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

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

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

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**NOTICE OF ADOPTION**

Ammonium Nitrate and Regulated Ammonium Nitrate Materials

I.D. No. AAM-33-06-00017-A
Filing No. 1221
Filing date: Oct. 6, 2006
Effective date: Oct. 25, 2006

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following action:

**Action taken:** Addition of Part 154 to Title 1 NYCRR.

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

**Subject:** Ammonium nitrate and regulated ammonium nitrate materials.

**Purpose:** To implement L. 2005 ch. 620 relating to ammonium nitrate and regulated ammonium nitrate materials.

**Text or summary was published** in the notice of proposed rule making, I.D. No. AAM-33-06-00017-P, Issue of August 16, 2006.

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

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

**Assessment of Public Comment**

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**PROPOSED RULE MAKING**

No hearing(s) scheduled

Practice of Physical Therapy without a Referral

I.D. No. EDU-43-06-00009-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 29.17 and 77.9 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6509(9) and 6731(d)

**Subject:** The practice of physical therapy without a referral.

**Purpose:** To implement the requirements of Education Law, section 6731(d) by defining the experience requirement that a licensed physical therapist must meet to provide treatment without a referral, clarifying the content of the notice of advice provided to a patient prior to treatment without a referral, and establishing a definition of unprofessional conduct relating to such practice.

**Text of proposed rule:** 1. Section 29.17 of the Rules of the Board of Regents is added, effective February 1, 2007, as follows:

29.17 Special provisions for the profession of physical therapy.

Unprofessional conduct in the practice of physical therapy shall include conduct prohibited by sections 29.1 and 29.2 of this Part. In addition, unprofessional conduct in the practice of physical therapy shall include failing to meet the requirements of subdivision (d) of section 6731 of the Education Law and/or section 77.9 of this Title, when providing treatment in the practice of physical therapy without a referral from a physician, dentist, podiatrist, or nurse practitioner.

2. Section 77.9 of the Regulations of the Commissioner of Education is added, effective February 1, 2007, as follows:

77.9 Providing treatment in the practice of physical therapy without referral.

(a) In accordance with Education Law section 6731(d), a licensed physical therapist may provide a patient with treatment in the practice of physical therapy without a referral from a physician, dentist, podiatrist, or nurse practitioner, for 10 visits or 30 days whichever occurs first, provided the licensed physical therapist meets the following requirements:

1. The licensed physical therapist has practiced physical therapy on a full-time basis equivalent to not less than three years prior to beginning such treatment, meaning the licensed physical therapist has completed at least 4,320 clock hours of physical therapy practice over a minimum of 36 months anytime prior to beginning such treatment; and

2. The licensed physical therapist has met all requirements of subdivision (b) of this section relating to the notice of advice.
The amendment is needed to advise licensed physical therapists of the requirements that they must meet in order to provide treatment without a referral and to provide uniformity and consistency in the information that must be contained in the written notice provided to a patient. At the present time, more than 7,500 physical therapists are licensed and registered to practice in New York State. Consequently, a significant number of individuals will be affected by the proposed amendment.

The amendment establishes an additional definition of unprofessional practice in the practice of physical therapy: failing to meet the requirements of subdivision (d) of section 6731 of the Education Law and/or section 77.9 of the Commissioner’s Regulations. This will provide a way for the State Education Department to enforce the requirements that licensed physical therapists must meet to provide treatment without a referral.

4. COSTS:
(a) Costs to State government. The proposed amendment implements statutory requirements and establishes standards as directed by statute. It will not impose any additional costs on State government, including the State Education Department, beyond those imposed by the statute. The Department will utilize existing personnel and resources to implement these requirements.
(b) Costs to local government: None.
(c) Cost to private regulated parties. The proposed amendment does not impose additional costs beyond those imposed by the statute, which requires licensed physical therapists to provide a notice of advice to patients prior to treatment.
(d) Cost to the regulatory agency: As stated above in “Costs to State government”, the proposed amendment does not impose additional costs on State Government, including the State Education Department.

5. LOCAL GOVERNMENT MANDATES:
The proposed amendment implements the requirements of section 6731(d) of the Education Law, relating to requirements that must be met by licensed physical therapists to provide treatment to their patients without a referral from a physician, dentist, podiatrist or nurse practitioner. The amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:
Education Law section 6731(b) requires licensed physical therapists to provide a written notice of advice to patients prior to providing treatment without a referral. Consistent with this statute, the proposed amendment requires the notice of advice form to include the following information: (1) a statement of such advice and a statement attesting that the patient has read the notice of advice; (2) the date treatment will begin; (3) the patient’s name and address; (4) the patient’s signature and date the patient signed the form; (5) the treating physical therapist’s name and address; and (6) the treating physical therapist’s signature and the date the physical therapist signed the form.

The amendment implements the requirements of section 6731(d) of the Education Law by defining the experience requirement that a licensed physical therapist must meet to provide treatment without a referral. Failing to provide the content of the notice of advice provided to a patient prior to treatment without a referral, and establishing a definition of unprofessional conduct relating to such practice.
The proposed amendment defines an experience requirement that individuals who are licensed physical therapists must meet in order to provide treatment to patients without a referral from specified health care professionals. This requirement does not pertain to small businesses but are required to meet that requirement that the individual is licensed for the full-time basis for three years, or the equivalent, and if they choose to practice without a referral. Of these, 2,331 reported that their permanent address of record is in a rural county of New York State.

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

Chapter 298 of the Laws of 2006, which was signed by the Governor on July 26, 2006, added a new section 6731(d) to the Education Law to permit licensed physical therapists, including those located in rural areas, who have practiced physical therapy on a full-time basis equivalent to not less than three years prior to providing treatment without a referral from a physician, dentist, podiatrist or nurse practitioner. This statute directs the Commissioner of Education to prescribe a form that physical therapists must distribute to a patient prior to treatment advising the patient of the possibility that any treatment provided without a referral may not be an expense covered by the patient’s health care plan or insurer.

The proposed amendment implements the requirements of section 6731(d) of the Education Law by defining the experience requirement that a licensed physical therapist must meet to provide treatment without a referral, clarifying the content of the notice of advice provided to a patient prior to treatment without a referral, and establishing a definition of unprofessional conduct relating to such practice.

Education Law section 6731(b) requires licensed physical therapists, including those living or working in rural areas, to provide a notice of advice to patients prior to providing treatment without a referral. Consistent with this statute, the proposed amendment requires the notice of advice form to include the following information: (1) a statement of such advice and a statement attesting that the patient has read the notice of advice; (2) the date treatment will begin; (3) the patient’s name and address; (4) the patient’s signature and date the patient signed the form; (5) the treating physical therapist’s name and address; and (6) the treating physical therapist’s signature and the date that the physical therapist signed the form. These content requirements will affect the practice of physical therapy, including such practice in small businesses.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed amendment.

4. COMPLIANCE COSTS:

The proposed amendment will not impose costs beyond those required to comply with the statutory requirements.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any special technological requirements on regulated parties. As stated above in “Compliance Costs,” the amendment will not result in additional costs to regulated parties.

6. MINIMIZING ADVERSE IMPACT:

The amendment implements a statutory requirement which make no exception for licensed physical therapists who are employed in small businesses. The statute requires licensed physical therapists that provide treatment without a referral from specified health care professionals to provide the patient with written notice of the possibility that such treatment may not be an expense covered by the patient’s health care plan or insurer. Because of the nature of the proposed amendment, establishing different standards for licensed physical therapist based upon the size of the physical therapist’s employer is inappropriate. The amendment establishes a uniform content requirement for this notice. The Department believes that uniform standards are required, regardless of the size of the business, in order to ensure that all patients who receive such treatment have this consumer protection.

7. SMALL BUSINESS PARTICIPATION:

Members of the State Board for Physical Therapy, many of whom have experience in a small business environment, provided input during the development of the proposed amendment. In addition, staff of the State Education Department have worked with the statewide and national professional associations and councils that represent physical therapists by disseminating information concerning the proposed amendment to these organizations and seeking their input. These organizations include members who own and operate small businesses or are employed by small businesses.

(b) Local Governments:

The proposed amendment establishes requirements that licensed physical therapists must meet to provide treatment to patients without a referral from a physician, dentist, podiatrist or nurse practitioner, and clarifies the content of the written notice to patients prior to their receiving such treatment. The proposed amendment will not impose an adverse economic impact or reporting, recordkeeping, or other compliance requirements on local governments. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment to the Rules of the Board of Regents and Regulations of the Commissioner of Education applies to licensed and registered physical therapists in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. All 17,639 licensed physical therapists registered to practice in New York would be subject to the requirements of the proposed amendment once they have practiced physical therapy on a full-time basis for three years, or the equivalent, and if they choose to practice without a referral. Of these, 2,331 reported that their permanent address of record is in a rural county of New York State.
PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Vocational Rehabilitation Program

I.D. No. EDU-43-06-00010-P

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following proposed rules.

Proposed action: Amendment of section 247.14 and addition of section 247.18 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 1004 (1)

Subject: Vocational Rehabilitation Program.

Purpose: To provide the Office of Vocational and Educational Services for Individuals with Disabilities more flexibility to establish educational and vocational training, room and board and book payment rates as the budgetary restraints of the program require.

Text of proposed rule: 1. Subdivision (d) of section 247.14 of the regulations of the Commissioner of Education is amended, effective February 1, 2007, as follows:

(d) Maintenance. Maintenance shall be provided to an eligible individual or an individual receiving either trial work or extended evaluation services, when appropriate, to cover additional costs including basic subsistence expenses such as food, shelter and clothing that are in excess of the individual’s normal expenses and are necessary because of the individual’s participation in a program of vocational rehabilitation.

(i) Types of maintenance.

(i) Major maintenance shall be provided for food, shelter and miscellaneous personal needs for individuals living away from home to compensate for extra expenses incurred while undergoing diagnostic evaluation or participating in a training program.

Supplementation for food and shelter provided for an individual participating in a training program while living away from home shall be funded at up to a maximum of $1,350 per year from the date of commencement of training. Amount established by the agency, provided that such maximum amount shall not exceed the current and actual State University of New York (SUNY) room and board costs. Approval may be granted for a variance from such maximum [supplementation] amount upon a finding by the agency that the cost to the agency resulting from such variance will not be greater than the alternative cost of providing commutation transportation and/or other support services. Major maintenance shall also be provided to individuals living at home only if all the following conditions are met:

(a) . . . .
(b) . . . .
(c) . . . .
(ii) . . . .
(ii) . . . .
(iii) . . . .
(iv) training at a college, business college or university, provided that the [maximum] funding for tuition shall be [not exceed the maximum amount established by the agency, and provided further that such maximum amount shall not exceed the current and actual resident tuition rate for the State University of New York (SUNY) (for full-time enrollment during an academic year (excluding mini-session, intersession and/or summer session). Funding for tuition for mini-session, intersession, and summer session shall be prorated based on such established maximum.]

(2) . . . .

2. Subdivision (j) of section 247.14 of the regulations of the Commissioner of Education is amended, effective February 1, 2007, as follows:

(j) Training. (1) Types of training provided. The agency shall provide the following types of training when necessary for the individual to achieve an employment outcome:

(i) . . . .
(ii) . . . .
(iii) . . . .
(iv) training at a college, business college or university, provided that the [maximum] funding for tuition shall be [not exceed the maximum amount established by the agency, and provided further that such maximum amount shall not exceed the current and actual resident tuition rate for the State University of New York (SUNY) (for full-time enrollment during an academic year (excluding mini-session, intersession and/or summer session). Funding for tuition for mini-session, intersession, and summer session shall be prorated based on such established maximum.]

(2) . . . .

3. A new section 247.18 is added to Part 247 of the regulations of the Commissioner of Education, effective February 1, 2007, as follows:

247.18 Waiver. The agency shall grant a waiver to an eligible individual of any maximum amount, maximum allowance or other cost and/or duration limit established in this Part, upon a finding by the agency that such cost and/or duration limit, if made applicable to such individual, would effectively deny him or her access to services necessary to achieve an employment outcome. A request for a waiver shall be submitted in a form prescribed by the Commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschuck, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Rebecca H. Cort, Deputy Commissioner, VESID, Education Department, Rm. 1606, One Commerce Plaza, Albany, NY 12234, (518) 473-2714, e-mail: rcort@mail.nysed.gov

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

Regulatory Impact Statement

1. Statutory Authority:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Section 207 of the Education Law authorizes the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 1004(1) authorizes the Education Department to adopt and promulgate such rules and regulations and take such action as may be necessary to carry out The Vocational Rehabilitation Law (Article 21 of the Education Law), including actions necessary to comply with the applicable requirements of the Federal Rehabilitation Act (29 U.S.C. § 720 et seq.).

2. Legislative Objectives:

NYS Register/October 25, 2006
The State Education Department has the responsibility to provide vocational rehabilitation services to eligible individuals with disabilities and is authorized by Education Law section 1004(1) to adopt and promulgate rules and regulations necessary to carry out the provision of such services. The proposed amendment carries out the intent of the statute by eliminating specific dollar amounts for payment of costs associated with vocational and educational training (including, but not limited to, college study) for individuals with disabilities participating in vocational rehabilitation services. This will enable VESID to set educational and vocational training, room and board and book payment rates, to eligible individuals participating in a vocational rehabilitation program, through policy and to change those rates as budgetary restraints require.

3. NEEDS AND BENEFITS:
The Federal Rehabilitation Act recognizes that lack of education and training is a reason why significant numbers of individuals with disabilities are not working or are not working at levels commensurate with their abilities and capabilities. Because of this finding vocational education and training are specific mandates within the Rehabilitation Act (29 U.S.C.A. § 723). In an effort to support all consumers who require vocational and educational training, approximately ten years ago, VESID set stringent dollar limits in its regulations: $1,350 per year for food, shelter and miscellaneous personal needs of individuals living away from home to compensate for extra expenses incurred while undergoing diagnostic evaluation or participating in a training program (8 NYCRR § 247.14[d]); $1,650 per academic year for tuition for training at a college, business college or university (8 NYCRR § 247.14[j][1][iv]); and a $500 maximum allowance for books and related training materials (8 NYCRR § 247.14[j][2][vi]). Although these limited dollar amounts were necessary during periods of tight fiscal restraints, in recent years VESID has been granting waivers of this amount to nearly every consumer who requests a waiver. Considerable employee time is expended reviewing thousands of waiver requests each year. Budgetary constraints being less problematic than in the past, VESID is seeking relief from the restriction of having fixed dollar amounts in its regulation. The proposed change in regulation will allow VESID the ability to set educational and vocational training, room and board and book payment rates through policy, and provide VESID with more flexibility to change the payment rates as the budgetary restraints of the program require. It will also allow the program to increase the amounts provided consumers as these rates periodically increase at educational and vocational institutions. No changes would be made beyond what Federal statute and regulation require.

4. COSTS:
(a) Costs to State government: None.
(b) Costs to local government: None.
(c) Costs to private regulated parties: None.
(d) Costs to the regulatory agency for implementation and continued administration of the rule: None. It is anticipated that the amendments will be implemented using existing staff and within current allocations. However, fiscal analysis has determined that there will be an increase in case service expenditures in the postsecondary education. This increase is sustainable within current levels of funding and it is necessary to ensure consistency and fairness amongst VESID consumers seeking educational and vocational training.

5. LOCAL GOVERNMENT MANDATES:
The proposed rule relates to VESID’s administration of the vocational rehabilitation program and does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:
The proposed amendment will reduce paperwork as each consumer’s request for the maximum financial assistance, as set forth in policy, will be processed through the district offices and will not require processing through a central office waiver committee, as is the current process.

7. DUPLICATION:
The proposed amendment does not duplicate any existing State or Federal requirements. It conforms State regulation to Federal requirements but does not go beyond the Federal government to operate the vocational rehabilitation program.

8. FEDERAL STANDARDS:
This rule does not exceed any minimum standards set by the Federal government. Instead, it is necessary in order to meet the mandatory standard set by the Federal government to operate the vocational rehabilitation program.

9. ALTERNATIVES:
Federal law mandates that VESID operate its vocational rehabilitation program in conformance with Federal statute and regulations. It is necessary to amend the existing regulations to ensure that policy related to college training continues to conform to Federal regulation. Accordingly, there are no significant alternatives and none were considered.

