higher Education Services Corporation and the New York State Division of Criminal Justice Services dated March 2, 2006 and the authority granted to the New York State Higher Education Services Corporation in sections 653 and 655 of the Education Law.

(c) **Eligibility.** An applicant shall be a legal resident of New York State for at least one year; a U.S. citizen or eligible non-citizen; an eligible attorney; and have eligible student loan expenses.

(d) **Definitions.**

(1) "Eligible Attorney" shall mean a District Attorney or Assistant District Attorney, admitted to practice law in New York State, who has been employed in a District Attorney's office in New York State full-time during the year of qualified service immediately preceding application.

(2) "Full-time" shall mean thirty-five hours per week.

(3) "Year of qualified service" shall mean each of the fourth through ninth years (365 calendar days per year) of full-time employment in a District Attorney's Office in New York State as an eligible attorney. For purposes of this section, all periods of time during which an admitted attorney was employed as a District Attorney or Assistant District Attorney and all periods of time during which the attorney was a law school graduate who, while awaiting admission to the New York State bar, was employed by a prosecuting or criminal defense agency shall be combined.

(4) "Eligible student loan expenses" shall mean the total cumulative loan balance, at the time of application, required to be paid by the Eligible Attorney for student loans, including any interest, covering the cost of attendance at his or her undergraduate institution(s) and/or law school(s). Student loan expenses shall include New York State student loans, federal government loans, and loans made by commercial entities subject to governmental examination. Student loan expenses shall not include: Parent PLUS loans; loans cancelled under any program; private loans given by family or personal acquaintances; or student loan debt paid by credit card. Student loan expenses shall be reduced by any grants, loan forgiveness, public service scholarships or other reductions to student loan expenses that a student has received or shall receive, including, but not limited to law school loan forgiveness and public service scholarships.

(e) **Administration.** In addition to the requirements of § 661 of the Education Law, applicants for this Program shall:

(1) File applications annually on forms prescribed by the Corporation;

(2) Postmark or electronically transmit applications to the Corporation on or before May 1st of each year, provided that this deadline may be extended at the discretion of the Corporation;

(3) Apply at the end of each year of qualified service, beginning no earlier than the end of the fourth year of qualified service and concluding no later than the end of the ninth year of qualified service; and

(4) Provide an attestation on the Program application as to full-time qualified service for the prior year.

(f) **Duration and award amounts.**

(1) Award disbursements under this program are available for up to a maximum of six years of qualified service, provided program funding is available.

(2) At the end of each year of qualified service, qualified applicants may receive awards for student loan expenses in the amount of three thousand four hundred dollars (\$3,400).

(3) The maximum lifetime amount of awards for student loan expenses shall not exceed the qualified applicant's student loan expense documented on his or her first Program application or twenty thousand, four hundred dollars (\$20,400), whichever is less.

(4) The Corporation may offset any award given if the recipient is in default on a student loan guaranteed by the Corporation.

(g) **Priority of award.** In any year for which there are more qualified applicants than funds available, the Corporation shall notify the President Pro Tem and Majority Leader of the New York State Senate and indicate that the Corporation shall be using the following method of award distribution:

(1) Qualified applicants who received an award for forgiveness of student loan expenses for the preceding year of qualified service shall

receive first priority. If funding is insufficient to make awards to this group, recipients will be chosen by random selection.

(2) Qualified applicants with loans guaranteed by the Corporation shall receive second priority. If funding is insufficient to make awards to this group, recipients will be chosen by random selection.

(3) Distribution of any remaining funds to remaining qualified applicants shall be done by random selection.

(h) **Disqualification.** A qualified applicant shall be disqualified from receiving an award for forgiveness of student loan expenses if:

(1) The applicant owes a service obligation for any State or Federal program;

(2) The applicant is in default on a federally guaranteed student loan, unless the loan is guaranteed by the Corporation;

(3) The applicant has loans for which documentation is not available;

(4) The applicant has loans without a promissory note; or

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

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 August 19, 2006.

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

Regulatory Impact Statement

Statutory authority:

New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the New York State New York State District Attorney Loan Forgiveness Program is codified in sections 653 and 655 of the Education Law. This emergency rule is being adopted pursuant to authority granted by Chapter 50 of the Laws of 2004 and a Memorandum of Agreement entered into between the New York State Higher Education Services Corporation and the New York State Division of Criminal Justice Services dated March 2, 2006.

Legislative objectives:

The legislature established the New York State District Attorney Loan Forgiveness Program to encourage experienced district attorneys to remain in service.

Needs and benefits:

A statewide survey done of District Attorneys offices in 2002, by the New York State District Attorneys Association, revealed that experienced and skilled district attorneys were leaving their careers in public service for more lucrative employment due to high student loan debt. As a result, the legislature established the New York State District Attorney Loan Forgiveness Program to address this need and entice experienced district attorneys to remain in employment. This Program offers qualified applicants \$3,400.00 for each year of qualified service up to a cumulative amount of \$20,400.00, or documented student loan expense, whichever is less.

Costs:

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

ii. It is anticipated that there will be no costs to HESC or other state agencies for the implementation of, or continuing compliance with, this rule except for programmatic administration costs. There will be no cost to local governments for the implementation of, or continuing compliance with, this rule.

iii. The cost of this program to the State in the first year, FY 2005-06, shall not exceed \$4.8 million. Costs to the State shall not exceed available New York State budget appropriations for the Program.

Paperwork:

This proposal will require New York State District Attorney Loan Forgiveness Program applicants to submit an annual application and supporting documentation to establish their eligibility for this program. No additional paperwork will be required.

Local government mandates:

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

Duplication:

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

Alternatives:

This Program was developed and advocated for by the New York State District Attorneys Association, based upon the results of their survey of

District Attorney offices. In consideration of data supplied by this group, this rule has been constructed to most effectively target the issue at hand. No other alternatives were considered.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government.