10. COMPLIANCE SCHEDULE:
Compliance with the rule will be achieved within a short time after its enactment. The nature of the rule is such that only VESID needs, or is able to, take action. VESID has already engaged in a planning and implementation process under which it has begun to implement payment of higher rates under an individual waiver process as allowed in regulation. VESID expects it would be able to fully implement these changes within one year.

Regulatory Flexibility Analysis

The proposed amendment applies to the State Education Department’s operation of the vocational rehabilitation program by the Office of Vocational and Educational Services for Individuals with Disabilities (VESID). The proposed amendment does not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments, and will not have any adverse economic impact on them. In order to better serve consumers, VESID is seeking to have specific dollar amounts eliminated from its regulations found at 8 NYCRR section 247.14. This will enable VESID to set educational and vocational training, room and board and book payment rates, to eligible individuals participating in a vocational rehabilitation program, through policy and to change those rates as budgetary restraints require. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not necessary and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:
The proposed amendment will apply to the State Education Department’s Office of Vocational and Educational Services for Individuals with Disabilities (VESID) consumers who are receiving support from VESID to attend educational or vocational training. This includes consumers who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS, AND PROFESSIONAL SERVICES:
The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements nor will it require any additional professional services in rural areas. Vocational education and training are specific mandates within the Federal Rehabilitation Act (29 U.S.C. § 273). In order to better serve its consumers, VESID is seeking to have specific dollar amounts eliminated from its regulations found at 8 NYCRR § 247.14. This will enable VESID to set educational and vocational training, room and board and book payment rates through policy and to change those rates as budgetary restraints require.

3. COSTS:
The proposed amendment will not impose capital costs on local governments or any other entity located in rural areas.

4. MINIMIZING ADVERSE IMPACT:
The proposed amendment does not impose any costs or compliance requirements on entities in rural areas. The proposed amendment will allow VESID the ability to set educational and vocational training, room and board and book payment rates through policy. This will allow VESID more flexibility to change the payment rates as the budgetary restraints of the program require.

This change will also ensure that all consumers are treated in a more equal manner because the need for consumers to request waivers up to a SUNY/CUNY or other public school tuition amount will be eliminated. Therefore, the proposed change in regulation is designed to minimize adverse impact on all areas of the State including rural ones.

5. RURAL AREA PARTICIPATION:
Comments on the proposed policy changes were solicited from the State Rehabilitation Council which represents individuals and organizations from all areas of the State, including rural ones. In addition, advice was sought from the New York State Office of Vocational Services through regional locations, including rural areas. The State Education Department will conduct town meetings in Fall 2006, and will obtain additional public comment by mail and e-mail, on the topic of setting rates through vocational rehabilitation policy rather than through the State regulations.

Job Impact Statement

The proposed amendment relates to the operation of the State’s vocational rehabilitation program by the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) and will not have a sub-
PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Nonattainment Area

LD. No. ENV-43-06-00008-P

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

Proposed action: This is a consensus rule making to amend section 200.1(av) of Title 6 N.Y.C.R.R.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0305 and 19-0311

Subject: Modify the definition of “Nonattainment Area” at 6 NYCRR 200.1(av).

Purpose: To incorporate the new Federal 8-hour ozone nonattainment designations, classifications and geographic boundaries (69 FR 23951); and the new Federal PM2.5 designations and geographic boundaries (70 FR 943-1019). Failure to do so will result in regulation implementation difficulties.

Public hearing(s) will be held at: 2:00 p.m., Nov. 27, 2006 at Department of Environmental Conservation, 625 Broadway, Rm. 129A, Albany, NY.

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

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

Text of proposed rule: Subdivision (a) of section 200.1 through Subdivision (aa) of section 200.1 remains unchanged.

All of Subdivision (av) of section 200.1 is repealed, a new Subdivision (av) of section 200.1(av) is adopted as follows:

(1) Areas designated as “Nonattainment” for the 8-Hour Ozone NAAQS.

(i) Nonattainment areas classified as “Basic”.

(a) The Jamestown, NY area consisting of Chautauqua County.

(b) The Buffalo-Niagara Falls, NY area consisting of Erie and Niagara Counties.

(c) The Rochester, NY area consisting of Genesee, Livingston, Monroe, Ontario, Orleans and Wayne Counties.

(d) The Essex County (Whiteface Mountain), NY area which only consists of the portion of Whiteface Mountain above 1,900 feet in elevation in Essex County.

(e) The Albany-Schenectady-Troy, NY area consisting of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady and Schoharie Counties.

(ii) Nonattainment areas classified as “Moderate”.


(b) The Poughkeepsie, NY area consisting of Dutchess, Orange and Putnam Counties.

(c) The Jefferson County, NY area consisting of all of Jefferson County.

(ii) Nonattainment areas classified as “Moderate”.

(a) The Lower Hudson Valley area consisting of Putnam and Dutchess Counties, and all of Orange County except the Lower Orange County Metropolitan Area.

(b) Nonattainment areas classified as “Marginal”.

(a) The Capital District area consisting of Saratoga, Montgomery, Schenectady, Albany, Rensselaer and Greene Counties.

(b) The portion of Essex County surrounding Whiteface Mountain above an elevation of 4,500 feet.

(c) The area consisting of all of Jefferson County.

(d) The Niagara Frontier area consisting of Niagara and Erie Counties.

(4) Areas designated as “Nonattainment” for the PM10 NAAQS.

(i) The area consisting of all of New York County.

Subdivision (aw) of section 200.1 through Section 200.16 remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: Robert D. Bielawa, P.E., Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8396, e-mail: airsps@gw.dec.state.ny.us

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

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

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on the file. This rule must be approved by the Environmental Board.

Consensus Rule Making Determination

The proposed amendments to 6 NYCRR Part 200, “General Provisions”, consist of an addition to the definition of “Nonattainment Area” to incorporate the new federal 8-hour ozone nonattainment designations, classifications, and geographic boundaries, and the new federal PM2.5 designations and geographic boundaries.

The current “Nonattainment Area” definition, 6 NYCRR 200.1(av), only includes the revoked 1-hour ozone standard and the current particulate matter (PM10) standard. Part 200 needs to be amended to include the new 8-hour ozone NAAQS nonattainment classifications (69 FR 23951) and the new PM2.5 NAAQS nonattainment designations (70 FR 943-1019) and their respective geographic boundaries in order to avoid regulatory implementation difficulties that will arise when Department regulations reference outdated and undefined nonattainment areas.

No person is likely to object to the amendments to Part 200 as written because it is merely an administrative amendment to conform to federal requirements.

Job Impact Statement

Nature of impact:

The New York State Department of Environmental Conservation proposes to amend 6 NYCRR Part 200, “General Provisions”, to incorporate new federal 8-hour ozone nonattainment designations, classifications, and geographic boundaries (69 FR 23951); and the new federal PM2.5 designations and geographic boundaries (70 FR 943-1019). The amendment to Part 200 consists solely of a change (addition) to the definition of “Nonattainment Area”, and will not have any impact on jobs and employment opportunities. Failure to amend Part 200 will result in discrepancies between state and federal definitions, which may cause regulation implementation difficulties.

Categories and numbers affected:

There are no categories of jobs or employment opportunities affected by the amendment to Part 200.

Regions of adverse impact:
There are no adverse impacts associated with the amendment to Part 200.

Minimizing adverse impact:
- There are no adverse impacts associated with the amendment to Part 200.

Self-employment opportunities:
- Not applicable.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Youth Pheasant Hunt

I.D. No. ENV-43-06-00005-P

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

Proposed action: Amendment of section 2.25 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0905

Subject: Youth pheasant hunt.

Purpose: To establish a two-day youth pheasant hunt.

Text of proposed rule: Title 6 of NYCRR, Section 2.25, entitled “Hunting upland game birds,” is amended as follows:

New paragraph 2.25(b)(3) is adopted as follows:

(3) Youth hunt.

(i) Eligibility. In addition to the open seasons set forth in this subdivision, licensed junior hunters (12-15 years of age), accompanied by an adult in accordance with section 11-0929 of the Environmental Conservation Law, may take pheasants on special Youth Pheasant Hunting Days, as specified in this paragraph. Any adult who is accompanying a youth hunter pursuant to this section shall possess a valid hunting license, but shall not carry a firearm or longbow or kill a pheasant during the youth hunt.

(ii) Season. The Youth Pheasant Hunting Days shall be as follows:

(a) WMU 1A and 1C: no Youth Hunting Days.

(b) All other WMUs: Youth Pheasant Hunting Days shall be the last full weekend (Saturday and Sunday) prior to opening of the regular pheasant season.

(iii) Bag limits. Youth hunters may take no more than two pheasants during each Youth Pheasant Hunting Day. The regulation of hen shooting, as specified in this subdivision, shall apply to all Youth Pheasant Hunting Days.

Text of proposed rule and any required statements and analyses may be obtained from: Bryan L. Swift, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8919, e-mail: b-l-swift@gw.dec.state.ny.us

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

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

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

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

Regulatory Impact Statement

1. Statutory authority

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (Department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL Section 11-0903 and 11-0905 establish the regulatory authority for setting seasons, bag limits and hunting methods for pheasants. However, the Department does not have the authority to establish open seasons and bag limits for pheasants on Long Island. Therefore, the proposed rule making excludes Long Island.

2. Legislative objectives

The legislative objective behind the statutory provisions listed above is to establish, or authorize the Department to establish by regulation, certain basic wildlife management tools, including the setting of open seasons, and restrictions on methods of take and possession. These tools are used by the Department to maintain desirable wildlife species in ecological balance, while observing sound management practices and providing for public use of the resource.

3. Needs and benefits

The Department of Environmental Conservation (“Department”) proposes to amend 6 NYCRR Section 2.25 (Hunting upland game birds) to establish a special two-day youth pheasant hunting weekend for licensed junior hunters prior to the regular fall season. This regulation would take effect in 2007.

Through this rule making, the Department proposes to build upon the success of New York’s youth turkey hunt, youth waterfowl days, and free fishing days. With adult supervision and hunter safety education, these events help young people gain the necessary knowledge and skills to become safe and responsible hunters and anglers.

The Department’s proposal would amend the upland game bird hunting regulations to create a two-day pheasant hunt for all hunters holding a Junior License (ages 12 to 15). The season would take place on the full weekend prior to the start of the regular fall pheasant hunting season. The season would be held in late September in northern and eastern New York, where the regular season opens on October 1, and in early to mid-October in western New York, where the season opens on the first Saturday after October 14. No youth hunt would be permitted on Long Island because the Department currently lacks regulatory authority to set pheasant seasons in that area of the state.

Providing an early pheasant season will allow hunters the opportunity to be afield in less crowded conditions and to slowly acclimate to upland game bird hunting while accompanied and mentored by a parent or guardian. A number of conservation organizations currently sponsor youth pheasant hunts during the regular pheasant hunting season. Those organizations have voiced a need for a pre-season day or days for youth hunts because the weather is warmer, there are less conflicts with other pheasant hunters, and volunteer dog handlers and adult hunters are readily available to assist.

In some cases, the Department will provide pheasants raised at the Reynolds Game to organizations that sponsor youth hunts during this proposed season. The decision to allocate pheasants for this purpose will be made by the regional wildlife manager in consultation with interested constituents and potential sponsors of special youth hunts. In other cases, private individuals will release their own pheasants to facilitate a youth hunt. (Private individuals are required to obtain a free “release permit” from the Department, issued by the regional offices, to place pheasants in the wild.)

As required under existing law, Junior Hunters would be required to have a licensed adult hunter accompany them during the youth pheasant hunt. Adults would not be allowed to possess a firearm or take a pheasant during this special season. During the two-day youth hunt, Junior Hunters would be allowed to take two birds per day, as allowed during the regular season. All other pheasant hunting regulations would remain in effect.

Ultimately, the goal of this and other youth hunting initiatives is to sustain hunting participation and its associated recreational, wildlife management and economic benefits. Pheasant hunting was one of the first hunting experiences for many of today’s adult hunters, and our proposal would maintain this traditional introduction to hunting. Similar youth pheasant hunting opportunities already exist in Pennsylvania, Ohio, Massachusetts, and Connecticut.

4. Costs

There are no other costs associated with these regulatory changes beyond normal administrative costs.

5. Local government mandates

This rule making does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed rules do not impose additional reporting requirements upon the regulated public (pheasant hunters).

7. Duplication

There are no other local, state or federal regulations concerning hunting season structure and license use. The Department is the primary government agency with regulatory authority for the managed harvest of game species in New York.

8. Alternatives

The only current alternative is “No Action,” which would not accomplish any of the goals of this proposed rule making. Failure to implement the proposed changes would result in the loss of potential increased benefits and opportunities to youth.

9. Federal standards
There are no federal standards affecting this regulatory proposal.

10. Compliance schedule
Hunters will be notified of this change via news release, postings on the Department’s web-site, and through agency contacts with the public.

**Regulatory Flexibility Analysis**

The proposed rule making will establish a two-day youth hunt for pheasants. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting regulations. Based on the Department’s experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rule making, the Department has determined that this rule making will not impose an adverse economic impact on small businesses or local governments. All reporting or recordkeeping requirements associated with hunting are administered by the Department.

The Department has also determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with hunting are administered by the Department.

Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

**Rural Area Flexibility Analysis**

The proposed rule making will establish a two-day youth hunt for pheasants. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting regulations. Based on the Department’s experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rule making, the Department has determined that this rule making will not impose an adverse economic impact on rural areas. The new season would not have any direct impact on entities in rural areas. Any impacts on private entities would be indirect and positive as the new season may prompt spending (e.g., fuel, supplies, lodging and food) by those taking advantage of the opportunity.

The Department has also determined that this rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with hunting or trapping are administered by the Department.

Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

**Job Impact Statement**

The proposed rule making will establish a two-day youth hunt for pheasants. The Department of Environmental Conservation (Department) has historically made regular revisions to its hunting regulations. Based on the Department’s experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rule making, the Department has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities.

Few, if any, persons actually hunt as a means of employment. Those few for whom hunting is an income source (e.g., professional guides) will not suffer any substantial adverse impact as a result of this proposed rule making because its effect, if any, would be indirect and would increase hunting participation. For this reason, the Department anticipates that this rule making will have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

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**Office of General Services**

**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

**Vendor Responsibility**

**L.D. No.** GNS-43-06-00017-P

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

**Proposed action:** Addition of section 250.21 to Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 200 and 202; State Finance Law, sections 163(3)(a)(iii) and (9)(f); and 48 CFR 9.104-1

**Subject:** Vendor responsibility.

**Purpose:** To provide State agencies with standards to consider for vendor responsibility determinations when contracting for goods, services or technology in accordance with New York State Finance Law, art. 11.

**Text of proposed rule:** Part 250 is amended as follows:

820.21 Vendor Responsibility Standards and Determinations

(a) Standards. Prior to making an award of contract for commodities, services or technology in accordance with Section 163 of the New York State Finance Law, each State agency shall make a determination of responsibility of the proposed vendor. In deliberating upon the responsibility of a bidder or a subcontractor, all contracting State agencies shall, if relevant to the specific review, give due consideration to any credible evidence or reliable information related to the standards below. Credible evidence is that which is derived from a written determination or statement issued by an authorized official of a body having statutory jurisdiction or administrative oversight relating to the conduct at issue. Reliable information should consist of facts that have demonstrable bearing, not rendered irrelevant by passage of time, on the vendor’s historical, financial and legal ability to perform the terms and conditions of the contract under consideration in an ethical and legal manner. In the event that credible evidence or reliable information indicates a failure to comply with a statutory or governmental directive applicable to the vendor in question, with respect to which directive, the vendor has timely submitted an appropriate rebuttal or appeal of such and which rebuttal or appeal is pending, the state agency may consider the relevancy of the alleged failure to comply in its review.

Standards to consider include:

1. whether the vendor has the financial resources necessary to fulfill the requirements of the proposed contract or the ability to obtain them;
2. whether the vendor is able to comply with the required or proposed delivery or performance schedule, taking into consideration all relevant existing commercial and governmental business commitments;
3. whether the vendor has a satisfactory performance record;
4. whether the vendor has a satisfactory record of integrity and business ethics;
5. whether the vendor has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
6. whether the vendor is either authorized to do business in New York State, incorporated in New York State or can provide a current certificate of good standing from its state or applicable local jurisdiction;
7. whether during the previous three (3) years, the vendor failed to file returns or pay any applicable federal, state or local government taxes;
8. whether during the previous three (3) years, a vendor having New York State employees, failed to file returns or pay New York State unemployment insurance;
9. whether bankruptcy proceedings have been initiated by or against the vendor within the past seven (7) years, whether closed or not;
10. whether bankruptcy proceedings are pending by or against the vendor, regardless of the date of filing;
11. whether the record of the vendor, principal, owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), or any person involved in the bidding, contracting or leasing process, includes any of the following within the previous five (5) years:

   (i) A criminal investigation, indictment, judgment, conviction or or grant of immunity for any business related conduct, which if proven would constitute a crime under federal, state, or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion;

   (ii) An investigation for a civil or criminal violation for any business related conduct by any federal, state or local government agency;

   (iii) An unsatisfied judgment, injunction or lien for any business related conduct obtained by any federal, state or local government agency, including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency.

(iv) A federal, state or local government suspension or debarment from the contracting process.

(v) A federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract.

(vi) A federal, state or local government denial of a lease or contract award for non-responsibility.
(vi) An administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease.

(vii) A federal, state or local determination of a willful violation of any public works or labor law or regulation.

(viii) A sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license.

(x) A consent order, presently in effect, with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local laws.

(xii) An Occupational Safety and Health Act citation and Notification of Penalty for a serious or willful violation of federal, state or local law.

(xiv) A rejection of a bid on a New York State contract or a lease with the State for failure to comply with the McBride Fair Employment principles.

(xvi) A denial, decertification, revocation or forfeiture of Women's Business Enterprise or Minority Business Enterprise status, pursuant to Article 15-A of the New York State Executive Law.

(xvii) A finding of non-responsibility by an agency or authority pursuant to Section 139-j of the New York State Finance Law.

(12) whether the vendor is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Determinations and documentation. (1) Determinations. The contracting officer’s signing of a contract constitutes a determination that the prospective vendor is responsible with respect to that contract. When an offer upon which an award would otherwise be made is rejected because the prospective vendor is found to be non-responsible, the contracting officer shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination. Such officer shall make, sign, and place in the contract file a determination of responsibility of a proposed contractor. This means that the State agency must determine if the vendor possesses the necessary financial capacity, legal authority, integrity and past performance history. The regulations do not prescribe a “bright line” test to determine responsibility. Rather, agencies will consider each of the standards and decide for themselves what level of noncompliance with the procurement standards triggers a finding of non-responsibility.

The draft proposed text was sent to NYS Department of Tax and Finance, the NYS Department of Transportation, the NYS Department of Environmental Conservation, the NYS Thruway Authority and NYS Department of Agriculture and Markets for outreach. OGS received minor substantiative text change suggestions from DEC and one request for clarification of a standard from Tax and Finance. It is expected that State agencies will strongly support the efforts of OGS to create standards in regulation to assist them in responsibility determinations for prospective contractors. It will speed the contract approval process and ensure that all of the relevant factors have been considered prior to award. State Agencies are in need of a uniform set of standards, set in regulation, to use when determining the responsibility of a vendor.

4. Costs: a. The subject regulations simply provide standards to assist State agencies in evaluating the responsibility of a vendor, as required by Section 163 of the State Finance Law. The proposed regulations do not impose any additional costs on State government. In fact, adoption of these proposed regulations will save money and achieve significant results by ensuring that all criteria has been considered relative to a vendor’s financial capacity, legal authority, integrity and past performance. Many of the standards listed in the proposed regulations are standards that State agencies currently use to determine the responsibility of a vendor.

b. Costs to local governments. The regulations do not apply to local government and do not impose any costs on local government.

c. Costs to private regulated parties. The regulations do not apply to private parties and do not impose any costs on private parties.

d. Costs to the regulatory agency. The subject regulations do not impose additional paperwork requirements.

7. Duplication: The subject regulations do not duplicate other existing Federal or State requirements.

8. Alternatives: One alternative OGS considered was to seek statutory amendments to the Procurement Stewardship Act. However, this was not an acceptable alternative because the Procurement Stewardship Act is set to expire on June 30, 2007. Uniformity in state agency responsibility determinations will benefit both government and the contracting community at large. A second alternative that OGS considered was including different standards. However, the Federal Acquisition Regulations set general standards for determining vendor responsibility on the Federal level (48 CFR 9.104-1).
Insurance Department

EMERGENCY RULE MAKING

Market Stabilization Mechanisms for Individual and Small Group Market

L.D. No. INS-43-06-00001-E

Filing No. 1219

Filing date: Oct. 4, 2006

Effective date: Oct. 4, 2006

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

Action taken: Amendment of sections 361.5 and 361.7(a), renumber sections 361.6-361.7 to 361.7-361.8, and addition of new section 361.6 to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3233; and L. 1992, ch. 501, L. 1995, ch. 504

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

Specific reasons underlying the finding of necessity: The first filing for the new pooling methodology is November 10, 2006.

Subject: Market stabilization mechanisms for individual and small group market.

Purpose: To create a new market stabilization process in the individual and small group market, to share among plans substantive cost variations attributable to high cost medical claims.

Text of emergency rule: The title of Section 361.5 is amended to read as follows:

Section 361.5 Pooling of variations in costs attributable to variations in specified medical conditions (SMC) beginning in 1999 through 2006.

Section 361.5 is hereby amended to add a new subdivision (k) to read as follows:

(k) Reporting requirements, payments to the pools, or collections from the pools under this section shall not be required in 2005 or 2006.

Sections 361.6 and 361.7 are hereby renumbered 361.7 and 361.8 and a new section 361.6 is added to read as follows:

361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 for individual and small group policies, other than Medicare supplement and Healthy New York policies.

(a) In each pool area a risk adjustment pool is established in connection with individual and small group health insurance policies, other than Medicare supplement insurance policies and Healthy New York health insurance policies. Each pool shall operate independently; that is, all calculations and payments described below are made for each pool independently of any other pool.

(b) The annual funding amount for all pool areas combined is as follows:

(1) $80,000,000 for 2007;
(2) $120,000,000 for 2008; and
(3) $160,000,000 for 2009 and each calendar year thereafter.

(c) The annual funding amount for each pool area is in proportion to the annualized premiums in that pool area. For 2007, the amounts are as specified in the table below. For 2008 and each calendar year thereafter, each pool participant shall provide to the superintendent annualized premium information on or before January 31. The superintendent shall advise carriers of the funding amount for each pool area within sixty days of receipt of annualized premium information from all carriers.

<table>
<thead>
<tr>
<th>Pool Area</th>
<th>Percentage of</th>
<th>2007 Pool Area Funding Amount</th>
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</thead>
<tbody>
<tr>
<td>Albany</td>
<td>5.5%</td>
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</tr>
<tr>
<td>Buffalo</td>
<td>7.4%</td>
<td>$5,920,000</td>
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<tr>
<td>Mid-Hudson</td>
<td>5%</td>
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department of health

ERRATUM

A Notice of Revised Rule Making, L.D. No. HLT-50-05-00004-RP, pertaining to Nursing Home Pharmacy Regulations, published in the September 27, 2006 issue of the State Register did not indicate that it was being continued for an additional 90 days beyond December 14, 2006, the date on which it would otherwise expire. Legal authority for this extension was found in SAPA § 202(3)(d) as it existed on November 29, 2005, the date that the original Notice of Proposed Rule Making was filed with the Department of State. SAPA § 202(3)(d) stated that when an agency submitted a notice of revised rule making within 90 days of the date on which a rule for which a notice of continuation had been previously submitted would expire, the rule making would be continued for an additional 90 days beyond the date on which it would have expired. Since the Notice of Revised Rule Making published in the State Register on September 27, 2006 was filed within 90 days of the December 14, 2006 expiration date, this rule making is extended until March 14, 2007, the date which is 90 days from December 14, 2006.
NYC: 69.5% $55,600,000 
Rochester: 5.1% $4,080,000 
Syracuse: 4.8% $3,840,000 
Utica/Watertown: 2.7% $2,160,000 
Total: 100% $80,000,000 

(5) Subtract the amount calculated in paragraph (4) of this subdivision from the amount in paragraph (2) of this subdivision for each carrier for each type of policy to determine the adjustment needed to equalize high cost claims and determine if the carrier is a net contributor or receiver.

(6) Sum the net contributions of all carriers who are net contributors in the pool area to determine the total net contribution.

(7) Divide the pool area funding amount by the total of paragraph (6) of this subdivision and multiply by the amount identified for each carrier for each type of policy in paragraph (5) of this subdivision to determine the carrier’s net pool contribution or distribution.

(8) If a carrier makes a submission after January 31 and the carrier is a pool payer, the carrier’s payment into the pool will be increased by one percent interest per month. If a carrier makes a submission after January 31 and the carrier is a pool receiver, the carrier’s distribution will be reduced by one percent per month.

(e) The superintendent shall calculate each carrier’s share of the total funding payable to or from the pools pursuant to the example in subdivision (i) of this section for each pool area as follows:

(2) Identify the total claims paid by each carrier for the following types of policies: individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, other than Medicare supplement and Healthy New York insurance policies.

(3) For each carrier for each type of policy, divide the claims paid in excess of $20,000 for each insured by the type of policy.

(4) Calculate the average high cost claim ratio for each carrier for each type of policy combined and multiply that ratio by the total claims paid for each insured for each type of policy to determine the high cost claim ratio.

(5) Subtract the amount calculated in paragraph (4) of this subdivision from the amount in paragraph (2) of this subdivision for each carrier for each type of policy to determine the adjustment needed to equalize high cost claims and determine if the carrier is a net contributor or receiver.

(6) Sum the net contributions of all carriers who are net contributors in the pool area to determine the total net contribution.

(7) Divide the pool area funding amount by the total of paragraph (6) of this subdivision and multiply by the amount identified for each carrier for each type of policy in paragraph (5) of this subdivision to determine the carrier’s net pool contribution or distribution.

(f) Billings will be done by the superintendent beginning in 2008 within thirty days of receipt of submissions from all carriers, and payments will be due from carriers within five business days from the date billed. Payments made after the due date shall include interest at a rate of one percent per month. Subsequent to the billing date, within the calendar year, carrier data that formed the basis of the billing will be audited. In the event audits necessitate post-billing adjustments, such adjustments will be charged or credited in the next year’s billing or distribution. Additional payments due from any carrier whose data errors caused it to underpay shall include a one percent interest charge from the original due date.

(g) A carrier shall, with respect to distributions from the pools attributable to each type of policy, as determined in paragraph (7) of subdivision (e) of this section, without reduction for contributions owed on other types of policies:

(1) refund the distributions directly to insureds based upon the type of policy that caused the payments to be received without consideration of minimum loss ratio provisions; or

(2) submit a detailed plan to the superintendent for approval:

(i) demonstrating how the distribution will be applied to reduce future premium rates for the type of policy whose insureds caused the payments to be received; or

(ii) providing a detailed explanation as to how the distribution was considered in the development of premium rates for that year.

(h) Claim Submission Form.

Claims Paid From January 1 – December 31, ______

Carrier: ____________

Pool Area: ____________

Total annualized premium for individual standardized direct payment health maintenance organization (HMO) policies, individual standardized direct payment point of service (POS) policies, other individual health insurance policies, and small group policies: ____________

<table>
<thead>
<tr>
<th>Cumulative</th>
<th>Direct</th>
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<tr>
<td>Total Claims Paid Above MCO POS Other</td>
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Instructions:

* Do not include Medicare Supplement Policies or Healthy New York Policies.
** For each insured determine the cumulative claims paid from January 1 through December 31 and report the total claims paid for all insureds for each type of policy listed above.
*** At each dollar level (Attachment Point), report all claims paid over that attachment point level amount from January 1 through December 31 for any insured. Cumulative total claims paid above the ZER0 attachment point level would equal the total claims paid by the carrier for all insureds for the period. At the $10,000 attachment point level, the amount would equal the sum of all claim amounts exceeding the $10,000 attachment point.
Rule Making Activities

Chapter 501 of the Laws of 1992 amended the insurance law and public health law to require that individual and small group health insurance be made available on an open enrollment basis; community rating of individual and small group health insurance policies; portability of health insurance coverage; continuation of hospital, surgical or medical expense insurance; and requiring the superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of open enrollment and community rating.

Chapter 504 of the Laws of 1995 amended the insurance law and the public health law to establish standardized direct payment contracts for individual health insurance and to provide that regulations promulgated by the superintendent shall include only reinsurance or a pooling process involving insurer or health maintenance organization contributions to, or receipts from, a fund which shall be designed to share the risk of high cost claims or the claims of high cost persons.

2. Legislative objectives: The statutory sections cited above provide a framework for the establishment of a market stabilization process in the individual and small group health insurance market. The proposed amendment to Regulation 146 is consistent with legislative objectives in that it would effectuate the Legislature’s direction in Section 3233 to establish a pooling process involving health maintenance organization and insurer contributions to, or receipts from, a fund which shall be designed to share the risk of or equalize high cost claims or claims of high cost persons, designed to protect insurers and health maintenance organizations from disproportionate adverse risks of offering coverage to all applicants.

3. Needs and benefits: This amendment is the result of comments and suggestions received by the Department in relation to the current market stabilization pool. The current market stabilization pool is being phased-out. Payments, collections and data reports were not required in 2005, and the new pooling methodology established by the proposed amendment will be established in 2006 and become fully operational in 2007 to ensure a prospective application. The proposed amendment will modify the pooling methodology established in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) to provide a simplified approach and to increase uniformity and consistency in the methodologies used by insurers and health maintenance organizations when determining their contributions and/or distributions from the pools, and should help insurers and health maintenance organizations avoid reporting errors. The proposed amendment is needed because of the widely differing methodologies used by insurers and health maintenance organizations and the inconsistencies and resulting confusion as to how to apply the distributions and/or contributions to premium rates.

4. Costs: This amendment imposes no compliance costs upon state or local governments. The amendment does not impose any significant additional compliance costs to insurers or health maintenance organizations. Insurers and health maintenance organizations may have to modify their internal policies and procedures for compliance with the new pooling methodology, and if insurers or HMOs fail to comply with statutory or regulatory pooling requirements a penalty could be imposed. In addition, similar to the previous pooling methodology, insurers and HMOs with healthier lives will have to pay money into the market stabilization pool and those with unhealthy lives will receive money from the pool. There will be a cost to insurers and HMOs with healthier lives; however the purpose of any market stabilization mechanism is to share risk and equalize claim costs. There should be no additional costs to the Insurance Department as existing personnel are available to assist insurers and health maintenance organizations with the transition to the new market stabilization process.

5. Local government mandates: The proposed amendment imposes no new programs, services, duties or responsibilities on local governments.

6. Paperwork: The proposed amendment imposes new reporting requirements. However, insurers and health maintenance organizations are currently reporting similar information to the superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Therefore, this proposed amendment should not create more paperwork for the insurers and health maintenance organizations than is currently in place.

7. Duplication: Section 3233 directs the Superintendent of Insurance to promulgate regulations to create a pooling process to establish stabilization in the individual and small group market. There is no duplication with federal or state laws.

8. Alternatives: The Insurance Department has been meeting with the Health Plan Association and the Conference of Blue Cross Blue Shield Plans to discuss this amendment. A suggestion was made to take payments
from the Direct Payment Stop Loss Pools into consideration when determining amounts owed or received under the new pooling methodology. The pooling methodology established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) in the existing regulation does not take these direct payment stop loss recoveries into consideration. The Department researched this alternative in conjunction with this Fifth Amendment and determined that the standardized individual direct payment health maintenance organization policies would be adversely impacted if the stop loss recoveries were taken into consideration. A suggestion was also made to increase the claim threshold from $20,000 to $100,000. The Insurance Department researched this alternative as well and found that the risk shared among insurers and market stabilization would be significantly diminished and that legislative goals would not be accomplished.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The provisions of this amendment will take effect immediately. Insurers and health maintenance organizations will be expected to submit initial reports to the superintendent by November 10, 2006 and January 31, 2007, for advisory purposes only, and payments under the new pooling process will be made in 2008. The Insurance Department had several meetings with representatives of insurers and health maintenance organizations to discuss this amendment, and insurers and health maintenance organizations should be aware of the requirements established by this amendment.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Based upon information provided by these companies in annual statements filed with the Insurance Department, HMOs and insurers licensed to do business in New York do not fall within the definition of small business found in Section 102(8) of the State Administrative Procedure Act because none of them are both independently owned and have under 100 employees. This amendment may indirectly affect small businesses because it simplifies the market stabilization process for the individual and small group health insurance market, established by the 4th Amendment to Regulation 146. This amendment does not apply to or affect local governments.