Compliance schedule:

The agency will comply with this rule immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption, dated May 15, 2006, seeking to add a new section 2201.9 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose reporting, record-keeping or compliance requirements on small businesses or local governments. This proposal implements a student loan forgiveness program for post-secondary education, funded by New York State and administered by a State agency.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption, dated May 15, 2006, seeking to add a new section 2201.9 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal implements a student loan forgiveness program for post-secondary education, funded by New York State and administered by a State agency.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation’s Notice of Emergency Adoption, dated May 15, 2006, seeking to add a new section 2201.9 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it could only have a positive impact or no impact on jobs and employment opportunities. The proposal implements a student loan forgiveness program for post-secondary education, funded by New York State and administered by a State agency.

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program’s commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After several years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce Healthy New York premium rates by adjusting the stop loss reimbursement corridors to enable more uninsured businesses and individuals to afford health insurance; lessen complexity in eligibility determination; eliminate the well-child copayment; create a second benefit package; allow members to select a benefit package at annual recertification or when the premium rate changes; establish clear rules with respect to determining employment eligibility; clarify employer contribution requirements for part-time workers, qualify Healthy New York as coverage eligible for a Federal tax credit - generally improving the Healthy New York Program based upon feedback of affected parties; change the loss ratio standard for Healthy New York contracts from small group to individual; require reports from the insurers pertaining to stop loss reimbursement or loss ratio to be certified.

Substance of emergency rule: Summary of the Second Amendment to Regulation 171 (11 NYCRR 362)

The Second Amendment to Regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection also provides that once enrolled in the program, any change in the selection of a benefit package may occur at the time of annual recertification or at anytime the premium rate changes. Notice of this option must be included with any notice of rate change.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Insurance Department

**EMERGENCY
RULE MAKING**

Healthy New York Program

I.D. No. INS-23-06-00002-E

Filing No. 623

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2, 362-5.3 and 362-5.5 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326, and 4327

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

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions through January 31, 2005 as those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. De-minimus contributions shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund to include claims paid on behalf of a covered member in excess of \$5,000 and less than \$75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the." This corrects a technical error.

Subsection 362-5.3(e) is amended to change the loss ratio standard for Healthy New York contracts from small group to individual.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

Subsection 362-5.5(a) is amended to require that reports pertaining to stop loss reimbursement or loss ratio be certified by an officer of the company that such report is accurate and complete.

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 August 16, 2006.

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

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the super-

intendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the premium rate changes. Any notice of rate change must include notice of this option to change benefit packages. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the recertification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. Through January 31, 2005, de-minimus contributions are those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contri-

butions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York. This amendment changes the loss ratio standard for Healthy New York contracts from small group to individual and requires that insurer's reports pertaining to stop loss reimbursement or loss ratio be certified.

4. **Costs:** The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

5. **Local government mandates:** This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. **Paperwork:** This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees. This amendment requires that insurers certify all reports pertaining to stop loss reimbursement and loss ratio but does not require any additional reports.

7. **Duplication:** There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. **Alternatives:** Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will

enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. Increase of the loss ratio standard for Healthy New York contracts will increase the percentage of premium dollar that is received in claims by members. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. **Federal Standards:** The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. **Compliance schedule:** This rule making will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. **Effect of rule:** The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers 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.

2. **Compliance requirements:** Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. **Professional services:** The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. **Compliance costs:** The implementing legislation requires that small businesses wishing to participate in the Healthy New York program com-

plete an initial form certifying as to their eligibility to participate in the program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. This amendment does require that a notice of rate change include a notice of the right to change benefit packages. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule making process.

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in

benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

Department of Motor Vehicles

NOTICE OF ADOPTION

Caution Arms on Vehicles Vending Frozen Desserts

I.D. No. MTV-13-06-00015-A

Filing No. 627

Filing date: May 23, 2006

Effective date: June 7, 2006

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

Action taken: Amendment of Part 69 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(37)

Subject: Caution arms on vehicles vending frozen desserts.

Purpose: To mandate that front crossing arms be included among those cautionary devices required on motor vehicles engaged in retail sales of frozen desserts directly to consumers as required by L. 2005, ch. 608.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-13-06-00015-P, Issue of March 29, 2006.

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.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Ownership Interest by Atlantic Renewable Projects LLC and Zilkha Renewable Energy, LLC, et al.

I.D. No. PSC-22-04-00011-A

Filing date: May 22, 2006

Effective date: May 22, 2006

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

Action taken: The commission, on May 17, 2006, adopted on order in Case 04-E-0630 approving a request filed by Atlantic Renewable Projects LLC, Zilkha Renewable Energy, LLC, Constellation Generation Group, LLC, Flat Rock Windpower LLC, and Flat Rock Windpower II, LLC for the transfer of real property interests and other assets from Flat Rock Windpower LLC to Flat Rock Windpower II, LLC.

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership interest in an electric corporation, transfer of real property interest, other assets and certain rights under a Certificate of Public Convenience and Necessity from one electric corporation to another, and related matters.

Purpose: To approve the transfer of ownership interest in an electric corporation, transfer of real property interest, other assets and certain rights under a Certificate of Public Convenience and Necessity from one electric corporation to another, and related matters.

Substance of final rule: The Commission adopted an order approving a request filed by Atlantic Renewable Projects LLC, Zilkha Renewable Energy, LLC, Constellation Generation Group, LLC, Flat Rock Windpower LLC and Flat Rock Windpower II, LLC for the transfer of real

property interests and other assets from Flat Rock Windpower LLC to Flat Rock Windpower II LLC, 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-0630SA1)

NOTICE OF ADOPTION

568 Payment Advise ment by Niagara Mohawk Power Corporation

I.D. No. PSC-31-04-00025-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving modifications in the electronic data interchange (EDI) 568 payment advise ment standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the EDI transaction set standard for the 568 payment advise ment.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 568 Payment Advise ment Standards, 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. (98-M-0667SA44)

NOTICE OF ADOPTION

814 Enrollment Request and Response by Orange & Rockland Utilities, Inc. and Niagara Mohawk Power Corporation

I.D. No. PSC-31-04-00026-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving modifications in the electronic data interchange 814 enrollment request and response standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To approve the electronic data interchange transaction set standard for the 814 enrollment request and response.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 814 Enrollment Request & Response standard, 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. (98-M-0667SA45)

NOTICE OF ADOPTION

Request for Accounting Authorization by Corning Natural Gas Corporation

I.D. No. PSC-38-04-00006-A

Filing date: May 22, 2006

Effective date: May 22, 2006

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

Action taken: The commission, on May 17, 2006 adopted an order regarding Corning Natural Gas Corporation's request to defer the costs associated with a revised allocation reflecting the Sept. 2003 sale of the subsidiary appliance business.