2. Compliance requirements: This amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

3. Professional services: Small businesses or local governments should not need professional services to comply with the amendment.

4. Compliance costs: This amendment will not impose any compliance costs upon small businesses or local governments.

5. Economic and technological feasibility: Small businesses or local governments should not incur an economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: This amendment simplifies the market stabilization methodology for individual and small group coverage established by the 4th Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance coverage offered by HMOs and insurers, similar to the 4th amendment to Regulation 146, and should not impose any adverse or disparate impact.

7. Small business and local government participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Act. Notice of the proposal was previously published in the Insurance Department’s Regulatory Agenda. This notice was intended to provide small businesses with the opportunity to participate in the rule making process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Rural Area Flexibility Analysis

The amendment will not have any adverse impact on rural areas and does not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Insurers and health maintenance organizations to which the amendment applies do business in all counties of the state, including rural areas as defined under State Administrative Procedure Act Section 102(13). Since the amendment applies to the insurance market throughout New York, not only to rural areas, the same regulation will apply to regulated entities across the state. Therefore, there is no adverse impact on rural areas as a result of this amendment.

Job Impact Statement

This amendment to Regulation 146 will not adversely impact job or employment opportunities in New York. The proposed amendment is likely to have no measurable impact on jobs. Insurers and health maintenance organizations will need to annually report to the superintendent their annualized premium amount and their cumulative calendar year claims paid. However, it is anticipated that such responsibilities will be handled by existing personnel because these reporting requirements are similar to the existing reporting requirements set forth in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5): which will be eliminated as a result of this amendment. Costs to the Insurance Department will also be minimal as existing personnel are available to assist insurers and health maintenance organizations in implementing the new pooling methodology.

NOTICE OF ADOPTION Standards for the Use of Credit Information to Underwrite and Rate Personal Lines Insurance
L.D. No. INS-31-06-00013-A
Filing No. 1220
Filing date: Oct. 4, 2006
Effective date: Oct. 25, 2006

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

Action taken: Addition of Part 221 (Regulation 182) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and art. 28

Subject: Standards for the use of credit information to underwrite and rate personal lines insurance.

Purpose: To establish limitations upon, and requirements for, the permissible use of credit information by insurers to underwrite and rate risks for personal lines insurance business.

Text or summary was published in the notice of proposed rule making. L.D. No. INS-31-06-00013-P, Issue of August 2, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: Amais@ins.state.ny.us

Assessment of Public Comment

The Department received comments from two insurer trade organizations and one producer trade organization.

Summaries of the comments on the proposal and the Department responses thereto are as follows:

(1) The provision regarding when an insurer must effectuate adjustments where an insured requests that it use updated credit reports, as addressed in Section 221.4(b)(1) of the rule, generated comments from all three entities that submitted comments.

Section 2802(g) of the law gives an insured, where an insurer has chosen to use credit information, the right to request, not more often than once every 36 months, that the insurer re-underwrite and re-rate the policy based on current credit report or insurance score. It also contains the qualification that an insurer does not have to re-calculate the insurance score or obtain the updated credit report more frequently than once in a 36 month period.

Section 221.4(b)(1) and (c)(1) of the rule implements Section 2802(g) of the law. Section 221.4(b)(1) requires that the insurer make any necessary adjustments resulting from the use of the current credit report or score, including moving the insured to the appropriate tier, effective as of the date of the updated credit report or score. Section 221.4(c)(1) implements the statutory qualification discussed above by providing that an insurer may decline a request to obtain updated credit information because the insurer had obtained a credit report within the past 36 months.

Some of the comments received from two insurer trade organizations related to this provision are as follows:

- Any improved credit score necessitating a tier or affiliate placement change would require the insurer to immediately make the required tier or affiliate changes and refund premium, as of the date of the new score, even if there was only one day left in the policy period.
- Mid-term adjustments are a major problem for insurers and requiring mid-term adjustments is highly unusual and very problematic for insurers. A mid-policy term change like this is not done for any other type of change in the insured’s underwriting profile, positive or negative.
- This re-underwriting requirement could have anti-consumer consequences. If a carrier which re-runs a credit score independent of a consumer request is required to refund premium mid-policy term, this is a great disincentive to the carrier to re-running any credit scores.
Rule Making Activities

NYS Register/October 25, 2006

- The phrase contained in Section 221.4(b)(1), “... effective as of the date of the report or score” should be amended to state that underwriting changes be made “effective as of the date of the next policy renewal, unless a new score was requested more than ninety days prior to policy renewal and by the insurer more than three years old, in which case the necessary adjustments shall be made as of the date of the report or score.”

Some of the comments received from a producer trade organization related to this provision are as follows:

- It indicated agreement with the Department’s approach in requiring any adjustment, including moving a consumer to an appropriate tier, to become effective as of the date of the report or insurance score. It also stated that in its view the statute does not appear to provide the option of delaying implementation until renewal of the policy. The Department confirmed that the producer trade organization’s comment that stated “the statute does not appear to provide the option of delaying implementation until renewal of the policy” is only referring to the application of Section 221.4(b)(1) of the rule, which restates the minimum statutory standard of Section 2802(g) of the law regarding the right of the consumer or producer to initiate re-underwriting and re-rating of the policy once every 36 months, and not to situations that come under the exception in 221.4(c)(1).

- Concern was expressed that insurers are not informing insureds or producers of the right to request re-underwriting, re-rating based on current credit information. They noted that since not all consumers are eligible for a review upon request, it might create confusion to include such information with the required renewal notices; moreover, the statute does not clearly require this information to be provided. They specifically indicated that they are not recommending that the information be included in the renewal notices. Instead, they suggested that upon final adoption of this regulation the Department, through a circular letter, the adoption notice itself or other means, should advise companies of their responsibility to make the right of review known to eligible policyholders and their producers, including clear procedures to follow.

After reviewing the comments on this provision, the Department determined that no modifications are required for the following reasons:

The rule does not require immediate re-rating when an insurer has obtained a credit report within the past 36 months. Section 221.4(c)(1) permits the insurer to decline a request to obtain current credit information (with its concomitant obligation for immediate re-rating) if the insurer has already obtained such a report within the past 36 months. It is clear that the obligations set forth in Section 221.4(b)(1) are self-contained and are only applicable when an updated credit report has been obtained as a result of a request by the insured or their agent more than 36 months after the previous credit information had been obtained.

The obligation to re-underwrite and re-rate the policy as of the date of the credit report only applies when the new credit report has been obtained as a result of a request by the insured or the insured’s agent more than 36 months after the previous credit information had been obtained. In all other cases, the insurer is permitted to re-underwrite and/or re-rate in accordance with whatever guidelines and time frames they’ve chosen provided that they are clearly set forth in the insurer’s procedures and applied in a consistent manner.

The Department does not agree with the comment that mid-term adjustments are highly unusual and very problematic for insurers since all insurers have systems in place that are designed to accommodate making mid-term adjustments and that such adjustments are not at all “unusual.” Some common examples of mid-term adjustments currently being made by insurers include an addition of a vehicle, adding or removing a driver, change in address, or a coverage change. These types of policy changes can occur at any time during the policy period and may require a premium adjustment to take effect as of the date of the change. Nevertheless, any insurer that finds making an adjustment based on an updated credit score “very problematic” may choose to automatically re-run credit scores every 36 months or more frequently and thereby avoid having to implement a mid-term adjustment. Since the implementation of this rule, several insurers have made filings utilizing this approach of obtaining an updated credit score along with making the appropriate changes automatically.

The amendment from an insurer trade organization, recommended that a consumer request a review of the consumer’s score more than 90 days before the policy renewal date in order to get an immediate adjustment. However, such an amendment is not consistent with the law. The legislation intended that the remedy be implemented as soon as possible after 36 months in order to provide the insured with an opportunity to get a lower premium based on current credit information. Therefore the rule is being adopted as proposed.

With regard to the suggestion that the Department advise insurers of their responsibility to make the right of review known to eligible policyholders and their agents the Department trusts that insurers should be aware of their responsibility to comply with the law and develop appropriate policies and procedures in order to adequately inform policyholders and their agents of their “right of review.” In addition the Department will conduct market monitoring activities and provide relevant information on its web site as it deems appropriate. The comment did not request a modification to the rule and the Department concurs that none is necessary.

(2) The provision regarding how insurers may treat consumers without credit information, or for whom they are unable to calculate an insurance score, generated comments from one insurer trade organization.

Section 221.3(a)(5) provides the standards regarding an insurer’s treatment of consumers when there is an absence of credit information or an inability to calculate an insurance score. Insurers may do one of the following: treat the consumer as if the consumer had neutral credit information, as defined by the insurer; exclude the use of credit information as a factor and uses only other underwriting criteria; or make a filing with the Superintendent with respect to an individual consumer that shall be subject to approval by the Superintendent. The insurer shall present satisfactory information applicable to the consumer that the absence of credit information or the inability to calculate an insurance score relates to the risk for the insurer.

- The comments related to the requirement in the option contained in Section 221.3(a)(5)(iii) that an insurer make a filing with the Superintendent as to an “individual consumer.” Specifically, the entity indicated that the statute contemplates that a group of these consumers with similar characteristics relating to credit history could be treated as having other than a neutral credit score if the Superintendent approves such alternate treatment based on risk information presented by the insurer. They further indicate that the language in Regulation 182 seems to require a filing for each individual consumer. They also state that “clearly, it would be unworkable to present a filing on behalf of each consumer and such an interpretation essentially removes the alternate treatment option for the insurer and requires the insurer to either exclude credit information as a factor or treat the consumer as if the consumer had neutral credit information.”

After reviewing the comments on this provision, the Department determined that no modification to the rule in this regard is required for the following reasons:

The industry trade group that made this comment appears to be suggesting by its use of the phrase “a group of consumers with similar characteristics” that the Department could approve a “classification” of insureds consisting of consumers for which there is an absence of credit information or an inability to calculate an insurance score. However, there are circumstances where such an approach would conflict with the requirement of Section 2802(d), which prohibits an insurer from taking an adverse action against a consumer solely because he or she does not have a credit card account. Clearly, consumers that do not have a credit card would fall into a “class” of insureds or a “group of these consumers with similar characteristics” that could be defined as having an absence of credit information or an inability to calculate an insurance score and as such would be violative of Section 2802(d) of the law.

Therefore no modifications to the rule are necessary.

(3) A producer trade group gave additional comments in support of the regulation according to the requirements in Section 221.4 and Section 221.7 of the rule which address the treatment of affiliated insurers.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED
Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update references in the regulatory text to documents incorporated by reference that have been revised and republished and to make minor modifications regarding accounting treatment of certain insurer assets.

Text of proposed rule: Subdivision (c) of Section 83.2 of Part 83 is amended to read as follows:

(c) To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2004]* and Procedures Manual as of March [2005]* (**Accounting Manual**) includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles (“SAFP’s”).

The footnote to subdivision (c) of Section 83.2 is amended to read as follows:


Subdivision (m) of Section 83.4 is amended to read as follows:

(m)(1) For life insurers, Paragraph 8 of SSAP No. 40 Real Estate Investments is not adopted. Depreciation on real estate investments owned by life insurers shall be computed at a rate no greater than two and one-half percent per annum, in accordance with Section 1405(b)(1)(C) of the Insurance Law.

(2)(i) For Article 43 corporations and not-for-profit Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans authorized pursuant to Article 44 of the Public Health Law, SSAP No. 40 Real Estate Investments is adopted with the following addition:

In accordance with Section 4310(l) of the Insurance Law, in determining the financial condition of Article 43 corporations and not-for-profit Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans authorized pursuant to Article 44 of the Public Health Law, real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, may be valued by the corporation at either its current amortized book value or at ninety percent of its current market value, less encumbrances. Market value shall be determined by an independent appraisal undertaken annually, no earlier than September 30 of each year, by a member of the Appraisal Institute, 55 West Van Buren Street, Suite 1000, Chicago IL 60607. (website address is http://appraisalinstitute.org.) This option is not applicable to for-profit corporations authorized pursuant to Article 44 of the Public Health Law.

(ii) Real estate “owned and held” and “utilized in the ordinary course of business” as set forth in subparagraph (m)(2)(i) of this subdivision shall have the same definition as “property occupied by the company” as set forth in Paragraph 5 of SSAP No. 40 Real Estate Investments.

(iii) The provisions of paragraph 11 of SSAP No. 40 shall govern the independent appraisal requirement set forth in subparagraph (m)(2)(i) of this subdivision.

(iv) The election to value real estate at either its current amortized book value or at ninety percent of its current market value, less encumbrances, in the valuation of all property not held for sale. As of any determination date either all real estate shall be valued at current amortized book value or all real estate shall be valued at ninety percent of its current market value, less encumbrances. Changes in the statement value of real estate held under this election shall be accounted for as unrealized capital gains or losses.

(v) If an entity elects to value its real estate at ninety percent of its current market value, less encumbrances, in addition to the Schedule A filed as part of the NAIC Annual Statement Health Blank, a Supplemental Schedule A must be completed for what the current amortized book value would be if the entity had not made such an election as of the determination date. A Supplemental Schedule A is herein defined as a Schedule A submitted for informational purposes only, not intended to supersede the Schedule A filed as part of the NAIC Annual Statement Health Blank. The completed Supplemental Schedule A shall be submitted annually on or before the first day of March for Article 43 corporations and on or before the first day of April for not-for-profit Health Maintenance Organizations as a supplement to the NAIC Annual Statement Health Blank in support of the note requirement of subparagraph 83.4(m)(2)(vii) of this subdivision.

(vi) Notwithstanding the valuation methodology permitted in subparagraph (m)(2)(i) of this subdivision and the instructions of subparagraph (m)(2)(v) of this subdivision, the reporting entity has the intent to sell, or is required to sell, shall be classified as properties held for sale and carried at the lower of depreciated cost or current market value less encumbrances and estimated sales costs consistent with the requirements of paragraph 10 of SSAP No. 40.

(vii) An entity which elects to change its valuation of real estate pursuant to subparagraph (m)(2)(i) of this subdivision shall disclose all of the following in the note to its annual financial statements:

a. The current amortized book value of each property.

b. The current market value and ninety percent of the current market value, less encumbrances, of each property.

c. The determination date of the annual appraisal.

d. The name and qualifications of the independent appraiser.

(viii) Appraisals obtained in satisfaction of subparagraph (m)(2)(i) of this subdivision shall be maintained in good order and shall be readily available for examination.

Subdivision (n) of Section 83.4 is amended to read as follows:

(n)(1) Paragraph (n) of SSAP No. [46]*88 Investments in Subsidiary, Controlled, and Affiliated Entities, A Replacement of SSAP No. 46, is not adopted. Pursuant to Section 1501(c) of the Insurance Law, the superintendent may determine upon application that any person does not, or will not, not upon taking of some proposed action, control another person. 10 NYCRR 98-1.9(d) authorizes the Commissioner of Health to make a similar determination with respect to organizations which have a certificate of authority pursuant to Public Health Law Article 44.

(2) Paragraph [7]8 of SSAP No. [46]*88 is not adopted with respect to subsidiaries that are insurers. Pursuant to Section 1414(c)(2) of the Insurance Law, the shares of an insurer that is a subsidiary shall be valued at the lesser of its market value or book value as shown by its last annual statement or the last report on examination, whichever is more recent.

(3) Paragraph [7]b)(b) of SSAP No. [46]*88 is not adopted with respect to Public Health Law Article 44 Health Maintenance Organizations which are subsidiaries and which record goodwill as an admitted asset pursuant to Section 83.4(0) of this Part. Investments in such entities shall be recorded based on the underlying statutory equity of the respective entity’s financial statements, including an admitted asset for goodwill as provided for in Section 83.4(b) of this Part.