Statutory authority: Public Service Law, section 66-9

Subject: Accounting authorization.

Purpose: To approve Corning Natural Gas Corporation's request to defer certain expenses beyond the end of the year in which they were incurred.

Substance of final rule: The Commission adopted and order regarding Corning Natural Gas Corporation's request to defer the costs associated with a revised allocation reflecting the September 2003 sale of the subsidiary appliance business, 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-G-1032SA1)

NOTICE OF ADOPTION

814 Enrollment Request and Response Standard by National Fuel Gas Distribution Corporation and Rochester Gas & Electric Corporation

I.D. No. PSC-52-04-00005-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving modifications in the electronic data interchange 814 enrollment request and response standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the transaction set standard 814 enrollment and change request and response standards.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 814 Enrollment and change Request & Response standard, 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.
(98-M-0667SA48)

NOTICE OF ADOPTION

Exchange of Retail Access Data by National Fuel Gas Distribution Corporation

I.D. No. PSC-52-04-00008-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving modifications in the electronic data interchange 568 accounts receivable advisement standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the TS568 accounts receivables advisement standard to include transmission of additional data necessary for the efficient implementation of the Home Energy Fair Practices Act amendments and pro-rata policies.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 568 Accounts Receivable Advisement standard, 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.
(98-M-0667SA51)

NOTICE OF ADOPTION

Rules and Guidelines for the Exchange of Retail Access Data between Jurisdictional Utilities and Eligible ESCO/Marketers

I.D. No. PSC-05-05-00010-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving modifications in the electronic data interchange 820 payment order/remittance advice—utility consolidated billing standard and an update to the business process document to reflect revised uniform business practices.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the TS820 payment order/remittance advise standard to enable recipients of 820 transactions to readily distinguish between different types of payments/adjustments and update the business process document to reflect revised uniform business practices.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 820 Payment Order/Remittance Advice—Utility Consolidated Billing Standard and an update to the Business Process Document to reflect revised Uniform Business Practices, 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.
(98-M-0667SA52)

NOTICE OF ADOPTION

Rules and Guidelines for the Exchange of Retail Access Data between Jurisdictional Utilities and Eligible ESCO/Marketers

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

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving modifications in the electronic data interchange 814 enrollment request and response standard and the uniform business practices.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the TS814 enrollment request and response standard documents and the uniform business practices.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 814 Enrollment Request & Response Standard and Section 5 of the Uniform Business Practices, 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.
(98-M-0667SA53)

NOTICE OF ADOPTION

Uniform Business Practices and Related Matters

I.D. No. PSC-07-05-00015-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving changes made to section 5 of the Uniform Business Practices.

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

Subject: Revisions to Uniform Business Practices.

Purpose: To revise section 5 of the Uniform Business Practices (changes in service providers).

Substance of final rule: The Commission adopted an order approving the modifications to Section 5 of the Uniform Business Practices to revise procedures governing enrollment of customers in retail access programs, 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. (98-M-1343SA12)

NOTICE OF ADOPTION

Statement of Policy Regarding Gas Procurement Practices by Corning Natural Gas Corporation

I.D. No. PSC-47-05-00007-A

Filing date: May 22, 2006

Effective date: May 22, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order regarding a proposal to require Corning Natural Gas Corporation to follow the provisions of the commission's statement of policy regarding gas procurement practices issued April 28, 1998.

Statutory authority: Public Service Law, sections 4(1), 66(1), (2) and 72

Subject: Statement of policy regarding gas procurement practices.

Purpose: To require Corning Natural Gas Corporation to comply with the commission's statement of policy regarding gas procurement practices.

Substance of final rule: The Commission adopted an order regarding a proposal to require Corning Natural Gas Corporation to follow the provisions of the Commission's Statement of Policy Regarding Gas Procurement Practices issued April 28, 1998 in Case 97-G-0600, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-1268SA1)

NOTICE OF ADOPTION

Temporary Operator for Corning Natural Gas Corporation

I.D. No. PSC-47-05-00008-A

Filing date: May 22, 2006

Effective date: May 22, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order regarding a proposal to require Corning Natural Gas Corporation to provide a temporary operator for its gas procurement, accounting and fiscal operations.

Statutory authority: Public Service Law, sections 4(1), 65(1), 66(1), (2) and (72)

Subject: Temporary operator for Corning Natural Gas Corporation's gas procurement, accounting and fiscal operations.

Purpose: To approve a temporary operator for Corning Natural Gas Corporation's gas procurement, accounting and fiscal operations.

Substance of final rule: The Commission adopted an order regarding the appointment of a temporary operator for Corning Natural Gas Corporation's gas procurement, accounting and fiscal operations, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-

1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-1268SA2)

NOTICE OF ADOPTION

Waiver of Filing Requirements in Article VII Proceedings by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-48-05-00012-A

Filing date: May 17, 2006

Effective date: May 17, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order in Case 05-T-1369 approving Consolidated Edison Company of New York, Inc.'s request for waivers of 16 NYCRR sections 86.3(a)(1)(i), (iii), (2), (b)(2), 86.6(b) and (c), and 88.4(a)(4) in its application for a Certificate of Environmental Compatibility and Public Need for the construction and operation of the Cedar Street Project.

Statutory authority: Public Service Law, sections 4(1) and 122(1)

Subject: Filing requirements for art. VII proceedings.

Purpose: To grant waivers of 16 NYCRR sections 86.3(a)(1)(i), (iii), (2), (b)(2), 86.6(b) and (c) and 88.4(a)(4).