Subdivision (t) of Section 83.4 is amended to read as follows:

(t) Paragraph 7 of SSAP No. [46]*88 Business Combinations and Goodwill is not adopted. Section 1302(a)(1) of the Insurance Law shall apply. Goodwill recorded as an admitted asset on the books of a Public Health Law Article 44 Health Maintenance Organization, Integrated Delivery System, Prepaid Health Services Plan or Comprehensive HIV Special Needs Plan as of December 31, 2000, which is in compliance with Generally Accepted Accounting Principles[,] shall continue to be treated as an admitted asset on Financial Statements filed with the superintendent or the Commissioner of Health. Goodwill shall be written off over its useful life. The period of amortization shall not exceed 40 years.

Subdivision (v) of Section 83.4 is amended to read as follows:

(v) Paragraph 9 of SSAP No. 73 Health Care Delivery Assets – Supplies, Pharmaceutical and Surgical Supplies, Durable Medical Equipment, Furniture, Medical Equipment and Fixtures, and Leasethold Improvements in Health Care Facilities is not adopted. Durable medical equipment, furniture, medical equipment and fixtures, and leasehold improvements shall be depreciated utilizing a depreciation schedule no less conservative than that set forth in the latest revision of Estimated Useful Lives of Depreciable Hospital Assets (Revised [1998]2004 Edition)**. The document may also be viewed at the New York State Insurance Department’s New York City office at 25 Beaver Street, New York, NY 10004. Lease improvements in health care facilities shall be amortized against net income over the shorter of their estimated useful life or the remaining life of the original lease excluding renewal or option periods, using methods detailed in SSAP No. 19.

The footnote to subdivision (v) of Section 83.4 is amended to read as follows:

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: mbarry@ins.state.ny.us

Data, views or arguments may be submitted to: Sam Wachtel, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5269, e-mail: swachtel@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Insurance Law Section 107(a)(2) defines the term “accredited reinsurer” which is used in sections 83.2, 83.3, and 83.5 of Part 83.

Insurance Law Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the Insurance Law, effectuate any power granted to the superintendent under the Insurance Law, prescribe forms; or otherwise make regulations.

Insurance Law Sections 307 and 308 require insurers to file annual and quarterly statement blanks on forms prescribed by the superintendent and in accordance with instructions prescribed by the superintendent. Section 307(a)(1) of the Insurance Law requires every insurer authorized in New York to file an annual statement showing its financial condition in such form as prescribed by the superintendent. Section 307(a)(2) permits the use of the annual statement form adopted from time to time by the NAIC. Provisions of Article 44 of the Public Health Law and Sections 98-1.16(a) and 98-1.16(b) of Title 10 of the New York Code of Rules and Regulations provide that Public Health Law Article 44 Health Maintenance Organizations and Integrated Delivery Systems shall file financial statements annually and quarterly with both the commissioner of health and the superintendent.

Insurance Law Section 1109(a) provides that an organization complying with the provisions of Article 44 of the Public Health Law is subject to various specified sections of the Insurance Law, including Section 308. Section 1109(e) provides that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Article 13 specifies the requirements regarding the treatment of assets and deposits in determining the financial condition of insurers for the purposes of the Insurance Law.

Insurance Law Article 14 contains provisions regarding the authorization of, and restrictions on, investments of insurers regulated by the Insurance Department and sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Article 15 contains provisions sets forth procedures for the establishment and operation of holding company systems including controlled insurers.

Insurance Law Section 3233 sets forth provisions concerning stabilization of health insurance markets and premium rates.

Insurance Law Section 4117 sets forth provisions concerning loss reserves and loss expense reserves of property/casualty insurance companies.

Insurance Law Section 4233 sets forth provisions concerning the annual statements of life insurance companies including a provision that in addition to any other matter which may be required to be stated therein, either by law or by the superintendent pursuant to law, every annual statement of every life insurer doing business in New York shall conform substantially to the form of statement adopted from time to time for such purpose by, or by the authority of, the National Association of Insurance Commissioners, together with such additions, omissions or modifications, similarly adopted from time to time, as may be approved by the superintendent.

Insurance Law Section 4239 sets forth provisions concerning allocation and reporting of income and expenses of life insurers.

Insurance Law Article 43 establishes organizational requirements, investment and reserve requirements for non-profitor medical and dental indemnity, or health and hospital service corporations organized in this state. The article also establishes “stop loss funds”, from which health maintenance organizations, corporations or insurers may receive reimbursement, to the extent of funds available therefor, for claims paid by such entities for members covered under certain contracts.

Insurance Law Section 6404 sets forth provisions concerning the assets, title plant, and valuation and allowance of admitted assets of title insurance corporations.


Additionally, in regard to Public Health Law Article 44 Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans, Insurance Law Sections 1109(e) and 4301(e)(5) respectively provide that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law and authorize the superintendent to modify any regulatory requirement in order to encourage the development of Health Maintenance Organizations in this state. Article 43 of the Public Health Law provides for the issuance of certificates of authority to health maintenance organizations, the granting by the Commissioner of Health of a special purpose certificate of authority, provided the applicant complies with certain requirements, authorizes the superintendent to establish standards governing the fiscal solvency of Integrated Delivery Systems, and requires the filing of financial reports by Prepaid Health Service Plans and Comprehensive HIV Special Needs Plans. In accordance with these sections, the regulation sets forth certain accounting rules applicable to Public Health Law Article 44 Health Maintenance Organizations, Integrated Delivery Systems, Prepaid Health Services Plans and Comprehensive HIV Special Needs Plans. This Part does not apply to managed long term programs licensed pursuant to Section 4403-f of the Public Health Law.

2. Legislative objectives: Certain provisions of the Insurance Law provide that authorized insurers, accredited reinsurers, authorized fraternal benefit societies, and Public Health Law Article 44 Health Maintenance Organizations and Integrated Delivery Systems shall file financial statements annually and quarterly with the superintendent. These entities are subject to the provisions of Sections 307 and 308 of the Insurance Law and are required to file what are known as Annual and Quarterly Statement Blanks on forms prescribed by the superintendent. Except in regard to filings made by Underwriters at Lloyd’s, London, the superintendent has prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time for the National Association of Insurance Commissioners, as supplemented by additional New York forms and instructions. To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the Accounting Practices and Procedures Manual As Of March 2005 (“Accounting Manual”) includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into this regulation. The Accounting Manual states that “...this Manual is not intended to preempt states’ legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations...” (Accounting Manual at Pg. P-1).

3. Needs and benefits: The purpose of this Part is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject hereto, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law.

The National Association of Insurance Commissioners has most recently adopted a new Accounting Manual as of March 2005. The Accounting Manual represents a codification of statutory accounting principles, presented in the form of Statement of Statutory Accounting Principles (“SSAP’s”). The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. Statutory Accounting Principles (“SAP”) prior to codification did not always provide a consistent and complete basis of accounting and reporting. The prescribed statutory accounting model resulted in practices that varied from state to state. The codification project results in more comparable financial statements and in more complete disclosures, which will make regulators’ analysis techniques more meaningful and effective. Codification will provide examiners and analysts with uniform accounting rules against which insurers’ financial statements can be evaluated. Also, calculations under Risk Based Capital will be reported more consistently.
state law, rules or regulations are in conflict with these publication.” In some instances, a New York statute or regulation may preclude implementation of particular codification rules. In a few instances, for various reasons, the Department has not implemented the codification rule.

Chapter 462 of the Laws of 2004 added a subsection (i) to Insurance Law Section 4310. The new subsection requires that in determining the financial condition of corporations subject to the provisions of Article 43 and not-for-profit corporations authorized pursuant to Article 44 of the Public Health Law, the Insurance Department shall include real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, provided that such real estate may be valued by the corpora- tion at either its current amortized book value or at ninety percent of its current market value, as determined by an independent appraisal under- taken annually and in accordance with regulations promulgated by the Superintendent of Insurance. This required modification of SSAP No. 40 regarding permissible valuation methods.

The deviation from SSAP No. 88 is a continuation of the deviation to old SSAP No. 46, which it replaced in the 2005 Manual. The paragraphs of SSAP No. 88 that were not adopted were contrary to provisions of the Insurance Law regarding certain holding companies and subsidiaries.

The deviation from SSAP No.68 is continued since Section 1302(a)(1) of the Insurance Law dictates that goodwill shall not be treated as an admitted asset by insurers. In the case of certain HMOs however, goodwill can be treated as an admitted asset to be depreciated over a period not to exceed 40 years. The amendment was necessary to preserve the permit- ability to use GAAP practices. The existing regulatory framework for Generally Accepted Accounting Principles ("GAAP") practices in place at the time the regulation was originally promulgated. GAAP accounting principles have since been modified with regard to the treatment of good- will. This amendment eliminates the reference to existing GAAP princi- ples and allows certain HMO's to continue accounting for goodwill as an admitted asset subject to the aforementioned 40 year depreciation limita- tion.

The amendment of the provision regarding SSAP No. 73 was necessi- tated by the issuance of a revised edition of Estimated Useful Lives of Depreciable Hospital Assets, which is incorporated by reference in regula- tion.

4. Costs: Cost to regulated entities as a result of implementing Part 83 are the acquisition of the Accounting Manual from the National Associa- tion of Insurance Commissioners and the acquisition of Estimated Useful Lives of Depreciable Hospital Assets (2004 Edition) from the American Hospital Association. The Accounting Manual costs $425.00 per copy plus shipping charges. It is estimated that an insurer with 2,000 employees would require between 15 and 20 copies for a total cost of between $6,375 and $8,500 exclusive of shipping charges, Estimated Use- ful Lives of Depreciable Hospital Assets is only needed by Insurance Law Article 43 Corporations and Public Health Law Article 44 Health Mainte- nance Organizations with medical facilities. Currently, there are only three plans that have medical facilities. For these Plans, it is estimated that between 7 and 15 copies would be needed. Estimated Useful Lives of Depreciable Hospital Assets (Revised 2004 Edition) costs $45.00 per copy with a 15% discount if between 11 to 30 copies are ordered. Total costs would be between $315.00 for 7 copies and $573.75 for 15 copies, exclusive of shipping charges.

There is no cost to the Insurance Department for the Accounting Manual since it is obtainable free of charge from the National Association of Insurance Commissioners. The Department will need to acquire 35 copies of Estimated Useful Lives of Depreciable Hospital Assets (Revised 2004 Edition) at a total cost of $1,338.75, exclusive of shipping charges.

5. Paperwork: To the very minor extent to which the regulation makes changes to current accounting practices, staffs of insurers will need to familiarize themselves with this regulation. To the extent that the regulation conforms New York filings, for the most part, to other States’ requirements, the need for separate New York filings is reduced.

6. Local government mandate: This regulation does not impose any obligations on local governments.

7. Duplication: This regulation will not duplicate any existing state or federal rule.

8. Viable alternatives: None. The regulation ensures conformance with New York statutes and regulations that preclude implementation of partic- ular rules found in the Accounting Manual.

9. Federal standards: There are no minimum standards of the Federal government in the same or similar areas.

10. Compliance schedule: The regulated parties should already be in compliance with the provisions of the Accounting Manual instructions unless and until the Insurance Department promulgates a regulation delineating exceptions.

Regulatory Flexibility Analysis

The Insurance Department finds that this regulation will have no adverse economic impact on local governments, and will not impose report- ing, recordkeeping or other compliance requirements on local govern- ments. The basis of this finding is that this regulation is directed to insurers as defined under this regulation, none of which are local governments.

The Insurance Department finds that this regulation will have no ad- verse impact on small businesses, and will not impose reporting, record- keeping or other compliance requirements on small businesses. The basis for this finding is that this regulation is directed to insurers. The Insurance Department has reviewed filed Reports on Examination and Annual State- ments of authorized insurers and determined that none of them would come within the definition of small businesses, within the meaning of the State Administrative Procedure Act, because none are both independently owned and have fewer than one hundred employees.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: This regulation applies to insurers which do business or are resident in every county in the state, including those that are, or contain, rural areas, as defined under section 102(13) of the State Administrative Procedure Act. Some of the home offices of these insurers lie within rural areas.

2. Reporting, recordkeeping and other compliance requirements, and prohibitions or restrictions on rural areas: Due to the nature of the regulation, the amendment does not impose new reporting or recordkeeping requirements. To the extent that the regulation conforms New York filings, for the most part, to other States’ requirements, the need for separate New York filings is reduced. To the very minor extent to which the regulation makes changes in accounting principles, staffs of insurers will need to familiarize themselves with the provisions of this regulation.

3. Costs: Insurers as defined under this regulation are the regulated persons. Since the regulation is for the most part merely declaratory of existing accounting practices and procedures, there is no negative cost impact on regulated persons, and possibly a beneficial one, because the regulation is intended to enhance consistency of accounting treatment of assets, liabilities, reserves, income and expenses. Accounting is facilitated because the practices and procedures are organized and consolidated pursuant to one regulation.

4. Minimizing adverse impact: This regulation applies to any insurers that do business in New York State. The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: The amendment would not have a negative impact on rural areas. Insurers that have home offices that lie within rural areas were represented in industry organizations that were consulted in every stage of the development of this regulation.

Job Impact Statement

The proposed rule changes should have no adverse impact on jobs and employment opportunities in New York State. The regulation codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. The current amend- ment, in addition to changing the publication date references to publica- tions incorporated by reference in the regulation, makes some minor changes to current accounting practices but should have no adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Term Life Issuance and Renewal Restrictions

I.D. No. INS-43-06-00003-P

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

Proposed action: Amendment of Part 42 (Regulation 149) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 3201, 4221 and 4511.

Subject: Term life issuance and renewal restrictions; nonforfeiture values for certain life insurance policies.

Purpose: To modify the restrictions on issuance of term life insurance, bring basic policy anniversary nonforfeiture requirements into closer
alignment with those of the rest of the states, provide guidance on miscellaneous nonforfeiture issues.

Substance of proposed rule (Full text is posted at the following State website: www.ins.state.ny.us): The following is a summary of the substance of the rule.

The present Part 42 is renumbered to be Subpart 42-1.

The use or the reference of “Part” has been changed to “Subpart” throughout Subpart 42-1. References to specific areas in Subpart 42-1 have been updated to reflect that they now are in a Subpart instead of a Part.

Section 42-2.1 is the applicability section for Subpart 42-1. The beginning date of effectiveness remains unchanged. It’s been revised to indicate that Subpart 42-1 will no longer be applicable to policies issued after the operative date of Subpart 42-2.

Section 42-2.1 sets forth the purpose of Subpart 42-2. Subpart 42-2 clarifies the requirements of Section 4221 of the Insurance Law in regard to nonforfeiture requirements.

Section 42-2.2 is the applicability section for Subpart 42-2. This Subpart applies to all individual life insurance policies on or after the operative date of Subpart 42-2. It’s also applicable to any policy forms subject to sections 4221 or 4511 unless either a detailed statement of the method used by the insurer in calculating any cash surrender value and any paid-up nonforfeiture benefit is stated in the policy form or a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy form is delivered.

Section 4221 sets forth the nonforfeiture standards for life insurance contracts issued in this state by life insurance companies. Section 4221(l) in part indicates that “or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsection (a), (c), (d), (g), (h), (i) or (k) of this section, then: (3) the cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this section, as determined by the superintendent”. This amendment addresses the common areas where the superintendent is called upon to make determinations as to whether the proposed nonforfeiture values are consistent with the principals of section 4221.

Section 4511 sets forth the requirements for life insurance issued in this state by fraternal benefit societies. Section 4511(c) calls on certificates of life insurance issued by fraternal benefit societies to be subject to the requirements and exceptions of section 4221.

2. Legislative objectives:

The Insurance Law sets forth the nonforfeiture requirements on the anniversaries of life insurance. This is to ensure that the owner of the insurance, in the event of termination of the insurance, receives an equitable return of that portion of premiums. In general mortality cost increase with age. This means for policies with level premiums, the premium exceeds the expected claims in the earlier years with the excess being set aside to subsidize the premium in later years when the expected claims will exceed the premiums then being paid. Nonforfeiture requirements specify the minimum amount of this prefunding of future claims that the owner of the insurance is due in the event of termination of the insurance. In addition an interest factor is included in the calculation of the nonforfeiture values to reflect the insurer expenses in issuing the policy. Nonforfeiture requirements attempt to balance the treatment of terminating policyholders and continuing policyholders.

The legislation in section 4221 also balanced the equity of returning an appropriate portion of the premiums prefinancing future benefits against the increase in premium that results from the additional administrative and benefits costs to provide nonforfeiture benefits. To have term insurance available at the lowest possible cost, section 4221(o)(1)(G) allows term insurance with level benefits and level premiums to be written without any nonforfeiture values provided that the term is 30 years or less and that the policy ends before age 81. Again in an effort to recognize that providing nonforfeiture benefits increases premiums, section 4221(o)(1)(H) allows for policies that would produce relatively modest cash values to be exempt from having to provide nonforfeiture values. The test for modest cash values is that the calculated cash values for ever policy year be less than or equal to $25 per thousand dollars of insurance in effect at the beginning of the policy year.

3. Needs and benefits:

The Insurance Law sets forth the nonforfeiture requirements for the anniversaries of life insurance. The requirements set forth in the Insurance Law assume that premiums are annually paid at the beginning of each policy year and that any surrenders or lapses occur at the end of the year. In practice premiums may actually be paid through out a policy year (i.e. monthly) and surrenders may occur at times other than on a policy anniversary. Nonforfeiture requirements deal with the fair treatment of policyholders. Consider two whole life policies of life insurance that are basic, identical except one has an annual premium while the other has monthly premiums. Both are surrendered one month after a policy anniversary. The Department would consider it inequitable for both to receive the...
same amount since the annual premium has already paid for the next 11 months of coverage.

In addition, the death benefits may not be level during each policy year and the death benefit may be affected by the premium mode used.

This amendment addresses the issues that arise when these sorts of variations occur. By having these issues addressed in a regulation insurance companies have guidance as to what is considered acceptable, enhancing their ability to get policy forms approved quicker.

This amendment also seeks to clarify the requirements of section 4221 in a number of areas where the Department has found problems with policy form submissions. For example, section 4221 requires the mortality table used to calculate the nonforfeiture values be stated in the policy. Some companies would merely state that the 1980 CSO table was used. However, there are a number of variations of the 1980 CSO table (i.e. Male, Female, Unisex) that might apply and this amendment points out that the specific version of the mortality table must be specified. This again is an effort to provide insurance companies with guidance to enhance their ability to get policy forms approved quickly.

The standards appearing in the regulation were developed with extensive discussions with the Life Insurance Council of New York (LICONY). LICONY is a trade group representing a significant number of the life insurance companies licensed in New York. A number of revisions and clarifications were made based on their recommendations.

The current version of the regulation requires a significant number of calculations for products that don’t have level premiums and level benefits. This is commonly referred to as the segmented approach. The segmented approach makes the policy up into segments for each period of coverage where the premiums and benefits are level. A segment could be as short as one year. The cash values are then calculated for each possible combination of contiguous segments. Then the highest result across all the possible combinations is used. This amendment will bring the New York requirements into closer alignment with the rest of the country where the unitary approach is used. The unitary approach just looks at the policy as a whole. This will greatly reduce the number of calculations needed to be made for New York policies. This will reduce the cost of doing business in New York by both reducing the required calculations and by not requiring special calculations just for New York.

While the most significant change to the nonforfeiture calculation was the switch from a segmented approach to the unitary approach a number of other requirements or clarifications were also made. Effort was made to keep as many of these as close to, if not identical, to the standards adopted by the National Association of Insurance Commissioners (NAIC) as possible. The differences from the NAIC standards are generally in areas where it was felt that additional details as to the requirements were needed. Having the Departments rules formally spelled out is in keeping with our ongoing efforts to speed up the approval process.

The amendment should have a positive impact or no impact on jobs and employment opportunities.

4. Costs:
There should be little or no cost to insurers. Some companies may make policy form submissions to take advantage of the changes.
Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

5. Local government mandates:
The proposed amendment imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:
The proposed amendment allows for a six month period of time from July 1, 2007 to December 31, 2007 to get new issues into compliance with the requirements of new Subpart 42-2. The regulation calls for an insurer to notify the Department in writing if they elect to issue a policy form under Subpart 42-2 prior to January 1, 2008. It is anticipated that most insurers will not agree to the requirement for a written election by including a sentence to that effect in the submission letter when the policy forms are submitted.

Some companies will need to submit new forms along with new actuarial memorandum to the Department to be in compliance Subpart 42-2. Many companies already have forms that are in compliance with Subpart 42-2 but will want to submit new forms along with new actuarial memorandums to take advantage of the changes made.

7. Duplication:
The proposed amendment does not duplicate any existing law or regulation.

8. Alternatives:
The standards appearing in the regulation were developed with extensive discussions with the Life Insurance Council of New York (LICONY). LICONY is a trade group representing a significant number of the life insurance companies licensed in New York. A number of revisions and clarifications were made based on their recommendations.

The proposed amendment originally contained a fixed date for compliance with Subpart 42-2. At the request of the Life Insurance Council of New York (LICONY) the amendment was revised to permit an election of an operative date by insurers in section 42-2.2 on a plan by plan basis.

The proposed amendment did not originally contain a maximum age for term policies. However without a final age, the policy could not be considered term insurance and a maximum age was added.

9. Federal standards:
The Age Discrimination in Employment Act (ADEA) prohibits discrimination against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age.

The current regulation placed non-actuarial restrictions on the renewal of term insurance past age 80 unless a stated exception is satisfied. ADEA requires that coverage be continued on employees but does allow for actuarially justified decreases in coverage. This means that while ADEA requires coverage on employees to continue at higher ages the current regulation restricts this coverage. The amendment to the regulation places no restriction on the renewal of group life insurance and limits individual term life insurance to the highest age of the nonforfeiture mortality table.

This means for individual term life insurance based on the 1980 CSO Mortality table the policy may not be renewed past age 100 and for policies based on the 2001 CSO Mortality table the age limit is 120.

10. Compliance schedule:
The amendment has an effective date of July 1, 2007. An insurer can elect to be in compliance with new Subpart 42-2 for new issues of a policy form starting July 1, 2007, and must be in compliance for all new issues on or after January 1, 2008. Subpart 42-1 remains in effect for new policies issued by life insurance companies and certificates issued by fraternal benefit society until Subpart 42-2 become operative.

Regulatory Flexibility Analysis

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

2. Local governments:
The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:
Insurers covered by the regulation do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements: This amendment has no reporting or recordkeeping requirements.

3. Costs:
Costs to insurers authorized to do business in New York State will be minimal.

4. Minimizing adverse impact:
It does not impose any adverse impact on rural areas. The amendment should have a positive impact or no impact on jobs and employment opportunities.

5. Rural area participation:
The amendment was drafted after consultation with an advisory group made up of members of the Life Insurance Council of New York (LICONY), including members that do business in rural areas of the state.

Job Impact Statement
Nature of impact:
The Insurance Department finds that this rule will have a positive impact or no impact on jobs and employment opportunities. The rule removes renewal restrictions on term insurance, revises the requirements
for year-end nonforfeiture values and addresses nonforfeiture issues not specifically addressed by statute. This rule will generally bring the New York requirement in line with the rest of the country and therefore decrease the cost of doing business in New York.

Categories and number affected:

The Insurance Department finds that no categories of jobs or number of jobs will be affected.

Regions of adverse impact:

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

Minimizing adverse impact:

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

Self-employment opportunities:

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

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Legal Services Insurance

L.D. No. INS-43-06-00004-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 262 (Regulation 162) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1113(a)(29), 1116 and arts. 23 and 63

Subject: Legal services insurance.

Purpose: To permit legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations and art. 63 of the Insurance Law, and the policy is written on such a basis.

Text of proposed rule: Section 262.10 is amended to read as follows:

Section 262.10 Minimum provisions for legal services insurance written as part of a policy of liability insurance.

Legal services insurance that is written as part of a policy of liability insurance:

(a) May be written on a group basis, only if the underlying liability insurance policy is written on a group basis in accordance with Part 153 of this Title (Regulation 135);

(b) Shall be subject to the filing and approval requirements of Article 23 of the Insurance Law, and shall not except that such coverage may qualify as a special risk coverage pursuant to Part 16 of this Title (Regulation 86) only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to that Part, and the policy is written on such a basis;

(c) Shall be subject to Section 3102 of the Insurance Law if the underlying liability insurance policy is subject to that section;

(d) Shall be written on a "pay on behalf" basis, except for a policy of directors and officers insurance, which may be written on an "indemnification" basis; and

(e) Shall provide that nothing in the policy shall be construed to prevent an insurer from making a complaint to the Appellate Division or other body designated by the Appellate Division to investigate complaints in accordance with Judiciary Law Section 90, or to the appropriate disciplinary body in the state where the legal service is being provided.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us Data, views or arguments may be submitted to: Buffy Cheung, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: bcheung@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 1113(a)(29), 1116 and Articles 23 and 63 of the Insurance Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Legal services is an authorized kind of insurance which is defined in Section 1113(a)(29). Section 1116 authorizes the superintendent to promulgate regulations regarding legal services insurance when made a part of a liability insurance policy. Section 1116 provides that legal services insurance is regulated in accordance with Article 23 of the Insurance Law. Article 23 governs rating standards for property/casualty insurers. Article 63 governs special risks.

2. Legislative objectives: The purpose of the statute is to make legal services insurance available in New York, subject to appropriate safeguards and limitations.

3. Needs and benefits: Currently, legal services insurance that is written as part of a policy of liability insurance is subject to the filing and approval requirements of Article 23 of the Insurance Law and do not qualify as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations (Regulation 86). Thus, a liability policy which might otherwise be exempt from Article 23 filing requirements except for the fact that it includes legal services insurance coverage, is required to be submitted to the Department for approval before it can be used. The proposed rule would permit legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations and Article 63 of the Insurance Law, and the policy is written on such basis.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. There should be no compliance costs for regulated parties since the proposed rule permits legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations and Article 63 of the Insurance Law, and the policy is written on such basis.

5. Local government mandates: None.

6. Paperwork: The proposed rule will save on paperwork because it will permit legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations and Article 63 of the Insurance Law, and the policy is written on such basis. Under this circumstance, the legal service insurance coverage would not be subject to the filing and approval requirements of Article 23 of the Insurance Law.

7. Duplication: None.

8. Alternatives: The alternative was to continue to have legal services insurance that is written as part of a policy of liability insurance subject to the filing requirements of Article 23 of the Insurance Law and not qualify as a special risk coverage. The Insurance Department had received comments from a law firm and trade association suggesting that legal services insurance that is written as part of a policy of liability insurance should be permitted to qualify as a special risk coverage requiring the Department to engage in a process, including assessing the needs and benefits as well as any potential negative consequences that would result from making the change, it was decided that the change would be appropriate because it is consistent with the purpose of Part 16 of Title 11 of the New York Codes, Rules and Regulations. The Department did outreach with two trade organizations and received no objections to the proposed rule.


10. Compliance schedule: No compliance schedule is necessary because the proposed rule is providing an additional option for insurers by permitting legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations and Article 63 of the Insurance Law, and the policy is written on such basis.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State.

The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and believes that none of them would fall within the definition of "small business" contained in Section 102(8) of the State Administrative Procedure Act, because there are none which are independently owned and have under 100 employees.
Power Authority of the State of New York

ERRATUM

A Notice of Propose Rule Making, I.D. No. PAS-41-06-00032-P, pertaining to Rates for the Sale of Power and Energy, published in the October 11, 2006 issue of the State Register contained an incorrect hearing date. The correct hearing information follows: Public hearings will be held at 2:00 p.m., Nov. 15, 2006 at Power Authority of the State of New York, 123 Main St., Jaguar Rm., White Plains, NY.

Public Service Commission

NOTICE OF ADOPTION

Deferred Debits and Credits by United Water New York Inc.
I.D. No. PSC-18-05-00015-A
Filing date: Oct. 5, 2006
Effective date: Oct. 5, 2006

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following action:

Action taken: The commission, on Sept. 29, 2006 received a proposal from United Water New York Inc. for the deferral of certain expenditures and deferrals on the company’s books and the establishment of a new account.

Statutory authority: Public Service Law, section 89-c(3) and (7)

Subject: Deferred credits and credits.

Purpose: To consider the unbundled bill formats submitted by Central Hudson Gas and Electric Corporation.

Statutory authority: Public Service Law, sections 5(1)(b); 65(1), 66(1), (4), (5), (10) and (12)

Subject: Unbundled bill formats.

Purpose: To consider the unbundled bill formats submitted by Central Hudson Gas and Electric Corporation.

Substance of proposed rule: The Commission is considering a proposal to unbundle bill formats filed by Central Hudson Gas and Electric Corporation, dated September 29, 2006. The Commission may approve, reject or modify, or whole or in part, the proposal.

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

NOTICE OF ADOPTION

Deferral of an Expense Item by Orange and Rockland Utilities, Inc.
I.D. No. PSC-27-06-00015-A
Filing date: Oct. 6, 2006
Effective date: Oct. 6, 2006

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following action:

Action taken: The commission, adopted an order on Sept. 29, 2006 approving Orange and Rockland Utilities, Inc.’s request (Orange and Rockland) to defer and recover its allocated costs related to termination of a powers sales agreement with KMS Crossroads, Inc.

Statutory authority: Public Service Law, sections (2), (5), 65 and 66(9)

Subject: Deferral of an expense item and related matters.

Purpose: To approve Orange and Rockland Utilities, Inc.’s request to defer certain expenditures, and other related matters.

Substance of final rule: The Commission adopted an order approving Orange and Rockland Utilities, Inc.’s (Orange and Rockland) request to defer and recover its allocated costs related to termination of a Power Sales Agreement with KMS Crossroads, Inc.

Orange and Rockland will be authorized to recover the deferred costs through its Energy Cost Adjustment over the next two years, beginning in 2007, subject to the terms 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., 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Unbundled Bill Formats by Central Hudson Gas and Electric Corporation
I.D. No. PSC-43-06-00011-P

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following proposed rule:

Proposed action: The commission is considering a proposal to unbundle bill formats filed by Central Hudson Gas and Electric Corporation, dated Sept. 29, 2006.

Statutory authority: Public Service Law, sections 5(1)(b); 65(1), 66(1), (4), (5), (10) and (12)

Subject: Unbundled bill formats.

Purpose: To consider the unbundled bill formats submitted by Central Hudson Gas and Electric Corporation.

Substance of proposed rule: The Commission is considering a proposal to unbundle bill formats filed by Central Hudson Gas & Electric Corporation, dated September 29, 2006. The Commission may approve, reject or modify, or whole or in part, the proposal.

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

The Insurance Department finds that this rule will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

Rural Area Flexibility Analysis

The Insurance Department finds that this rule does not impose any additional burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State.

Job Impact Statement

This rule should not have any adverse impact on jobs and employment opportunities in this state since it merely permits legal services insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations and Article 63 of the Insurance Law, and the policy is written on such basis.

NOTICE OF ADOPTION

Deferral of an Expense Item by Orange and Rockland Utilities, Inc.
I.D. No. PSC-27-06-00015-A
Filing date: Oct. 6, 2006
Effective date: Oct. 6, 2006

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following action:

Action taken: The commission, adopted an order on Sept. 29, 2006 approving Orange and Rockland Utilities, Inc.’s request (Orange and Rockland) to defer and recover its allocated costs related to termination of a powers sales agreement with KMS Crossroads, Inc.

Statutory authority: Public Service Law, sections (2), (5), 65 and 66(9)

Subject: Deferral of an expense item and related matters.

Purpose: To approve Orange and Rockland Utilities, Inc.’s request to defer certain expenditures, and other related matters.

Substance of final rule: The Commission adopted an order approving Orange and Rockland Utilities, Inc.’s (Orange and Rockland) request to defer and recover its allocated costs related to termination of a Power Sales Agreement with KMS Crossroads, Inc.