Substance of final rule: The Commission adopted an order approving Consolidated Edison Company of New York, Inc.'s request for waivers of 16 NYCRR Sections 86.3(a)(1)(i), 86.3(a)(1)(iii), 86.3(a)(2), 86.3(b)(2), 86.6(b) and (c), and 88.4(a)(4) in its application for a Certificate of Environmental Compatibility and Public Need for the construction and operation of the Cedar Street Project, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-T-1369SA1)

NOTICE OF ADOPTION

Uniform System of Accounts by Corning Natural Gas Corporation

I.D. No. PSC-04-06-00018-A

Filing date: May 22, 2006

Effective date: May 22, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving with modifications, the request of Corning Natural Gas Corporation to defer certain accounting treatment of recovery costs remaining after the sale of its appliance business.

Statutory authority: Public Service Law, section 66-9

Subject: Deferral of certain accounting treatment.

Purpose: To approve Corning Natural Gas Corporation to defer accounting treatment for expenses beyond the end of the year in which it was incurred.

Substance of final rule: The Commission adopted an order approving Corning Natural Gas Corporation's request 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, 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-G-1032SA2)

NOTICE OF ADOPTION

Electric Rates for Standby Service

I.D. No. PSC-08-06-00009-A

Filing date: May 23, 2006

Effective date: May 23, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving the extension of the deadline for qualifying for exemptions from, or phase-ins to, electric rates for standby service.

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

Subject: Electric rates for standby service.

Purpose: To approve exemptions from, or phase-ins to, electric rates for standby service.

Substance of final rule: The Commission adopted an order approving the extension of deadlines for qualifying for exemptions from, or phase-ins to, electric rates for standby service, and directed Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation to file tariff amendments on not less than one day's notice to become effective on June 1, 2006, providing for a three-year extension to May 31, 2009, 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. (02-E-0551SA4)

NOTICE OF ADOPTION

Electronic Data Interchange 814 Enrollment Request and Response Standard by Central Hudson Gas & Electric Corporation

I.D. No. PSC-08-06-00012-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order approving modifications in the electronic data interchange 814 enrollment request and response standard.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible energy service companies/marketers.

Purpose: To revise the TS814 enrollment request and response standards.

Substance of final rule: The Commission adopted an order approving modifications in the Electronic Data Interchange 814 Enrollment Request

& Response Standard, 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. (98-M-0667SA55)

NOTICE OF ADOPTION

Major Rate Case by Corning Natural Gas Corporation

I.D. No. PSC-10-06-00013-A

Filing date: May 22, 2006

Effective date: May 22, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order regarding Corning Natural Gas Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service — P.S.C. Nos. 2, 3 and 4.

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

Subject: Major gas rate case.

Purpose: To consider the company's request to increase annual gas revenues.

Substance of final rule: The Commission adopted an order regarding Corning Natural Gas Corporation's request to increase annual gas revenues, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-1359SA1)

NOTICE OF ADOPTION

Gas Rates by Corning Natural Gas Corporation

I.D. No. PSC-12-06-00012-A

Filing date: May 22, 2006

Effective date: May 22, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order regarding whether Corning Natural Gas Corporation should be allowed to recover from customers additional gas costs plus interest associated with lost and unaccounted for gas for the year ending Aug. 31, 2005.

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

Subject: Gas rates and charges.

Purpose: To determine whether Corning is responsible and should adsorb gas losses.

Substance of final rule: The Commission adopted an order regarding Corning Natural Gas Corporation's request to recover from customers additional gas costs, plus interest associated with lost and unaccounted for gas for the year ending August 31, 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.
(05-G-1359SA2)

NOTICE OF ADOPTION

Outdoor Lighting Service by New York State Electric & Gas Corporation

I.D. No. PSC-13-06-00022-A

Filing date: May 19, 2006

Effective date: May 19, 2006

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

Action taken: The commission, on May 17, 2006, adopted an order in Case 06-E-0273 approving New York State Electric & Gas Corporation's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 119.

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

Subject: Outdoor lighting service.

Purpose: To reorganize and streamline the contents of the outdoor lighting application.

Substance of final rule: The Commission adopted an order approving New York State Electric and Gas Corporation's (NYSEG) request to reorganize and streamline the contents of the Outdoor Lighting Application to conform to NYSEG's recently unbundled Outdoor Lighting rate structure.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-0273SA1)

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

Uniform System of Accounts—Request for Accounting Authorization

I.D. No. PSC-23-06-00004-P

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

Proposed action: The Public Service Commission will review a request from Corning Natural Gas Corporation (Corning) for deferral accounting treatment of recovery costs remaining after the sale of its appliance business as well as the costs of preparing and filing the May 17, 2006 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, 2006 through September 30, 2006. In conjunction with the costs allocated to the appliance business, Corning is requesting to defer costs associated with the filing of the May 17, 2006 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.

(06-G-0600SA1)

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

Certificate of Merger between Delhi Net, Inc. d/b/a Delhi Long Distance and Delhi Wireless Inc. with DTC Cable Inc.

I.D. No. PSC-23-06-00005-P

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

Proposed action: By joint petition dated March 31, 2006, Delhi Net, Inc., d/b/a Delhi Long Distance and Delhi Wireless Inc. request approval of a certificate of merger, with DTC Cable Inc., being the surviving corporation. The commission is considering granting its consent and approval of the filing of certificate of merger with the State of New York Department of State.

Statutory authority: Public Service Law, section 108

Subject: Certificate of merger of Delhi Net Inc., Delhi Wireless Inc. and Delhi Cellular Inc. with DTC Cable Inc.

Purpose: To approve the filing of the certificate of merger with the State of New York Department of State.

Substance of proposed rule: By joint petition dated March 31, 2006, Delhi Net, Inc., d/b/a Delhi Long Distance and Delhi Wireless Inc. request approval of a Certificate of Merger, with DTC Cable Inc., being the surviving corporation. The Commission is considering granting its consent and approval of the filing of Certificate of Merger with the State of New York Department of State.