Orange and Rockland will be authorized to recover the deferred costs through its Energy Cost Adjustment over the next two years, beginning in 2007, subject to the terms set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-W-0255SA1)

NOTICE OF ADOPTION

Deferral of an Expense Item by Orange and Rockland Utilities, Inc.
I.D. No. PSC-27-06-00015-A
Filing date: Oct. 6, 2006
Effective date: Oct. 6, 2006

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following action:

Action taken: The commission, adopted an order on Sept. 29, 2006 approving Orange and Rockland Utilities, Inc.’s request (Orange and Rockland) to defer and recover its allocated costs related to termination of a powers sales agreement with KMS Crossroads, Inc.

Statutory authority: Public Service Law, sections (2), (5), 65 and 66(9)

Subject: Deferral of an expense item and related matters.

Purpose: To approve Orange and Rockland Utilities, Inc.’s request to defer certain expenditures, and other related matters.

Substance of final rule: The Commission adopted an order approving Orange and Rockland Utilities, Inc.’s (Orange and Rockland) request to defer and recover its allocated costs related to termination of a Power Sales Agreement with KMS Crossroads, Inc.

Orange and Rockland will be authorized to recover the deferred costs through its Energy Cost Adjustment over the next two years, beginning in 2007, subject to the terms set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-W-0255SA1)
PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Reliability Rule D-R2 of the New York State Reliability Council

I.D. No. PSC-43-06-00012-P

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

Proposed action: The Public Service Commission is considering whether to adopt in whole or in part a proposed change to Reliability Rule D-R2 of the New York State Reliability Council.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1) and (2)

Subject: Adoption by the Public Service Commission of a proposed change to Reliability Rule D-R2 of the New York State Reliability Council.

Purpose: To consider adopting in whole or in part a proposed change.

Substance of proposed rule: By Order issued February 9, 2006, the New York Public Service Commission adopted the current reliability rules of the New York State Reliability Council (NYSRC). The Commission is considering adopting, in whole or in part, a proposed change to Reliability Rule D-R2 now under review by the NYSRC for the purpose of making that rule consistent with NPCA-A-06 and NERC BAL-002-0. The Commission may accept, reject, or modify any proposals relating to these matters.

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/96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

(05-E-0934SA4)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Unbundled Bill Formats by Central Hudson Gas and Electric Corporation

I.D. No. PSC-43-06-00013-P

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


Statutory authority: Public Service Law, sections 5(1)(b); 65(1), 66(1), (4), (5), (10) and (12)

Subject: Unbundled bill formats.

Purpose: To consider the unbundled bill formats submitted by Central Hudson Gas and Electric Corporation.

Substance of proposed rule: The Commission is considering a proposal to unbundle bill formats filed by Central Hudson Gas & Electric Corporation.

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/96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

(05-G-0935SA4)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Electric Delivery Services by Strategic Power Management, Inc.

I.D. No. PSC-43-06-00014-P

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

Proposed action: The Commission is considering a petition filed Sept. 22, 2006 by Strategic Power Management, Inc. (SPM) against Orange and Rockland Utilities, Inc. (O&R) and Mirant New York, Inc. relating to the failure of a 345 kV electric transmission line in May of 2006. SPM seeks an order directing O&R to reimburse SPM for certain charges, a determination that $2 million in costs should be allocated to O&R’s out-of-state customers, and an investigation into the failure and restoration of the line.

Statutory authority: Public Service Law, sections 5(1)(b), (d), 65(1), 66(1), (2), (5), (12), 70 and 71

Subject: Electric delivery services: recovery of costs through rates.

Purpose: To determine the proper mechanism for the rate-recovery of costs and changes for electric delivery services.

Substance of proposed rule: The Commission is considering a petition filed September 22, 2006 by Strategic Power Management, Inc. (SPM) against Orange and Rockland Utilities, Inc. (O&R) and Mirant New York, Inc. The Petition relates to the failure of a 345 kV electric transmission line in May of 2006. SPM seeks an order directing O&R to reimburse SPM for certain charges, a determination that $2 million in costs related to the failure of the line should be allocated to O&R’s out-of-state customers, and an investigation into the failure and restoration of the line.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/96dir.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. Brilling, 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-E-1149SA1)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Gas Re-Inspection Charges by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-43-06-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed action: The Public Service Commission is considering whether to grant a petition for rehearing filed by Consolidated Edison Company of New York, Inc. related to its decision that the company is statutorily prohibited from imposing gas re-inspection charges, and, if it grants the petition, whether to change its initial determination on the legality of such charges.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Consideration of a petition for rehearing of a commission decision on gas re-inspection charges and of the legality of gas re-inspection charges.

Purpose: To determine whether to grant Consolidated Edison’s petition for rehearing on and to reconsider the legality of Consolidated Edison’s proposed gas re-inspection charge.

Substance of proposed rule: On August 28, 2006, the Public Service Commission issued an Order in which it determined that Consolidated Edison Company of New York, Inc. (Con Edison) is statutorily prohibited from charging a fee to re-inspect work performed by gas contractors for connecting residential and commercial customers to Con Edison’s gas system. Con Edison seeks rehearing of that decision on the basis that its proposed gas re-inspection charge is not a fee for service or for the installation of equipment and is therefore not prohibited by Public Service Law § 65(6).

The Public Service Commission is considering whether to grant or deny, in whole or in part, Con Edison’s petition for rehearing. If the Commission grants the petition, it may reconsider and modify the determination contained in the August 28 Order.

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. Brilling, 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-0231SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Stock by Chaffee Water Works Co., Inc.

L.D. No. PSC-43-06-00016-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Chaffee Water Works Co., Inc. for approval of a no interest loan with the Environmental Facilities Corporation for approximately $382,000 to make construction costs estimated for the water system improvements. In order to pay for the loan the company must establish an annual customer surcharge of approximately $172 per customer for 30 years. The Commission may approve or reject, in whole or in part, or modify the company’s request.

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

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

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

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

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

(06-W-1160SA1)

NOTICE OF ADOPTION

Electronic Funds Transfer Program

L.D. No. TAF-30-06-00001-A

Filing No. 1222

Filing date: Oct. 10, 2006

Effective date: Oct. 25, 2006

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

Action taken: Amendment of Parts 2396 and 2397 of Title 20 NYCCR.

Statutory authority: Tax Law, sections 9(b), (e), (i); 171, subd. First; 289(f); 315(b); 658(a); 697(a); 1142(1), (8); and 1250

Subject: Electronic Funds Transfer Program.

Purpose: To update the regulations to reflect the department’s enhanced electronic funds transfer system.

Text or summary was published in the notice of proposed rule making, L.D. No. TAF-30-06-00001-P, Issue of July 26, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York Reportable Transactions

L.D. No. TAF-43-06-00006-P

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

Proposed action: Addition of Part 2500 to Title 20 NYCCR.

Statutory authority: Tax Law, sections 25(a)(3); 171, subd. First; 697(a); and 1096(a)

Subject: New York reportable transactions.

Purpose: To provide a definition of a New York reportable transaction and the disclosure requirements for participation in a New York reportable transaction.

Substance of proposed rule (Full text is posted at the following State website: www.nystax.gov): The proposal creates Part 2500 “New York Reportable Transactions” in the Procedural Regulations as published in Chapter IX of Title 20 NYCCR. The rule provides a definition of a New York reportable transaction.
York reportable transaction and the disclosure requirements for participa-
tion in a New York reportable transaction. A New York reportable transac-
tion is a transaction that has the potential to be a tax avoidance transaction
under articles 9, 9-A, 22, 32, or 33 of the Tax Law.

A summary of the sections of Part 2500 as contained in the proposal
follows:

Section 2500.1 provides the statutory authority for the amendments, a
brief description of a New York reportable transaction and the purpose of
the Part.

Section 2500.2 requires a taxpayer to disclose its participation in a New York
reportable transaction with its tax return for the taxable year it has
participated in such New York reportable transaction. The section also
contains a provision that a transaction’s designation as a New York reportable transac-
tion shall not affect the legal determination of whether the taxpayer’s
treatment of the transaction is proper.

Section 2500.3 defines a New York reportable transaction and includes
a description of the three categories of New York reportable transactions:
New York listed transactions, New York confidential transactions, and
New York transactions with contractual protection. A brief description of
each category follows.

A New York listed transaction is a transaction that is the same or
substantially similar to a transaction that the commissioner has determined
to be a tax avoidance transaction and identified by notice or form of
published guidance as a New York listed transaction. When determining
whether a transaction is a tax avoidance transaction, the commissioner is
required to find that one or more of the following conditions exists:
(1) The transaction is not done for a valid business purpose;
(2) The transaction does not have economic substance apart from its tax
beneﬁts; or
(3) The tax treatment of the transaction is based upon an elevation of
form over substance.

A New York confidential transaction is a transaction that is offered to a taxpayer under conditions of conﬁdentiality and for which the taxpayer has
paid an advisor fee.

A New York transaction with contractual protection is a transaction
where the taxpayer or related party has a right to a full or partial refund of
fees if the tax treatment is not sustained or where the fee is contingent on the
taxpayer’s realization of tax beneﬁts from the transaction.

Section 2500.4 provides the deﬁnitions for Part 2500. The deﬁnition of
“taxpayer” describes persons who may be subject to the reporting require-
ment if they participate in New York reportable transactions, and is struc-
tured to include persons required to ﬁle a return or report or are subject to
tax under the speciﬁc articles of the Tax Law: 9, 9-A, 22, 32, and 33.

The deﬁnition of “participation” describes when a taxpayer has partici-
pated in New York reportable transactions and therefore, is subject to the
disclosure requirements. Generally, a taxpayer is considered to have par-
cipated in a transaction if its return ﬁnds a tax beneﬁt from the transac-
tion. Thus, for instance, a member of a combined group that is subject to
New York tax has participated in a transaction where the combined report
reﬂects a tax beneﬁt from a transaction engaged in by another member of
the group, even if the other member is not subject to New York tax. Other
terms deﬁned are: substantially similar, tax, tax beneﬁt, tax return, tax
treatment, and tax structure.

Section 2500.5 provides taxpayer is required to report such disclosure
on the forms and in the manner prescribed by the commissioner. Guidance
of the speciﬁc ﬁling and disclosure requirements will be provided in applicable forms, instructions, and other appropriate publications.

The section provides the requirement for a timely disclosure of partici-
pation in a New York listed transaction where the designation of the transac-
tion as a listed transaction occurs after a taxpayer has ﬁled the tax
return that encompasses the date the New York listed transaction occurred.
The taxpayer must disclose its participation with the next tax return ﬁled
after the date the transaction is listed.

The section also provides that these disclosure requirements are in-
tended to supplement any existing provisions of the Tax Law.

Section 2500.6 allows a taxpayer to request a review of a transaction to
determine whether or not a transaction is subject to the New York reporta-
ble transaction disclosure requirements prior to the date that disclosure
would normally be required. A protective disclosure procedure is also
provided for a transaction where a taxpayer is uncertain whether a transac-
tion is subject to the disclosure requirements.

Section 2500.7 provides the document retention requirements based
unw the Tax Law sections 25(d) and (e). The section also provides that these
retention requirements are intended to supplement any existing provisions of
the Tax Law.

The rule is effective upon publication of the Notice of Adoption in the State Register and shall apply to taxable years beginning on or after
January 1, 2006.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 25(a)(3); 171, subdivision
First; 697(a); and 1096(a). Section 25(a)(3) of the Tax Law, which was
added by Chapter 61 (Part N) of the Laws of 2005, provides the Commis-
sioner of Taxation and Finance the authority to issue regulations regarding
New York reportable transactions. Section 171, Subdivision First autho-
rizes the Commissioner to make rules and regulations, which are consistent
with law, that may be necessary for the exercise of the Commissioner’s
powers and the performance of the Commissioner’s duties under the Tax
Law. Sections 697(a) and 1096(a) provide the authority for the Commis-
sioner to make such rules and regulations as are necessary to administer the
personal income tax and the franchise taxes.

2. Legislative objectives: This rule is being proposed pursuant to such
authority and in accordance with the legislative objectives that the Com-
misioner has administratively administered under sections 25(d) and (e). The
section provides the provisions of the Tax Law designed for the purpose of
curtail the use of abusive tax shelters, section 25 of the Tax Law
was added by Chapter 61 (Part N) of the Laws of 2005 to require
taxpayers and others to disclose to the Department of Taxation and Finance
information relating to transactions that present the potential for tax avoid-
ance subject to penalties imposed by Chapter 61 (Part N) for failure to
disclose or for understatement of tax attributable to such transactions.

Section 25(a)(1) requires the disclosure of information that is reported to
the Internal Revenue Service. Section 25(a)(2) requires the disclosure of
New York reportable transactions, as prescribed by the Commissioner
pursuant to section 25(a)(3). This rule exercises this authority to prescribe,
as New York reportable transactions, certain types of transactions that
have the potential to be tax avoidance transactions under Articles 9, 9-A,
22, 32 or 33 of the Tax Law.

3. Needs and beneﬁts: The purpose of this rule is to provide a deﬁnition
of a New York reportable transaction and the disclosure requirements for
participants in New York reportable transactions. The deﬁnition of a
New York reportable transaction and the related disclosure requirements pro-
vides the Department with information necessary to evaluate potential tax
avoidance transactions. The promulgation of these regulations will also
fulﬁll the statutory requirement that the Commissioner must deﬁne a New
York reportable transaction before the Department identiﬁes a transaction as
a New York listed transaction.

The deﬁnition of a New York reportable transaction provides a descrip-
tion of three categories of New York reportable transactions. The New
York reportable transaction amendments largely conform to Federal provi-
sions relating to reportable transactions. The structure and content of the
proposed amendments are analogous to Treasury Regulations § 1.6011-4,
which require the Department to disclose in certain transactions by taxa-
tables, the categories chosen were the types of arrangements that
could be designed for the purpose of avoiding New York tax, and affect a
taxpayer’s New York State tax position while not having a federal tax
effect. Taxpayers will beneﬁt from this parallel design since they already
are familiar with the requirements of the federal provisions. Additionally,
this information will assist regulated parties in determining if certain
transactions have participated in are considered New York reportable
transactions. The reporting requirements are limited to narrowly circumscribed types of transactions that a taxpayer would have reason to know are
designed for State tax avoidance purposes. Taxpayers will need to be
aware of the reporting requirements so that they may properly advise their
clients of their responsibility to disclose New York reportable transactions.

4. Costs:
(a) Costs to regulated parties: The rule will impose new reporting,
recordkeeping and other compliance costs on those regulated parties that
have participated in New York reportable transaction. Based on the Fed-
eral regulations for the comparable Federal Form 8886, the reporting form
will take three hours for recordkeeping, two hours for learning about the
law or the form, and two hours for preparing the form, for a total of seven

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Local governments are not affected. The disclosure requirements for participants in New York reportable transactions largely conform to similar federal provisions on reportable transactions. Some taxpayers affected by these rules may be located in rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 fewer people per square mile).

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The purpose of this rule is to provide a definition of a New York reportable transaction and the disclosure requirements for participants in New York reportable transactions. Participating in New York reportable transactions largely conform to similar federal provisions on reportable transactions. The parallel design will help to minimize the adverse impact on taxpayers since they are already familiar with the requirements of the Federal provisions.

2. Reporting, recordkeeping and other compliance requirements: The estimates for any additional time needed in order to comply with this rule as well as the additional professional service that may be required to comply with this rule have been factored in the estimate of the compliance costs provided in Part 4 of the “Regulatory Impact Statement” for this rule.

3. Costs: There are no variations in costs for public or private concerns in rural areas. See Part 4 of the “Regulatory Impact Statement” for this rule.

4. Minimizing adverse impact: The rule does not distinguish between rural areas and non-rural areas, nor is the rule explicitly designed to affect rural areas. The New York reportable transactions amendments largely conform to similar Federal provisions on reportable transactions. The parallel design will help to minimize the adverse impact on taxpayers since they are already familiar with the requirements of the Federal provisions.

5. Economic and technological feasibility: This rule does not present any economic or technological feasibility concerns on small businesses or local governments.

6. Minimizing adverse impact: The rule does not distinguish between affected small businesses and other types of businesses. The reporting requirements are limited to narrowly circumscribed types of transactions that a taxpayer would have reason to know are designed for State tax avoidance purposes.