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-C-0417SA1)

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

Open Market Plan by Frontier of Rochester, Inc.

I.D. No. PSC-23-06-00006-P

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

Proposed action: The commissioner is considering whether to approve or reject, in whole or in part, Frontier of Rochester, Inc.'s (FTR) petition to terminate the remaining provisions of the open market plan (OMP) relating to the holding company structure and other related provisions. All aspects of the remaining OMP provisions are subject to review. Among those provisions are dividend restrictions related to service quality, rules on affiliate transactions, cash management, capital structure and related issues.

Statutory authority: Public Service Law, sections 91(1), 94(2), 106 and 110

Subject: FTR's petition to terminate all remaining provisions of the OMP.

Purpose: To consider FTR's petition to terminate all remaining provisions of the OMP.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, Frontier of Rochester, Inc.'s (FTR) petition to terminate the remaining provisions of the Open Market Plan (OMP) relating to the holding company structure and other related provisions. All aspects of the remaining OMP provisions are subject to review. Among those provisions are dividend restrictions related to service qualify, rules on affiliate transactions, cash management, capital structure, and related issues.

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.

(93-C-0033SA12)

Racing and Wagering Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Horsemen's Contract Requirements for Track Licensure and/or Assignment of Race Dates

I.D. No. RWB-23-06-00007-P

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

Proposed action: Addition of sections 4003.13 and 4101.8 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 210, 241 and 307

Subject: Horsemen's contract requirement for track licensure and/or assignment of race date.

Purpose: To enable the board to preserve the continuity of pari-mutuel racing, while generating reasonable revenue for the support of government. The proposed rule enumerates specific board authority to require the existence of an agreement governing the terms and conditions of racing in relation to the granting of a pari-mutuel track license and/or the assignment of race dates in a given year. A provision of the proposed rule provides that the board may for good cause due to factors beyond the control of the parties excuse the absence of the otherwise required agreement. This discretion is intended to preclude unreasonable positions of both parties.

Text of proposed rule: Sections 4003.13 and 4101.8 of Title 9 NYCRR are added to read as follows:

Section 4003.13 Horsemen's contract requirement.

In determining whether or not to grant a pari-mutuel track license to a racing association or corporation and/or assign racing dates to a licensed or franchised racing association or corporation, the Board may consider if there exists a written agreement between the racing association or corporation and its representative horsemen's association governing the terms and conditions of racing and the Board may require such an agreement to be in existence, unless it finds that the absence of the agreement is for good

cause due to factors beyond the control of the racing association or corporation or the representative horsemen's association.

Section 4101.8 Horsemen's contract requirement.

In determining whether or not to grant a pari-mutuel track license to a racing association or corporation and/or assign racing dates to a licensed racing association or corporation, the Board may consider if there exists a written agreement between the racing association or corporation and its representative horsemen's association governing the terms and conditions of racing and the Board may require such an agreement to be in existence, unless it finds that the absence of the agreement is for good cause due to factors beyond the control of the racing association or corporation or the representative horsemen's association.

Text of proposed rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: gpronti@racing.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority and Legislative Objectives of Such Authority. The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("RPMWBL") sections 101, 207, 210, 241 and 307. Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel racing activities. Section 207 of the RPMWBL grants licensing authority to Board whereby any corporation or association desiring to conduct a race meeting for running races, may annually apply to the Board for a license. Further, that every such licensee shall contain a condition that all races conducted thereunder shall be subject to rules and regulations prescribed by the Board. Section 210 provides that the Board can revoke said corporation or association licenses if the licensee fails or refuses to comply with the provisions of the racing law, or with the terms and conditions of its license, or if for any other reason the continuance of such license shall not be deemed conducive to the interests of legitimate racing as deemed by the Board. Section 241 empowers the Board to assign race dates to corporations or associations for conducting race running races or steeplechases. In section 307, the Board's certification of race dates is based, in part, on its assessment as to whether the authorized harness horsemen's association concurs as evidenced by a written agreement between the track and the horsemen's association.

2. Legislative Objectives. To enable the New York State Racing and Wagering Board to preserve the continuity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and Benefits. The rule proposals adds new sections 9 NYCRR 4003.13 (thoroughbred) and 4101.8 (harness) to enumerate the Board's authority to require the existence of an agreement governing the terms and conditions of racing in relation to the granting of a pari-mutuel track license and/or the assignment of race dates. The rules are drafted with a provision that the Board may for good cause due to factors beyond the control of the parties excuse the absence of the otherwise required agreement. This discretion is intended to preclude unreasonable positions of both parties.

The proposal is based upon the view that it is in the best interests of racing to require a written agreement between the track operator and the representative horsemen's association as a condition of racing. Certain racing associations seek to operate referencing past written agreements or continuing rights while the vast majority of racing associations voluntarily and annually submit updated written agreements with their respective horsemen's associations. Further, the agreements expire periodically and the Board wishes to clarify the intent of the Racing Law by mandating a contract as a condition of racing. Furthermore, racing associations must have a racing and/or simulcast license as a condition to operate video lottery terminals at the racetracks.

Certainly, the existence of a contract promotes continuity in racing and will address many of the issues that should be resolved between these major parties in the industry without the need for regulatory determination. The requirement for the contract will prompt both parties to address the need for contracts and renewal contracts in a timely fashion. Each racing association or corporation has an existing representative horsemen's association, which is entitled by statute to receive and use funds for specified purposes (Racing Law Sections 221.2 and 318.1).

In summary, the proposed rules would require that there exists a written agreement between all racing associations or corporations and their respective representative horsemen's associations as a condition for the issuance

of a license to conduct pari-mutuel horse racing and/or the assignment of racing dates.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for regulated parties vary depending on the specific circumstances of the contract negotiations. The Board contacted three persons who were previously involved in horsemen's contract negotiations to obtain historical data on costs. In the case of Buffalo and Batavia harness race tracks, there were no costs for the horsemen due to the fact that the horsemen form a three-person committee to negotiate the contract. They are not compensated for serving on the committee. Two of the three persons are horsemen. An attorney who has negotiated for a track owner stated that the cost of negotiations for the owners are based upon the routine cost of the attorneys who are hired to negotiate such contracts. He noted that in some cases, there may not be a need to hire outside attorneys to negotiate the contract and therefore there are no added costs. Another person who has negotiated horsemen's contracts related that one firm charged as high as \$475 an hour to negotiate a contract, while in other cases there were no additional costs to the horsemen for negotiating a contract because the attorney opted not to charge for his services. Cost was dictated by the length of time required in negotiations, which varied greatly depending upon the complexity of the issues, litigation that may be required and the length of time needed to resolve contested matters.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: See (d) below.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Please see above. The cost of negotiating a contract varies greatly depending upon the complexity of the disputed issues, and the cost of hiring an attorney, which can vary from pro bono work to \$475 an hour. It is not possible for the board to determine fixed cost for any given contract negotiation given these variables.

5. Local Government Mandates: None. See above.

6. Paperwork: None. See above.

7. Duplication: None.

8. Alternatives: The other alternative would be to allow pari-mutuel racing to occur without a contract between the licensed or franchised racing association and its respective horsemen's association. Absent a written agreement, any disruption in racing could potentially cause a disruption in the operation of video lottery terminals at the State's racing associations, in addition to potential economic hardships felt by those individuals who earn their livelihoods from racing and breeding, and/or who have made investments in racing and breeding. Prospective participants and fans alike optimize the economy of racing if they are assured of its scheduled continuance.

9. Federal Standards: None.

10. Compliance Schedule: Once adopted, the rule can be implemented immediately.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as it merely requires the existence of an agreement governing the terms and conditions of racing in relation to the grant of a pari-mutuel track license and/or the assignment of race dates. These proposals do not impact upon State Administrative Procedure Act section 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule simply assures continuity of racing and therefore assists to protect jobs and the robust horse racing and breeding economy in New York State.

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

Claiming of Race Horses

I.D. No. RWB-23-06-00008-P

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

Proposed action: Amendment of Part 4038 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 207, 208 and 902

Subject: Claiming of race horses.

Purpose: To remove restrictions to claiming imposed by the current rule and replace obsolete language with language reflecting present day practice. The current rule has been in effect for more than 30 years and needs to be updated to simplify the claiming process for new owners as well as for existing owners. Also, language is necessary to address circumstances when claims should be voidable.

Text of proposed rule: Subdivisions (a), (b), and (c) of Section 4038.1 of 9 NYCRR are repealed and new subdivisions (a), (b) and (c) are added:

4038.1 Who may make claim.

[(a) In claiming races, any horse may be claimed for its entered price by any managing owner (or his duly authorized agent) if the managing owner is presently registered in good faith for racing at that meeting, and has nominated a starter, up to or including the race in which the claim is made. Such claim may be for the account only of the managing owner making the claim, or for the ownership of the horse which establishes such managing owner's right to claim, as indicated by the managing owner on the claiming blank. However, no person shall claim his own horse or cause his horse to be claimed directly or indirectly for his own account.

(b) Where the managing owner is a partnership, only such partnership through its managing partner or such managing partner's duly authorized agent may claim, and individual partners, as such, are not qualified to claim as individuals thereby.

(c) Notwithstanding the provisions of subdivision (a) of this section, a person who has not previously been licensed in any state as an owner, upon application for an owner's license in this State, may apply to the stewards for a certificate authorizing him to claim one horse during the next 30 racing days following the issuance of the certificate. The certificate shall be valid for claiming only at a track of the racing association at which it was issued. Such certificate shall be issued by the stewards only after they have been advised by the board that from the face of the application the applicant appears to be qualified to be licensed and only after the applicant has designated a licensed trainer who will assume responsibility for any horse the applicant may claim.]

(a) Claims may be made by an owner licensed for the current year, or duly authorized agent, if the owner is presently registered in good faith for racing at that meeting, and has nominated a starter in the previous or current race meet of the licensed or franchised racing association, up to or including the race in which the claim is made. Such claim shall be in the name of the owner making the claim, or in the name of the entity of which the claimant is the managing owner, or

(b) The holder of a certificate of eligibility to claim. A person who has not previously been licensed in any state as an owner, upon application for an owners' license in this State, may apply to the stewards for a certificate authorizing him to claim one horse during the next 30 racing days following the issuance of the certificate. The stewards may grant an extension if deemed appropriate. The certificate shall be valid for claiming only at the track of the racing association at which it was issued. Such certificate shall be issued by the stewards only after they have been advised by the board that after an initial background check, and from the face of the application, the applicant appears to be qualified to be licensed and only after the applicant has designated a licensed trainer who will assume care and responsibility for the horse to be claimed.

(c) No person shall claim any horse in which he has an ownership interest or cause any horse in which he has an ownership interest to be claimed directly or indirectly for his or her own account.

Subdivision (d) of Section 4038.1 of 9 NYCRR is amended to read as follows:

(d) Notwithstanding the provisions of subdivision (a) of this section, an [managing] owner who shipped in to race and had a horse claimed from him at the meeting, shall be eligible to claim one horse for that ownership entity for the remainder of the meeting or for the next 30 days whichever is longer.

Section 4038.2 of 9 NYCRR is amended to read as follows:

4038.2 Minimum price for claim.

The minimum price for which a horse may be entered in a claiming race shall be \$1,200 [but in no case shall it be entered for less than the value of the purse to the winner].

Section 4038.4 of 9 NYCRR is amended to read as follows:

4038.4 Sale, transfer restricted.

If a horse is claimed it shall not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from the date

of the claim[, nor shall it, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for a like period, nor shall it race elsewhere until after the close of the meeting at which it was claimed]. A claimed horse shall not, unless reclaimed, remain in the same stable or under the control or management of its former owner or trainer for a like period. A claimed horse shall not race outside New York State for a period of 30 days from the date of the claim or the end of the meeting at which it was claimed, whichever period of time is longer, except that a horse may run in a sweepstakes elsewhere for which the horse was nominated by its former owner or trainer, or if permission is granted by the stewards.