7. Small business and local government participation: The following organizations have been given an opportunity to participate in the rule’s development: the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of CPAs, the National Conference of CPA Practitioners, and the New York City Department of Finance. No substantive comments were received from any of these parties.
appreciation rights, (720/1200 x $60,000 = $36,000).

readily ascertainable fair market value at the time of grant, and stock compensation recognized in 2014 is New York source income in 2014

sections 422 and 423), nonstatutory stock options that do not have a New York workday fraction is 720/1200, and $36,000 of the $60,000

lesser of: "Example 2:" Same facts as in "Example 1" except that the options

the capital gain that is compensation is limited to the amount that is the 2013 (720/1200 x $70,000 = $42,000).

and 423), the amount of income recognized for federal income tax pur-

In the case of statutory stock options (Internal Revenue Code, sections 422 compensation from the stock options. Therefore, S's New York workday

attributable to stock options, stock appreciation rights or restricted stock, the same period of time that applies to regular, non-stock-based remuneration from the grantor during the taxable year of the grant, or

"Example 1:" On April 1, 2007, Company B compensates employee S with a grant of nonstatutory stock options that do not have a readily ascertainable fair market value when granted. The stock options permit S to purchase 10,000 shares of Company B stock for $5 per share. The stock options do not become exercisable unless and until S performs services for Company B (or a related company) for the next 5 years. S continues to work for Company B for the next 15 years. From April 1, 2007 through March 31, 2011, S is a New York State nonresident who works within and without New York State. S’s workdays within New York State during this time period total 720 days, and S’s workdays both within and without New York State for this time period total 960 days. From April 1, 2011 to August 15, 2013, S continues to be a nonresident of New York State, but during this time period, only performs services for Company B outside New York State. From April 1, 2011 to March 31, 2012 (the date that the options become exercisable), S has a total of 240 working days, all of which were services performed outside New York State. On August 15, 2013, S exercises the options when the stock is worth $12 per share. S recognizes $70,000 in compensation for federal income tax purposes (($12 x $5 x 10,000) in 2013. S’s allocation period for computing New York source income is the 5-year period between the date of grant (April 1, 2007) and the date that the stock options become exercisable (March 31, 2012) because, as of that date, S has performed all services necessary for exercise of the options. The services performed after the date that the stock options become exercisable are not taken into account in allocating the compensation from the stock options. Therefore, S’s New York workday fraction for the 5-year allocation period is 720/1200, and $42,000 of the $70,000 compensation recognized in 2013 is New York source income in 2013 (720/1200 x $70,000 = $42,000).

“Example 2:" Same facts as in “Example 1” except that the options granted were statutory stock options and the stock is sold on September 17, 2014, for $11 per share. From August 16, 2013 to September 17, 2014, S continues to be a New York State nonresident who performs services in New York State. In this situation, S recognizes a capital gain for federal income tax purposes of $60,000 ($11 x 10,000) when the stock is sold in 2014. S’s compensation is limited to $60,000 since the $60,000 gain is less than the $70,000 difference between the option price and the fair market value at the time of exercise ($12 x 10,000). S’s allocation period for computing New York source income is the 5-year period between the date of grant (April 1, 2007) and the date that the stock options became exercisable (March 31, 2012) because, as of that date, S has performed all services necessary for exercise of the options. Therefore, S’s New York workday fraction is 720/1200, and $6,000 of the $60,000 compensation recognized in 2014 is New York source income in 2014 (720/1200 x $60,000 = $36,000).

“Example 3:" Same facts as in “Example 2" except that the stock sells for $14 per share. In this situation, S recognizes a capital gain for federal income tax purposes of $90,000 ($14 x 10,000) when the stock is sold in 2014. S’s compensation is limited to $70,000, the difference between the option price and the fair market value at the time of exercise ($12 x 10,000), and $42,000 of the $70,000 compensation recognized in 2014 is New York source income in 2014 (720/1200 x $70,000 = $42,000). The $20,000 increase in the value of stock after the exercise date is considered investment income, and is not New York source income for S.

Section 3. Section 132.25 of such regulations is amended to read as follows:

Section 132.25 Other methods of allocation.

Sections 132.15 through [132.23] 132.24 of this Part are designed to apportion and allocate to New York State, in a fair and equitable manner, a nonresident’s items of income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without New York State. Where the methods provided under those sections do not so allocate and apportion those items, the [department] Department may require a taxpayer to apportion and allocate business, trade, profession or occupation carried on partly within and partly without New York State. The method proposed in the proposed rule is designed to make a fair and equitable apportionment and allocation. A nonresident individual may submit an alternative method of apportionment and allocation with respect to items of income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without New York State. If the method proposed by the taxpayer is approved by the [depart-
ment] Department, it may be used in lieu of the applicable method under sections 132.15 through [132.22] 132.24 of this Part.

Section 4. A new section 154.6 of such regulations is added to read as follows:

Section 154.6 Stock options, stock appreciation rights and restricted stock (Tax Law, section 638(c))

(a) Where an individual changes resident status during the taxable year, the amount of New York source income from compensation (see section 132.24(c)(1)) received from stock options, stock appreciation rights or restricted stock, in the taxable year that such income is included in the individual’s federal adjusted gross income (as either ordinary income or capital gain income), is dependent on the individual’s resident status at the time that the compensation is recognized for federal income tax purposes.

(b) If the compensation is recognized during the resident period, the entire amount of compensation recognized for federal income tax purposes is includable in New York source income. In the case of statutory stock options (Internal Revenue Code, sections 422 and 423), the entire amount of gain or loss recognized for federal income tax purposes (both the compensation element and any appreciation in the value of the stock after the exercise date) is includable in New York source income.

(c) If the compensation is recognized during the nonresident period, the amount includable in New York source income is determined using the allocation methods described in section 132.24 of this Title.

These amendments shall apply to taxable years beginning on or after January 1, 2006.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, subdivision First; 631(g); 638(c); 697(a); and Section 3 of Part N of Chapter 62 of the Laws of 2006. Section 171, subdivision First, authorizes the Commissioner of Taxation and Finance to recognize for federal income tax purposes consistent with law which may be necessary for the exercise of the Commissioner’s powers and the performance of the Commissioner’s duties under the Tax Law. Sections 631(g) and 638(c) of the Tax Law, added by Part N of Chapter 62 of the Laws of 2006, provide that nonresident and part-year resident taxpayers, who performed services within New York State during the grant period, may allocate to New York State their compensation income attributable to stock options, restricted stock or stock appreciation rights according to rules prescribed by the Commissioner. Section 3 of Part N of Chapter 62 of the Laws of 2006 directs that such rules be proposed within 180 days of the effective date of the act, which took effect April 26, 2006. Section 3 further provides that the rules may apply to taxable years beginning on or after January 1, 2006, and shall be controlling notwithstanding any Tax Appeals Tribunal decision to the contrary (see discussion of recent Tax Appeals Tribunal decision in Matter of E. Randall Stockless and Jennifer Olson in section 8 below). Section 697(a) provides the authority for the Commissioner to make such rules as are necessary to enforce the personal income tax.

2. Legislative objectives: The rule is being proposed pursuant to such legislative authority to provide specific allocation rules applicable to compensation attributable to stock options, stock appreciation rights and restricted stock for nonresident and part-year resident taxpayers for taxable years beginning on or after January 1, 2006.

3. Needs and benefits: Sections 631(g) and 638(c) of the Tax Law, added by Chapter 62 of the Laws of 2006, provide that the allocation of New York source income for nonresident and part-year resident taxpayers who received compensation income attributable to stock options, restricted stock or stock appreciation rights and who performed services within New York State during the grant period for the corporation granting such option, stock or right be determined pursuant to rules to be developed by the Department of Taxation and Finance. This rule will provide a specific method for such allocation. The rule provides for a grant-to-vest allocation period, for statutory stock options, nonstatutory stock options, restricted stock and stock appreciation rights. The rule will benefit taxpayers by providing clear guidance for the computation of New York source income from compensation income attributable to stock options, restricted stock and stock appreciation rights. It will eliminate double recordkeeping for many nonresident aliens as it is similar to the method used by the Internal Revenue Service for the sourcing of stock option income to the United States. Furthermore, because taxpayers may have relied on a 1995 technical memorandum issued by the Department (TSB-M-95(3)) to compute their estimated tax and/or withholding requirements for 2006, the rule allows taxpayers an election to use either the method in the rule or the method outlined in the technical memorandum in 2006, so as not to leave taxpayers at a disadvantage.

4. Costs:

(a) Costs to regulated parties: There is no cost to regulated parties for implementation and continued compliance with the proposed amendments. The impact on the tax liability of a particular taxpayer, which could be positive or negative, will depend largely on the individual circumstances of the nonresident/part-year resident taxpayer and could vary significantly depending on such factors as the amount of compensation income and the number of days worked in New York State during the allocation period. Using the grant-to-vest allocation period for statutory stock options, nonstatutory stock options without a readily ascertainable fair market value at the time of grant, and stock appreciation rights will result in a fair allocation to New York State of the compensation for services performed in New York State and determination of the tax due to New York State pursuant to statute as, when the option or right is vested, the taxpayer has performed all service-related conditions necessary to exercise the option.

(b) Costs to the State and its local governments including this agency: It is estimated that the implementation and continued administration of these amendments will not impose any costs on the State and its local governments, including this agency. In the aggregate, the fiscal impact on the State will be nominal and there will be no effect on local government revenues.

(c) This analysis is based on a review of the statutory provisions and on discussions among personnel from the Department’s Technical Services Division, Office of Counsel, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: This rule imposes no mandates upon any local governments.

6. Paperwork: The rule imposes no reporting requirements, forms, or other paperwork upon regulated parties beyond those required by existing law and regulations. The allocation method in the rule contains a workday fraction obtained by including days worked in New York State and days worked within and without the state. But this does not involve a new reporting or paperwork requirement, as to compute wage income derived from New York State sources, nonresident employees and officers are already required to keep track of their working days both within and without New York State (20 NYCRR 132.18). Additionally, the rule will generally lessen the time period necessary to keep workday records for calculation of New York source income from compensation income attributable to stock options, restricted stock and stock appreciation rights as compared to the method outlined in the 1995 technical memorandum.

7. Duplication: These amendments do not duplicate any other requirements. The rule eliminates double recordkeeping for many nonresident aliens as it is similar to the method used by the Internal Revenue Service for the sourcing of stock option income to the United States.

8. Alternatives: Other allocation methods were considered in our preparation of these amendments. The allocation method given the most serious consideration was the method outlined in a 1995 technical memorandum issued by the Department (TSB-M-95(3)) to compute estimated tax and withholding requirements for 2006. The Tribunal interpreted the election to use either the method in the rule or the method outlined in the technical memorandum in 2006, so as not to leave taxpayers at a disadvantage.
the tax year of exercise of the option or right), subject to the flexibility afforded by sections 132.4(c) and 132.24 of 20 NYCRR. In considering this allocation method, which is based solely on the year of exercise, we determined that the work days in the year of exercise do not necessarily correlate to the individual’s performance of services with respect to the option or right. It was decided, instead of either of these two methods, to use a grant-to-vest allocation period for statutory stock options, nonstatutory stock options without a readily ascertainable fair market value at the time of grant and stock appreciation rights because, when an option or right is vested, the individual has performed all the service-related conditions necessary to exercise the option or right.

The amendments will provide the benefits listed in section 3 above.

9. Compliance schedule: As stated above, the rule imposes no reporting requirements, forms or other paperwork upon regulated parties beyond those required by existing law and regulations. The rule applies to tax years beginning on or after January 1, 2006. But, in recognition that taxpayers may have relied on the 1995 technical memorandum to compute their estimated tax and/or withholding requirements for 2006, the rule affords taxpayers a choice in this transitional year to use either the new method or the method outlined in the 1995 technical memorandum, so as not to leave taxpayers at a disadvantage.

** Regulatory Flexibility Analysis

1. Effect of rule: This rule amends Parts 132 and 154 of the personal income tax regulations to comply with a statutory directive. Sections 631(g) and 638(c) of the Tax Law, which were added by Chapter 62 of the Laws of 2006, provide that nonresident and part-year resident taxpayers who receive compensation income attributable to stock options, restricted stock or stock appreciation rights and who performed services within New York State during the grant period for the corporation granting such option, stock or right allocate such income attributable to stock options, restricted stock or stock appreciation rights, received for services performed within New York State during the grant period for the corporation granting such option, stock or right. Some taxpayers affected by these rules may be located in rural areas throughout the State. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements: The allocation method in the rule involves some recordkeeping but the rule imposes no reporting requirements, forms, or other paperwork upon regulated parties beyond those required by existing law and regulations. The rule sets forth an allocation method for which a record of days worked within and without the state is used for individuals who are already keeping this information.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will do nothing to encourage or discourage the use of any of such services.

4. Compliance costs: These changes will place no additional burdens on small businesses and local governments. There is also no cost to those individuals affected by the rule for implementation and continued compliance with the rule. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: The rule does not adversely impact small businesses or local governments. The regulation does provide some relief to individuals who are impacted with respect to the allocation methods allowed for 2006. In recognition that taxpayers may have relied on a 1995 technical memorandum to compute their estimated tax and/or withholding requirements for 2006, the rule affords taxpayers a choice in this transitional year to use either the new method or the method outlined in the 1995 technical memorandum, so as not to leave taxpayers at a disadvantage.

7. Small business and local government participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the New York Conference of Mayors, the Association of Towns of New York State, the New York State Association of Counties, the Office of Local Government and Community Services of the New York State Department of State, the Small Business Council of the New York State Business Council, the National Federation of Independent Businesses, the Division for Small Business of Empire State Development and the Retail Council of New York State.

** Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: The purpose of these amendments is to provide flexibility for nonresident and part-year resident taxpayers about the computation of New York source income from compensation income attributable to stock options, restricted stock or stock appreciation rights, received for services performed within New York State during the grant period for the corporation granting such option, stock or right. Some taxpayers affected by these rules may be located in rural areas throughout the State. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements: The allocation method in the rule involves some recordkeeping, but the rule imposes no reporting requirements, forms, or other paperwork upon regulated parties beyond those required by existing law and regulations. The rule sets forth an allocation method for which a record of days worked within and without the state is used for individuals who are already keeping this information.

3. Costs: There is no cost to regulated parties for implementation and continued compliance with the proposed amendments. The impact on the tax liability of a particular taxpayer, which could be positive or negative, will depend largely on the individual circumstances of the nonresident/part-year resident taxpayer and could vary significantly depending on such factors as the amount of compensation income and the number of days worked in New York State during the allocation period. Using the grant-to-vest allocation period for statutory stock options, nonstatutory stock options without a readily ascertainable fair market value at the time of grant, and stock appreciation rights will result in a fair allocation to New York State of the compensation for services performed in New York State and determination of the tax due to New York State pursuant to statute as, when the option or right is vested, the taxpayer has performed all the service-related conditions necessary to exercise the option.

4. Minimizing adverse impact: There is no adverse impact on rural areas. The regulation does provide some relief to individuals who are impacted with respect to the allocation methods allowed for 2006. In recognition that taxpayers may have relied on a 1995 technical memorandum to compute their estimated tax and/or withholding requirements for 2006, the rule affords taxpayers a choice in this transitional year to use either the new method or the method outlined in the 1995 technical memorandum, so as not to leave taxpayers at a disadvantage.

5. Rural area participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the New York Conference of Mayors, the Association of Towns of New York State, the New York State Association of Counties, the Office of Local Government and Community Services of the New York State Department of State, the Small Business Council of the New York State Business Council, the National Federation of Independent Businesses, the Division for Small Business of Empire State Development and the Retail Council of New York State.

**Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because the rule will have no adverse impact on jobs and employment opportunities. This rule amends Parts 132 and 154 of the personal income tax regulations to comply with a statutory directive. Sections 631(g) and 638(c) of the Tax Law, which were added by Chapter 62 of the Laws of 2006, provide that nonresident and part-year resident taxpayers who received compensation income attributable to stock options, restricted stock or stock appreciation rights and who performed services within New York State during the grant period for the corporation granting such option, stock or right allocate such income to New York according to rules prescribed by the Commissioner.

Section 3 of Part N of Chapter 62 directs that such rules be proposed within 180 days of the effective date of the act. This rule provides such method of allocation.