Subdivision (a) of section 4038.5 of 9 NYCRR is amended to read as follows:

4038.5 Requirements for claim; determination by stewards.

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the [clerk of the course] racing secretary or his designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless he shall have such amount to his credit with the association, must first deposit with the association the whole amount of the claim [in cash], in a manner approved by the racing secretary or designee for which a receipt will be given. All claims shall be passed upon by the stewards, and the person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether it be alive or dead, sound or unsound or injured before or during the race or after it, except that the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.18 of this subchapter [unless the age or sex of such horse has been misrepresented], and subject to the provisions of subdivision (b) of this section[.]. In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. [An owner shall not be informed that a claim has been made until after the race has been run, a] Any horse so claimed shall then be taken to the [paddock] test barn for delivery to the claimant after the test sample is taken.

Section 4038.6 is renumbered as new section 4038.7, and new section 4038.6 is added:

4038.6 Opening of sealed claim.

No official or other person shall open the sealed claim box and envelope or give any information on claims filed except to check on the claimant's license and eligibility of the claim. Otherwise, the claim box and envelope shall remain unopened until after the results of the race are made official.

Section 4038.7 of 9 NYCRR is renumbered as section 4038.8.

Section 4038.8 of 9 NYCRR is renumbered as section 4038.9.

Section 4038.9 of 9 NYCRR is renumbered as section 4038.10.

Section 4038.10 of 9 NYCRR is renumbered as section 4038.11.

Section 4038.11 of 9 NYCRR is renumbered as section 4038.12.

Section 4038.12 of 9 NYCRR is renumbered as section 4038.13.

Section 4038.13 of 9 NYCRR is renumbered as section 4038.14.

Section 4038.14 of 9 NYCRR is renumbered as section 4038.15.

Section 4038.15 of 9 NYCRR is renumbered as section 4038.16.

Section 4038.16 of 9 NYCRR is renumbered as section 4038.17 and is amended to read as follows:

4038.[16]17 Horses claimed-testing.

Each horse claimed in a race shall be designated by the stewards for post-race blood and urine testing. The original trainer shall remain responsible for the claimed horse until the on-track post-race sample collection has been completed.

Section 4038.17 of 9 NYCRR is renumbered as section 4038.18.

Section 4038.18 of 9 NYCRR is renumbered as section 4038.19 and subdivisions (a) is amended to read as follows:

4038.[18]19 Certain voidable claims.

(a) Post race positive. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a post-race positive test, or if the test results of a previous race have not been cleared by the date of the claim and result in a post-race positive test, the claimant's trainer shall be promptly notified [in writing] by the stewards and the claimant shall have the option to void said claim within five (5) days [of receipt] of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer. In the event the claim is voided, the horse shall be returned to the owner of the horse who subjected the horse to claiming in the race from which the positive test resulted.

New subdivision (f) is added to new section 4038.19 to read as follows:

(f) Misrepresentation of age or sex. Where a horse has been claimed and the age or sex of the animal has been misrepresented in the racing program, the claimant shall have the option to void the claim upon written notice to the stewards from the claimant or his trainer within 10 days following the date of the claim.

Section 4038.9 of 9 NYCRR is renumbered as section 4038.19.

Text of proposed rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: gpronti@racing.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority and Legislative Objectives of Such Authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("RPMWBL") sections 101, 207, and 208. Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities. Section 207 of the RPMWBL provides that the Board shall issue a license to conduct running races and race meetings or steeplechases and steeplechase meetings. Section 208 authorizes the Board to approve race dates for any nonprofit racing association organized pursuant to section 202 of the RPMWBL.

2. Legislative Objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and Benefits: There are three ways to buy racehorses: privately, at horse auctions or in claiming races. All horses in a claiming race are, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. Generally horses in claiming races tend to be more affordable, yet the way the current claiming rule is written, it is still restrictive and can deter legitimate and eager investors from entering and funding the sport. By entering a horse in a claiming race, the owner is offering his horse up for sale to another individual. There are varying grades of claiming races, and usually the better horses are entered in the more expensive claiming races while the lower rank horses are entered in the cheaper claiming races. This usually means that horses are competing against more or less equal competition.

The proposed amendments to NYCRR part 4038 remove restrictions to claiming imposed by the current rule and substitute obsolete language with language reflecting present day practice. The current rule has been in effect for more than 30 years, and in some respects, is unnecessarily restrictive. Years ago there was concern that unknown people would enter the prestigious sport of thoroughbred racing and potentially sully racing's image. Over time, as the licensing process became more sophisticated—with the ability to conduct criminal background checks using fingerprinting and new technologies—individuals could be verified as to character and fitness. Increasingly, racing has more people of varying socioeconomic backgrounds pursuing horse ownership, and not necessarily only the nation's wealthiest.

By amending section 4038.1, the current language requiring that only the managing owner or his duly authorized agent are permitted to make a claim would be amended to allow any licensed owner or his duly authorized agent—including a minority owner—to make a claim. At this time, only managing owners or their duly authorized agents, may submit claims under the exact ownership that they have run a horse at the current race meet. This restricts the other minority or "silent" owners that are in that partnership from making a claim. The minority owner, under the proposed amendment, could claim a horse under his name under his own account.

The current section 4038.1 requires that in order for an owner to claim, he must have previously entered a horse in the current race meet. This requirement is to ensure that owners have a financial interest in the meet before they can claim horses and potentially remove the horses to another track. Proposed amendments to section 4038.1 would relax this requirement by allowing owners to claim if they have started a horse at the previous race meet or the current meet of a licensed racing franchise or corporation. For example, under the current rule, an owner who ran a horse on December 31 at Belmont would not be eligible to claim on January 1 at Aqueduct. The existing rule fails to take into account ongoing participation of a claimant at a licensed racing association or franchise.

Proposed amendments to section 4038.2 deletes the phrase concerning entry for at least the winner's share of the purse. Under present language, the secretary must write races with claiming prices that are at least 60% of the purse. This is not a problem at NYRA, where the claiming price usually exceeds the total purse. At Finger Lakes, the winner's share is usually, if not always greater than the claiming tag. The Board considers this rule obsolete and contrary to the best interests of racing, so deletion is warranted.

The amendments proposed in section 4038.4 allow horses to be claimed and immediately shipped to another race track in New York State. The seriousness of this change involves allowing NYRA circuit horses to be claimed and immediately shipped to Finger Lakes. Under the present rule, the longer of the a) end of the meet or b) thirty (30) days gives the racing secretary at NYRA a level of comfort that he will not be encouraging a mass exodus of horses from the backstretch by writing attractive claiming races immediately before and during the Finger Lakes meet. The benefit is to the owner who can decide which New York track to enter his horse/s. It is the Board's assertion that racetracks can create their own policies restricting sale or transfer of claimed horses. Government should not enforce such protections to the benefit of one regulated entity and possibly to the detriment of another.

Proposed amendments to section 4038.5 substitutes "racing secretary" for "clerk of course," which is accurate. The new language designates the stewards as making the initial determination that a claim is sufficiently accurate to identify the claim. By deleting the phrase "in cash" the Board is permitting the tracks to accept bank checks, certified checks, wire transfers, irrevocable letters of credit and credit cards at their discretion. The "association official" is substituted by "racing secretary or his designee." This helps to clarify as to who it is that makes the call of what types of transactions are acceptable. The substitution of "test barn" for "paddock" is warranted since every claimed horse shall be tested pursuant to amendments in section 4038.17.

Regarding the dissemination of claiming information until after the race is run, new language in section 4038.6, provides that the "claim box and envelope shall remain unopened until after the results of the race are made official." This language protects against tampering of the claim forms.

Proposed amendments to section 4038.19 provide for a claim to be voidable by the claimant if there is a post-race positive test, "or if the test results of a previous race have not been cleared by the date of the claim and result in a post-race positive test." In the event the test results of a previous race have not been cleared by the date of the claim and result in a post-race positive test, the trainers of both claimants shall be notified. In the event that the last claimant or his trainer elects to void the claim, then the first claimant's trainer shall be so notified of such election by the stewards and such claimant shall have the option to void said claim. For example, assume Doper races the horse on December 1 and Innocent I claims the horse. Innocent I then runs the horse back on December 20 and Innocent II claims the horse. The Board finds out on December 21 that the December 1 specimen is positive. Both claimants should be notified and both should be able to void the claim. The proposed amendment addresses this scenario.

Also, the misrepresentation of age or sex is added as a voidable circumstance with the confines of the proposed rule amendment. If the wrong age or sex is printed in the program and the horse is claimed, it should be at the discretion of the claimant whether he wants to keep the horse.

Finally, horsemen and track management alike have voiced concern about New York's restrictive claiming rule. The Board is working to remove barriers into the business, without sacrificing integrity. Without owners—whether they own hundreds or a share of one horse—there would not be horses to fill race cards. Full fields of horses lead to greater opportunities for betting options, more exciting race meetings, and potentially greater revenue for the state. Hypothetical situations:

Minority partners can't claim.

If you're at the track and want to claim, you have to call your managing partner to make the claim. What if his line is busy? Too late.

The minority partners have to rely solely on the managing partner or the trainer to make the claim. Without the consent of the managing partner, claiming activity is discouraged. If a minority partner continues feeling frustrated about lost opportunities because of unnecessary restrictions, he puts his investments in the stockmarket or elsewhere, not in horseracing.

If you raced a horse last week but not this week, you can't claim.

The current rule requires that the owner making a claim must have run a horse at the current race meet. This certainly restricts anyone wishing to make a claim on the first few days of a new race meet. Why should an owner that has run five horses on December 31st not be eligible to claim on

January 1? Someone new off the street could claim right away, while a horse owner in good standing would have to enter a horse in the current race meet in order to claim. This double standard is punitive to existing owners.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: As is evident from the nature of the rule, there will be no costs imposed by this rule. The rule will liberalize the opportunities for claiming races, prohibit misrepresentation of a claiming horse's gender, protect the rights of owners of a newly claimed horse if the horse was previously tested positive for prohibited drugs, and otherwise make technical amendments to the claiming rules. No added costs will be imposed by any of these aspects of this rule making. In fact, the rule that allows immediate shipment of a claimed horse will reduce costs for the new owners of the claimed horse by permitting the horse to race and earn money quicker. The rule that allows a new owner to void a claim based upon a positive drug test will also reduce his or her costs for the horse by allowing for an expedited return of the horse, rather than endure a protracted legal proceeding to resolve the matter.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. There will be no costs imposed by this rule.

5. Local Government Mandates: None. The New York State Racing and Wagering is exclusively responsible for the regulation of thoroughbred racing in New York State. Local governments are not and therefore no mandates are imposed by this rule.

6. Paperwork: None. This rule does not create any new paperwork and can be implemented using the existing documentation methods for claiming races.

7. Duplication: None. The New York State Racing and Wagering Board, through its rules and regulations, has exclusive regulatory power over the conduct of thoroughbred racing in New York State. There are no other applicable rules for the conduct of thoroughbred racing.

8. Alternatives: No other alternatives were considered.

9. Federal Standards: None.

10. Compliance Schedule: Once adopted, the rule can be implemented immediately.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely enables the Board to describe the regulatory requirements pertaining to the claiming of thoroughbred race horses in accordance with sections 101(1), 207, 208, and 902 of the New York Racing Wagering Pari-Mutuel and Breeding Law. Consequently, the rule does not adversely affect small business, local governments, jobs nor rural areas. The rule proposal sets forth parameters to simplify and remove barriers to claiming of thoroughbred race horses, thus potentially stimulating a more robust economy for thoroughbred racing and breeding in the State. Prescribing regulatory requirements associated with claiming does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, record-keeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either. By removing barriers to claiming, the process is more equitable to prospective, new or existing owners of thoroughbred horses. No one segment of the industry is advantaged as is the case with the current rule.